

Refining Slavery, Defining Freedom:

Slavery and Slave Governance in South Carolina, 1670-1747

by

Heidi Scott Giusto

Department of History  
Duke University

Date: \_\_\_\_\_

Approved:

\_\_\_\_\_  
Laura F. Edwards, Supervisor

\_\_\_\_\_  
David Barry Gaspar

\_\_\_\_\_  
Philip J. Stern

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Kathleen A. DuVal

Dissertation submitted in partial fulfillment of  
the requirements for the degree of Doctor of Philosophy  
in the Department of History in the Graduate School  
of Duke University

2012

ABSTRACT

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## **Abstract**

This dissertation examines the changing concepts and experiences of slavery and freedom in South Carolina from its founding in 1670 through 1747, a period during which the legal status of “slave” became solidified in law. During the course of South Carolina’s first eight decades of settlement, the legal statuses of “slave” and “free” evolved as the colony’s slaveholders responded to both local and imperial contexts. Slaves and slaveholders engaged in a slow process of defining and refining the contours of both slavery and freedom in law. The dissertation explores how this evolution occurred by focusing on three topics: constant conflict that afflicted the colony, free white colonists’ reliance on the loyalty of slaves, and South Carolina’s law and legal system.

Through its use of social and legal history, as well as close reading, the dissertation shows that South Carolina’s legal and military contexts gave unplanned meaning to slaves’ activities, and that this had the effect of permitting slaves to shape slavery and freedom’s development in practice and in law. In various ways, the actions of slaves forced slaveholders to delineate what they considered appropriate life and work conditions, as well as forms of justice, for both slaves and free people. As such, slavery as an institution helped give form to freedom. Drawing on legal records, newspapers, pamphlets, and records of the colonial elite, the dissertation argues that slaves’ actions—nonviolent as well as violent— served as a driving force behind the legal trajectory of slavery and freedom in South Carolina. These processes and contexts change our understanding of colonial America. They reveal that slaves influenced the legal regulation of slavery and that slavery and the enslaved population played a critical role in defining freedom, a central tenet of American democracy. Contrary to

modern assumptions about freedom and even the ideals expressed in the Declaration of Independence, this dissertation shows how slavery actually constrained freedom.

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## **Introduction**

In 1747, the South Carolina legislature ratified an act that granted legal freedom to Arrah, an enslaved boat pilot. Arrah's story illuminates the complexities of early modern legal systems by showing how slaves and slavery shaped the law. In 1745, during the War of Jenkins's Ear (1739-1748), French privateers captured Arrah and his vessel. They offered him handsome incentives to fight with them against the British. Arrah refused. The French then sold him in the Spanish colony of Puerto Rico, but he later escaped to St. Thomas, where the Danish governor granted him freedom. Arrah, however, did not value freedom in St. Thomas. Three months later, Arrah returned voluntarily to South Carolina, even though he was still legally a slave in that colony. He promptly petitioned the South Carolina General Assembly (legislature) for his freedom, basing his request on his loyalty to the British. The legislature granted Arrah unconditional freedom and also extended the offer to any other South Carolina slave who escaped from enemy territory and returned to the colony. Arrah's decision to return to the colony that enslaved him forces us to rethink the meanings of slavery and freedom in the early modern era, and to consider the varied ways slaves influenced those legal statuses. Illuminating in many ways, Arrah's story appears throughout the dissertation.

This study examines the changing concepts and experiences of slavery and freedom in South Carolina from its founding in 1670 through 1747, a period during which the legal status of "slave" became solidified in law. During this period of South Carolina's history, slaves and slaveholders engaged in a slow process of defining and refining the contours of slavery and freedom in law. The dissertation explores how this evolution occurred by

focusing on three topics: constant conflict that afflicted the colony, free white colonists' reliance on the loyalty of slaves, and South Carolina's law and legal system. The endemic conflict that plagued the colony from 1670-1747 make it a critical factor for understanding the changes in slavery and freedom. The white residents of South Carolina, a British slave society and colonial outpost, endured incessant conflict with imperial rivals, Indians, and even slaves. Conflict encompassed declared warfare but also other acts of aggression and hostility. Such political turmoil forced the slaveholding minority to rely on the loyalty and aid of its enslaved subordinates. This dependence on the enslaved population compelled colonial officials to consider slaves during the lawmaking process, which included the regulation of slavery. The colony's legal system facilitated such consideration of slaves. English legal traditions and South Carolina's founding documents recognized slaves as part of the social order and positioned them to be involved in the colony's legal culture. The co-existence of conflict, English legal traditions, and the colony's dependence on coerced labor created a situation in which slaves' actions—nonviolent as well as violent— served as a driving force behind the legal trajectory of slavery and freedom in South Carolina.

My dissertation shows that South Carolina's legal and military contexts gave unplanned meaning to slaves' activities, and that this had the effect of permitting slaves to shape slavery and freedom's development in practice and in law. Slaves directly challenged the meanings of slavery through resistance. They also molded it unintentionally through mundane activities, such as working as skilled laborers. Enslaved people's allegiance during conflict also influenced concepts of slavery and freedom by creating ideal models of slave behavior. In various ways, the actions of slaves forced slaveholders to delineate what they

considered appropriate life and work conditions, as well as forms of justice, for both slaves and free people. As such, slavery as an institution helped give form to freedom. Slaveholders expressed their changing beliefs about slavery and freedom through legislative action. South Carolina's local contexts forced legislators to define gradually slaves' legal status. My research shows that legislators often crafted laws in response to slaves' actions, thereby making slaves indirect participants in lawmaking. These processes and contexts change our understanding of colonial America. They reveal that slaves influenced the legal regulation of slavery and that slavery and the enslaved population played a critical role in defining freedom, a central tenet of American democracy.

Early South Carolina through 1747 is ideal to study the legal evolution of slavery because that institution lay at its center since its founding in 1670. From the beginning, South Carolina's eight lord proprietors planned for slavery to undergird the colony's economic and agricultural foundations, and they made provisions for it in the new settlement's Fundamental Constitutions. Settlers knew from the outset that slaves would be a part of the social order. South Carolina quickly developed into a slave society.<sup>1</sup> White colonists relied heavily on Indian slavery up until the 1710s, but by 1708, only thirty-eight years after the colony's formation, enslaved people of African descent constituted the majority of South Carolina's residents.<sup>2</sup> Many of the colony's earliest settlers came from the

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<sup>1</sup> In his foundational text, Peter H. Wood describes the origins of South Carolina as a plantation slave society. In a more recent account, S. Max Edelson also discusses the very beginnings of the colony. See: Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 Through the Stono Rebellion* (New York: W.W. Norton, 1974); and Edelson, *Plantation Enterprise in Colonial South Carolina* (Cambridge, Massachusetts and London: Harvard University Press, 2006).

<sup>2</sup> For studies about Indian slavery in South Carolina, see Alan Gally, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (New Haven, CT and London: Yale University Press, 2002) and

English island colony of Barbados, which was already a slave society at the time of South Carolina's founding. The high proportion of immigrants from Barbados has led some scholars to refer to South Carolina as a "colony of a colony."<sup>3</sup> White immigrants from Barbados brought their servants and slaves with them to the new colony, and they also played an influential role in government during its formative years. These powerful men, as well as other slaveholders, ensured that the colony's legal system supported slavery. When South Carolina lawmakers crafted statutes designed to regulate slavery, they looked to Barbados slave laws for guidance.

Slavery's importance to South Carolina is particularly apparent when viewed in conjunction with the conflict that plagued the colony from its founding through 1747. European imperial powers frequently waged war against each other during the late-seventeenth and eighteenth centuries. As an English colony, South Carolina participated in and was affected by warfare. This turmoil occurred, in part, because the colony had one of the most important ports along the Atlantic seaboard (Charlestown) and because of its geographic proximity to Spanish Florida and the Caribbean basin where imperial conflicts often unfolded. Amid the political upheaval and warfare among Europe's powers and also

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William L. Ramsey, *The Yamasee War: A Study of Culture, Economy, and Conflict in the Colonial South* (Lincoln and London: University of Nebraska Press, 2008).

<sup>3</sup> For a further discussion of South Carolina's demographics and the concept of a "colony of a colony," see Wood, *Black Majority*. Recent scholarship by L.H. Roper challenges the "colony of a colony" belief and argues that previous scholarship has overstated the influence of Barbadian immigrants. L.H. Roper, *Conceiving Carolina: Proprietors, Planters, and Plots, 1662-1729* (New York: Palgrave MacMillan, 2004). For more information about the settlement and growth of Barbados, see Richard Dunn, *Sugar and Slaves: The Rise of the Planter Class in the English West Indies, 1624-1713* (1972; Chapel Hill and London: Published by the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2000) and Russell R. Menard, *Sweet Negotiations: Sugar, Slavery, and Plantation Agriculture in Early Barbados* (Charlottesville and London: University of Virginia Press, 2006).

with Native Americans, slaveowners worried about foreign enemies. They also held deep-seated anxieties about their slaves, whom they often referred to as domestic enemies.<sup>4</sup> My research shows that slaves played crucial roles in the colony during warfare and other times of conflict. Thus, conflict created an environment in which slaves indirectly, and sometimes directly, influenced colonial leaders because the colony was so extensively dependent on their labor, knowledge, and loyalty.

This project uses an Atlantic World perspective because it sheds light on the role of outside influences, including inter-colonial and inter-imperial rivalries, in shaping slavery in South Carolina. Scholars have pointed to the webs of connections across the Atlantic and between colonies, refining our understanding of colonial societies and legal systems.<sup>5</sup> During the period 1670-1747, South Carolina was an integral part of broad social, economic, and cultural networks. The British colony had an export-based plantation economy that closely connected to Atlantic trade networks. The bustling port town of Charlestown encouraged the growth of racial slavery by becoming the hub for the African slave trade in British North America. This enhanced the colony's ties to other areas involved in that trade. Conflict over

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<sup>4</sup> Colonial contemporaries often recognized slaves as potential enemies. For one example see Benjamin Martyn, *An Impartial Inquiry into the State and Utility of the Colony of Georgia* (London, 1741), rpt. in Georgia Historical Society, *Collections*, I (1840), in Wood, *Black Majority*, p. 166. Another instance involves the Stono rebellion, in which legislative journals refer to the slaves involved in the insurrection as "Domestic Enemies." J.H. Easterby, ed., *The Journal of the Commons House of Assembly, September 12, 1739-March 26, 1741*, (Columbia: South Carolina Archives Department, 1952), p. 63.

<sup>5</sup> David Hancock discusses the webs of association throughout the Atlantic World among twenty-three London merchants. David Hancock, *Citizens of the World: London Merchants and the Integration of the British Atlantic Community 1735-1785* (New York: Cambridge University Press, 1995). April Lee Hatfield examines Virginia and presents a new interpretation of Bacon's Rebellion by tying the rebellion to trading with Indians instead of the classic interpretation of the rebellion as one based on issues surrounding class conflict. April Lee Hatfield, *Atlantic Virginia: Intercolonial Relations in the Seventeenth Century* (Philadelphia: University of Pennsylvania Press, 2004); Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York and London: W. W. Norton & Company, 1975).

trade and even South Carolina's existence as an English colony drew it into warfare. South Carolina's encroachment on territory that Spain claimed resulted in tension and acts of aggression between Spanish Florida and South Carolina.<sup>6</sup> The dissertation's attention to political currents outside of South Carolina highlights how the colony suffered from constant conflict and how that turmoil influenced its development. This study also reveals the legal development of slavery as being highly influenced by events stemming from outside the colony, particularly imperial rivalry.

This project is meant to contribute to the rich literature of colonial legal studies and follows a recent trend that focuses on subordinated peoples' interaction with the law. In early modern England and her colonies, law was intricately woven into the fabric of society, thus including in it people from all walks of life.<sup>7</sup> Scholars of colonial America such as Kathleen Brown, Cornelia Hughes Dayton, and Linda Sturtz have demonstrated the importance of understanding the social and cultural contexts in which legal action took place;

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<sup>6</sup> For a study that takes a broad view of European conquest of the New World and how individual powers claimed new territory, see Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640* (Cambridge, UK; New York: Cambridge University Press, 1995). Ken MacMillan focuses exclusively on England's acquisition of New World land and argues that in addition to securing land claims through occupation and cultivation of the territory, England created a legal foundation for its New World land holdings. Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576-1640* (Cambridge, UK: Cambridge University Press, 2006).

<sup>7</sup> Scholarship that examines women in early modern England and colonial America demonstrates that despite their subordination to men, women were able to own property and actively participate in and shape law and legal culture. See: Susan Dwyer Amussen, "'Being Stirred to Much Unquietness': Violence and Domestic Violence in Early Modern England," *Journal of Women's History* 6, no. 2, (1994): pp. 70-89; Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia by the University of North Carolina Press, 1995); Amy Louise Erickson, *Women and Property in Early Modern England* (London and New York: Routledge, 1993); Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon Press, 1996); Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge and New York: Cambridge University Press, 1987); Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998); and Linda L. Sturtz, *Within Her Power: Propertied Women in Colonial Virginia* (New York: Routledge, 2002).

their studies of women and gender have been especially fruitful in revealing how women and people of color participated in legal systems and were affected by them.<sup>8</sup> This dissertation draws attention to South Carolina's legal system and the place of slaves within it. Doing so changes some fundamental assumptions about how slavery and the law worked in South Carolina, primarily the prevailing belief that the colonial elite administered law to slaves without every truly taking them into consideration. My research finds that both slaves and slavery were central to the development of statutory law and the colony's overarching legal schema.

Existing scholarship on gender provides a framework with which to view the historical subjects and society that I research.<sup>9</sup> South Carolina's patriarchal social and political structures thoroughly embraced inequality based on sex, class, and color. These profound inequalities actually presented subordinated people with opportunities to shape the colony's trajectory, as counter-intuitive as that might seem today, given the presumed

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<sup>8</sup> Studies that examine women and gender have been particularly enlightening about law in early America. Cornelia Hughes Dayton discusses the way women's participation in court was restricted over time in New Haven, Connecticut. Dayton, *Women Before the Bar*. Kathleen Brown argues that gender was a crucial factor in the development of slavery and racism in colonial Virginia. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996). Linda L. Sturtz also examines colonial Virginia and argues that in certain circumstances propertied women were allowed or expected to act on their own behalf. Sturtz, *Within Her Power*. Marylynn Salmon examines seven colonies and states from 1750 to 1830, looking at how formal property laws changed over time and how those changes affected married women's rights. Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill and London: University of North Carolina Press, 1986).

<sup>9</sup> Kathleen Brown's scholarship has transformed the way historians view the development of colonial Virginia, while Kirsten Fischer and Martha Hodes have revealed the importance of gender in understanding illicit sexual relationships and social dynamics more generally. Brown changed the fundamental understanding of slavery in colonial Virginia by showing that gender shaped the power relationships and the development of racial slavery in Virginia. This is a shift from Edmund Morgan's emphasis that class issues were central to understanding the development of slavery. Brown, *Good Wives*; Morgan, *American Slavery, American Freedom*; Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca, NY and London: Cornell University Press, 2002); and Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven: Yale University Press, 1997).

connection between legal agency and the civil and political equality that comes with legal personhood. Although subordinates were not protected in the same manner as elite white men, they were an accepted part of the social order and had some standing within South Carolina's legal culture. Because—not in spite— of their inequality, subordinates wielded some (albeit minimal) influence in South Carolina.

The dissertation takes an existing paradigm that focuses on the role of slaves and freed people in relation to law during the nineteenth century and applies it to the colonial period. Recently, a small number of legal historians who study slavery in the nineteenth-century United States have argued that enslaved people influenced the law and legal culture because they were part of the established social order.<sup>10</sup> Slaves also molded aspects of life beyond the law. Walter Johnson asserts that slaves sold in the domestic slave trade in the antebellum South shaped their own fate by actively participating in the sale. Dylan Penningroth shows that slaves established rules for property ownership and obtained recognition of them.<sup>11</sup> Other scholars discuss various forms of slave property, most of which relate to slaves' right to their own time, including the widespread urban practice of self-

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<sup>10</sup> Laura F. Edwards, "Enslaved Women and the Law: Paradoxes of Subordination in the Post-Revolutionary Carolinas," *Slavery & Abolition* 26, no. 2 (2005): pp. 305-323; Edwards, "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *American Historical Review* 112, no. 2 (2007): pp. 365-393; Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2010); Ariela Gross, "Beyond Black and White: Cultural Approaches to Race and Slavery," *Columbia Law Review* 101, no. 3 (2001): pp. 640-690.

<sup>11</sup> Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge: Harvard University Press, 1999) and Dylan Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003).

hiring.<sup>12</sup> The dissertation builds on the work of nineteenth-century historians by recognizing the wide range of conditions that slaves experienced, in order to show how people of African descent molded law and legal culture during the colonial period. Unlike histories of nineteenth-century slavery, even the most renowned studies of colonial slavery have not addressed seriously slaves' active role in the law or in the evolving relationship between slavery and freedom. My work reveals that slaves in the colonial era were key members of the social order and legal culture of the colony, and were positioned to shape slavery and freedom.

The dissertation uses close reading and a combination of social and legal history to trace the legal evolution of slavery and how people experienced the institution in colonial South Carolina during the late seventeenth and early eighteenth centuries. I have consulted a range of sources, including legislative journals of the upper and lower houses of assembly, Council journals, admiralty court records, records from the courts of Chancery and Common Pleas, statutes, petitions, and a collection titled the Miscellaneous Records of the Secretary of the Province. Newspapers, manuscripts of the colonial elite, instructions from British imperial authorities, broadsides, and pamphlet literature also inform my understanding of the colony's legal culture and the mindset of its slaveholders. Public

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<sup>12</sup> By negotiating the ability to manage some of their own time, slaves were able to acquire property through self-hiring, which often led to ownership of property in various forms. Slaves earned capital to buy their own clothes, put a roof over their head, and purchase and or grow their food. The ultimate possession of property occurred when some slaves purchased themselves, and thereby their legal freedom. Philip Morgan has discussed self-hiring during the colonial period and legislative efforts to constrict the practice. Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made*, (1972; New York: Vintage Books, 1976), pp. 390-392; Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry* (Chapel Hill & London: Published for the Omohundro Institute of Early American History and Culture, by the University of North Carolina Press, 1998), pp. 350-352; Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage Books, A Division of Random House, 1956), pp. 72-73, 90, 96.

documents from and pertaining to Caribbean islands, Florida, Georgia, and other colonies help contextualize South Carolina's place in the British Empire and Atlantic World. Documents generated by the colonial government have provided critical information about South Carolina's legal system. Journals from the legislature have been particularly useful for my project because they often contain detailed notes about the debates that occurred as legislators considered bills and petitions. Overall, my approach was to read the governmental records with a focus on examining how ordinary people, including slaves, interacted with and used the law. Newspapers from various locations, especially from South Carolina, have also proven crucial to this study. As the colony's lone newspaper from this era, the *South Carolina Gazette* aided my reconstruction of social, cultural, and political settings. The newspaper reported on major events that concerned colonists of European descent, including warfare, slave revolts, acts of maritime predation, crime, and criminal prosecutions. From this information, I documented cases of slave crime particularly through the runaway advertisements that frequently appeared in the paper, and also through accounts of criminal prosecutions against slaves. The *Gazette* enabled me to examine case law as it pertained to slave crime. This would have been impossible without the newspaper because the courts that tried slaves did not keep records.

The dissertation is divided into six thematic chapters. Chapters one through three lay the foundation for the arguments presented in the last three chapters. The initial chapters establish the context for how slavery and slaves—whom some historians view as outsiders to

colonial societies—came to influence the legal development of slavery.<sup>13</sup> Chapters one and two focus on how conflict shaped slavery in South Carolina. Chapter one establishes that endemic conflict plagued the colony. Imperial warfare as well as hostilities with free Indians, slaves, privateers, and pirates troubled white colonists incessantly. These conflicts were almost always about slavery in some way. Many wars and acts of hostility that were about something else, such as trade rights, actually had underlying causes and motives related to slavery.

The second chapter highlights the colony's dependence on slaves by uncovering their roles in conflict. Unrest forced white colonists to rely on the enslaved population in various ways because they needed slaves' loyalty and skills during conflict. They thus relied on slaves for more than just their productive and reproductive labor as it related to economic gain. Viewing slavery in conjunction with conflict reveals that dynamics outside the colony shaped slavery and how people experienced it. No singular experience defined slavery. Constant conflict ensured that, especially for select skilled slaves, diversity characterized the slave experience and how whites treated and depended on enslaved people.

Chapter three discusses South Carolina's legal culture and situates slavery within the colony's legal schema. It shows how the lord proprietors and slaveholding government officials ensured that the formal legal system and the colony's foreign policy supported slavery. But the colonial-level government did not completely control the legal culture, which

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<sup>13</sup> Moses Finley, "Slavery," *International Encyclopedia of the Social Sciences* (New York: Macmillan Co. and Free Press, 1968), vol. 14, pp. 307-313; Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge Massachusetts and London: Harvard University Press, 1982), p. 7; Diana Paton, "Punishment, Crime, and the Bodies of Slaves in Eighteenth-Century Jamaica," *Journal of Social History* 34, no. 4 (2001): pp. 923-954, 945.

also included customary methods of governing that included subordinates. Slaves were members of the social order, and as such, they helped maintain the colony's peace and participated in its legal culture.

Chapters four and five of the dissertation chronicle the enactment of slave laws. These chapters rely on close reading of statutes pertaining to slavery. Chapter four looks at how lawmakers generated slave laws and reveals a dialogue that occurred between slaves and slaveholding legislators. During the legislative process, slaveholders grappled with the realities of living in a slave society. When legislators created laws they often responded to the actions of enslaved members of society. Chapter five situates comprehensive slave acts in the context of the colony's broader legal culture. Slave acts get much scrutiny from historians and legal scholars, but there has been difficulty determining where those laws fit within the colony's legal schema. Through a close reading of statutes, the chapter argues that custom—in which slaves participated because they were members of the social and legal order—was actually the dominant mode of governing slaves. By showing that custom primarily governed slavery, and by applying insights from social historians, the chapter presents a new interpretation of the legal regulation of slavery.<sup>14</sup> Recognizing custom's primacy in slave

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<sup>14</sup> Social histories of British colonial slavery have viewed the individual master-slave relationship as based on negotiation, albeit from unequal positions of power. Such negotiation most likely carried over into customary law. Ira Berlin argues: "slavery, though imposed and maintained by violence, was a negotiated relationship." Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA and London: The Belknap Press of Harvard University Press, 1998), p. 2. In his study of colonial South Carolina, Robert Olwell claims that "growing familiarity between South Carolina's whites and blacks ... inspired a degree of mutual comprehension, calculation, and negotiation...Slaves were not merely the passive subjects of the slave society but were intelligent agents whose choices and actions, while always shackled by their condition, nonetheless helped to shape the world they lived in." Robert Olwell, *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Lowcountry 1740-1790* (Ithaca, NY and London: Cornell University Press, 1998), p. 7; Philip Morgan argues: "However total the masters' exercise of power, negotiation and compromise were necessary to make slavery function." Philip Morgan, *Slave Counterpoint*, p. 257.

governance opens the possibility that slaves had more of an active role in governing the institution than scholars previously presumed.

Chapter six, the final chapter, argues that over the course of time, the institution of slavery gave form to freedom. Throughout the period of this study, slaveholders took measures through law to strengthen slavery. As other chapters show, slaveholding lawmakers refined the comprehensive slave acts in response to slaves' actions and when they felt the colony's peace was at risk. They also used legal means to grant manumission and other rewards to slaves, actions that reinforced slavery. At the same time, they crafted legislation that restricted free people of color. Collectively, these actions prescribed what slaveholders considered appropriate behavior for slaves, and even free blacks. The effect, well known among historians, is that blackness became associated with slavery and whiteness with freedom. But those actions did more than just make declarations about slavery and freedom along racial lines. As the conclusion to the dissertation argues, slavery actually helped define freedom and what whites expected of it.

During the period 1670-1747, the implications of having a free or slave status changed in practice and in the law. This change occurred as South Carolina's legislators responded to the colony's utter dependence on slaves and slavery. That dependence compelled the colonial elite to take the presence and actions of slaves into consideration when crafting slave law. As such, slaves influenced the refining and shaping of slavery's legal trajectory. Moreover, the actions of slaves and the harsh realities of living in a slave society afflicted by conflict ultimately influenced the terms of freedom. No one in South Carolina prescribed what being free meant legally in the same way that they did for slaves through the

comprehensive slave acts. But slave and other laws did have a formidable effect on what it meant to be a free person of color or a free white person and the legalities surrounding that status. Contrary to widely held beliefs about freedom today, freedom in South Carolina could mean different things depending on one's race, gender, and economic background. Even more telling, slavery actually constrained freedom for white colonists.

## Chapter 1: Conflict: The Nature of South Carolina Society

In 1733, General James Oglethorpe approached South Carolina's leaders and asked for their continued help in protecting Georgia, a newly founded British colony bordering South Carolina to the north and Florida to the south. The new colony amplified Spain's hostility toward both Georgia and South Carolina, thereby increasing the possibility that Spain might attack. In a speech that Oglethorpe delivered before the South Carolina Governor, Council, and Commons House of the legislature, he pointed out that Georgia's settlement benefited South Carolina's security: "It would be needless for me to tell you... how the increasing Settlements of the new Colony upon the Southern Frontiers, will prevent... Danger for the future."<sup>1</sup> South Carolina had faced invasion before, and Oglethorpe built on the common knowledge of those in attendance about the two colonies' uncertain futures because of latent threats posed by imperial rivals, free Indians, and slaves.<sup>2</sup>

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<sup>1</sup> Reprint of General Oglethorpe's Speech, *South Carolina Gazette: Containing the freshest Advices Foreign and Domestick* (Charles Town, South Carolina: Printed by T. Whitmarsh), July 7, 1733 (hereafter *South Carolina Gazette*); M. Eugene Sirmans, *Colonial South Carolina: A Political History, 1663-1763* (Chapel Hill: Published for the Institute of Early American History and Culture at Williamsburg, VA, by the University of North Carolina Press, 1966), pp. 169-170; J.H. Easterby, ed., *The Journal of the Commons House of Assembly, Nov. 10-1736-June 7, 1739* (Columbia: The Historical Commission of South Carolina, 1951), pp. 154-155.

<sup>2</sup> I use the terms Indians, Native Americans, and indigenous people synonymously. I adhere to the understandings that race, class, and gender are socially constructed. Nevertheless, I often use the terms "white" and "black" in order to avoid the clumsiness of repeatedly writing "people of European descent" and "Africans and people of African descent." When referring to people of both European and African descent, I use the term contemporaries often employed, mulatto. For works that discuss the social construction of race, see Stephanie Cole and Alison M. Parker, eds., *Beyond Black & White: Race, Ethnicity, and Gender in the U.S. South and Southwest* (College Station: Published for the University of Texas at Arlington by Texas A&M University Press, 2004); Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1980s* (New York: Routledge and Kegan Paul, 1987); David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (London: Verso, 1991); Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *The American Historical Review* 91, no. 5 (1986): pp. 1053-1075.

Oglethorpe acknowledged that most of the men in the audience were “personal Witnesses of the dangerous Blows this Country has escaped, from French, Spanish, and Indian Arms.” He also reminded them of “a Time, when every Day brought fresh Advices of Murders, Ravages and Burnings.” The General rehashed the hostile encounters with Indians, the French, and the Spanish that occurred during the preceding years. He then underscored the personal sacrifice the members of government endured, “when no Profession or Calling was exempted from Arms,” and when men were “obliged to leave their Wives, their Families, their useful Occupations, and undergo all the Fatigues of War.” Oglethorpe recognized that people made these sacrifices “for the necessary Defence [sic] of the Country,”<sup>3</sup> and he hoped South Carolina would continue to aid its southern neighbor during times of alarm.

The War of Jenkins’s Ear (1739-1748) and the conflicts that preceded it, such as the ones that Oglethorpe referenced, rocked South Carolina society and unsettled colonists. Historians know that warfare destabilized colonial societies,<sup>4</sup> but they have not recognized the extent to which warfare and other forms of conflict in South Carolina were both constant and related to slavery. Conflict—defined broadly to include wartime military action, aggression during official peacetime, and domestic strife—characterized South Carolina

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<sup>3</sup> *South Carolina Gazette*, July 7, 1733.

<sup>4</sup> Jill Lepore, *The Name of War: King Philip’s War and the Origins of American Identity* (New York: Knopf, 1998); Daniel R. Mandell, *King Philip’s War: Colonial Expansion, Native Resistance, and the End of Indian Sovereignty* (Baltimore, MD: Johns Hopkins University Press, 2010); Steven J. Oatis, *A Colonial Complex: South Carolina’s Frontiers in the Era of the Yamasee War, 1680-1730* (Lincoln: University of Nebraska Press, 2004); Richard Pares, *War and Trade in the West Indies, 1739-1763* (Great Britain: Oxford at the Clarendon Press, 1936); William L. Ramsey, *The Yamasee War: A Study of Culture, Economy, and Conflict in the Colonial South* (Lincoln and London: University of Nebraska Press, 2008); Carl E. Swanson, *Predators and Privateers: American Privateering and Imperial Warfare, 1739-1748* (Columbia: University of South Carolina Press, 1991).

society.<sup>5</sup> Conflict and hostile actions such as privateering occurred so frequently in the mainland Southeast that the starting and ending dates of war, as marked by imperial authorities, are virtually meaningless. White colonists had many concerns that one writer enumerated in 1742 as “the particular Circumstances of Carolina.”<sup>6</sup> Colonists perpetually—and legitimately—worried that the Spanish or French would invade, that hostile Indians in the surrounding areas might challenge them, that privateers and pirates would continue to hinder their trade, and that their slaves might run away, or worse yet, revolt. These apprehensions were rooted in justifiable concerns about the people who might contest British control of the region.

Conflict reveals the wider context of slavery. Slavery held at least a secondary place in wars that, on the surface, were primarily about something else. Wars about trade rights or access to trade directly related to transporting slaves or the goods they produced. On the ground, the Spanish challenged slavery in South Carolina by encouraging slave desertion. South Carolina depended on slaves for its economic prosperity, so the colony’s success in conflicts was crucial. Should all of its slaves be stolen away or willingly desert, or if the British failed to control the seas enough for merchant vessels and slave ships to come and go

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<sup>5</sup> Matthew H. Jennings has noted how violence characterized the mainland Southeast through 1740. In the context of the modern United States, Mary Dudziak argues that wartime is not a discrete period of time, and explores the consequences of such constant engagement in warfare. Matthew H. Jennings, “This Country is Worth the Trouble of Going to War to Keep It: Cultures of Violence in the American Southeast to 1740,” (Ph.D. dissertation, University of Illinois at Urbana-Champaign, 2007); Mary Dudziak, *War Time: An Idea, Its History, Its Consequences* (New York: Oxford University Press, 2012).

<sup>6</sup> *An Impartial Account of the Late Expedition Against St. Augustine Under General Oglethorpe. Occasioned by The Suppression of the Report, made by a Committee of the General Assembly in South-Carolina, transmitted, under the Great Seal of that Province, to their Agent in England, in order to be printed. With an Exact Plan of the Town, Castle and Harbour of St. Augustine, and the adjacent Coast of Florida; shewing the Disposition of our Forces on that Enterprize* (London: Printed for J. Huggonson, in Sword-and -Buckler-Court, over-against the Crown-Tavern, on Ludgate-Hill, 1742), p. 68.

freely, South Carolina would have been in an even more precarious situation. White colonists' relations with Indian and African-descended slaves, and with free Indian societies, also point to slavery's role in inter-colonial conflicts. Inter-imperial contexts, in which competing powers warred with each other, and inter-colonial circumstances shaped South Carolina's development and help to reveal the inter-imperial and inter-colonial aspects of slavery.

Environmental and political circumstances shaped South Carolina's early history and the conflicts that plagued the colony. The terrain's natural features facilitated the growth of plantation agriculture reliant on bound laborers, which then propelled South Carolina along the same path taken by other colonies that produced a single staple crop: it became a slave society.<sup>7</sup> Political contexts also molded South Carolina's development. Even though the initial English settlement in South Carolina was relatively small, English presence that far south on the North American mainland invited contestation from Spain and other empires. Additionally, England's colonial outpost encroached on Indian communities. This intrusion encouraged trade but also warfare. Combined, these conditions and circumstances made

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<sup>7</sup> Institutionalized racial slavery dominated and affected all facets of life in slave societies like South Carolina. Scholars have fine-tuned the definition of slave society. Elsa Goveia notes that a slave society is a "whole community based on slavery, including masters and freedmen as well as slaves," and goes on to say that "Under the slave system, the place of the individual in society was determined by his status, and not by any concept of human equality." Goveia also notes that the social position of slaves "was determined by the fact that they were regarded primarily as property." Elsa Goveia, *Slave Society in the British Leeward Islands at the End of the Eighteenth Century* (New Haven, CT and London: Yale University Press, 1965), pp. vii, 47-48. Ira Berlin builds on Goveia's work by contrasting slave societies and societies with slaves. He defines slave societies as societies in which, "slavery stood at the center of economic production, and the master-slave relationship provided the model for all social relations." This is in contrast to societies with slaves, where "slaves were marginal to the central productive processes." Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA: The Belknap Press of Harvard University Press, 1998), p. 8.

South Carolina colonists vulnerable to attacks from slaves, Native American groups, and imperial rivals.

The colony's semi-tropical environment fostered the emergence of rice as South Carolina's dominant staple crop. During most of its colonial period, the majority of South Carolina's population lived in the Lowcountry coastal region where the soil and climate favored the rise of plantations.<sup>8</sup> Many European colonists based their economic prosperity on agricultural pursuits. During the early-eighteenth century, colonists succeeded in perfecting rice's cultivation as a staple crop. Rice, which thrived in the Lowcountry's swampy terrain, became South Carolina's most profitable agricultural export during the eighteenth century.<sup>9</sup> From 1724 to 1739, the colony exported more than 551,000 barrels of rice, which greatly outpaced the rate of the two next most common exports, pitch (approximately 273,000 barrels) and tar (at least 73,600 barrels).<sup>10</sup> The Lowcountry's internal waterway

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<sup>8</sup> It was not until the 1760s that the backcountry began to be inhabited by large numbers of European-descended settlers; prior to that time, most people lived in the Lowcountry. Rachel N. Klein, *The Unification of a Slave State: The Rise of the Planter Class in the South Carolina Backcountry, 1760-1808* (Chapel Hill and London: Published for The Institute of Early American History and Culture, Williamsburg, Virginia, by The University of North Carolina Press, 1990), especially pp. 1-46.

<sup>9</sup> A rich scholarly discussion of rice's rise to prominence in South Carolina centers around Africans' role in successfully producing the crop. For works that consider rice's development as a cash crop in South Carolina and Africans' important role in this endeavor, see: Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 Through the Stono Rebellion* (New York: W.W. Norton, 1974), pp. 35-62; and Daniel C. Littlefield, *Rice and Slaves: Ethnicity and the Slave Trade in Colonial South Carolina* (Baton Rouge, LA and London: Louisiana State University Press, 1981). Supporting the assertion that African knowledge of rice-growing was crucial to its success as a cash crop in South Carolina, Judith Carney discusses the African influence on rice growing more generally. Judith Carney, *Black Rice: The African Origins of Rice Cultivation in the Americas* (Cambridge, MA: Harvard University Press, 2001). A more recent account asks not who grew the rice, but why rice became the staple crop in South Carolina. See: S. Max Edelson, *Plantation Enterprise in Colonial South Carolina* (Cambridge, MA: Harvard University Press, 2006), pp. 53-91.

<sup>10</sup> I rounded down to produce a conservative estimate of the number of barrels exported because some of the numbers in the documents were illegible. Port of Charles-Town in South-Carolina, An Account of sundry Goods Imported and of sundry Goods of the Produce of the Province Exported, from the Year 1724, to the Year 1735...And a Particular Account of the last Year (Charles-Town: Lewis Timothy, 1736); Port of Charles-

system further facilitated the rise of plantations because it allowed for relatively easy intra- and inter-colony travel and trade, including the distribution of rice.

South Carolina's geographic characteristics and economic development made the colony both valuable and vulnerable in an imperial context characterized by war. These conditions drew South Carolina into conflict. Spain contested England's claim to South Carolina, which positioned the countries to carry out warfare in the mainland Southeast. Centuries earlier, the 1494 Treaty of Tordesillas granted Spain, based on its assertion of first discovery, a theoretical claim to virtually all lands in the New World, regardless of its ability to colonize them.<sup>11</sup> This treaty between Spain and Portugal overlooked other countries, which at the time, or in the future, sought out distant lands to explore and colonize. Spain's ambitions of exploration and colonization in the New World encouraged other budding European empires to stake their claims in the Western Hemisphere. Unlike Spain and Portugal, England did not claim land based on first discovery or even papal approval. Rather, it used legal arguments that were partially based on England's ability to occupy and cultivate the territory.<sup>12</sup> At a fundamental level, then, the English settlement and claiming of South

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Town in South-Carolina, An Account of sundry Goods Imported and of sundry Goods of the Produce of the Province Exported from this Port, from the first of November 1737, to the first of November, 1738 (Charles-Town: Lewis Timothy, 1738); Port of Charles-Town in South-Carolina, An Account of sundry Goods Imported and of sundry Goods of the Produce of the Province Exported from this Port, from the first of November 1738, to the first of November, 1739 (Charles-Town: Peter Timothy, 1739).

<sup>11</sup> J.H. Parry discusses Spain's claims in the New World and its resistance to acknowledge trading or settlement by other empires's unless it specifically granted permission for such activities. J.H. Parry, *The Spanish Seaborne Empire* (Berkeley, Los Angeles and London: University of California Press, 1966), pp. 46-47, 270-271. For an account of Spain's attempts to settle the area what would become South Carolina, see Robert M. Weir, *Colonial South Carolina: A History* (1983; Columbia: University of South Carolina Press, 1997), pp. 1-7.

<sup>12</sup> Rather than focusing on how the English seized possession and maintained their claim by domination and cultivation over the land, Ken MacMillan shows how the English also established a legal foundation to their empire in New World. For works that consider the manner in which various powers maintained their claim and

Carolina challenged Spain's land claims in southeastern North America and set up a perfect scenario for future conflicts between the two rival imperial powers.

England's young colony threatened Spain's land claims in the southeast in a theoretical sense, and it also directly intruded into Spanish Florida's territory, thereby inviting attack from its rivals. In 1663, the English Crown granted a charter to eight proprietors for title to a large tract of land called "Carolina," pushing the boundaries of English settlement on the mainland further south and putting their claims very near to Spanish Florida. The eight proprietors possessed land between the 31° and 36° north latitude, which approximately encompassed modern-day North Carolina, South Carolina, and Georgia. The extensive east-west boundaries reached from the Atlantic Ocean to an unknown distance to the west, ending at the "South Seas." A little more than two years later, in 1665, the Crown granted the proprietors a second charter that extended the land claim northward to 36° 30' north latitude and southward to 29° north latitude. This southern boundary encroached on Spain's claim to Florida by approximately two degrees latitude.<sup>13</sup> English settlement patterns in this vast area varied, and relatively soon after initial settlement Carolina split into separate colonies, North Carolina and South Carolina. North Carolina did not receive its own governor until 1712, but by that time, as one historian claims, "this division was already a

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possession of New World territory, see John J. Juricek, "English Claims to North America to 1660: A Study in Legal and Constitutional History" (Ph.D. dissertation, University of Chicago, 1970); Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576-1640* (Cambridge, UK: Cambridge University Press, 2006); and Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640* (Cambridge, UK; New York: Cambridge University Press, 1995).

<sup>13</sup> Sirmans, *Colonial South Carolina*, p. 5.

matter of administrative semantics.”<sup>14</sup> South Carolina’s boundaries intruded on Spain’s territorial claims, and the Spanish in Florida aimed to destroy the more southern of the two English colonies. (See Figure 1.)



Figure 1 Map of Carolina by H. Moll (1729) marking the boundaries of South Carolina. Note that Moll recognized the overlap of "The South Bounds of Carolina" and Florida's northern boundary. Courtesy of the American Antiquarian Society.

English settlement in the Southeast also conflicted with the interests of Native Americans who inhabited the same area. After initial amiable relations, conflict riddled relationships between Indians and the English. English, Spanish, and French colonies competed with each other over land claims, trade, and for alliances with Indians, who played

<sup>14</sup> Edelson, *Plantation Enterprise in Colonial South Carolina*, p. 13.

off imperial rivals for their own benefit. The Indian slave trade also resulted in violence. Alan Galloway's inquiry into South Carolina's engagement with the Indian slave trade has transformed scholars' understandings of the political dynamics in the Southeast by revealing the extent and consequences of slave trading.<sup>15</sup> Once colonists in South Carolina had enough power to do so, they ruthlessly exploited Indian groups. The Westos, for example, raided other Indian groups for slaves and traded with South Carolina colonists. Those trade ties, however, did not protect them. Ultimately, colonial officials, with the help of another Indian group, waged a war against the Westos and destroyed them.<sup>16</sup>

The institution of slavery contributed to South Carolina's state of unrest. Colonists needed people to work and cultivate their lands, and they relied on bound laborers to do so, as other studies have shown.<sup>17</sup> South Carolinians of European-descent exploited white indentured servants, Indian slaves, and African slaves during the initial decades of settlement. Over time, however, the supply of white indentured servants decreased.<sup>18</sup> White colonists pursued trade in Indian slaves. But Indian slavery posed problems. The South Carolina

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<sup>15</sup> Alan Galloway, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (New Haven, CT and London: Yale University Press, 2002). Galloway also edited a volume dedicated to exposing the ubiquity of Indian slavery across colonial America. Alan Galloway, ed., *Indian Slavery in Colonial America* (Lincoln and London: University of Nebraska Press, 2009).

<sup>16</sup> Galloway, "South Carolina's Entrance into the Indian Slave Trade," in *Indian Slavery in Colonial America*, pp. 120-131. For a discussion of English-Indian relations that focuses on the importance of violence, see Jennings, "This Country is Worth the Trouble of Going to War to Keep It," pp. 161-216.

<sup>17</sup> Wood, *Black Majority*; Galloway, *The Indian Slave Trade*; Warren B. Smith, *White Servitude in Colonial South Carolina* (Columbia: University of South Carolina Press, 1961); John Donald Duncan, "Servitude and Slavery in Colonial South Carolina, 1670-1776" (Ph.D dissertation, Emory University, 1971).

<sup>18</sup> According to historian Peter H. Wood, recruiting indentured laborers became difficult because of reports that indentured servants endured horrible conditions. England also had a complicated recruitment process for indentures, which reduced the number of bound laborers leaving from England, Scotland, and Ireland. Additionally, white indentured laborers had a reputation for poor work performance, which may have decreased demand for their presence in the colony. Wood, *Black Majority*, pp. 40-42, n. 20.

Proprietors discouraged an unrestricted slave trade because they wanted to preserve the other forms of commerce that did not result in retaliation and the expenses associated with such conflicts. Indigenous enslavement also encouraged conflict with the Spanish who perceived the colonists' actions as detrimental to their own relations with Indians.<sup>19</sup> Indian slavery peaked in the early part of the eighteenth century and then declined drastically after the Yamasee War (1715-1722) in part because most South Carolina Indian agents died during the war and because the primary Indian slave-raiding regions were "depopulated or dangerously well armed" after the war's conclusion.<sup>20</sup>

A variety of factors supported plantation owners' use of African labor. South Carolina's Fundamental Constitutions, a theoretical and instructional document originating in 1663 from the Proprietors, guaranteed that migrants to the new colony could bring their slaves and maintain authority over them, and that baptism would not enable slaves to gain legal freedom. The Proprietors also established an expansive headright system. By 1670, the settlement scheme had generous policies that provided white colonists 150 acres of land for every unfree laborer they brought to the colony, whether the servants were of European or African descent.<sup>21</sup>

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<sup>19</sup> Gally, "South Carolina's Entrance into the Indian Slave Trade," pp. 109-146 and Joseph Hall, "Anxious Alliances: Apalachicola Efforts to Survive the Slave Trade, 1638-1705," pp. 147-184, both in *Indian Slavery in Colonial America*, ed., Gally.

<sup>20</sup> Dating this war is particularly challenging and speaks to the complexity of the conflict and to misunderstandings about it by both contemporaries and scholars. According to Ramsey, South Carolina still suffered from attacks until 1722. Ramsey, *The Yamasee War*, pp. 170-181, 180.

<sup>21</sup> Carolina's northern neighbor, Virginia, also promoted African enslavement through various governmental measures. In 1667, Virginia's legislators enacted a statute that explicitly stated, "baptisme of slaves doth not exempt them from bondage." The colony also had a headright system that promoted African slavery. British Public Record Office, Indexed by A.S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1663-1684* (Atlanta, GA: Printed for The Historical Commission of South Carolina by Foote & Davies

As historian Richard S. Dunn has argued, “the Barbadians introduced Negro slavery to South Carolina.”<sup>22</sup> By the time of South Carolina’s founding some of the wealthiest planters of Barbados led an exodus from the small island. The English island colony was literally running out of land for agricultural endeavors. The planters sought land elsewhere for themselves and their children, and migrated to Carolina in relatively large numbers. Barbadian planter Sir John Colleton was one of Carolina’s original proprietors. One hundred and seventy five Barbadians moved to Carolina during the 1670s and brought with them at least 150 servants and slaves.

Vessels routinely delivered enslaved Africans to South Carolina shores, allowing white colonists to acquire African slaves with relative ease. One thousand five hundred and nineteen slaves disembarked at South Carolina from February 1717 to September 1719.<sup>23</sup> Between 1724 and 1739, South Carolina imported at least 24,779 African slaves, who arrived directly from Africa and also from the Caribbean.<sup>24</sup> Between November 1735 and November

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Company, 1928), pp. 203, 204; Virginia, *The Statutes at Large: Being A Collection of All the Laws of Virginia from the First Session of the Legislature, in the Year 1619*, Second ed., Vol. 2, Edited by William Waller Hening, (Richmond, VA: Printed for the editor by R. & W. & G. Bartow, 1819-1823), p. 260 ; Wood, *Black Majority*, pp. 18-20; Anthony S. Parent, *Foul Means: The Formation of a Slave Society in Virginia, 1660-1740* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, by the University of North Carolina Press, 2003).

<sup>22</sup> Richard S. Dunn, *Sugar and Slaves: The Rise of the Planter Class in the English West Indies, 1624-1713* (Chapel Hill: The University of North Carolina Press, 1972), pp. 18-19, 26, 59, 70, 111-116.

<sup>23</sup> Daniel C. Littlefield, “The Slave Trade to Colonial South Carolina: A Profile,” *The South Carolina Historical Magazine* 91, no. 2, (1990): pp. 68-99, 71

<sup>24</sup> I have been unable to quantify how many slaves arrives in South Carolina prior to 1724, although approximately 210,000 African slaves arrived in the Carolinas during the duration of the African slave trade. Daniel Littlefield estimates, based on incomplete naval records, that 32,663 slaves entered South Carolina between 1717-1767 as part of the trans-Atlantic slave trade. For the import and export documents, I rounded conservatively when numbers were illegible for the years 1724-1739, so the actual number of imported slaves was most likely higher. An Account of sundry Goods Imported ... from 1724 to 1735; An Account of sundry Goods Imported and of sundry Goods ... from ... 1737, to ... 1738; An Account of sundry Goods Imported

1736, the vast majority (2,991) arrived directly from Africa aboard 12 vessels, while a much smaller number (106) came from the “West Indies.”<sup>25</sup> By 1738, and probably decades earlier, white colonists already concluded that the land in South Carolina was “of Little Value” without the use of African slaves. They also lived in an environment in which “the Property of the People chiefly consists of slaves.”<sup>26</sup>

Newly-arrived African slaves primarily disembarked in Charlestown, South Carolina’s major port town and the center of mainland North America’s slave trade. Charlestown served as the colony’s lifeblood by enabling the transport of valuable commodities. Goods such as sugar, molasses, rum, lime juice, wine, bread, flour, beef and salt all entered the colony through Charlestown. Products such as rice, pitch, tar, turpentine, pork, deer skins, leather, corn, peas, and timber all exited the colony through the port. Vessels traveling to and from Africa, numerous Caribbean islands (including to non-English colonies), England, Ireland, Massachusetts and other mainland colonies routinely came and went from Charlestown, confirming South Carolina’s membership in the Atlantic World. From 1724 to 1739 South Carolina had a steadily growing trade, averaging 184 incoming and 182 outgoing vessels per year. As expected with a growing economy, the port’s business progressively

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and of sundry Goods ... from ... 1738, to ... 1739; Littlefield, “The Slave Trade,” p. 75. For total estimates of slaves disembarking in the Carolinas, see: “Introductory Maps, Map 9: Volume and Direction of the Trans-Atlantic Slave Trade from all African to all American Regions,” *Voyages: The Transatlantic Slave-Trade Database*, 2009, accessed December 12, 2011, <http://www.slavevoyages.org/tast/assessment/intro-maps.faces>.

<sup>25</sup> An Account of sundry Goods Imported ... from 1724 to 1735. This document also contains an itemized list of imports, exports, and incoming and outgoing vessels for the year 1735-1736.

<sup>26</sup> William Bull, “To the Right Hon.ble The Lords Commissioners for Trade and Plantations, etc. The Humble Representation of William Bull Esqr President and Commander in Chief of The Province of South Carolina,” Charles Town, SC, May 25, 1738, James Glen (1701-1777), 6 MSS 25 May 1738- [c. 1750], Folder 1, James Glen Papers, 1738-1777, South Caroliniana Library, University of South Carolina, Columbia, South Carolina.

increased as years passed. At its busiest, Charlestown welcomed 248 vessels from November 1734 to November 1735, and cleared to leave 253 vessels.<sup>27</sup> Charlestown merchants Samuel and Joseph Wragg, Henry Laurens, and Miles Brewton made their fortunes through slave trading.<sup>28</sup> Between 1700 and 1775, approximately 40 percent of enslaved people forcibly transported from Africa and the Caribbean into the British mainland colonies entered the colony through Charlestown, making it what Peter Wood calls, “the Ellis Island of black Americans.”<sup>29</sup>

South Carolina’s reliance on bound laborers made it particularly vulnerable to moments of unrest. White colonists and even officials in England recognized that Indian and African slaves threatened whites’ control of their government, surroundings, and dependants.<sup>30</sup> By 1708, only thirty-eight years after the colony’s formation, enslaved people of African descent constituted the majority of non-native South Carolinians. At that time, there were approximately 4,100 enslaved people of African descent, 4,080 free whites, and 1,400 enslaved Indians.<sup>31</sup> In 1742, more than three decades after a black majority emerged,

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<sup>27</sup> An Account of sundry Goods Imported ... from 1724 to 1735; An Account of sundry Goods Imported and of sundry Goods ... from ... 1737, to ... 1738; An Account of sundry Goods Imported and of sundry Goods ... from ... 1738, to ... 1739.

<sup>28</sup> Walter Edgar, *South Carolina: A History* (Columbia: University of South Carolina Press, 1998), pp. 63-64

<sup>29</sup> Wood, *Black Majority*, pp. xiv, 36, 143-144.

<sup>30</sup>For examples of references to South Carolina’s vulnerabilities to rivals and slaves, see *An Impartial Account*, pp. 11-12; A Letter from Charles Town in South Carolina, Nov. 22, 1740, *Gentleman’s Magazine* 11, January 1741, pg. 55; and George R., “Instructions to James Glen, Esqr Governor of South Carolina,” Court of Kensington, September 7, 1739, #105.

<sup>31</sup> British Public Record Office, Indexed by A. S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1701-1710*, (Columbia, SC: Printed for The Historical Commission of South Carolina by Crowson-Stone Printing Company, 1947), p. 203.

there were 39,155 slaves and only 20,000 free white colonists.<sup>32</sup> White colonists were acutely aware that the enslaved majority represented a threat to the colonists' safety and economic welfare, should slaves rebel.

European nations endorsed African and indigenous slaveholding in their American colonies, even if they did not condone inheritable racial slavery at home. The Americas were what historian Richard Dunn refers to as “beyond the line,” or outside the reach of traditional European social norms. Existing social conventions in home countries limited the extent to which masters or overseers could abuse their laborers. But those social norms failed to influence colonists' actions; servants in the Americas experienced conditions that did not meet accepted standards for laborers in Europe.<sup>33</sup> Without such constraints, white colonists pushed the limits of appropriate treatment of servants and adopted widespread inheritable racial slavery in New World colonies. European cultural beliefs about Africans also contributed to the colonists' turn toward race-based slavery. Historian Winthrop Jordan has revealed how travel narratives helped inscribe the conviction that Africans were culturally inferior to Europeans because of the perceived differences based on physical appearance, religion, living practices, and sexual norms.<sup>34</sup>

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<sup>32</sup> For demographic information, see Wood, *Black Majority*, pp. 25, 36, 143-144. Walter Edgar discusses the diversity of the white population in Edgar, *South Carolina: A History*, pp. 47-52.

<sup>33</sup> Dunn, *Sugar and Slaves*, p. 12.

<sup>34</sup> Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: Published for the Institute of Early American History and Culture at Williamsburg, Virginia, by The University of North Carolina Press, 1968), pp. 3-43. Historian Jennifer L. Morgan has built upon Winthrop's claims by using travel narratives to discuss English beliefs about West Africans in terms of differing reproduction practices between African and European women. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004), pp.12-49. The origins of African slavery in the Western hemisphere and in the British colonies have gained extensive scholarly attention. For an excellent overview, see

European expansionist efforts relied on unfree labor from the start, leading such labor to be indirectly tied to imperial rivalries. Shortly after Columbus's arrival in the Western Hemisphere, Cubagua, a small island off the coast of modern-day Venezuela, served as the location for the Spanish settlement of New Cadiz and was the site of pearl diving performed by enslaved laborers. Historian J.H. Parry, noting the integral role of slavery in economic prosperity, has remarked that the settlement was "one of the most prosperous places in the Caribbean, and the centre of a thriving and brutal trade in slaves to serve as [pearl] divers."<sup>35</sup> The French, too, never hesitated to use bound labor, especially African slaves. In his study of the French colonization of the Caribbean islands during the seventeenth century, Philip P. Boucher explained the shift from white indentured servitude to racial slavery. Boucher established that colonial governors provided tax incentives to sugar producers and that "sugar production demanded capital in the form of ... intense human labor."<sup>36</sup> This human labor most often came from African-descended slaves. Much like Spain and England, France did not question racial slavery's legitimacy. Rather, Boucher claimed, "No legal contradiction existed between not enslaving Frenchmen and enslaving Africans." He furthered his point by drawing on the example set by the Iberians, who had a long history with the profitable practice of slavery, which had received papal approval in the mid-

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Betty Wood, "The Origins of Slavery, 1619-1808," in *Blackwell Companions to American History, A Companion to the American South*, ed. John B. Boles, (Malden, MA: Blackwell Publishing, 2002), pp. 54-68.

<sup>35</sup> Parry, *The Spanish Seaborne Empire*, p. 50.

<sup>36</sup> Philip P. Boucher, *France and the American Tropics to 1700: Tropics of Discontent?* (Baltimore, MD: The Johns Hopkins University Press, 2008), p. 157.

fifteenth century.<sup>37</sup> The English had no qualms about using coerced labor for economic gain. The Dutch, too, promoted slavery and the profits derived from it by monopolizing the slave trade for many years. To these European powers, unfree laborers helped ensure that the colonies were economically profitable. Slavery in the colonies was so crucial to imperial economic success that it became linked to conflict.

Mercantilism primed the pumps for warfare as well. Scholars have scrutinized the concept of mercantilism, but it still holds relevance to slavery's development in the New World.<sup>38</sup> Historian Carl E. Swanson characterized mercantilism as having four basic tenets, which aid in understanding both warfare and slavery in the New World. First, empires aimed for a favorable balance of trade, meaning they tried to export more goods than they imported. Second, empires recognized specie's value in certain markets and during times of inter-imperial tension, so they attempted to increase their control of gold and silver. Third, the widespread belief that only a finite amount of wealth and trade existed contributed to imperial competition over bullion and trade in colonial holdings. Last, mercantilist thought encouraged the mother country to intervene in the economic life of the empire in order to

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<sup>37</sup> Ibid., pp. 157-158.

<sup>38</sup>For instance, W.A. Speck and D.C. Coleman have critiqued mercantilism as a concept. Speck discredits mercantilism, in part, because he claims "imperial authorities did not proceed from theoretical concepts when formulating their views of colonial questions, but reacted in a pragmatic way to the problems and opportunities presented to them by the colonies." W.A. Speck, "The International and Imperial Context," in *Colonial British America: Essays in the New History of the Early Modern Era*, eds. Jack P. Greene and J.R. Pole (Baltimore, MD and London: The Johns Hopkins University Press, 1984), p. 395. Swanson counters Speck's assertion by arguing that just "because governments strayed from theoretical concepts when enacting and enforcing legislation" does not mean that mercantilism did not exist. My work aligns with Swanson's belief that "A mercantilist world view clearly existed in the seventeenth and eighteenth centuries, and this outlook shaped the interactions of the British, Spanish, and French Empires in the 1740s." Swanson, *Predators and Privateers*, p. 17. For another view that scrutinizes the usefulness of mercantilism, see: D.C. Coleman, "Mercantilism Revisited," *Historical Journal* 23, no. 4 (1980): pp. 773-791.

realize its economic objectives.<sup>39</sup> This motivation promoted economic nationalism and contributed to disputes regarding trade between and among empires and their colonies.

A 1724 publication, *A View of the Trade of South Carolina, with Proposals Humbly Offer'd for Improving the Same*, clearly links mercantilist concerns to threats from slaves, imperial rivals, and Indians. He did so by showing how the mother country regulated colonial economic matters and determined trade relations. The author suggested that Parliament pass an Act that would have permitted an increase in rice production and allow its free trade because he believed that greater rice production and a more favorable balance of trade would cause an increase in English settlement within South Carolina. When the author advocated for additional English settlers, he emphasized the threat slaves posed. South Carolina, he argued, lacked a sufficient number of white colonists “to defend themselves against their own Slaves, much less a *Spanish* or *French* Enemy ... who are always inciting the Indians to molest them.”

<sup>40</sup> As he saw it, the colony was exposed to slaves as well as Indians and foreign enemies, and he tied those vulnerabilities to mercantilism.

Issues relating to trade often surfaced as central reasons for warfare between empires. These clashes factored significantly in the Anglo-Dutch wars of the late-seventeenth century. The Netherlands enjoyed a “Golden Age” of commerce during the seventeenth century, but during the last half of that century the English and French effectively challenged the Dutch

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<sup>39</sup> Swanson, *Predators and Privateers*, pp. 17-18

<sup>40</sup> F. Yonge, *A View of the Trade of South Carolina, with Proposals Humbly Offer'd for Improving the Same*, c.1724, pp. 12-13.

Golden Age.<sup>41</sup> The Duke of Albermarle, George Monck, bluntly revealed trade's importance as a cause of the Anglo-Dutch war of 1664-1667: "What matters this or that reason? What we want is more of the trade the Dutch now have."<sup>42</sup> The background of European powers' competition over the slave trade provides greater understanding of seventeenth- and eighteenth-century inter-imperial warfare. Because the Treaty of Tordesillas (1494) theoretically granted Portugal claim to land east of the westernmost part of modern-day Brazil, Spain needed a third party to bring African slaves to its New World possessions. Spain originally granted Portugal the *Asiento*, a contract granting one country a monopoly to trade slaves to Spain's New World possessions. After 1640, however, the Dutch started large-scale slave trading on the West African coast, thereby making the buying and selling of humans a part of their successful commercial enterprise.<sup>43</sup>

European powers' desires for trade rights, especially over the coveted *Asiento* became a factor in the imperial wars of the late-seventeenth and eighteenth centuries. Specifically, the English and French vied and fought for trading prominence because they believed in the *Asiento's* profitability. If the English or French acquired the *Asiento*, then other trading possibilities would also become available.<sup>44</sup> According to J.H. Parry, "by the late-seventeenth

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<sup>41</sup> C.R. Boxer, *The Dutch Seaborne Empire: 1600-1800* (New York: Alfred A. Knopf, 1965). Boxer discusses the many causes of the Netherlands's commercial ascendancy, but concludes that, "Dutch maritime strength had weakened considerably during the eighteenth century." (p. 283).

<sup>42</sup> Quoted in Swanson, *Predators and Privateers*, pp. 18-19.

<sup>43</sup> Parry, *The Spanish Seaborne Empire*, p. 268.

<sup>44</sup> Because of Spain's claim to the New World through the Treaty of Tordesillas and subsequent treaties, Spanish vessels often intercepted French and English vessels. If Spain granted either of those countries the *Asiento*, then they would have a greater opportunity for smuggling. The goal of the French and English, according to Parry, would be to secure enough slaves for their own colonies, sell excess slaves wherever

century the *Asiento* had come to be regarded as so valuable a concession that its grant acquired all the characteristics of an international treaty.”<sup>45</sup> By 1702 Spain granted France the *Asiento*, much to England’s dismay. Parry astutely notes that a “subsidiary motive” of the War of the Spanish Succession, which pitted England and the Netherlands against France and Spain, was England’s desire to wrestle the *Asiento* from France’s control. The Treaty of Utrecht (1713) that ended the war accomplished this objective and granted Great Britain the contract.<sup>46</sup> The *Asiento*, however, did not guarantee uninterrupted and peaceful voyages. Spanish vessels frequently searched British ships and seized their goods, based on Spain’s broad claim to the New World.

During the period 1739-1748 South Carolina became part of the larger British conflict with the French and Spanish known as the War of the Austrian Succession, or the War of Jenkins’s Ear. Problems associated with trade contributed to the outbreak of this war, which erupted in the western hemisphere partly in response to problems associated with Spain’s search and seizure of British vessels.<sup>47</sup> The war’s curious name originated with an alleged attack on Robert Jenkins, a captain of a British vessel. In 1731, the Spanish seized his vessel, searched it for illegal contraband, and, according to Jenkins, cut off his ear. The Spanish then ordered Jenkins to display his dismembered body part in England to serve as a message to others who planned to ignore Spain’s claim to the seas. Jenkins did not approach

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possible, and also retain a monopoly to supplying slaves to Spain’s New World possessions. Parry, *The Spanish Seaborne Empire*, p. 268.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., pp. 268-270.

<sup>47</sup> Pares, *War and Trade in the West Indies*, pp. 29-64.

Parliament with his severed ear until 1738 when tensions were already mounting.<sup>48</sup> Scholars are unsure whether the Spanish actually cut off Jenkins's ear, but that information did not matter at the time. He—and his ear—represented Spain's predations on British trade vessels and served as Great Britain's immediate justification for war. The declaration of war, issued October 23, 1739, claimed that Spain sanctioned "unjust Seizures" of British ships and "Depredations...for several Years," and asserted that Spain's actions were "contrary to the Liberty of Navigation."<sup>49</sup> The reasons for the conflict prompted one historian to call the conflict "England's purest trade war."<sup>50</sup>

South Carolina colonists became direct participants in these imperial rivalries. By the onset of the War of Jenkins's Ear, the colony had a long history dealing with rival and enemy forces because its geographic proximity to Spanish Florida produced conflict and uncertainty during both war and peace. Hostile actions extended beyond declared wartime. Even though Georgia, founded in 1733, served as a buffer between Florida and South Carolina, white South Carolinians still feared that the Spanish would invade these two British colonies.<sup>51</sup> Georgia's leaders, as evidenced by General Oglethorpe's 1733 plea to South Carolina leaders for protection, also worried about an attack from Spanish Florida. A 1736 letter from London that appeared in the *South Carolina Gazette* indicates that people in England, too,

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<sup>48</sup> Jan Rogoziński, *A Brief History of the Caribbean: From the Arawak and Carib to the Present, Revised Edition* (New York: A Plume Book, Published by the Penguin Company, 1999), pp. 146-147.

<sup>49</sup> *South Carolina Gazette*, December 22, 1739; Caleb D'anvers, of Gray's-Inn, Esq., *Country Journal: Or, The Craftsman* (London, England), November 3, 1739.

<sup>50</sup> Walter L. Dorn, *Competition for Empire, 1740-1763* (New York, London: Harper & Brothers, 1940), p. 126, as quoted in Swanson, *Predators and Privateers*, p. 19.

<sup>51</sup> Georgia's charter was granted in 1732 and settlers arrived in 1733.

realized the Spanish threat to South Carolina and Georgia. The correspondence emphasized, “the Fear the English Colonies of Georgia and South-Carolina are in, is not without Foundation.”<sup>52</sup> As a part of larger conflicts, South Carolina and its white colonists frequently coped with attacks, threats of attacks, pillaging, plunder, the death and capture of soldiers, and the theft of their slaves. White South Carolinians and their Indian allies also acted aggressively against their rivals.

Spain’s initial involvement with South Carolina set the tone for hostile activities for decades. One contemporary document, a report published by the South Carolina legislature, enumerates Spain’s tireless efforts to challenge the English in South Carolina. Spain’s first attempted attack dates from the year when settlers established permanent colonization in South Carolina in 1670. According to the legislature, when the Spanish in St. Augustine heard of the English settlement, they “sent a Party in a Vessel . . . immediately to attack them” even though there was “Peace then subsisting between the Crowns.” The report asserted that settlers evaded the attack because they had received more provisions and had “enforced” themselves.<sup>53</sup> Other evidence supports this claim and also provides additional information regarding the incident. Both the Spanish and their Indian allies had plans to assault the fledgling settlement. Although the Spanish governor sent three Spanish ships and

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<sup>52</sup> *South Carolina Gazette*, December 18, 1736.

<sup>53</sup> South Carolina General Assembly, *The Report of the Committee of Both Houses of Assembly Of the Province of South-Carolina, Appointed to Enquire into the Causes of the Disappointment of Success, in the Late Expedition against St. Augustine, Under the Command of General Oglethorpe. Published by the Order of Both Houses* (South Carolina and London: Reprinted in London for J. Roberts, near the Oxford-Arms, in Warwick Lange, 1743), pp. 3-4.

Indian allies by land, a storm thwarted the attack by sea, causing the Spanish and the Indians to withdraw.<sup>54</sup>

Spain's attempts to hinder English intrusion in the Southeast allowed some settlements to succeed while other ones floundered or were destroyed. In 1684, Scottish Presbyterians settled Stuart Town, located near Port Royal and southwest of Charlestown. In response, the Spanish initiated a surprise attack and destroyed Stuart Town in 1686. Amidst the invasion, which occurred during official peacetime, the Spanish also set their sights on the Governor's house and on Charlestown. Attackers successfully sacked and burned Governor Joseph Morton's home, but a hurricane intervened and prevented their intended invasion of Charlestown.<sup>55</sup> During this series of attacks, the Spanish "killed and whipt a great many...in a most cruel and barbarous Manner" and "plundered them all."<sup>56</sup> The attack surprised the settlers, but an English document dated November 1685 predicted the assault through its recognition that Stuart Town "is the Frontier of ye Whole Settlement towards ye Spaniards." The author suspected the settlement was vulnerable to Spanish attack and "most lyable to be hurt by them ... whenever they shall be disposed to disturb us."<sup>57</sup>

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<sup>54</sup> Verner Winslow Crane, *The Southern Frontier* (Durham, North Carolina: Duke University Press, 1928), pp. 10-11; Sirmans, *Colonial South Carolina: A Political History*, p. 20.

<sup>55</sup> South Carolina General Assembly, *The Report of the Committee*, p. 4; Edelson *Plantation Enterprise in Colonial South Carolina*, p. 30; Sirmans, *Colonial South Carolina: A Political History*, p. 44; Peter H. Wood also notes that in addition to Spanish and Indian attackers, people of African descent also participated in the attack on behalf of the Spanish. Wood, *Black Majority*, p. 39.

<sup>56</sup> South Carolina General Assembly, *The Report of the Committee*, p. 4.

<sup>57</sup> British Public Record Office, Indexed by A.S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1685-1690* (Atlanta, GA: Printed for The Historical Commission of South Carolina by Foote & Davies Company, 1929), p. 105.

A Spanish assault in 1702 highlights how closely imperial and Native American agendas could be intertwined. According to the report issued by the legislature, “the Spaniards formed another Design to fall upon our Settlements by Land, at the Head of *Nine Hundred Apalatchee Indians*.”<sup>58</sup> In this show of aggression, Apalachees and the Spanish clashed with a large group of Creeks, who were “in Friendship” with South Carolina settlers. The Creeks had informed South Carolina traders about the impending assault and ended up suppressing the Apalachee and Spanish actions. The South Carolina report noted that the incident occurred “before Queen *Anne’s* Declaration of War was known in these Parts,” indicating that formal periods of war or peace meant little in the lived reality of this colonial society.<sup>59</sup>

During periods of declared war, South Carolina white colonists often justified their offensive efforts as defensive measures, highlighting the fact that English colonists could be just as antagonistic as the Spanish in Florida. Such a scenario occurred in 1702 during the War of the Spanish Succession, when South Carolina colonists and Indian allies laid siege to St. Augustine. The South Carolina legislature portrayed the military move as a success, despite its ultimate failure in taking the Spanish stronghold. The report that discussed the conflict described the final outcome of the siege in capital letters, implying added importance. The document noted that the South Carolina colonists and their allies retreated, “BUT NOT

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<sup>58</sup> South Carolina General Assembly, *The Report of the Committee*, p. 4. Emphasis is in original.

<sup>59</sup> *Ibid.*, p. 4-5. Emphasis is in original. The War of Spanish Succession was known as Queen Anne’s War in the English colonies.

WITHOUT FIRST BURNING THE TOWN.”<sup>60</sup> Based on the same motive of offensive action under the guise of defensive strategy, fifty South Carolina colonists and one thousand Indians embarked on an attack in 1704 “at Apalatchee,” an area of Indian settlement approximately eighty miles west of St. Augustine. Using all capital letters again, the report recorded that five of the Indian towns surrendered “WITHOUT CONDITIONS.” The assault also resulted in the capture of nearly two dozen Spanish colonists and several hundred Indians; the death of at least two hundred Indians fighting for the Spanish; the total destruction of two towns; and the burning of a town, church, and fort.<sup>61</sup> These conflicts also point to the secondary role that Europeans may have played in conflicts between Indians because Indians constituted the majority of participants on both sides of the battles in 1702 and 1704.

The war then moved to South Carolina’s coastline, making white colonists there wary. In 1706, the Spanish and French joined forces and attempted to invade Charlestown directly, a situation that placed South Carolina residents in a particularly vulnerable position. According to the report, the invasion involved “a Fleet of *Ten* Sail, with *Eight Hundred* Men, Whites, *Mustees* and *Negroes*, and *Two Hundred Indians*.”<sup>62</sup> The multi-ethnic attackers managed to plunder and burn some houses, but colonists suppressed them without extensive fighting and captured French, Spanish, and Indian prisoners.<sup>63</sup> The colony successfully defended

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<sup>60</sup> Ibid., p. 5.

<sup>61</sup> Ibid., p. 5-6.

<sup>62</sup> Ibid., p. 6.

itself, but white colonists believed in Spain and France's commitment to driving the English from the area, which caused them great concern. A letter written in September 1706, one month after the invasion, reveals white colonists' anxieties. The author remarked: "How soon they may make an other attempt upon us to Retrieve this disappointment we cannot tell." He understood that "they have a great desire to root us all out of this Province."<sup>64</sup> Luckily for the residents, it would be almost a decade before Spanish, French, or Indian adversaries again challenged the colony.

None of the previous hostilities prepared the white colonists of South Carolina for the violence and destruction that they experienced during the Yamasee War, which began in 1715 and involved multiple Indian groups on both sides of the conflict.<sup>65</sup> This war was the worst crisis South Carolina faced prior to the American Civil War. When lawmakers reflected on the war, they focused on Spain's complicity, but historians William Ramsey and Alan Galloway have exposed an array of issues that prompted the widespread Native American attack on the colony.<sup>66</sup> The report sponsored by the legislature noted that the war broke out amidst peace between the imperial powers, but that the Yamasees "were prompted to this

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<sup>63</sup> Reports vary between 70 and 230 French and Spanish prisoners. See: South Carolina General Assembly, *The Report of the Committee*, p. 6; Joseph Ioor Waring, "An Account of the Invasion of South Carolina by the French and Spaniards in August 1706," *The South Carolina Historical Magazine* 66, no. 2 (1965): pp. 98-101; Kenneth R. Jones, "A 'Full and Partial Account' of the Assault on Charleston in 1706," *The South Carolina Historical Magazine* 83, no. 1 (1982): pp. 1-11.

<sup>64</sup> Lords Proprietors' Council, Account of 1706 Invasion of South Carolina, Lords Proprietors' Council, Copies of Correspondence Relating to the Spanish and French Invasion, 1706, South Carolina Department of Archives and History, Box P S188002, S171003.

<sup>65</sup> Recent scholarship has focused on this understudied war. See: Oatis, *A Colonial Complex*; Ramsey, *The Yamasee War*.

<sup>66</sup> Ramsey, *The Yamasee War*; Galloway, *The Indian Slave Trade*, pp. 329-335.

severe Resentment of their Usage ... by the *Spaniards* at *St. Augustine*.”<sup>67</sup> Colonial leaders recognized that St. Augustine served as a refuge for the Indian attackers between assaults, and they also claimed that the Spanish led expeditions and “carried away” slaves from the colony. Slaves also fled from their masters to St. Augustine on “their own Accord.”<sup>68</sup> Over 400 whites died in the war. This calamity put South Carolina on the brink of annihilation.<sup>69</sup>

The practice of slavery mattered more in this war than it did in previous conflicts. Whereas other wars had their genesis in the imperial slave trade and then spilled over in the North American colonies, the Yamasee War involved slavery within the region. One of the root causes of the war was Yamasee dissatisfaction with the Indian slave trade. Nearly 100 of the 400 white colonists killed during the fighting were Indian agents who engaged in the Indian slave trade. During this conflict, white colonists aimed to secure an Indian alliance with the Tuscaroras, even though planters relied on the labor of Tuscaroras slaves. In an effort to gain their allegiance, the South Carolina legislature issued a resolution proclaiming that all Tuscaroras slaves in South Carolina would become free and any who became enslaved as a result of war would also gain freedom immediately. This measure prompted the historian William Ramsey to recognize that the Yamasee War was, in a sense, a “war of liberation.”<sup>70</sup> This war also involved the arming of more African slaves than in any other

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<sup>67</sup> South Carolina General Assembly, *The Report of the Committee*, p. 6.

<sup>68</sup> Later chapters, especially Chapter Two, address how Florida served as a refuge to South Carolina slaves. The contemporary document reveals colonists’ beliefs that Spain protected the Indian attackers and secondary literature substantiates this claim. Gally, *The Indian Slave Trade*, p. 334.

<sup>69</sup> Ramsey, *The Yamasee War*, pp. 13-33 159-182.

<sup>70</sup> *Ibid.*, p. 165.

colonial war in South Carolina.<sup>71</sup> The war had far-reaching consequences for the trajectory of slavery in South Carolina. It effectively ended the South Carolina Indian slave trade and led to the premature decline of Indian slavery. Additionally, it prompted South Carolina lawmakers to create legal distinctions between Indian and African slaves, which, according to Ramsey, had “significant implications for the subsequent development of white racial ideology.”<sup>72</sup>

Indians and imperial rivals posed a combined threat to South Carolina when they collaborated against the colony. Colonial leaders knew collusion occurred between the Spanish and Yamasees in the depredations of war, which included the theft of South Carolina slaves. Despite the “Peace between the *Crowns*,” the Spanish welcomed Yamasees in St. Augustine after the Indians attacked South Carolina by land. Acting together in 1727, the Spanish and Yamasees attempted to take slaves, horses, and other unnamed possessions of three white men, but defenders intervened and forced them to “quit their Booty.”<sup>73</sup>

Conflict also occurred at sea. Maritime predation by Spanish vessels plagued South Carolina during the 1720s. Colonists coped with enemies traveling by sea who stole their slaves. In 1727, men from a schooner that came from St. Augustine took David Ferguson’s slaves.<sup>74</sup> South Carolina also endured the plundering of its vessels by Spanish *guarda-costas*, privately outfitted vessels meant to patrol waters for illicit trade. Colonists judged the *guarda-*

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<sup>71</sup> Ramsey, *The Yamasee War*, pp. 13-33 162-163.

<sup>72</sup> *Ibid.*, pp. 13-33 159-182, quote from 166.

<sup>73</sup> South Carolina General Assembly, *The Report of the Committee*, p. 7.

<sup>74</sup> *Ibid.*, p. 7.

*costas* to be “*Pyrates*,” but the Spanish may have considered the searches and seizures legitimate based on Spain’s broad claim to the New World. J.H. Parry noted in his assessment of *guarda-costas* that they were “difficult to control” and “caused constant trouble with other maritime powers.”<sup>75</sup> This appraisal of *guarda-costas* applied to South Carolina where the officials worked to drive out the Spanish vessels.

The threats presented by the *guarda-costas* were not the only form of maritime predation that frequently troubled South Carolina. The colony also fell prey to French privateers and pirates from all over the Atlantic World. The distinction between these groups may have been artificial, or irrelevant, to colonists. When they criticized the *guarda-costas* they called them “*Pyrates*,” clearly showing a conflation of terms. But in fact, the political motivations behind attacks by *guarda-costas*, privateers, and pirates varied. Spanish *guarda-costas* intercepted vessels they suspected of trading illicitly. Privateers were privately out-fitted vessels meant to harass and seize enemy ships and cargo. European empires sanctioned both forms of maritime predation. French and British privateering flourished along the South Carolina coast, especially during the 1730s and 1740s. When a French privateer captured Arrah, an enslaved boat pilot working along the South Carolina coast in 1745 during the War of Jenkins’s Ear, no one questioned the privateer’s motives. The privateer captured the vessel and anticipated that Arrah would engage in battle with them against the British.<sup>76</sup>

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<sup>75</sup> Parry, *The Spanish Seaborne Empire*, p. 285.

<sup>76</sup> J.H. Easterby, ed., *The Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747* (Columbia: South Carolina Archives Department, 1958), pp. 71-72; David J. McCord, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. VII, Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers* (Columbia, SC: A.S. Johnston, 1840), pp. 419-420.

Piracy instigated by larger political contexts also plagued South Carolina.<sup>77</sup> War—or actually, the absence of declared war—directly contributed to the rise of piracy in the first quarter of the eighteenth century. After the Treaty of Utrecht (1713), which ended the War of the Spanish Succession, a surplus of sailors and former privateers existed because the British Navy no longer required their services.<sup>78</sup> These predators experienced a “Golden Age” during the period 1716-1726, and were true “villains of all nations.”<sup>79</sup> The unemployed sailors and privateers often continued attacking and plundering vessels of other nations (actions that had been appropriate during war, but not so in peace), or turned to piracy outright, also attacking British vessels. Through such action, pirates were everyone’s enemies, and they contributed to the violent conflict that characterized South Carolina’s existence.

An account of piracy along the South Carolina coast illustrates the terror that pirates inflicted on the colony without even stepping onto its shores. The most notorious pirate attack during the Golden Age involved Edward Teach, commonly known as Blackbeard. His 1717 attack must have terrified Charlestown residents. Teach sailed along the South Carolina coast commanding three vessels. The first and largest was the *Queen Anne’s Revenge*, a ship armed with 40 guns and 350 men. The other two vessels were smaller sloops, but combined

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<sup>77</sup> I am applying Anne Pérotin-Dumon’s conception of piracy to South Carolina. For Pérotin-Dumon, the political motivations behind piracy are critical to understanding the phenomenon. See Pérotin-Dumon, “The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850,” in *Bandits at Sea: A Pirates Reader*, ed. C. R. Pennell (New York and London: New York University Press, 2001), pp. 25-54.

<sup>78</sup> Rediker discusses several causes for the peak of piracy from 1716-1726 and describes piracy’s broad characteristics. See Marcus Rediker, *Villains of All Nations: Atlantic Pirates in the Golden Age* (Boston, MA: Beacon Press, 2004), pp. 19-37.

<sup>79</sup> Marcus Rediker argues, “The pirate was thus a threat to property, the individual, society, the colony, the empire, the Crown, the nation, the world of nations, and indeed all mankind. His villainy was complete.” *Ibid.*, p. 129.

they had 18 guns and 140 men. Teach and his crew numbered 490 men and 58 guns. The *London Journal* reported that Teach and his pirates captured seven vessels along “the Bar of Carolina,” a prize totaling 850 tons. Pointing to pirates’ capabilities for shutting down trade, Teach and his crew then blockaded Charlestown harbor because they sought a “Chest of Medicine” from the town in order to treat sick crewmembers. The pirates “rode at Anchor with their black Flags flying four Days” within sight of Charlestown and in possession of their “Prizes.” They had plundered the vessels and used their prizes carefully. Teach threatened that he would burn all the vessels and “murder the Men” if South Carolina did not furnish the requested supplies. The colonial leaders complied.<sup>80</sup>

Widespread piracy produced a crisis in trade and prompted Great Britain and its colonies to wage war against the pirates to eradicate them.<sup>81</sup> One contemporary account proclaimed that during Teach’s blockade of Charlestown “the Trade ... was totally interrupted.”<sup>82</sup> Historian Marcus Rediker estimated that pirates captured and plundered 2,400 vessels during the Golden Age, 400 more than scholars estimate the French and Spanish took during the War of the Spanish Succession.<sup>83</sup> Between 1717 and 1721, in South Carolina alone, pirates captured, burnt, or plundered at least 36 vessels that were either on its coast, inward bound, or heading out from it.<sup>84</sup> In 1718, the colony allocated money to rid

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<sup>80</sup> *London Journal*, Number CXXXV, (London: Printed for, and Sold by J. Peele), February 24, 1721 [New Style, 1722], pp. 4-5.

<sup>81</sup> Rediker, *Villains of All Nations*, p. 33.

<sup>82</sup> Manuel Schonhorn, *Daniel Defoe: A General History of the Pyrates* (1972; Mineola, NY: Dover Publications, Inc., 1999), p. 74.

<sup>83</sup> Rediker, *Villains of All Nations*, p. 33.

itself of piracy and outfitted two ships and four sloops to suppress the illicit attacks.<sup>85</sup> That same year, Captain Stede Bonnett and thirty-three of his pirate crew were tried in Charlestown. After the court convicted him, Bonnett was executed at the gallows in November.<sup>86</sup> Between 1716 and 1726 approximately 500 pirates were executed, mostly in British colonies, but pirates faced trial, condemnation and execution even earlier.<sup>87</sup> One person writing in 1684 commented that in Charlestown a pirate and “two of the most guilty of his Company” were tried, found guilty, and then executed. Officials used the public display of corpses to deter piracy and caution others. The writer revealed that officials had the bodies hung “in Chains at the Entrance of the port and there hang to this day for an Example to others.”<sup>88</sup> Clearly, pirate attacks threatened South Carolina residents and merchants who relied on open seaways to travel and engage in commerce.

Although governments may have effectively suppressed piracy by 1726, South Carolina still faced the possibility of maritime attack at the hands of its southern neighbors. In 1737, white colonists worried that the Spanish would attack yet again during official peacetime. In this instance, vessels from Havana had arrived at St. Augustine with the intent

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<sup>84</sup> *London Journal*, February 24, 1721 [New Style, 1722], pp. 4-5.

<sup>85</sup> *Ibid.*

<sup>86</sup> Rediker, *Villains of All Nations*, p. 3, 94.

<sup>87</sup> Kris E. Lane, *Pillaging the Empire: Piracy in the Americas 1500-1750* (Armonk, NY and London: M.E. Sharpe, 1998), p. 6

<sup>88</sup> British Public Record Office, Indexed by A.S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1663-1684*, p. 284. For another early account of pirates being executed in order to deter piracy, see British Public Record Office, Indexed by A.S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1698-1700* (Columbia, SC: Printed for The Historical Commission of South Carolina by Crowson-Stone Printing Company, 1946), p. 169.

of invading South Carolina and Georgia. The *London Evening Post* reported this event with great detail, noting that Spanish forces from “the Havannah” reached St. Augustine on April 2, 1738, with “all Things necessary for an invading Army,” including “Men of War, Galleys, [and] Cannon.” Colonial residents estimated that 7,000 men prepared to invade Georgia, with an approximate cost of “7000 Dollars a Day” to the Spanish Crown. “This shews,” the newspaper claimed, “how much Value the Spaniards think those Provinces are of, since they put themselves to such an Expence for gaining them.”<sup>89</sup> Notwithstanding these extensive preparations, the Spanish put their efforts elsewhere and did not attack the colonies, much to the relief of colonists in South Carolina and Georgia.

Events during 1738 and 1739 reached a breaking point for colonists in South Carolina and contributed to their eagerness to wage war on Spain beginning in the latter part of 1739. The report issued by both the legislature complained about the Spanish encouraging slave desertion from South Carolina. The report claimed that “*altho’ Peace subsisted*” in 1738, an edict originally made in 1733 by the Spanish Crown was “published by beat of Drum” around St. Augustine. The edict, or *cédula*, promised “Liberty and Protection to *all Slaves* that should desert thither from any of the *English Colonies*,” but especially from South Carolina. The proclamation was not mere rhetoric; colonists realized the Spanish took special measures to ensure that slaves in the English colonies knew about it. Apparently, the Spanish announced the *cédula* when “many Negroes ... had the Opportunity of hearing it” because they worked on British vessels that were within earshot of town. The decree’s announcement in Spanish territory was undoubtedly distressing to white South Carolinians.

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<sup>89</sup> *London Evening Post*, June 6, 1738 (London, England, 1738).

But the pervasive belief that the Spanish used “*secret Measures*” to infiltrate South Carolina to ensure all slaves residing there knew about the possibility of liberty may have seemed even more treacherous.<sup>90</sup>

Spanish encouragement of slave desertion was neither unique to the colony nor a recent phenomenon. In fact, the Spanish Crown had been attempting to weaken slavery in South Carolina as well as in other areas of the Atlantic World for some time. Historian Linda M. Rupert’s work has revealed that between 1680 and 1764 the Spanish Crown issued at least seven *cédulas* that enticed slaves to flee from imperial rivals’ colonies to Spanish territory. These royal decrees targeted slaves from Protestant colonies and typically offered legal freedom to fugitives as long as they converted to Catholicism and became baptized. The pronouncements resulted in slaves absconding from a host of locations during the eighteenth century, including the English Leeward Islands, Danish and Dutch islands, French Hispaniola, the Wild Coast of South America, and South Carolina.<sup>91</sup>

The Stono rebellion, the most well-known attempt by South Carolina slaves to reach Florida, unfolded in this volatile political climate. On September 9, 1739, several dozen slaves from South Carolina rose up and presumably tried to reach Florida in search of freedom.<sup>92</sup> The report from the legislature is the best assessment of the rebellion that the

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<sup>90</sup> South Carolina General Assembly, *The Report of the Committee*, p. 9.

<sup>91</sup> Rupert further explains that the vast majority of runaway cases were maritime in nature and that the slaves escaped from “the English Leeward Islands to Trinidad, from South Carolina to Florida, from the Danish and Dutch islands to Puerto Rico, from French to Spanish Hispaniola, and from the Dutch ABC islands (Aruba, Bonaire and Curaçao) and the Wild Coast of South America to Venezuela.” Linda M. Rupert, “Marronage, Manumission and Maritime Trade in the Early Modern Caribbean,” *Slavery & Abolition* 30, no. 3 (2009): pp. 361-382, 362.

South Carolina government formally issued.<sup>93</sup> The government primarily blamed the Spanish for the slave revolt. The report linked imperial rivalry with Spain's encouragement of slave desertion and argued that "the *Negroes* would not have made this Insurrection had they not depended on St. *Augustine* for a Place of Reception afterwards." The legislature drove home Spain's culpability by claiming "the *Spaniards* had a Hand in prompting them to this particular Action."<sup>94</sup> Thus, the only official, published description of the rebellion presented it in the context of Spanish depredations on South Carolina, and this gives added significance to colonial leaders' beliefs that the Spanish policy of welcoming fugitive slaves strongly encouraged the revolt.<sup>95</sup>

Consumed by this turmoil, whites in the colony welcomed Great Britain's declaration of war against Spain in October 1739. Shortly thereafter, starting in April 1740, they collaborated with General Oglethorpe in an offensive move targeted at St. Augustine, Spain's stronghold in Florida. In this military endeavor, men from Georgia and South Carolina acted together because residents of both colonies feared foreign invasion, and resented Spanish maritime predation and Spanish policies that encouraged the Stono slave

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<sup>92</sup> The extant records regarding the rebellion are contradictory and historians continue to debate the number of slaves involved in the revolt, as well as the number of deaths that occurred as a result of the rebellion. There were approximately forty slaves and twenty whites killed. See: Mark M. Smith, *Stono: Documenting and Interpreting a Southern Slave Revolt* (Columbia: University of South Carolina Press, 2005).

<sup>93</sup> Smith, *Stono*, p. 28. Proceedings in the South Carolina Commons House of Assembly also discuss the revolt but were not meant for public consumption. J. H. Easterby, ed., *The Journal of the Commons House of Assembly, September 12, 1739-March 26, 1741* (Columbia, SC: South Carolina Archives Department, 1952).

<sup>94</sup> South Carolina General Assembly, *The Report of the Committee*, p. 9.

<sup>95</sup> Beyond blaming the Spanish, white South Carolinians performed introspection to their own society and attempted to curtail actions that they perceived to be contributing causes of the revolt. I will discuss these reactions to the revolt in a later chapter.

rebellion. General Oglethorpe, commander of the military forces on the British southern frontier, initiated and planned the attack after the British monarch ordered him in June 1739 “to ANNOY the Subjects of Spain.”<sup>96</sup> (Indicative of the constant hostilities, Oglethorpe received those orders *before* Great Britain declared war on Spain.) Oglethorpe sent a letter to the South Carolina legislature expressing his willingness to help his northern neighbors. “I shall spare no personal Labour nor Danger towards freeing Carolina of a Place from whence their Negroes are encouraged to massacre their Masters, and are openly harboured after such Attempts,” Oglethorpe attested.<sup>97</sup> A committee of the South Carolina legislature described the situation the colony faced and its need to attack St. Augustine in similar terms, noting, “the Protection our deserted Slaves have met with by the Spaniards at St. Augustine, has encouraged many other to make the like Attempts, and even to rise in Rebellion.” The committee concluded “the Demolition of that Place would in a very great Measure tend to free us from the like Danger for the future.”<sup>98</sup> Colonists from South Carolina and Georgia attempted to take over the Spanish settlement hoping to avoid a possible Spanish attack on British soil, to decrease privateering, and to prevent more slave desertions to wartime enemies. The British attack on St. Augustine failed. It was a disappointment on all fronts. Slaves continued to desert, privateers still “cruised” the southern British coastline, and Spain invaded Georgia in 1742, though without success.

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<sup>96</sup> Weir, *Colonial South Carolina: A History*, p. 117; South Carolina, *Appendix to the Report of the Committee of Both Houses of Assembly Of the Province of South Carolina, Appointed To Enquire into the Causes of the Disappointment of Success, in the late Expedition against St. Augustine, Under the Command of General Oglethorpe. Containing the Vouchers of the said Report. Published by the Order of Both Houses* (South Carolina Printed, London Reprinted for J. Roberts, near the Oxford-Arms, in Warwick Lane, 1743), p. 1.

<sup>97</sup> Easterby, *The Journal of the Commons House of Assembly, September 12, 1739- March 26, 1741*, p. 160.

<sup>98</sup> South Carolina, *Appendix to the Report of the Committee*, pp. 2-3.

It is difficult to imagine South Carolina *without* warfare during the period 1670 to 1747, given the historical context. Examining the colony through the lens of conflict highlights how inter-imperial and inter-colonial hostilities revolved around slavery. Slavery as a system of labor and as a way of life undergirded the entire British colonial system and assumed strategic significance in conflicts. Slavery was not just an economic institution in individual colonies that exploited the masses for the benefit of the few. Wars that ultimately supported the institution of slavery posed problems to South Carolina slaveholders. Because of endemic conflict and the demographic reality of a larger slave than free population within the colony during much of the colonial period, South Carolina slaveholders needed the support, loyalty, and labor of their slaves especially during times of social and political unrest. Yet, slaveholders also held apprehensions about those same slaves. Slaves could pose serious problems to South Carolina should they carry out collective resistance or act against the colony on an individual basis.

## Chapter 2: Enemies Foreign and Domestic: Slaves, Slavery, and Imperial Conflict

Writing from Florida in December 1740, Francisco Menéndez submitted a self-written petition to the Spanish King, Philip V, asking for official recognition and financial compensation for his loyal military service.<sup>1</sup> He not only fought successfully against the British for the Spanish but also served as Captain of Florida's black militia for fourteen years by the time he asked for a salary. He sought "compensation for the services which I have done for Your Majesty."<sup>2</sup> A servant of the Spanish King, Menéndez was an African-born slave from South Carolina but had escaped to St. Augustine with Indian allies following the Yamasee War. He had good reason to believe the Crown might respond favorably to his request because he realized his importance to the Spanish as commander of the black militia.

Menéndez's story highlights the various conditions of South Carolina slaves, and how the violence that marked the colony's first decades shaped their experiences. The uncertainties of endemic warfare forced South Carolina slaveholders to rely on and highly value their slaves, particularly skilled slaves. Yet those same slaves could act against them, just as Menéndez did. Scholars of early American slavery have focused on how internal factors shaped the conditions of slaves and the nature of slavery in South Carolina. Some

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<sup>1</sup> Francisco Menéndez to Don Joseph de la Quintana y M: Mi Señor, December 12, 1740, Francisco Menéndez Biographical File, St Augustine Historical Society, St. Augustine, FL. Menéndez signed the petitions with his full name, indicating he could read and write. If he had been illiterate, he would have signed with an "X." See Jane Landers, *Black Society in Spanish Florida* (Urbana and Chicago: University of Illinois Press, 1999), fn 52, pp. 299-300.

<sup>2</sup> "pretendo ... Remuneración de los Servicios [sic] que tengo echos a S[u] M[ajestad]." Ibid. In an earlier petition, he asked King Philip V to consider granting him remuneration "for the loyalty, zeal and love with which I have always shown in the Royal Service" ("de la lealtad zelo, y amor Con que Siempre me he mostrado en el Real Servicio"). Francisco Menéndez to Señor, November 21, 1740, Francisco Menéndez Biographical File, St Augustine Historical Society.

have viewed the institution as flexible during colonies' initial years of settlement, and often have attributed that situation to the fledgling colony's weak infrastructure, which required residents of all statuses to work together to eke out an existence in unfamiliar territory.<sup>3</sup> Flexibility also occurred in locations, such as Virginia, where the legal and social status of slaves hardened over time, so that a certain amount of opportunity existed for people of African descent until the end of the seventeenth century.<sup>4</sup> But internal factors did not exclusively shape slavery's trajectory. Dynamics outside the borders of colonies also influenced the institution. This is particularly evident for South Carolina. The colony's geographic situation made violence between 1670 and 1747 crucial to slavery's development. White colonists needed slaves for their protection and for the colony's security because of its position as a frontier and borderland. Slaves labored for the public good in various capacities, but slaveholders also knew that slaves could undermine the slave regime, a possibility that terrified colonial elites and sparked concern among people back in England. Slaves like Menéndez could choose or be forced to work for an enemy, and they could also threaten the colony's stability by rebelling and deserting.

Endemic conflict and conditions outside South Carolina amplified whites' dependence on their slaves. As a result, slaves worked at a variety of jobs and experienced slavery in a host of ways. Slavery encompassed a wide range of conditions. When slaves failed to meet slaveholders' expectations, or even outwardly rebelled, slaveholders responded

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<sup>3</sup> Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, Massachusetts and London: The Belknap Press of Harvard University Press, 1998); Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 Through the Stono Rebellion* (New York: W.W. Norton, 1974).

<sup>4</sup> T.H. Breen and Stephen Innes, *"Myne Owne Ground": Race and Freedom on Virginia's Eastern Shore, 1640-1676* (New York: Oxford University Press, 1980), 5.

strongly. They also reacted in concrete ways when slaves demonstrated their fidelity through exceptional measures. Whites' reactions to both acts of resistance and loyalty consistently balanced their desire to keep slaves subordinate and to maintain a dependable and minimally threatening workforce.

White colonists had little choice but to involve their slaves with the military defense of the colony. Slaves' engagement in such work directly affected South Carolina's long-term viability. Beyond working for the benefit of a single owner, slaves labored in many capacities for the public good, often in positions that required considerable skill and judgment. Slaves served as interpreters, guides, watchpersons, and messengers, and performed manual labor in building fortifications. They also worked as pilots along the coastal waters, navigating vessels in and out of the Charlestown port and other local waterways. White South Carolinians and British military officials enlisted the help of slaves who served as pioneers (unarmed laborers who cleared forests and built colonial infrastructure) and even as armed combatants. The various occupations slaves held reveal that whites understood their usefulness, used them strategically, and valued individuals for their skills and loyalty. Skilled slaves were especially important for whites to hold under their control because such slaves could work obediently for an imperial rival.

Historian Peter Wood has recognized that slaves could either aid or fight against South Carolina during Indian wars, actions that underscore the pivotal roles slaves played in colonial affairs. Like Francisco Menéndez, countless other slaves fought on both sides during the Yamasee War in which Yamasee Indians and their allies almost successfully defeated South Carolina's colonial government. Wood determined that "in simple

proportional terms,” black slaves never “played such a major role in any earlier or later American conflict.”<sup>5</sup> Wood comments that blacks participated in the Yamasee War “first in dozens, then in scores, and finally by the hundred.”<sup>6</sup> During the earlier Tuscarora War, slaves also became involved in a variety of ways, such as by aiding the Tuscaroras in North Carolina.<sup>7</sup>

White colonists relied on enslaved people during other conflicts as well. Jane Landers’s recent study of Atlantic creoles during the Age of Revolutions highlights the critical role of black slaves during that era, and also the social mobility slaves sometimes gained as a result of their involvement in imperial warfare.<sup>8</sup> Examining slavery during South Carolina’s earlier decades supports Landers’s findings and suggests that imperial reliance on slaves during warfare was a consistent policy during New World colonization efforts. As early as 1672, blacks aided South Carolina’s defense when the Grand Council of the colony assigned them to protect the Governor’s residence. During that year, the Grand Council ordered all inhabitants to travel to Charlestown “with their Armes and Ammunicon well fitted.” That mandate included all residents “*except* the Negroes in the Governors plantacon

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<sup>5</sup> Wood, *Black Majority*, p. 127.

<sup>6</sup> *Ibid.*, p. 128. William Ramsey’s study of the Yamasee War explicates the Yamasee’s War’s impact on slavery in a broader sense. He briefly discusses how slaves were participants, but more generally concludes that the Yamasee War led to an expedited demise of the Indian slave trade. Ramsey, *The Yamasee War: A Study of Culture, Economy, and Conflict in the Colonial South* (Lincoln and London: University of Nebraska Press, 2008), esp. pp. 171-180.

<sup>7</sup> Wood, *Black Majority*, p. 129.

<sup>8</sup> Jane Landers, *Atlantic Creoles in the Age of Revolutions* (Cambridge, MA: Harvard University Press, 2010).

*who are there left to defend the same* being an outward place.”<sup>9</sup> The decision to leave blacks, who almost certainly were slaves, in a strategically important position signifies the Council’s belief that they would act in the colony’s best interest. Unsupervised slaves could have fled or defected to an enemy if they encountered an attack at such an “outward place.” Whites’ dependence on their enslaved subordinates during times of hostility was not unique to South Carolina. It was a necessary feature of some other slave societies.<sup>10</sup>

Statutory law of South Carolina confirms the variety that characterized slaves’ employment. A 1703 law pertaining to securing and fortifying Charlestown assumed slaves would perform some of the necessary manual labor.<sup>11</sup> In a 1707 statute, legislators recognized the dire need to finish and to repair fortifications in Charlestown because of the colony’s involvement in the American theater of the War of the Spanish Succession. The lawmakers acknowledged that both free and enslaved men would perform the work. In addition to pressing into service skilled white men, who worked as “brick-layers, carpenters,

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<sup>9</sup> Emphasis is mine. A.S. Salley, Jr., *Journal of the Grand Council of South Carolina August 25, 1671-June 24, 1680*, (Columbia, SC: Printed for the Historical Commission of South Carolina by The State Company, 1907), pp. 36-37.

<sup>10</sup> The recent edited volume by Christopher Leslie Brown and Philip D. Morgan explores the tradition of arming slaves. Brown and Morgan, *Arming Slaves: From Classical Times to the Modern Age* (New Haven, CT & London: Yale University Press, 2006).

<sup>11</sup> Even though the statute was not specifically about slaves, it included them much like it did white laborers. Scholars of slave law often neglect to examine laws that are not specifically designated as laws pertaining to slavery. Such an approach invites researchers to overlook important ways that slaves were incorporated into the colony’s social order and legal structure. The full title of the act reflects its broad scope: “An Additional Act to an Act Entitled ‘An Act to Prevent the Sea’s Further Encroachment upon the Wharfe at Charles Town; And for the repairing and building more Batterys and Flankers on the said Wall to be built on the said Wharfe; and also for the fortifying the remaining parts of Charles Town by Intrenchments, Flankers and Pallisadoes, and appointing a Garrison to the Southward.” David J. McCord, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. VII, Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers* (Columbia, SC: A.S. Johnston, 1840), pp. 28,31.

and ... other handicrafts,” the statute permitted the recruitment of blacks if necessary.<sup>12</sup>

Later statutes addressing fortification concerns also contained clauses related to enslaved workmen, and the South Carolina legislature discussed the amount slaves should be paid for their labors.<sup>13</sup>

Statutes indicate that slaveholders customarily armed their slaves when rivals posed a direct threat, revealing that such actions were established policy, not impromptu decisions made by desperate individuals who had no other alternatives. The same 1703 law that discussed enslaved men working on Charlestown’s fortifications also unambiguously stated that masters could arm their slaves: “it shall and may be lawfull for any master or owner of any slave, in actual [sic] invasion, to arme and equip any slave or slaves.”<sup>14</sup> Legislators passed a law one year later that aimed to create a list of “trusty” slaves—slaves whom whites believed could be relied on and armed during an invasion. The preamble noted that “there are a great number of” slaves who “may be rendered serviceable towards the defence [sic] and preservation of this Province, in case of actual invasion.”<sup>15</sup> The law required members of the military to compile a list of trusty “negroes, mulattoes and Indian slaves.” This indicates

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<sup>12</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 43-44.

<sup>13</sup> I intentionally use gendered language because I have found no evidence that enslaved women worked in this fashion. For instance, see McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 65, 68, 72-73. Although the legislature discussed how much to pay the slaves, it was the masters who would have received the compensation for their slaves’ labors. South Carolina General Assembly, Commons House, Sessional Papers 1718-1725, Folder 5 No. 32, Folder 6 No. 44, Folder 12 No. 107, South Carolina Department of Archives and History, Columbia, South Carolina.

<sup>14</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 33.

<sup>15</sup> *Ibid.*, p. 347

the variety of people who endured enslavement in this era.<sup>16</sup> Subordinates of varying statuses bore arms in South Carolina's defense, but a 1708 assessment of the region focused specifically on enslaved black men's inclusion within the militia, and how they ought to be armed.<sup>17</sup> The statute dictated that masters arm the slaves who served in the militia with "either a serviceable lance, hatchet or gun, with sufficient ammunition and hatchets."<sup>18</sup> Two years later, Thomas Nairne wrote a letter from South Carolina noting that the colony's militia included within its ranks "a considerable Number of active, able, Negro Slaves."<sup>19</sup> The so-called "trusty slaves" must have proven themselves because in 1708 the legislature enacted a law that contained a primary aim of offering rewards to slaves "for the good service they may do us."<sup>20</sup>

South Carolina legislators carefully planned for large numbers of black slaves and Indians to participate in war efforts, showing white colonists' need to rely on some of the people whom they ruthlessly oppressed. In the discussions leading up to the 1740 siege of St. Augustine, General Oglethorpe wanted the service of 800 "Negro Pioneers" in addition to

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<sup>16</sup> Ibid., p. 348.

<sup>17</sup> Arming Indians and having allied Indians fight against British enemies was also a tactic white South Carolinians employed. Thomas Nairne, an Agent among the Indians, wrote a letter in 1708 to the Lords Proprietors describing his observations that were derived from his personal experiences. In that letter, he discussed the possibility of the English establishing another colony in the Southeast, and the key role Indian alliances would play in that effort. He remarked that "above all things arming the Indians" was "of the utmost consequence to the firm Establishing ye Colony." A. S. Salley, Indexer, *Records in the British Public Record Office Relating to South Carolina, 1701-1710* (Columbia, SC: Printed for The Historical Commission of South Carolina by Crowson-Stone Printing Company, 1947), pp. 193-202, 204 quotes from 201, 204.

<sup>18</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 348.

<sup>19</sup> Thomas Nairne, "A Letter From South Carolina," in *Selling a New World: Two Colonial South Carolina Promotional Pamphlets By Thomas Nairne and John Norris*, ed., Jack P. Greene (Columbia: University of South Carolina Press, 1989), p. 52.

<sup>20</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 349.

1,246 white men, 900 Creek Indians, and 1,100 Cherokee Indians. Numerically, the expedition would depend on more blacks and Indians than whites. The South Carolina legislature, however, declined to supply fully what Oglethorpe proposed. The legislators estimated his requests would require over £200,000, but they only approved spending a total of £120,000. The funding discrepancy resulted in a reduced amount of money being allocated for black pioneers. Nevertheless, legislators approved funds for either 300 white or 400 slave pioneers.

Whether slaves worked as pioneers in this expedition as laid out by Oglethorpe and the legislature, slaveholders ensured that some slaves worked tirelessly and obediently during the mission. The “Company of Voluntiers,” a group of South Carolina white men who participated in the expedition, brought with them a small number of South Carolina-born slaves. Slaves native to the colony were a greater asset to the British war effort than newly imported “saltwater” slaves who lacked knowledge of the land and of South Carolina’s political landscape and agendas.<sup>21</sup> The company of “Gentlemen Voluntiers” consisted of thirty-two “Officers and Men, with *fifteen* expert country-born *Negroes* their Property, and *eight* Settlement *Indians*.” Authorities granted these volunteers “Liberty ... to take any Number of Slaves capable of doing Duty,” and determined that slaveowners would receive

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<sup>21</sup> The gentlemen volunteers may have deemed the country-born, creole slaves as particularly suitable for the expedition because they may have known the terrain and surrounding waters better than recently imported slaves. Historians have recognized the many differences between African born, newly imported “saltwater” slaves and creole slaves. Stephanie E. Smallwood, *Saltwater Slavery: A Middle Passage from Africa to American Diaspora* (Cambridge, MA and London: Harvard University Press, 2007), pp. 7, 200-201; David Barry Gaspar, *Bondmen and Rebels: A Study of Master-Slave Relations in Antigua* (Durham, NC and London: Duke University Press, 1985), pp. 88-89.

£250 compensation for each of their slaves who died during the expedition.<sup>22</sup> The white volunteers were sorely disappointed with what they viewed as General Oglethorpe's incompetence. Nevertheless, they and their slaves worked for the war effort, and according to one contemporary's journal, "the Voluntiers set their Negroes to work ... who did more in one Night than the General has done with all his 'Troops'" since the beginning of the expedition.<sup>23</sup>

Beyond relying on slaves in actual warfare, slaveowners often trusted them to follow commands during unsupervised work assignments. In 1685, one slave became implicated in troubling activities when, upon orders from his owner, he took "into the countrey" a black box containing official government records. Officials apprehended Ralph Izard, the slave's owner, on charges of "takeing concealing and carrying away one Black box belonging to Robert Quarry," the Secretary of South Carolina. Authorities claimed that the theft caused a "delay of Justice" and a "hindrance of the proceedings of the affairs of this Province." Authorities found Izard solely responsible for the transgression because the slave's involvement stemmed only from following his master's orders.<sup>24</sup>

Another male slave, Caesar, had a work assignment that reflects slaveowners' trust of particular slaves, but his actions suggest that trusting a slave could be risky business.

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<sup>22</sup> South Carolina General Assembly, *Appendix to the Report of the Committee of Both Houses of Assembly Of the Province of South Carolina, Appointed to Enquire into the Causes of the Disappointment of Success, in the late Expedition against St. Augustine, Under the Command of General Oglethorpe* (South Carolina and London: Reprinted for J. Roberts, near the Oxford-Arms, in Warwick Lane, 1743), pp. 33, 47-48, 78; *South Carolina Gazette*, May 3, 1740.

<sup>23</sup> South Carolina General Assembly, *Appendix to the Report*, p. 66.

<sup>24</sup> British Public Record Office, Indexed by A. S. Salley Jr., *Records in the British Public Record Office Relating to South Carolina, 1685-1690* (Atlanta, GA: Printed for The Historical Commission of South Carolina by Foote & Davies Company, 1929), p. 104.

Confidence in and apprehension about slaves often went hand-in-hand for white colonists. Caesar, Captain Thomas Lloyd's slave, worked for his master in Broughton's Battery and had access to weapons. The incident involving Caesar occurred in the wake of the 1739 Stono slave rebellion when colonists were acutely aware of their vulnerabilities to slaves. Lieutenant Governor William Bull reported to the South Carolina legislature in February 1742 that Caesar had been "seen measuring the Key-hole of the inner Door of the Magazine in Broughton's Battery." Caesar also "was found in the Possession of ... a Master-key, which would open any Lock," suggesting that he intended to access weapons illicitly.<sup>25</sup> All of this was possible because Caesar's owner served as the gunner of Charlestown and of Broughton's Battery, and Caesar worked for Lloyd in those locations. Lloyd earlier had submitted a request for payment for "Negro Hire in shifting the great Guns."<sup>26</sup> Also, Bull reported that Caesar had been "employed in cleaning the Public Arms, loading and firing the great Guns, and that he may be capable of doing much Mischief, if concerned with other Negroes in any Attempt against the Peace and Safety of this Province." Under the circumstances, Bull recommended that Caesar be "taken into Custody."<sup>27</sup>

Bull requested that the legislature transport Caesar out of South Carolina. He suggested that the government pay Lloyd "the Value of the Negro" and send Caesar "off the Province at the Public Risque," in order to "prevent his contriving or promoting any

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<sup>25</sup> J. H. Easterby, ed., *The Journal of the Commons House of Assembly, May 18, 1741- July 10, 1742* (Columbia: The Historical Commission of South Carolina, 1953), Vol. 3, p. 449.

<sup>26</sup> *Ibid.*, p. 316, 374.

<sup>27</sup> *Ibid.*, p. 450.

dangerous Designs, as well as deter others from the like Practices.”<sup>28</sup> The committee assigned to examine the case concurred with Bull’s concerns. It reported that Bernard Taylor witnessed Caesar making the key, and when Taylor took it from Caesar, the enslaved man “seemed to be very uneasy ... and offered to give the Informant any Thing, if he would let him have it again.” Caesar must have kept his intentions to himself, however, because the committee of the legislature could not determine his motives other than that they were for “ill design” and that he might have been “enabled to open Locks, and to steal and pilfer.” Caesar’s activities seem to have ended poorly for him. All who investigated agreed that Caesar’s monetary value should be appraised, that he should be deported from South Carolina, and that Lloyd should receive compensation for his financial loss. Legislators had qualms about Lloyd, but they did not blame him for trusting Caesar with arms and perhaps even letting him possess a master key.<sup>29</sup> Nevertheless, the colonial elite condemned Caesar’s attempt to duplicate the master key because they feared he might steal or conspire against whites.

Slaves could wind up in an imperial rival’s possession and work for them either by force or choice. Some slaves in that situation served as translators because Europeans exploited slaves for their linguistic abilities. In 1725 during travels among the Creek Indians,

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<sup>28</sup> Ibid., p. 450.

<sup>29</sup> In the same month that Bull reported Caesar’s possession of the key, Lloyd submitted an account to the Commons House of Assembly, seeking payment. The legislators did not respond favorably, and were selective in what they were willing to pay. Lloyd appears to be of a lower social station than most of the legislators, and so they were not willing to fulfill all of Lloyd’s requests. Notably, the legislature did find in his favor when he asked for payment for slave hire—a practice legislators may have also engaged in because they, too, were slaveowners. But for most of his other requests, which went above and beyond his salary of £325 per year, the committee was “at a Loss to know for what that Sum is given him, if he is to be paid for every trifling thing he does, in Matters, which they apprehend to be in the Execution of his Office.” Ibid., pp. 374, 479.

Captain Tobias Fitch encountered a man of African descent who worked for the Spanish as an interpreter. Two Spanish colonists, along with two Indians and one black interpreter, traveled to the Cowetas for a “Talk” with their headman, Old Brinimus. Fitch reported the presence of a black enslaved man from South Carolina, and that “The Negro Sat in the Square in a Bould Maner,” implying that he acted above what Fitch thought his legal status should have allowed.<sup>30</sup> Fitch sought custody of the man by claiming that he was a South Carolina slave: “The Negro is a Slave and tho he has Been Taken by the Yamasees and Lived among The Spanyolds,” that does “not make him free.”<sup>31</sup> The Spanish men did not want to release the interpreter even though they acknowledged Fitch’s claim. One of the Spanish men, who had a commission to travel to and talk with the Coweta, even offered to trade the black interpreter for two Indian slaves or to buy him. Fitch refused the proposition, an act that suggests the interpreter’s high value.<sup>32</sup> Old Brinimus concurred that Fitch should gain possession of the black man, much to the Spanish men’s chagrin. One of them remarked to Fitch, “They [the Cowetas] sent for a Talk and the Mouth that I brought to Talk with them they have Suffered you To take from me.”<sup>33</sup> Clearly, giving up the slave proved troublesome to the Spanish men who needed him as their interpreter.<sup>34</sup>

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<sup>30</sup> Tobias Fitch, *Captain Fitch’s Journal to the Creeks, 1725*, in *Travels in the American Colonies*, ed., Newton D. Mereness (New York: The Macmillan Company, 1916), p. 184.

<sup>31</sup> I have concluded that the interpreter was a man because Fitch noted when a person was a woman. He writes of a “White English Woman” who the Creeks kept as a slave. *Ibid.*, pp. 186, 193.

<sup>32</sup> Coweta was one of the “mother towns” that made up the Creek nation. Coweta was part of the Lower Creeks. *Ibid.*, pp. 184-187, 186; Christina Snyder, *Slavery in Indian Country: The Changing Face of Captivity in Early America* (Cambridge, MA and London: Harvard University Press, 2010), pp. 114-115.

<sup>33</sup> Fitch, *Captain Fitch’s Journal*, p. 187.

Sometimes enemies of the colony used former South Carolina slaves to perform covert operations against it. During the War of Jenkins's Ear, the Spanish in St. Augustine planned to employ fugitive slaves to act against South Carolina within its boundaries. Slaves' knowledge of the terrain, plantations, and culture made them useful weapons against the British. By one account, the Spanish intended to use runaway slaves from South Carolina "to go amongst our [South Carolina] Negroes and to assure" slaves who "would desert their Masters and join the Spaniards they should be free."<sup>35</sup> Likewise, historian Jane Landers documented former slaves returning to South Carolina on clandestine missions "in search of British scalps and live slaves."<sup>36</sup>

Slaveholders of South Carolina depended on enslaved pilots. These men navigated local waterways leading watercraft into and out of harbors and neighboring areas. Pilots proved themselves invaluable to the colony especially during times of imperial conflict. Enslaved mariners of all occupations performed important tasks, but if not for pilots, sailing into and out of Charlestown harbor would have been much more difficult and dangerous.<sup>37</sup>

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<sup>34</sup> In later decades, people of African descent also served as translators for Native Americans. Ibid., p. 212; Snyder, *Slavery in Indian Country*, pp. 192, 221, 229, 231.

<sup>35</sup> This example also speaks to how blacks served as trusted messengers. Tony, an escaped South Carolina slave who was living among the Spanish, informed Captain Alexander Parris, who was a prisoner of war, of Spanish plans to use successful runaway slaves against South Carolina. Parris provided a deposition of his experiences, and provided no indication that he doubted Tony's word. Records in the British Public Records Office Relating to South Carolina, Vol. 21, 1743-1744, microfilm, pp. 17-18, Perkins Library, Duke University, Durham, NC.

<sup>36</sup> Jane Landers, "Gracia Real de Santa Teresa de Mose: A Free Black Town in Spanish Colonial Florida," *American Historical Review* 95, no. 1 (1990): pp. 9-30, 15.

<sup>37</sup> William R. Ryan, *The World of Thomas Jeremiah: Charles Town on the Eve of the American Revolution* (New York: Oxford University Press, 2010), pp. 3-6. Ryan discusses the treacherous nature of navigating in and out of Charlestown, noting that "sailing into Charles Town by way of the Atlantic was menacing proposition" and that "piloting ... was fraught with great peril" (quotes from pp. 3, 6). Other scholars have also recognized the

Pilots were respected members of South Carolina society. According to historian W. Jeffrey Bolster, enslaved “pilots and captains were the elite of maritime slaves.”<sup>38</sup>

Imperial rivals recognized pilots’ importance to the Atlantic economy and used the mariners to their advantage whenever possible. Especially during times of imperial hostility, pilots became prized laborers as well as targets for capture. In these circumstances, however, legal status mattered less than expertise. Spanish and French enemies sought to capture and employ British pilots of all social and legal statuses. In one instance during the War of Jenkins’s Ear, Captain Alexander Parris was piloting the *Fortune* from Port Royal to Charlestown when a brigantine successfully chased and captured the vessel. During an ordeal that lasted more than eight months, the Spanish held Parris, a white man who came from a politically active family, as a prisoner of war and forced him to work for them in an attack on Georgia.<sup>39</sup> In 1741, a Spanish privateer captured Thomas Poole, a Charlestown pilot. Poole escaped to South Carolina after a long tribulation, which included the Spanish in St. Augustine seizing “his Boat and Negroes.”<sup>40</sup> In another incident, Captain Prew made a

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importance of pilots. W. Jeffrey Bolster, *Black Jacks: African American Seamen in the Age of Sail* (Cambridge, MA and London: Harvard University Press, 1997); David Cecelski, *The Waterman’s Song: Slavery and Freedom in Maritime North Carolina* (Chapel Hill and London: University of North Carolina Press, 2001); Kevin Dawson, “Enslaved Ship Pilots: Navigating the Green Waters of Race and Slavery,” paper presented at the American Historical Association annual meeting, January 7, 2011.

<sup>38</sup> Bolster, *Black Jacks*, p. 133; Michael Craton and Gail Saunders also make a remarkably similar comment when they write that pilots were “the elite of all slave mariners.” Craton and Saunders, *Islanders in the Stream: A History of the Bahamian People, Volume One From Aboriginal Times to the End of Slavery* (Athens: University of Georgia Press, 1992), p. 284.

<sup>39</sup> I have drawn my summary of Parris’s capture and ordeal from statements made by Captain Edward Morris, Captain Alexander Parris, and Captain Edmund Gale, which can be found in: Records in the British Public Records Office Relating to South Carolina, Vol. 21, 1743-1744, microfilm, pp. 37-78.

<sup>40</sup> Easterby, *The Journal of the Commons House of Assembly, May 18, 1741- July 10, 1742*, p. 272; *South Carolina Gazette*, September 19, 1741.

harrowing journey back to South Carolina and recounted that the Spanish had captured him and that “their intention, was to employ him as a Pilot in their Design against Georgia.”<sup>41</sup>

An enslaved man named Arrah to whom reference has already been made in the introduction and chapter one, worked as a pilot on a schooner along the Carolina coast. His experiences also point to the strategic use empires made of pilots. Arrah became a prisoner of war after French privateers captured him in April 1745 during the War of Jenkins’s Ear.<sup>42</sup> The French saw value in Arrah because he was an enslaved pilot whom they could entice to share his knowledge of British territory. If Arrah willingly worked for the French, his labor would have served them against their enemies and may have enabled their vessels to penetrate deeper into the Carolina waterways. The predators repeatedly tried to exploit Arrah for the knowledge and fighting abilities they assumed he possessed. The French provided Arrah with “great encouragement...if he would join with them against the English, and assist them as a pilot for the Carolina coast.” Arrah refused. He also feigned ignorance when his captors asked him to locate fresh water. When the privateering vessel encountered an “English sloop,” the French mariners sought to “engage her,” and the captain “sent a Pistol and Cutlass” to Arrah “with Direction for him to assist them.”<sup>43</sup> The action of arming

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<sup>41</sup> *South Carolina Gazette*, April 15, 1738. It appears that Captain Prew was a white man, given that South Carolina Gazette did not specifically mention otherwise. The Spanish were desirous of help from British subjects and slaves, regardless of their skin color.

<sup>42</sup> McCord, *The Statutes at Large of South Carolina...Vol. VII*, pp. 419-420; J.H. Easterby, ed., *The Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747* (Columbia: South Carolina Archives Department, 1958), pp. 71-72, 159-161, 260; and *South Carolina Gazette*, April 15, 1745. Unless otherwise noted, my discussion of Arrah draws from these sources.

<sup>43</sup> McCord, *The Statutes at Large of South Carolina...Vol. VII*, p. 419.

a prisoner of war indicates that the French seafarers expected captured slaves to fight willingly with them against the British and did not consider them a threat to their personal safety. The French crew did not anticipate Arrah's rejection "that he would sooner die than take Arms against the English." In response, the captain who captured Arrah shot him in the calf. The captain may have intended to coerce Arrah to change his mind, because he did not injure Arrah enough to incapacitate or kill him. Nevertheless, Arrah maintained his allegiance to the British. The French eventually sold Arrah because of his refusal to aid them. After a long ordeal, Arrah voluntarily returned to South Carolina where he petitioned the South Carolina legislature, told its members of his capture, proclaimed his loyalty to South Carolina, and asked for legal freedom. In recognition of his fidelity, the legislature manumitted Arrah.

Documents present South Carolina colonists' palpable and legitimate anxiety that enslaved pilots would work for enemy forces. One such document indicated that slaves who defected to St. Augustine "might prove very injurious to Carolina, as Guides and Pilots to the Spaniards in Time of Hostility."<sup>44</sup> In discussing slave defection to the Spanish, even the editor of a London newspaper feared that British servants and slaves might work as pilots in a Spanish attack on Georgia.<sup>45</sup> Indeed, events unfolded precisely that way when the Spanish coerced their prisoner Alexander Parris to provide them with at least minimal aid in their attack on Georgia. In another case, this time in the Bahamas, a Spanish galley "pick'd up

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<sup>44</sup> *An Impartial Account of the Late Expedition Against St. Augustine Under General Oglethorpe. Occasioned by The Suppression of the Report, made by a Committee of the General Assembly in South-Carolina, transmitted, under the Great Seal of that Province, to their Agent in England, in order to be printed. With an Exact Plan of the Town, Castle and Harbour of St. Augustine, and the adjacent Coast of Florida; shewing the Disposition of our Forces on that Enterprize* (London: Printed for J. Huggonson, in Sword-and -Buckler-Court, over-against the Crown-Tavern, on Ludgate-Hill, 1742), pp. 11-12.

<sup>45</sup> Caleb D'anvers, of Gray's-Inn, Esq., *Country Journal: Or, The Craftsman* (London, England, 1739), June 23, 1739.

some black Pilots at Andro's Island" before it commenced its attack on another Bahamas island, New Providence.<sup>46</sup> During the 1748 Spanish attack on New Brunswick, North Carolina, the attackers "obliged" local pilots to aid them, and after the deadly engagement, they left with one of the pilots.<sup>47</sup>

Slaves helped attackers in more ways than by engaging in armed conflict or maritime predation. An invading force could benefit from their knowledge of the terrain, thus making them valuable guides. During the 1740 siege of St. Augustine, General Oglethorpe relied on a "*Spanish Negro Deserter*," whom he called Captain Jack, as a guide for the British forces. Captain Jack's aid, however, caused conflict within the British forces. Alexander Vander Dussen reported that Captain Jack "was at Liberty," and Richard Wright claimed: "*Captain Jack, and other Spanish Deserters ... were always at Liberty, as much as any of our People.*"<sup>48</sup> Oglethorpe deferred to Captain Jack. As a result, some of Oglethorpe's subordinates criticized his leadership. One of the Gentlemen Volunteers, William Steads, heard General Oglethorpe and Colonel Palmer exchange "*warm Words ... because the General regarded more what a Spanish Negro Deserter, named Captain Jack, told him (who served as a Guide) than what he did.*"<sup>49</sup> According to Captain Ephraim Mikell, Colonel Palmer was so furious at

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<sup>46</sup> *South Carolina Gazette*, September 21, 1747.

<sup>47</sup> *Ibid.*, October 24, 1748.

<sup>48</sup> South Carolina General Assembly, *Appendix to the Report*, pp. 28, 51.

<sup>49</sup> *Ibid.*, p. 43

Oglethorpe's reliance on Captain Jack that when the General asked for Palmer's opinion, Palmer refused and told Oglethorpe to "send for his *Negro Counsellor*."<sup>50</sup>

Slaves' knowledge of the land also made them valuable messengers. A slave brought the news to colonial officials that the Spanish and French had invaded Charlestown in 1706. On August 30, 1706 "news was brought by a Negro ... that the Enemy consisting of about one hundred and Sixty men had been on Shoar all that night."<sup>51</sup> In another example that dates from a later period, a man named Abram proved himself invaluable as a messenger during the Cherokee War, for which the South Carolina legislature granted him legal freedom.<sup>52</sup> White South Carolinians understood the potential danger of slaves working as guides or messengers for enemies.<sup>53</sup>

Conflict increased the awareness of the white colonists' that the people they relied on the most could also act against them. It is not coincidence then that the South Carolina legislature responded to an enslaved pilot's request for freedom, rather than to such a request from an unskilled slave. Underlying the work slaves did on behalf of South Carolina's security was the very real possibility that they could be induced to carry out such work on behalf of a different political power. Colonists' reliance on slaves made them both valuable and dangerous.

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<sup>50</sup> South Carolina General Assembly, *Appendix to the Report*, p. 46.

<sup>51</sup> British Public Record Office, Indexed by A. S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1701-1710*, p. 179.

<sup>52</sup> Snyder, *Slavery in Indian Country*, p. 141; *South Carolina Gazette*, September 20, 1760; Tom Hatley, *The Dividing Paths: Cherokees and South Carolinians through the Revolutionary Era* (New York: Oxford University Press, 1995), p. 136; *Pennsylvania Gazette*, July 3, 1760.

<sup>53</sup> *An Impartial Account*, pp. 11-12.

The colonists of South Carolina needed slaves to perform a host of different tasks or types of work, and they were anxious what would happen if many slaves who worked in trusted positions acted against South Carolina or if rivals coerced skilled slaves to work for them. South Carolina slaveholders also coped with fears about *all* of their slaves. They feared slave resistance, most notably desertion and rebellion. Desertion occurred frequently. Interrogations in one Court of Chancery case included a question about whether it was “Custom to Allow for...run away Days,” or brief absences from the plantation.<sup>54</sup> In another discussion of desertion, the *South Carolina Gazette* reported in 1735 that slaves from John Walters’s plantations were “constantly running away.”<sup>55</sup> Scholars have noted desertion throughout the slavery era and how it constituted a form of resistance.<sup>56</sup> The rich literature on running away, however, generally does not emphasize how impetuses originating outside the colony affected the practice of absconding from slavery.

Issues of colonial security stemming from imperial hostility shaped the effect of slave desertion and how South Carolina officials responded to it. The colony’s response to slave flight molded the entire institution of slavery. Lawmakers determined what type of slave flight they could tolerate and what type they needed to suppress swiftly. Slave flight challenged slavery on an individual level between a master and a slave, but it could also jeopardize colonial security. It appears that officials became involved in desertion cases only

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<sup>54</sup> Anne King Gregorie, ed., *American Legal Records Volume 6, Records of the Court of Chancery of South Carolina 1671-1779*, with an Introduction by J. Nelson Frierson (1950; Millwood, N.Y.: Kraus Reprint Co., 1975), pp. 191-192.

<sup>55</sup> *South Carolina Gazette*, June 21, 1735.

<sup>56</sup> Wood, *Black Majority*, pp. 239-268; John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York: Oxford University Press, 1999).

when they believed it threatened the colony, such as when slaves purposefully tried to make their way to the territory of a rival power. In such cases, fugitive slaves may have been induced to work for an imperial rival, as Menéndez had done for the Spanish.

South Carolina colonists treated short-term slave flight more as a nuisance than as a danger to colonial security. In a study of slavery and servitude in colonial South Carolina, John Donald Duncan quantified runaway advertisements for slaves and indentured servants printed in the *South Carolina Gazette* from 1732 to 1752, and he also documented the length of time a subordinate fled before the master paid for a newspaper advertisement announcing the missing person. Duncan found that masters waited significantly longer to advertise when black slaves fled than when white servants or Indian slaves deserted. He speculated that masters may have considered blacks easier to retrieve, and therefore, saw no need to pay for an advertisement.<sup>57</sup> An alternate conclusion exists based on the same data: slaveowners may have accepted short-term slave flight as common, even customary, among those most oppressed in the colony. Duncan calculated that, on average, sixty-three days passed before a black slave fled and when a master published a newspaper advertisement.<sup>58</sup> Owners may not have considered slave desertion threatening or extremely problematic until approximately two months had passed. Such a conclusion supports Herbert Klein's claim that "in all American slave societies, running away ... was a common occurrence."<sup>59</sup> Philip

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<sup>57</sup> John Donald Duncan, "Servitude and Slavery in Colonial South Carolina 1670-1776" (Ph.D. dissertation, Emory University, 1971), p. 530.

<sup>58</sup> Ibid.

Morgan's analysis in his study of the eighteenth-century Lowcountry and Chesapeake also supports desertion's regularity: "slaves ... seem to have been remarkably mobile in the sense of short- distance, local movements."<sup>60</sup>

In contrast to short-term absconding, some slaves fled permanently and formed maroon communities. This was an act that could threaten colonial security. *Grand marronage*, or the act of running away and establishing a separate community away from white settlement, occurred most notoriously in other colonial slave societies, such as Brazil, Jamaica, and Cuba. Runaway Jamaican slaves created such a hazard to British planters that authorities offered two maroon groups peace treaties during the eighteenth century (1739 and 1740). These treaties eased the hostilities between the British and the maroons, but they also strengthened the Jamaican slave system by including terms that forced the maroons to return new runaways to authorities.<sup>61</sup> The British mainland also experienced marronage during the colonial period, although it never challenged white society to the same extent that it did in other British colonies.<sup>62</sup>

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<sup>59</sup> Short-term escape, also known as *petit marronage*, occurred so frequently in Latin American and Caribbean societies that masters often negotiated with slaves to prompt their return. Herbert S. Klein, *African Slavery in Latin America and the Caribbean* (New York and Oxford: Oxford University Press, 1986), pp. 196-197.

<sup>60</sup> Philip Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry* (Chapel Hill and London: Published for the Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 1998), p. 524.

<sup>61</sup> For a thorough treatment of marronage in the Americas, see Richard Price, ed., *Maroon Societies: Rebel Slave Communities in the Americas* (1973; Baltimore, MD: Johns Hopkins University Press, 1979). For the distinctions between *grand* and *petit* marronage, see Gabriel Debien, "Marronage in the French Caribbean," in *Maroon Societies*, pp. 107-134. Timothy James Lockley, *Maroon Communities in South Carolina: A Documentary Record* (Columbia: University of South Carolina Press, 2009), pp. *vix-xvi*.

<sup>62</sup> *Ibid.*, p. *xviii*; Herbert Aptheker, "Maroons Within the Present Limits of the United States," *The Journal of Negro History* 24, no. 2, (1939), pp. 167-184, 168.

South Carolina's swampy terrain made marronage a possibility for an unknown number of slaves, who subsequently threatened the colony's stability by attacking South Carolina residents. Evidence pertaining to South Carolina maroons before the 1760s is exceedingly limited, but at least one small group of maroons, led by a fugitive named Sebastian, existed as early as 1711. During June of that year, the South Carolina legislature noted that "there are several Negroes runaway from their Masters & keep out, arm'd, robbing and plundering houses and Plantations." The maroons put residents "in great fear and terrour."<sup>63</sup> The frightened inhabitants quickly developed a plan of action to subdue the maroons. The legislature delivered an address to the governor, asking him "to Issue forth his Commission to prepare psons [sic] to apprehend, hunt, and take the runaway Negroes and to Employ a number of Indians to assist them."<sup>64</sup> The plan worked. In October 1711 the legislature recorded that Sebastian was "Lately Executed."<sup>65</sup> All told, it took approximately three to four months to suppress Sebastian.

Extant documents permit some speculation on Sebastian's experiences and motives during this incident, and on the significance of his actions to colonial security. According to reports, Sebastian and other runaways terrorized the local area, which would have been close to Charlestown, given the limited extent of British settlement at the time. They committed "Barbarities, Fellowies, and abuses" on South Carolina inhabitants. Sebastian killed at least one slave, an Indian belonging to Sarah Perry. He and his accomplices so

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<sup>63</sup> Lockley, *Maroon Communities*, p. 8.

<sup>64</sup> *Ibid.*, p. 8.

<sup>65</sup> *Ibid.*, p. 9.

unnerved the white colonists that Governor Robert Gibbes called for a revision of the comprehensive slave act passed in 1701.<sup>66</sup> In 1712, the South Carolina legislature passed a new slave act. The changes in the new act included more severe punishments for troublesome slaves and higher financial compensation to masters when authorities determined one of their slaves should be corporally punished or executed.<sup>67</sup> The attention given to compensation may have been intended to encourage masters to report their slaves' illicit activities to authorities.

Sebastian's case points to the inter-imperial contexts of slavery, and how those contexts shaped colonial response to his attacks as a fugitive slave. South Carolina was drawn into the War of the Spanish Succession (1702-1713), which pitted Britain against Spain and France. Although primarily fought in Europe, the war had real-life implications for residents in Britain's most southern mainland colony. Colonists in South Carolina laid siege to St. Augustine, Florida in 1702, and the Spanish and French launched an unsuccessful invasion against Charlestown in 1706.<sup>68</sup> South Carolina successfully repelled the invaders, but residents still would have been deeply aware of their vulnerabilities to French and Spanish adversaries in 1711 when Sebastian attacked.

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<sup>66</sup> Ibid., pp. 8-9.

<sup>67</sup> L. H. Roper, "The 1701 'Act for the better ordering of Slaves': Reconsidering the History of Proprietary South Carolina." *William and Mary Quarterly*, Third Series 64, no. 2 (2007): pp. 395-418; McCord, *The Statutes at Large of South Carolina...Vol. VII*, pp. 352-364. The slave codes, and the impetuses for their enactment, are discussed in detail in Chapters Four and Five.

<sup>68</sup> Lords Proprietors' Council, Account of 1706 Invasion of South Carolina, September 16, 1706 and November 4, 1706, Lords Proprietors' Council, Copies of Correspondence Relating to the Spanish and French Invasion, 1706, South Carolina Department of Archives and History.

Notably, whites in South Carolina identified Sebastian as a “Spanish Negroe.” Without exception, when members of the South Carolina legislature recorded Sebastian’s name, they qualified it by referring to him as Spanish. Sebastian was both a runaway slave and a foreign enemy. White colonists viewed Sebastian as especially menacing because he was simultaneously a foreign and domestic enemy. How Sebastian entered the colony is unknown, but once in South Carolina, he may have escaped because his enslavement was different from that to which he had been accustomed (if he was a slave at all when he resided among the Spanish). His ability to communicate verbally may have been compromised if he did not speak English. Sebastian’s actions, as related by the legislature, seem particularly disturbing for a colony engaged in warfare with Spain. Although white colonists considered his behavior barbarous and illicit, he may have stolen and plundered out of hunger and legitimate need. Sebastian, and perhaps the other maroons, also may have actually decided to wage war on the British colonists. After all, the bandits carried arms. Regardless of intent, Sebastian’s actions cost him his life and prompted the colonial elite to amend the statutory mode of slave governance by cracking down on slaves it deemed the most troublesome.<sup>69</sup>

Decades later, during the 1730s and 1740s, colonial leaders of South Carolina also acted against maroons whom they feared and believed threatened colonial security. In 1733, the Upper House of the legislature recommended that the government give monetary rewards to people who might capture dead or alive “Several Run away negroes ... who have

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<sup>69</sup> Lockley, *Maroon Communities*, pp. 8-9. Chapter Four discusses in detail the impetuses for the 1712 slave code.

robbed Several of the Inhabitants.”<sup>70</sup> But people of African descent were not the only subordinates who posed problems to South Carolina residents at this time. Sometimes whites and blacks acted together. In May 1735, Lieutenant Governor Thomas Broughton ordered the militia to hunt down maroons living in a swamp near “the head of the Wando River” located northeast of Charlestown. “Several White persons and blacks” had terrorized the colony’s inhabitants by committing “many Outrages and Robberys.” The Lieutenant Governor authorized the militia “to seize and apprehend those disturbers of the peace,” and he also permitted the militia to “exercise military discipline; either by shooting them or otherwise” if they resisted capture.<sup>71</sup> Government officials sometimes reached out to Indian allies to help suppress the maroons, highlighting how political connections with Native Americans could support colonial security. Referring to maroons as “daunting negroes” in 1744, Governor James Glen sought the aid of “my Friends the Notchees” to apprehend a group of maroons who “shelter[ed] themselves in the woods.” Glen noted that the maroons “procured arms,” and “commit[ted] divers disorders w[hi]ch may be of evil example, to other negroes.”<sup>72</sup>

These cases of marronage in South Carolina seem to have been isolated incidences, but they are all connected in at least one way: the colonial government became involved in suppressing the maroons only when the fugitives directly terrorized white colonists.

Colonial leaders prioritized eradicating maroons only when those runaways wreaked havoc

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<sup>70</sup> Ibid., p. 10.

<sup>71</sup> Ibid., pp. 10-11.

<sup>72</sup> The “Notchees” were Natchez Indians who had fled from the Mississippi region after the Natchez War (1729-1732). Ibid., p. 11; Snyder, *Slavery in Indian Country*, p. 117.

on society by committing crimes such as plundering and murder. Many other maroons may have existed during South Carolina's colonial period but went undetected by authorities. Historian Timothy James Lockley's analysis of maroons in South Carolina supports this speculation. Lockley posits that some of the rebels who participated in the Stono rebellion of 1739 may have been maroons seeking freedom in St. Augustine, and this helps explain why scholars have only minimal details for analyzing the uprising.<sup>73</sup> Little information is available about the rebels, such as who owned them or where they resided, perhaps because some of them had been fugitives from slavery for years.

South Carolina's broader political currents reveal that slaves had viable destinations when they chose to flee, which gives added significance to slave desertion. White colonists took measures, including making treaties with Indians, to inhibit the collusion of people of African descent and Indians. But black slaves sometimes sought refuge with local Native Americans, despite whites' efforts. In 1718, news circulated to Bermuda's Lieutenant Governor that white inhabitants of South Carolina feared that runaway black slaves and

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<sup>73</sup> Lockley's thesis that some of the Stono rebels were maroons is admittedly speculative but is also compelling and warrants quoting at length: "Perhaps not all of the Stono rebels were plantation slaves, as has generally been assumed, but instead were augmented by maroons who had fled bondage long ago and, lured by Spanish promises of liberty, were at that point seeking to end the threat of reenslavement by traveling to St. Augustine. Perhaps the involvement of the maroons, who did not have to wait for an opportunity to flee from a plantation under the watchful eye of an owner or overseer, explains how the numbers of rebels grew so quickly, reaching as many as a hundred within a few hours. We cannot know for certain if some of the rebels at Stono had been maroons, but considering that the location for the start of the rebellion—the ignition point—was on the fringes of the Stono Swamp and that (as this book makes clear) maroons were endemic in the swamps, it is not beyond the bounds of probability that they were involved. The Stono rebels certainly exhibited some of the traits often associated with maroons: they were armed and well organized; most sought to preserve their liberty, rather than fight to the death, by retreating 'to a thicket of woods' after the initial encounter with the militia; and some of those fleeing evidently had the requisite skills to support themselves while hiding from white pursuers ... Over the ensuing months it became clear that some of the escaped rebels had become maroons, or perhaps *returned* to being maroons." Lockley, *Maroon Communities*, pp. 12-13.

Cherokee Indians planned a joint attack.<sup>74</sup> Alternately, slaves occasionally fled to the French, England's imperial rivals in the west. In 1725, an escaped black slave from South Carolina wound up working on behalf of the French Governor of Mobile.<sup>75</sup> Tobias Fitch encountered the fugitive when he traveled to the Lower Creeks. Fitch informed his hosts that he planned to take the slave back to South Carolina because the "Negro ... is a Slave blonging [sic] to my great King and has Been Run from us a great while and lived with the French."<sup>76</sup> The Indians did not challenge his claim, and Fitch journeyed back towards South Carolina with him. The slave, however, proved his resiliency and broke free. He did so after Fitch left "two white men" who were "well arm'd" in charge of him. Remarkably, the prisoner seized the two men's weapons, shot one man "through the Brest" and then escaped.<sup>77</sup>

White South Carolinians were most concerned about black slaves fleeing south to the Spanish in Florida. Historian Jane Landers's scholarship has revealed that the Spanish encouraged slaves from South Carolina to make their way to the southern colony. As early as 1687, the Spanish in St. Augustine granted asylum to a group of slaves who fled by boat from St. George, Carolina. The Spanish at first employed an ad hoc method of dealing with slaves who ran from English colonies to Florida, but it eventually evolved into an openly

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<sup>74</sup> Ramsey, *The Yamasee War*, p. 164

<sup>75</sup> Fitch, *Captain Fitch's Journal*, pp. 193-194, 199-200.

<sup>76</sup> *Ibid.*, p. 200.

<sup>77</sup> *Ibid.*, p. 212

Crown-sanctioned policy.<sup>78</sup> In 1733, the Spanish king proclaimed that fugitive slaves from British settlements who reached Florida would receive their freedom after serving the Spanish Crown for four years.<sup>79</sup> Florida's policies and willingness to grant greater freedom to people of African descent provided an incentive for slaves of the British Empire to run away. South Carolina slaves had a viable destination. They did not just run away *from* a master, but rather, ran *to* freedom.<sup>80</sup>

Spain's threat to South Carolina and Georgia did not go unnoticed in England, where residents also acknowledged the threat fugitive slaves posed to the British Southeast. Just a few months before the War of Jenkins's Ear officially broke out in 1739, the London newspaper the *Country Journal* reprinted a letter written from Charlestown that expressed white colonists' concern about slaves defecting to Florida. The letter's author cautioned, "upwards of 700 [slaves] have been receiv'd, to the great Loss of the Planters ... which will prove their Ruin if a Stop is not put to such villanous Proceedings." The editor of the *Country Journal* linked runaways with maritime labor and warfare, and solemnly commented on the letter: "This is a certain Proof of their [the Spanish] Intent to attack Georgia, in which Case these Servants and Slaves will be their Pilots, and our worst Enemies."<sup>81</sup>

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<sup>78</sup> Jane Landers, "Spanish Sanctuary: Fugitives in Florida, 1687-1790," *Florida Historical Quarterly* 62, no. 3 (1984): pp. 296-313.

<sup>79</sup> *Ibid.*, p. 300.

<sup>80</sup> Linda M. Rupert has made a similar argument in the context of illicit trade facilitating slaves' entrance into Spanish colonies in the eighteenth century. See: Rupert, "Marronage, Manumission and Maritime Trade in the Early Modern Caribbean," *Slavery & Abolition* 30, no. 3 (2009): pp. 361-382, 374.

<sup>81</sup> *Country Journal: Or, The Craftsman*, June 23, 1739. John Donald Duncan details many attempts by slaves to flee to Spanish territory throughout the colonial period. Duncan, "Servitude and Slavery in Colonial South Carolina," pp. 632-683.

Many escaped slaves achieved refuge and a relative degree of freedom in Florida, thus confirming white colonists' apprehensions. Nineteen of Caleb Davis's slaves and "50 other Slaves belonging to other Persons inhabiting about Port Royal" successfully ran away in November 1738 to the Castillo de San Marco in St. Augustine, where the Spanish governor offered them protection. Davis found the fugitives but failed to retrieve them because Florida Governor Montiano abided by "the express Command of his Catholic Majesty ... to declare all Slaves to be free that should desert" from South Carolina.<sup>82</sup> A few months earlier in March 1738, Governor Montiano had declared that in order to maintain the spirit of the Crown's *cédulas* regarding slave flight, all slaves who had fled from South Carolina to Florida would become free. The Crown approved of Montiano's policy despite discontent from Spanish slaveholders, and furthered it by declaring that future fugitives from *all* British colonies who arrived in Florida would receive immediate freedom and the liberties associated with that status. The Crown required that the edict be posted publicly so that no opportunistic Spanish colonists could claim ignorance of the order and try to sell the fugitives.<sup>83</sup> In all likelihood, the slaves who escaped from the Port Royal region, located south of Charlestown, got wind of the orders of the Spanish Governor and King.<sup>84</sup> Less than

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<sup>82</sup> J.H. Easterby, ed., *The Journal of the Commons House of Assembly November 10, 1736- June 7, 1739* (Columbia: The Historical Commission of South Carolina, 1951), p. 596.

<sup>83</sup> Landers, *Black Society in Spanish Florida*, p. 28.

<sup>84</sup> Slave communication was often illicit and is difficult to trace in the historical record. At its most basic level, communication networks among enslaved populations can be seen as a challenge to white rule because communication, and thereby, information, could facilitate outward slave resistance. Maritime slaves, such as sailors, pirates, and pilots acted as conduits of information across the Atlantic World. Slaves also communicated by traveling through the countryside, especially by keeping horses. Other jobs, such as serving as guides, interpreters, and domestics placed slaves in positions to learn of and then also spread news and gossip. For works that discuss communication networks, see: Julius S. Scott, "The Common Wind: Currents of

one year later slaves rose up near the Stono River and began marching south, presumably in hopes of reaching Florida.<sup>85</sup>

Spanish religious records verify that many slaves from South Carolina ended up in Spanish territory during this era. Men, women, and children started their lives anew in Florida.<sup>86</sup> Following the Roman legal tradition and the Roman Catholic Church, the Spanish were more willing than the English to incorporate African slaves into their religious and legal cultures.<sup>87</sup> They formally granted slaves the rites of baptism, marriage, and interment.<sup>88</sup> Through 1734, authorities in Florida recorded all baptisms, marriages, and burials in the same collection of documents, but beginning in November 1735, they documented those rites separately for people not of European descent. The *Cathedral Parish Records, Baptisms, Marriages, Interments: Pardos, Morenos, Indianos, Etc. 1736-1763* sheds light on the lives people started once they entered Spanish territory.

Sixty-seven of 399 (16.8%) recorded baptisms in the *Cathedral Parish Records* of St. Augustine mentioned people who originated from “Carolina,” “San Jorge” or “English”

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Afro-American Communication in the Era of the Haitian Revolution” (Ph.D dissertation, Duke University, 1986); Cecelski, *The Waterman’s Song*; and Bolster, *Black Jacks*.

<sup>85</sup> Wood, *Black Majority*, pp. 308-330. For primary documents relating to the Stono rebellion, and divergent views on the rebellion, see: Mark M. Smith, *Stono: Documenting and Interpreting a Southern Slave Revolt* (Columbia; University of South Carolina Press, 2005).

<sup>86</sup> In addition to slaves willingly making their way to Florida, it is possible some ended up there from other reasons, such as by Spanish capture or through slave sale.

<sup>87</sup> On the Spanish reception of Roman law, and in particular, slave law, see: Alan Watson, *Slave Law in the Americas* (Athens and London: The University of Georgia Press, 1989), pp. 40-62.

<sup>88</sup> Christopher Beats, “African Religious Integration in Florida During the First Spanish Period,” (unpublished M.A. thesis, University of Central Florida, 2007) pp. 53-54.

territory.<sup>89</sup> Several were children, perhaps reflecting that an adult fled with the young child. On November 30 and December 1, 1738, four young girls were baptized. The baptismal records indicate that Maria (one and a half years old), Ana (three years old), Francisca (two years old), and Maria (six months old) were all free, baptized, and originally from “Carolina.”<sup>90</sup> One-year-old Mariana, who was also free and from Carolina, was baptized on December 8, 1738. The young children may have been former slaves of Caleb Davis and the other South Carolina slaveowners who had sixty-nine slaves flee from the Port Royal region in November 1738. Other ex-South Carolina slaves appear in the records as married couples having their child or children baptized. In May 1743 Salvador Garzia and Antonia del Rosari, who were married and natives of South Carolina, had their infant son Antonio de la Paz baptized.<sup>91</sup> Adults from Carolina also were baptized. Francisco, an “adult native of Carolina,” was baptized in February 1744, while four years earlier five adult men from Carolina all received baptism on the same day.<sup>92</sup> The five men may have been part of the group of

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<sup>89</sup> San Jorge translates to St. George, which the Spanish called South Carolina. In a correspondence to the Lords Commissioners for Trade and Plantations, Edward Randolph explained the Spanish attack on Stuart Town: “The Spaniards burnt down their [the settlers’] Houses destroyed and carryed away all that they had because (as the Spaniards pretended) they were settled upon their Land ... This whole Bay was called formerly St. Georges which they likewise lay claim to.” British Public Record Office, Indexed by A. S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1698-1700*, (Columbia, SC: Printed for The Historical Commission of South Carolina by Crowson-Stone Printing Company, 1946), p. 89.

My total of 67 people comes from adding together people who were baptized, as well as notations in the records indicating that parents of children receiving baptism were from English territory. When examining the parish records, I read the transcripts, but also consulted the original Spanish manuscripts. *Cathedral Parish Records Baptisms, Marriages, Interments: Pardos, Morenos, Indianos, Etc. 1736-1763*, originals and transcripts, both at St. Augustine Historical Society.

<sup>90</sup> *Cathedral Parish Records*, original pp. 32-33, transcripts pp. 9-10.

<sup>91</sup> *Ibid.*, p. 79-80, transcripts p. 24.

fugitives who fled during the fighting of the September 1739 Stono rebellion. At least a few slaves from the insurrection actually reached St. Augustine.<sup>93</sup>

The men and women who fled from the British Southeast had the opportunity to found and reside in the Crown-sanctioned free black fort and settlement of Fort Mose. The escaped slave Francisco Menéndez, whose story opened this chapter, supervised the fort's construction. The settlers used their carpentry, ironworking, and stonecutting skills, and built the walled fort and surrounding shelters.<sup>94</sup> Landers has estimated that approximately 100 men and women resided in Fort Mose and its surrounding village of Gracia Real de Santa Teresa at the time of its founding in 1738.<sup>95</sup> Mose residents endured hardship. The excavated material culture from the site offers "little to suggest luxury or frivolity."<sup>96</sup> The former slaves constructed Fort Mose, but during the 1740 siege of St. Augustine British forces took the fort. Fort Mose's black militia, which Menéndez commanded, participated in the counter-attack on the British-occupied fort on June 14, 1740. It was a bloody and gruesome battle. The alliance of the Spanish, Indians, and free blacks caught Oglethorpe's troops by surprise and killed approximately seventy-five British troops, two of whom they decapitated and

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<sup>92</sup> Ibid., p. 89, 15-16, transcripts pp. 15-16, 27. Lorenzo, Domingo, Juan, Luis, and Andres became baptized on January 26, 1740.

<sup>93</sup> Berlin, *Many Thousands Gone*, p. 73.

<sup>94</sup> Landers, *Black Society in Spanish Florida*, p. 30.

<sup>95</sup> Ibid., pp. 29-30.

<sup>96</sup> Kathleen Deagan and Darcie MacMahon, *Fort Mose: Colonial America's Black Fortress of Freedom* (Gainesville: University Press of Florida, 1995), p. 33.

castrated. Despite Spanish success at retaking the fort, the inhabitants of Fort Mose relocated two miles south to St. Augustine and lived there for the next decade.<sup>97</sup>

Larger political contexts mitigated how South Carolina slaves dealt with living in other colonies and show that freedom was a relative status. As escaped slaves' lives reveal, the conditions of slavery were not fixed. An enslaved legal status did not solely determine how a person experienced life, and at least a few men preferred slavery in South Carolina than the relative freedom they may have gained elsewhere.<sup>98</sup> Former prisoner-of-war Alexander Parris provided the South Carolina Upper House of the legislature a deposition in 1743 about his first-hand knowledge of Spanish wartime plans in which he discussed fugitive slaves. Parris encountered black slaves and Irish servants who had deserted from South Carolina to Florida. But he also became acquainted with a black man who hoped to return to South Carolina. The runaway's name was Tony, and he had "formerly" belonged to a Mr.

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<sup>97</sup> A series of accounts about the siege and Fort Mose battle emerged in the aftermath. The conflict was contentious and differing accounts abounded. See: *An Impartial Account*; South Carolina General Assembly, *The Report of the Committee of Both Houses of Assembly Of the Province of South-Carolina, Appointed to Enquire into the Causes of the Disappointment of Success, in the Late Expedition against St. Augustine, Under the Command of General Oglethorpe. Published by the Order of Both Houses* (South Carolina and London: Reprinted in London for J. Roberts, near the Oxford-Arms, in Warwick Lane, 1743); South Carolina General Assembly, *Appendix to the Report*; and George Cadogan, *The Spanish Hireling Detected: Being a Refutation of the Several Calumnies and Falshoods in a late Pamphlet, Entitl'd An Impartial Account of the Late Expedition Against St. Augustine Under General Oglethorpe*. (London: Printed for J. Roberts, in Warwick Lane, 1743). For a Spanish perspective, see: Manuel de Montiano letters, 1737-1741, Georgia Historical Society, Savannah, GA; Landers, *Black Society in Spanish Florida*, p. 35-39.

<sup>98</sup> Slavery and freedom varied according to historical context, and slavery could be more desirable than freedom for individual slaves. For an example of such an occurrence during the nineteenth century, see: Walter Hawthorne, "Gorge: An African Seaman and his Flights from 'Freedom' back to 'Slavery' in the Early Nineteenth Century," *Slavery & Abolition* 31, no. 2 (2010): pp. 411-428. In his study of manumission in Rio de Janeiro, James Sweet points out that in the mid-eighteenth century, manumission for the "vast majority of African slaves ... a cruel delusion." Manumission perpetuated the institution of slavery, and oftentimes, manumitted slaves were old or ill, and unable to support themselves. In such cases, some people may have preferred to stay enslaved. James H. Sweet, "Manumission in Rio de Janeiro, 1749-54: An African Perspective," *Slavery and Abolition* 24, no. 1 (2003), pp. 54-70, 66.

Givens from Port Royal. Tony was unsatisfied with his new life among the Spanish and desired “to return if he could be sure of a pardon.”<sup>99</sup> Decades earlier in 1686 during times of heightened Spanish-English hostility, the Spanish stole South Carolina Governor Joseph Morton’s slaves after the imperial enemies sacked his home. Five of the thirteen slaves “returned to their Master.” They chose to do so even after Florida’s governor refused to send them back to South Carolina.<sup>100</sup> Their decision to return to South Carolina after having been in non-British territory was not an isolated occurrence. In 1746, Arrah, the captured enslaved pilot, voluntarily returned to South Carolina where he had been Hugh Cartwright’s slave, even though the Danish governor of St. Thomas had granted him legal freedom.

After a lengthy legislative debate following Arrah’s arrival in South Carolina, the colony’s legislature passed an act in 1747 freeing Arrah for his loyalty to the British Crown, and also creating a way for other slaves who ended up in enemy territory to return. The law was meant to reduce the number of South Carolina slaves who aided enemies. In order for slaves to receive legal freedom in South Carolina, an enemy had to have captured the slaves. The statute, however, did not specify how lawmakers expected slaves to prove that rivals had abducted them (such as Governor Morton’s slaves). This situation opened up the possibility that runaway slaves could return to the colony without facing penalty, as Tony had hoped to do. Shortly after this law’s enactment, eight men returned from Florida by way of Frederica, Georgia. Prince, Jemie, Robin, Jack, Billy, Lewis, Kingson, and John Dick all had their free

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<sup>99</sup> Records in the British Public Records Office Relating to South Carolina, Vol. 21, 1743-1744, microfilm, pp. 18, 58.

<sup>100</sup> British Public Record Office, Indexed by A. S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1698-1700*, p. 89.

status recorded by the South Carolina Secretary of the Province simultaneously, indicating that the men voluntarily returned from Spanish Florida as a group after hearing about the new law.<sup>101</sup> Another man, Benjamin Elden, already resided in South Carolina at the time of the law's passage, and he had his free status confirmed. He had willingly returned from enemy territory after having been a prisoner of imperial rivals.<sup>102</sup>

The pervasive nature of slave desertion forced white South Carolinians to triage behaviors they found threatening. Slaveholders carried out severe punishment against maroons who attacked the colony. Authorities decided to grant legal freedom to a few slaves who voluntarily came back to the colony, even though those slaves may have been unable to prove that enemies stole them. It was good policy to free a few slaves through a counter-offer to Spain's policy of granting freedom to South Carolina fugitives. If whites failed to keep the vast majority of slaves submissive and loyal, then larger numbers of enslaved individuals may have fled to Florida or other areas, thereby posing a more serious risk to the colony's security.

South Carolina slaveholders relied on their slaves for both skilled and unskilled labor, yet they also dreaded their presence. Slaveholders needed to employ slaves in strategic positions to defend against foreign enemies. They also depended on slaves to work in dangerous locations that were exposed to foreign attack, such as the coastlines. These needs placed slaveholders in a vulnerable position should their slaves choose or be forced to work

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<sup>101</sup> J.H. Easterby, ed., *The Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747*, pp. 71-72; McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 419-420. John D. Duncan, "Servitude and Slavery in Colonial South Carolina," p. 383; South Carolina, *South Carolina Miscellaneous Records of the Secretary of the Province, Main Series, Vol. GG*, pp. 354-355, South Carolina Department of Archives and History.

<sup>102</sup> South Carolina, *South Carolina Miscellaneous Records*, Vol. GG, pp. 233-234.

against them. The reality of desertion and the possibility of revolt amplified this relative weakness of the slaveholding class.

Despite the denigrated legal status of slaves, slavery was, by necessity, an elastic, pliable, and robust institution that accommodated a host of conditions and situations. The frequent state of alarm and conflict in South Carolina contributed to this feature of slavery in the colony because it required whites to recognize simultaneously slaves as both latent threats and necessary allies. South Carolina slaveholders routinely were confident in slaves' obedience, and trusted them to act in the colony's best interest, such as when slaves participated in conflict. Sometimes slaves seized opportunities hoping to better their lives. Such contexts created an environment where slaves had a broad range of experiences and work atmospheres. Like Menéndez, some slaves departed from the geographic boundaries of South Carolina to take on entirely new roles. In addition to engaging in and even causing conflict, slaves also participated in South Carolina's legal culture, a topic explored in the next chapter. Similar to how slavery and the enslaved played key roles in conflict and imperial hostilities, they both also proved crucial to South Carolina's foreign policy and legal schema.

## Chapter 3: Inequality and Inclusivity: The Contours of South Carolina's Legal Culture

In the wake of a 1734 murder trial, a self-proclaimed “stranger” to Charlestown, presumably a visitor from England, wrote a letter to the editor of the *South Carolina Gazette* in which he called for a professionalization of the law in South Carolina.<sup>1</sup> He expressed his shock and dismay at who understood law in South Carolina: “I have seen some, that I much question whether they could write or read, who have told me what the Law is ... more readily, and I am sure with much more confidence, than the ablest Lawyer in England would pretend to do.”<sup>2</sup> The thinly veiled sarcasm suggests that he did not think much of these people’s legal knowledge, particularly compared to formally trained English lawyers. He drove home his point by ordering “ignorant Disputants to mind their own business in their respective Occupations, and leave such weighty matters ... to the decision of those whose business it is to determine them.”<sup>3</sup>

The visitor noted that lay people expressed their understandings of the law, but perhaps he was unaware that wealthy slaveholders excluded them from positions of power

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<sup>1</sup> Law was dynamic during the seventeenth and eighteenth centuries in England and her colonies. Some works highlight the professionalization of law in England and how it affected residents, especially women, while others contend that no clear linear path of professionalization existed when one examines law in England over multiple centuries. Convincing scholarship on New England has demonstrated how law became professionalized and more formal during the course of the colonial and post-Revolution eras. Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge, UK: Cambridge University Press, 1998), esp. pp. 216-239; Christopher W. Brooks, *Lawyers, Litigation and English Society since 1450* (London: Hambledon Press, 1998); Bruce H. Mann, *Neighbors and Strangers: Law and Community in Early Connecticut* (Chapel Hill and London: The University of North Carolina Press, 1987); Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1995).

<sup>2</sup> *South Carolina Gazette*, November 2, 1734.

<sup>3</sup> *Ibid.*

within the colony's legal culture. South Carolina's legal culture, defined here broadly to include the formal legal system as well as more informal ways people participated in and implemented law, was both hierarchical and inclusive, as the visitor's comments suggest. People of different backgrounds, including slaves, partook in legal processes. The colony's enslaved demographic majority, however, mostly experienced the formal legal system as a mechanism that distributed punishment.

This chapter examines the law and legal culture of South Carolina. It argues that self-interested slaveholders ran the government in ways that promoted slavery. Nearly all, if not all, local government officials had personal interests in slavery. Those same government officials ensured that the formal legal system undergirded slavery as an institution. These dynamics of South Carolina's government meant that slaveholders' interests shaped the formal law and the processes by which they formulated and upheld it. Government officials established and used slave courts to reinforce slaveholders' power and to regulate slavery because individual slaveholders' power was never complete. Local and imperial contexts mediated lawmakers' efforts to consolidate their power over subordinates. The chapter shows that customary modes of governing that included subordinates' participation were common in South Carolina, although those customs remain difficult to trace. As such, the colonial-level government was powerful, but it did not completely encompass or control the colony's legal culture.

Scholarship about early South Carolina society generally treats law and the legal culture separately from happenings in the rest of society. In these assessments, law occurs in its own domain, apart from society at large, and therefore it does not receive the same

scrutiny as other dynamics in colonial society.<sup>4</sup> Likewise, studies that discuss colonial slavery and the law often focus on the law of slavery, and not on the relationship between slave statutes and broader social dynamics.<sup>5</sup> Scholars have not fully recognized the role of slaves within South Carolina's colonial legal system because they have not understood that system's structure. Understanding the mechanics of South Carolina's government and legal process reveals how slaves interacted with the law and where slavery fit within the overarching legal schema.

South Carolina's formal legal system furthered slaveholders' interests. Slaveholders occupied the most powerful government positions in society. Those men had a vested interest in slavery, so they created laws and courts that reinforced their power over slaves. Moreover, government officials carried out politics and colonial policy in ways that supported slavery.

A small number of men who ran the colony's government were especially powerful. From South Carolina's founding through 1692, the colonial government consisted of the

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<sup>4</sup> For examples, see: Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 Through the Stono Rebellion* (New York: W.W. Norton, 1974); S. Max Edelson *Plantation Enterprise in Colonial South Carolina* (Cambridge, Massachusetts and London: Harvard University Press, 2006); Lorri Glover, *All Our Relations: Blood Ties and Emotional Bonds Among the Early South Carolina Gentry* (Baltimore: Johns Hopkins University Press, 2000); Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry* (Chapel Hill & London: Published for the Omohundro Institute of Early American History and Culture, by the University of North Carolina Press, 1998).

<sup>5</sup> Scholars' general tendency to study the legal history of slavery in isolation from how that law actually functioned in society has remained consistent over time. For a sampling of influential studies that largely ignore how the law of slavery interacted with society, and how slaves interacted with the law in practice, see: Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (New York: Cambridge University Press, 2010), esp. pp.401-508; Bradley J. Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," *The American Journal of Legal History* 38, no. 1 (1994): pp. 38-54; William Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," *The William and Mary Quarterly*, Third Series 34, no. 2 (1977): pp. 258-280, 280; Elsa Goveia, "The West Indian Slave Laws of the Eighteenth Century," *Revisa de Ciencias Sociales* 4, no. 1 (1960): pp.75-105.

Grand Council, which was comprised of the governor, plus men appointed by the proprietors and elected locally. This body functioned as the colony's civil and criminal court, except for cases of small amounts of debt, which justices of the peace heard. Until its dissolution in 1692, the Grand Council also served as the colony's Court of Chancery, a court of equity that operated separate from the criminal and civil courts. For a short time from 1682-1698, a separate court, the Berkeley County Court, heard civil cases. The Grand Council, however, still had a hand in civil matters. It heard appeals from the Berkeley County Court and also acted as a supreme court.<sup>6</sup>

By 1698, the colony had somewhat clearer distinctions between judicial, legislative, and executive responsibilities, but still only a handful of men controlled the colonial government. Significant overlap in civil servant duties remained. The men of the Council, for instance, held many roles. The eight lords proprietors appointed Council members, who advised the Governor. The Council and Governor carried out the duties of the Court of Chancery, and the Council served as the legislature's Upper House of Assembly.<sup>7</sup> The bicameral General Assembly, or legislature, also consisted of the Commons House of

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<sup>6</sup> Alexia J. Helsley and Michael E. Stauffer, *South Carolina Court Records: An Introduction for Genealogists* (Columbia: South Carolina Department of Archives and History, 1993), pp. 1-2, 17-18. I am indebted to Marion Chandler from the South Carolina Department of Archives and History for discussing South Carolina's early legal system, and for clarifying the differences between the Governor in Council and Grand Council. For a contemporary, albeit propagandistic, account of South Carolina's early government and legal system, see: Thomas Nairne, "A Letter to South Carolina; Giving an Account of the Soil, Air, Product, Trade, Government, Laws, Religion, People, Military Strength, &c. of that Province. Together, With the Manner and necessary Charges of Settling a Plantation there, and the Annual Profit it will produce. Written by a Swiss Gentleman, to his Friend at Bern" (London: Printed for R. Smith, at the Bible, under the Royal Exchange, 1718), Second Edition.

<sup>7</sup> Helsley and Stauffer, *South Carolina Court Records*, pp. 17-18. For the distinctions between the Council and the Upper House of Assembly, see: Charles E. Lee and Ruth S. Green, "A Guide to the Upper House Journals of the South Carolina Assembly 1721-1775," *The South Carolina Historical Magazine* 67, no. 4 (1966): pp. 187-202.

Assembly (the lower house of the legislature), an elected body that later come to wield great power.<sup>8</sup> In 1698, the proprietors established the Court of Common Pleas to oversee civil matters, for which the Governor and his Council heard appeals. That same year, the proprietors also created the Court of General Sessions to address criminal matters relating to the colony's white population. The same justices served in the Court of General Sessions and Court of Common Pleas.<sup>9</sup> The proprietors also established the position of chief justice. The person in this role oversaw all criminal and civil cases, and heard appeals.<sup>10</sup> The chief justice could serve in multiple capacities. Nicholas Trott, chief justice from 1703 to 1719, held positions in the Grand Council, in the Commons House of Assembly, and on the Vice-Admiralty Court, among other official roles.<sup>11</sup> He was also a slaveholder.<sup>12</sup> The Governor and Council handled probate, and the Secretary of the Province served as a clerk.<sup>13</sup> Overall, a relatively small number of men dominated the formal institutions of the colonial government.

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<sup>8</sup> For works that consider Commons House of Assembly's rise to power, see: Jack P. Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies 1689-1776* (Chapel Hill: University of North Carolina Press, Published for The Institute of Early American History and Culture at Williamsburg, Virginia, 1963); and M. Eugene Sirmans, *Colonial South Carolina: A Political History 1663-1763* (Chapel Hill: University of North Carolina Press, Published for the Institute of Early American History and Culture at Williamsburg, Virginia, 1966), pp. 225-357.

<sup>9</sup> Helsley and Stauffer, *South Carolina Court Records*, pp. 1-2, 9-10.

<sup>10</sup> *Ibid.*, pp. 1-2.

<sup>11</sup> Walter B. Edgar, ed. *Biographical Directory of the South Carolina House of Representatives Volume I, Session Lists 1692-1973* (Columbia: University of South Carolina Press, 1974), pp. 681-684.

<sup>12</sup> *South Carolina Gazette*, March 3, 1733.

<sup>13</sup> A probate court did not exist in South Carolina through 1747 in the modern sense of the term. Helsley and Stauffer, *South Carolina Court Records*, p. 26.

South Carolina's formal legal system was literally inaccessible for many of its residents. The legislature held session in Charlestown. The main courts of law and equity that served the colony, the Courts of Common Pleas and of General Sessions, and the Court of Chancery, respectively, only met in Charlestown. The Vice-Admiralty Court, also located in Charlestown, heard cases related to local maritime activities. Although the courts purported to serve the entire colony, they were located exclusively in the colony's capital. This location benefited the wealthiest planters, who lived in or near Charlestown, but forced everyone else to travel there or forego access to the legal system. The legislature attempted to establish county courts in 1721, but that effort failed until the era of the American Revolution.<sup>14</sup> The expense of traveling to Charlestown prompted some South Carolinians to petition the legislature for compensation. In 1738, William Bodington asked the legislature to grant him £25 after he traveled "express" from the Cherokees to Charlestown and then to Savannah in order to report George Stevens's murder.<sup>15</sup>

Justices of the peace could rule outside of Charlestown on certain legal matters, but this mode of justice remains hazy at best for a modern researcher. The justices did not keep records of their rulings. Statutes acknowledged that *all* civil and criminal trials occurred in Charlestown, resulting in the "less orderly" keeping of the peace.<sup>16</sup> But statutes also granted

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<sup>14</sup> Thomas Cooper, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. III, Containing the Acts from 1716 to 1752, Inclusive* (Columbia, SC: Printed by A. S. Johnston, 1838), p. 147; Helsley and Stauffer, *South Carolina Court Records*, p. 1.

<sup>15</sup> J.H. Easterby, ed., *The Journal of the Commons House of Assembly, November 10, 1736- June 7, 1739* (Columbia: The Historical Commission of South Carolina, 1951), pp. 390, 449, 456.

<sup>16</sup> David J. McCord, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. VII, Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers* (Columbia, SC: A.S. Johnston, 1840), p. 166.

justices of the peace the power to determine certain matters, such as whether a master treated a servant too harshly, the age of a servant, and how to employ the poor.<sup>17</sup> Depending on the situation, either one or two justices of the peace needed to be present to make a ruling.<sup>18</sup> Statutes bound justices of the peace to exercise diligence in their duties by considering evidence and testimony, such as for servants accused of striking their masters.<sup>19</sup> Except for when a statute explicitly stated an issue and declared that a person could see a justice of the peace, it is difficult to determine exactly what matters fell under a justice of the peace's judicial power.

Legal proceedings occurred in settings that were highly informal when compared to contemporary legal forums. Unlike the government buildings in which legislators enact statutes and judges administer trials in the United States today, the early South Carolina legal system lacked extensive infrastructure, a point Laura Edwards cogently argues about the post-Revolution Carolinas. During the post-Revolution period, North and South Carolina built large and imposing courthouses during the process of elevating state law over local law, of trying to centralize a traditionally decentralized and local system of law.<sup>20</sup> Prior to the widespread use of these structures, however, court proceedings occurred in locations that

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<sup>17</sup> Cooper, *The Statutes at Large of South Carolina... Vol. III*, pp. 15, 17-18; Thomas Cooper, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. II, Containing the Acts from 1682 to 1716, Inclusive* (Columbia, SC: Printed by A. S. Johnston, 1837), p. 116.

<sup>18</sup> Cooper, *The Statutes at Large of South Carolina... Vol. III*, pp. 14-21; 621-629; Cooper, *The Statutes at Large of South Carolina... Vol. II*, pp. 116-117.

<sup>19</sup> Cooper, *The Statutes at Large of South Carolina... Vol. III*, p. 623.

<sup>20</sup> Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2010), esp. pp. 205-219.

today would seem anything but legal, including under trees, in taverns, or even in a magistrate's sleeping quarters.<sup>21</sup>

Edwards' characterization of the legal system's infrastructure holds true for the period 1670-1747, when colonial officials carried out government business in private residences. In December 1695, freemen from Colleton County elected at "Capt[ain] Bristowes Plantacon [sic]" ten new members to the Commons House of Assembly. Once elections took place, the legislature met in Charlestown at Francis Fiddling's house.<sup>22</sup> In later years, the Commons House of Assembly met at Colonel Miles Brewton's home, and then after his death, at the residence of his son, Robert Brewton. The legislature paid the Brewton men annually for the rented room.<sup>23</sup>

The colonial government even relied on personal residences to serve as courthouses and a jail. A statute from 1731 declared that the provost marshal's home would be considered the public jail for the colony.<sup>24</sup> This arrangement, however, proved problematic. In March 1742, the Grand Jury made presentments at the Court of General Sessions of the

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<sup>21</sup> Ibid., p. 69.

<sup>22</sup> A.S. Salley, Jr., ed. *Journal of the Commons House of Assembly of South Carolina For the Session Beginning January 30, 1696, and Ending March 17, 1696*, (Columbia: Printed for The Historical Commission of South Carolina by The State Company, 1908), pp. 3, 5.

<sup>23</sup> J.H. Easterby, ed., *The Journal of the Commons House of Assembly, May 18, 1741- July 10, 1742* (Columbia: The Historical Commission of South Carolina, 1953), pp. 322, 437, 461; J.H. Easterby, ed., *The Journal of the Commons House of Assembly, September 10, 1745- June 17, 1746* (Columbia: South Carolina Archives Department, 1956), p. 156; J.H. Easterby, ed., *The Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747* (Columbia: South Carolina Archives Department, 1958), p. 363; Walter B. Edgar, ed., *Biographical Directory of the South Carolina House of Representatives Volume II, The Commons House of Assembly, 1692-1775* (Columbia: University of South Carolina Press, 1977), p. 98.

<sup>24</sup> The provost marshal performed duties similar to the responsibilities performed by sheriffs, under sheriffs (deputies), and jailers in Great Britain. Cooper, *The Statutes at Large of South Carolina... Vol. III*, p. 284.

Peace, Oyer and Terminer, Assize and General Gaol (Jail) Delivery. The jury decided that not having a “sufficient and commodious publick Gaol in Charles Town” caused “a very great Grievance.” The Grand Jury also included in their presentments to Chief Justice Benjamin Whitaker a grievance about not having a courthouse “for the more convenient carrying on the publick Business of this Province.”<sup>25</sup> In previous years the South Carolina government had rented a courtroom from Charles Shephard, a Charlestown vintner. The Grand Jury, however, found the room insufficient for their needs, even though the legislature allotted money for “fitting up” the Court Room with “a Bar and Benches.”<sup>26</sup> The Grand Jury’s desires did not come to fruition in the near future because Shephard still rented out a room for court proceedings in 1743.<sup>27</sup> Shephard’s home functioned as a common site of legal proceedings. In addition to Shephard’s property serving as a court room, a committee of the legislature used it for receiving petitions from local residents for aid after the devastating November 1740 Charlestown fire.<sup>28</sup> After Shephard died, the man who bought the home, Thomas Blythe, petitioned the legislature for more rent money. The Courts of General Sessions, Common Pleas, and Vice Admiralty routinely met at his residence, sometimes into the evening hours, which forced him to provide candles for the

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<sup>25</sup> *South Carolina Gazette*, March 20, 1742.

<sup>26</sup> J. H. Easterby, ed., *The Journal of the Commons House of Assembly, September 12, 1739- March 26, 1741* (Columbia: The Historical Commission of South Carolina, 1952), pp. 170, 314, 323 (quote from 314); Easterby, *The Journal of the Commons House of Assembly, May 18, 1741- July 10, 1742*, pp. 443, 467.

<sup>27</sup> J. H. Easterby, ed., *The Journal of the Commons House of Assembly, September 14, 1742- January 27, 1744* (Columbia: South Carolina Archives Department, 1954), p. 249.

<sup>28</sup> *South Carolina Gazette*, October 31, 1741.

legal proceedings. The petitioner claimed that the annual £100 the legislature paid him was not enough “for the Inconvenience, Trouble, and Expence” of holding court.<sup>29</sup>

The only formal court that was not limited to Charlestown was the Court of Magistrates and Freeholders, also known as the “slave court,” which tried criminal cases pertaining to slaves and people of color.<sup>30</sup> Proceedings of this court often occurred near the scene of an alleged crime immediately after the transgression occurred. The swiftness of prosecution aided slaveholders by punishing troublesome slaves quickly and reminding nearby slaves what consequences they could face should they violate the law. While some white residents desired a more accessible legal system, slaves probably wished for their court, the slave court, to be distant.

Government officials took measures to limit service in the lower house of the legislature to the slaveholding class. An Act the legislature ratified in 1717 established age, residency, and property requirements for serving in the lower house of the legislature.<sup>31</sup> Property included slaves, cash, and stock as well as landed property, which differed from the usual property requirements of just landed property.<sup>32</sup> Each man had to own land or buildings valued at least at £1,000 *or* own that same amount in cash or stock. An additional

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<sup>29</sup> Easterby, *The Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747*, p. 74.

<sup>30</sup> Helsley and Stauffer, *South Carolina Court Records*.

<sup>31</sup> The statute made eligible to serve in the Commons House: freeborn men of Great Britain or its colonies or foreigners naturalized through an Act of Parliament, who were at least twenty-one years old, provided that they had lived in South Carolina for at least one year and resided in the parish for which they represented in the legislature. Cooper, *The Statutes at Large of South Carolina... Vol. III*, pp. 2-4.

<sup>32</sup> For instance, in Virginia, men only had to be freeholders to vote or to run for the House of Burgesses. William Waller Hening, *The Statutes at Large; being a Collection of all the Laws of Virginia from the First the First Session of the Legislature in the Year 1619, Vol. III* (Philadelphia: Thomas Desilver, 1823), p 172, 236.

provision stated that men could also serve in the lower house of the legislature if they owned a “settled plantation” of 500 acres or more in South Carolina with at least “ten able working negro slaves” living on that plantation.<sup>33</sup> In 1721, the legislature reaffirmed the direct tie to slaveholding and public service by including the ownership of slaves as a qualifier to serve in the lower house of the legislature.<sup>34</sup>

Biographical information about members of the lower house of the legislature makes clear that most—if not all—representatives had direct interests in slavery. In the Commons House from the Thirteenth Assembly (1711-1712), every person for which biographical data exists owned slaves at some point in his life or supported slavery in other ways.<sup>35</sup> Of the thirty-six men elected to the lower house of the legislature at least twenty-eight were planters or merchants who owned, bought, or sold slaves.

Some members of the Thirteenth Assembly of the lower house of the legislature owned extensive tracts of land and hundreds of slaves. John Godfrey owned multiple plantations. So did Benjamin Godin and Ralph Izard. Twenty-eight slaves worked Godfrey’s land holdings, while Godin employed nine slaves at his Charlestown residence and at least

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<sup>33</sup> Cooper, *The Statutes at Large of South Carolina... Vol. III*, pp. 3-4.

<sup>34</sup> *Ibid.*, p. 137.

<sup>35</sup> Twenty-one men were elected to represent Berkeley and Craven Counties, while a total of 15 men were elected to serve on behalf of Colleton County. Berkeley and Craven Counties were only allowed to have 20 representatives total. The discrepancy of one representative is because one of the men was disqualified because he did not reside in Berkeley County. Colleton County was allotted 10 representatives, but of the initial 10 men elected, a full 80 percent of them declined to serve. Three of the eight men who declined to serve were reelected and accepted the position. All total, 36 different men were elected to fill 30 spots in the Commons House. For the purposes of this analysis, I am including all 36 men because the voting public (men at least twenty-one years of age who owned 50 acres or ten pounds in “money, goods, chattels, or rents”) selected these men to serve. Cooper, *The Statutes at Large of South Carolina... Vol. II*, p. 249; Edgar, *Biographical Directory ... Volume I*, pp. 36-37.

335 slaves at three plantations. Godin owned no less than 13,043 acres of land.<sup>36</sup> Izard inherited multiple plantations from his father. At the time of his death in 1743, he owned 171 slaves and ten plantations, totaling 10,291 acres of land.<sup>37</sup> Henroydah English inherited his step-father's South Carolina lands. Although English sold the land in 1712, he still lived locally for a time and engaged in slave trading. In 1713 he purchased "1 Negro boy," and in 1715 he sold "1 Negro boy."<sup>38</sup>

Having stakes in slavery often spanned generations, making slave ownership a cornerstone of many legislators' family histories. Numerous lower house members from the Thirteenth Assembly were part of a familial dynasty characterized by wealth, slaveholding, and political activity. The Wragg family serves as a primary example. Samuel Wragg partnered with his brother, Joseph, and they were the most prominent slave traders in South Carolina during the 1730s; their firm, Joseph Wragg & Company, imported twenty cargoes of slaves in 1735-1739. Joseph also engaged in the rum and fur trades, and accumulated nearly 15,000 acres of land. He owned multiple working plantations and a Charlestown house. Two hundred forty-four slaves worked his properties at the time of his death in 1751.<sup>39</sup> Samuel's son, William, served in the lower house of the legislature and in the Council. He also held other political positions. William owned 7,100 acres of land with multiple

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<sup>36</sup> Edgar, *Biographical Directory ... Volume II*, pp. 282-284.

<sup>37</sup> *Ibid.*, pp. 358-359.

<sup>38</sup> *Ibid.*, pp. 231-232; Caroline T. Moore, *Abstracts of Records of the Secretary of the Province, 1692-1721* (Columbia, SC: R.L. Bryan Co., 1978), pp. 318, 355-356.

<sup>39</sup> Edgar, *Biographical Directory...Volume II*, pp. 727-729.

functioning plantations and 256 slaves when he died in 1777.<sup>40</sup> For families like the Wraggs, slave ownership was a part of their core identity.

Marriage patterns among colonial elites reinforced their goals of capital accumulation through the exploitation of slave labor. Families often went to extraordinary lengths to solidify their status as powerful slaveholders. In her study of the South Carolina gentry, Lorri Glover discusses sibling relationships, the extensive (and confusing) patterns of intermarriage, and child naming trends.<sup>41</sup> Glover's research throws light on the depth of the commitment of the elite to slavery. The South Carolina gentry sought to maximize their wealth and social status through intermarriage that would qualify as incestuous by modern standards. William Wragg married his double-first cousin—his paternal uncle's daughter and his maternal aunt's daughter.<sup>42</sup>

Legislators' dedication to slavery extended into many occupational endeavors. In addition to managing their slaves, members of the legislature's lower body often worked simultaneously at agricultural, mercantile, and military pursuits. Colonel John Fenwicke served as commissioner of the Indian trade (an enterprise dominated by slave trading), worked as a merchant, and eventually acquired 13,027 acres of land that included working plantations. Fenwicke also became a business associate of Samuel Wragg. Wragg and his

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<sup>40</sup> Ibid., pp. 731-733.

<sup>41</sup> Lorri Glover, *All Our Relations*.

<sup>42</sup> Edgar, *Biographical Directory... Volume II*, pp. 731-733. For a brief account of the Wragg family genealogy, see South Carolina Historical Society, *South Carolina Genealogies: Articles from The South Carolina Historical (and Genealogical) Magazine, Vol. IV Rhett-Wragg* (Spartanburg, South Carolina: Published in Association with The South Carolina Historical Society by The Reprint Company, Publishers, 1983), pp. 435-437. A chart mapping out the Wragg familial relations appears on two unnumbered pages following page 437.

brother Joseph prospered as slave traders. Samuel owned several thousand acres of land with at least one working plantation exploiting the labor of fifty-seven slaves.<sup>43</sup> Other men of the Thirteenth Assembly of the lower house of the legislature became involved in the Indian slave trade, other mercantile and maritime pursuits, wartime military action, and even apprehending pirates. They also served in varied political posts.<sup>44</sup> In all of these undertakings, their personal interests as slaveholders and financial interests in slavery shaped how they approached legislative tasks.

The slaveholding status of eight representatives in the Thirteenth Assembly remains unclear, but evidence suggests that they supported slavery. David Davis, a captain of the militia in 1702-1715, owned 1,500 acres of land in St. James Goose Creek parish, and he also obtained grants for 1,197 acres in Craven and Berkeley counties. Beyond land that he may have used for working plantations, Davis was an Anglican who became interested in “providing” slaves “with religious instruction.”<sup>45</sup> Clearly, Davis did not oppose slavery. Another man, Colonel Hugh Grange, had land grants for 525 acres, which he could have used for plantation enterprise. People referred to Captain Richard Peterson as a “gentleman of Berkeley,” a term typically reserved for wealthy slaveholding residents of South Carolina.<sup>46</sup>

Legislators and other government officials created legal institutions and laws in order to further slaveholding interests. The South Carolina legislature created the slave courts,

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<sup>43</sup> Edgar, *Biographical Dictionary... Vol. II*, pp. 244-246, 729-731.

<sup>44</sup> *Ibid.*, pp. 52-54, 157-158, 234-235, 276-277, 283-284, 358-359, 379, 409-410, 418, 490-492, 505-507, and 547.

<sup>45</sup> *Ibid.*, p. 186.

<sup>46</sup> *Ibid.*, pp. 290, 519.

which subjected slaves and free people of color to trials without juries or legal counsel.<sup>47</sup> The Thirteenth Assembly serves as an ideal example of the connection between slavery and lawmaking. The men in that Assembly implemented a revised comprehensive slave Act in 1712 in response to violent attacks carried out by slaves. With the passage of the new law, the Governor and legislators sought to avert other acts of aggression from slaves.<sup>48</sup> From the construction of slave courts to the creation of statutory law, slaveholders ensured that the government supported slavery.

Government officials had interests in both African and Indian slave labor.

Legislators passed laws between 1670 and 1747 that regulated both slave trades.<sup>49</sup> As Alan Gally and others have argued, Indian slavery and the Indian slave trade were ubiquitous in early America.<sup>50</sup> Gally's research indicates that Indian slavery was just as common in numerical terms—if not more common—than African slavery in South Carolina's earliest years.<sup>51</sup>

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<sup>47</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 354-359.

<sup>48</sup> The next chapter explores in greater detail the legislative response to these slaves' actions. Edgar, *Biographical Directory... Volume I*, pp. 36-37; McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 352-365; Timothy James Lockley, *Maroon Communities in South Carolina: A Documentary Record* (Columbia: University of South Carolina Press, 2009), pp. 8-9.

<sup>49</sup> The Indian trade encompassed trade goods such as fur and deerskins in addition to slaves. Some statutes specifically referred to trading for slaves while others assumed the reader understood what the "Indian trade" included. Overtime, and especially after the Yamasee War, the Indian slave trade Thomas Cooper, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. I, Containing the Acts from 1682 to 1716, Inclusive* (Columbia, SC: Printed by A. S. Johnston, 1837), pp. vii, 64-68, 309-316, 357-359, 381, 622, 677-680, 691-694; Cooper, *The Statutes at Large of South Carolina... Vol. II*, pp.56-69, 86-96, 141-146, 184-186, 229-232, 250, 371-372, 448-449, 453, 556-568.

<sup>50</sup> Alan Gally, ed., *Indian Slavery in Colonial America* (Lincoln and London: University of Nebraska Press, 2009).

<sup>51</sup> Alan Gally, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (New Haven, CT and London: Yale University Press, 2002) and Gally, *Indian Slavery in Colonial America*.

Elected and appointed officials' interests in Indian slavery dictated government foreign policy. Gally, along with other scholars such as L.H. Roper, have documented the complicated, contentious, and volatile nature of South Carolina's politics during the proprietary period.<sup>52</sup> Colonial officials, including those appointed by the proprietors, often had different goals than the proprietors. Both proprietors and colonial elites found merit in the Indian slave trade because it produced revenue—arguably the primary interest of proprietors and colonists alike. But, where the proprietors acted in self-interest, they also exercised a modicum of restraint when determining which Indians the colonists could lawfully enslave. For the proprietors, enslaving free Indians crossed the line; enslaving Indian war captives, however, was acceptable.<sup>53</sup> During the colony's earliest years, the proprietors handed down strict instructions not to enslave Indians who lived close to the English settlement: "You are to take special [sic] care not to suffer any Indian that is in League or friendly correspondence with us and that lives within 200 miles of us to be made slaves."<sup>54</sup> The proprietors also held a monopoly on the Indian slave trade. Local colonists, including various government officials, disregarded the proprietors' orders because they found it more profitable to do so. They even instigated and supported warfare with Indians in order to

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<sup>52</sup> Gally, "South Carolina's Entrance into the Indian Slave Trade," in *Indian Slavery in Colonial America*, pp. 120-131 and L.H. Roper, *Conceiving Carolina: Proprietors, Planters, and Plots, 1662-1729* (New York: Palgrave Macmillan, 2004). For an earlier interpretation of South Carolina's political history, see Sirmans, *Colonial South Carolina*.

<sup>53</sup> For an explanation of the proprietors requirements of enslaving only Indians who had not been free, and who were war captives, see Gally, "South Carolina's Entrance into the Indian Slave Trade." For an explanation of the historical justification for enslaving war captives, see Jonathan A. Bush, "The First Slave (And Why He Matters)." *Cardozo Law Review* 18, no. 2 (1996): pp. 599-630.

<sup>54</sup> British Public Record Office, Indexed by A. S. Salley Jr., *Records in the British Public Record Office Relating to South Carolina, 1663-1684* (Atlanta, GA: Printed for The Historical Commission of South Carolina by Foote & Davies Company, 1928), p. 99.

further their personal slaveholding objectives. As a result of such inclinations, the South Carolina authorities ended up sanctioning wars that the proprietors considered repulsive and illegal.

South Carolina's involvement with the Westo Indians exemplifies these dynamics. As Gally shows, Westo attacks on coastal Indians drew the colony into warfare in 1673-1674 because the attacks reached English settlers and because South Carolina upheld an alliance with coastal Indians. In December 1674, however, the Westos sought an alliance and a trade relationship with South Carolina, which the local colonial government and residents readily accepted. During the period 1675-1680 the two groups engaged in trade, and the Westos procured Indian slaves for white South Carolinians. Despite the profitable Indian slave trade, local politics ensured that the South Carolina-Westos trading relationship would be short-lived. South Carolina needed to retain peace with local "settlement" Indians, but the Westos continued to engage in warfare. Thus, South Carolina colonists could not trade indefinitely with enemies of their allies. An alliance with the Westos blocked trade with other Indians. While trading for slaves with the Westos, South Carolina officials learned that the Savannah Indians sought trade relations with the English. With that information, government officials considered the Westos expendable. War broke out in 1679 between the colonists and the Westos, whom the colony subsequently destroyed with the aid of the Savannahs. The Savannahs then replaced the Westos as South Carolina's premier Indian slave traders.<sup>55</sup>

The war with the Westos, however, occurred without proprietary approval or knowledge, a fact that reflects the disjuncture between the proprietors and colonial officials.

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<sup>55</sup> Gally, "South Carolina's Entrance into the Indian Slave Trade," pp. 120-131

Rather than finding out about the war from the South Carolina government, the proprietors learned of it from a ship captain—hardly official notice of colonial foreign policy. The proprietors were mindful of their interests in Indian slave trading and presumed that peaceful relations were more desirable than warfare. They ordered colonial leaders to cease the war against the Westos. But as Gally asserts, the proprietors did not realize that “the planters preferred war to peace.”<sup>56</sup> “Peaceful coexistence with Indians,” Gally reiterates, “might be fine for subsistence farmers . . . but not for Carolinians hoping to amass capital quickly.”<sup>57</sup> Exterminating the Westos opened up even greater slave trading opportunities for the South Carolina colonists, a fact that countered the proprietors’ official monopoly over the Indian slave trade in which they allowed Indians to trade for slaves only at two plantations, one owned by a proprietor and the other, by his brother.<sup>58</sup>

The engagement of local officials in warfare for the sole purposes of procuring Indian slaves genuinely disgusted the proprietors. Even though the proprietors supported the slave trade, they found the colonists’ mode of acquiring captives distasteful. The interests of local government officials in slavery also led them initiate a war with the Waniah Indians for the purposes of selling Waniah captives into slavery. The proprietors wrote in dismay: “if their be peace with the Westohs and Waniahs where shall the Sevanahs get Indians to sell the Dealers in Indians”<sup>59</sup>

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<sup>56</sup> Ibid., p. 125.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid., pp. 125-126.

<sup>59</sup> Ibid., p. 130.

Government officials' conflict with the proprietors and with each other did not threaten slavery or diminish its role in the colony. Even with such rampant infighting, consistency marked South Carolina's governmental policy. Each faction sought to strengthen slavery, and their slave-trading interests influenced colonial policies. The difference in preferred policies depended on personal interest and prerogative.<sup>60</sup> Historian L.H. Roper bluntly remarks "the political activity" of South Carolina's earliest leaders "revolved around their enslavement of Indians."<sup>61</sup> As unpalatable as the South Carolina government's actions seemed to the proprietors, they could be equally callous. The proprietors wanted peaceful relations with Indians in order to strengthen the institution of African slavery. As Gallay's analysis reveals, "Without them [Indians], who would catch ... runaway African slaves?"<sup>62</sup>

South Carolina leaders continued to prioritize slavery from the colony's founding through 1747, and they incorporated those interests into the colony's legal schema. Other wars, such as the Tuscarora War (1711-1713) in which approximately 1,000 to 2,000 Tuscaroras became enslaved<sup>63</sup> and the Yamasee War, which stemmed at least partly from Indian fears of enslavement, all occurred because of slavery's thorough integration into the

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<sup>60</sup> Political infighting was pervasive during South Carolina's earliest decades. For example, Indian agents and traders, the white men who actually interacted with Indian slave traders, butted heads with other colonists. In particular, Denise Bossy notes that their abuses towards Indians resulted in tension, and ultimately the General Assembly's effort to regulate the Indian trade in 1707 by passing a statute with those aims. Denise I. Bossy, "Indian Slavery in Southeastern Indian and British Societies, 1670-1730," in *Indian Slavery in Colonial America*, pp. 207-250, esp. pp. 222-223.

<sup>61</sup> Roper, *Conceiving Carolina*, p. 8.

<sup>62</sup> Gallay, "South Carolina's Entrance into the Indian Slave Trade," p. 131.

<sup>63</sup> Bossy notes that "Slaves and other booty seem to have been the primary motivation for both colonial and Indian warriors alike." Bossy, "Indian Slavery in Southeastern Indian and British Societies, 1670-1730," p. 221.

economic and political priorities of colonial officials.<sup>64</sup> South Carolina's primary complaint about Spanish Florida stemmed from that government's policies of welcoming fugitive slaves from South Carolina. Government officials and the proprietors could not imagine a South Carolina *without* slavery. They did everything in their power to protect the institution, including the exertion of influence within the colony's formal legal system and over governmental policy to further their interests as slaveholders.

Subordinates participated in the colony's legal culture very differently than wealthy slaveholders. The legal system oppressed most subordinates, especially slaves. Nevertheless, the formal legal system, as designed and implemented by the wealthiest men in the colony, did not encompass the entire legal culture. Slaves participated in the legal culture although it is unclear what the law outside of slaveholders' law meant to them, while it also functioned primarily as a tool of oppression.

The example that opened the chapter illustrates one writer's opposition to lay people's involvement with the law and legal processes in South Carolina. His letter contended that a wide range of people possessed localized legal knowledge. It described the conversation about a murder trial between a "black Counsellor learned in the Law," a "greasy fellow with a leathern apron," and a local lawyer. Both the "black Counsellor" and the "greasy fellow with a leathern apron" lacked formal schooling in the law, yet they still held strong opinions about what the law allowed and how it should function.<sup>65</sup> The visitor's

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<sup>64</sup> Gallay, *Indian Slavery in Colonial America*; William Ramsey, *The Yamasee War: A Study of Culture, Economy, and Conflict in the Colonial South* (Lincoln and London: University of Nebraska Press, 2008).

<sup>65</sup> *South Carolina Gazette*, November 2, 1734.

presentation of the three men's conversation unveils his frustration that it seemed like no one understood the law—or more aptly that too *many* people understood the law.

In the visitor's concluding remarks about the murder case and residents' discussion of it, he referred to the "black Counsellor" as "Lawyer." A friend of the visitor had informed him that "a Black man" lived "in this Town, who is called Lawyer (from his constant attendance on the Courts)." The letter-writer's final lines are simultaneously ambiguous and revealing. "Perhaps," he wrote, the black man "was the person above mentioned, if so, I beg his pardon, because he (in all probability) may have a better guess at the matter in Dispute than any of the rest." Clearly, something about South Carolina's legal culture struck the visitor as improper, perhaps its informality and apparent lack of professionalization.<sup>66</sup> He may have been genuinely surprised that a black man, most likely a slave, attended court sessions and understood the law better than local white free people. According to the visitor, the black man correctly predicted the outcome of the murder trial.<sup>67</sup> Historical context helps explain why such events very well may have transpired in South Carolina.

When English colonizers founded South Carolina, they brought with them assumptions about law and how it functioned, including the concept of the peace. Applying this concept to colonial South Carolina exposes how subordinates, such as Lawyer, helped maintain South Carolina's metaphorical peace, even if the legal system failed to protect them. The concept of maintaining the peace, or the preservation of the social order according to

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<sup>66</sup> The author's comments reflect a growing tendency in the British American colonies to professionalize and formalize the law. Dayton, *Women Before the Bar*; Mann, *Neighbors and Strangers*.

<sup>67</sup> *South Carolina Gazette*, April 19, 1735.

localized contexts, functioned as a central mechanism of lawmaking in early modern England. Scholars such as Cynthia Herrup and Laura Edwards have demonstrated the importance of the peace in England and the post-Revolution Carolinas, respectively, yet the concept has not been fully incorporated into studies of colonial South Carolina.<sup>68</sup> According to Edwards, local contexts and subordinates helped maintain the peace of the metaphorical public body: “Localized law depended on information conveyed orally by ordinary people—even subordinates without rights—who were all considered necessary to the legal process of maintaining the peace.”<sup>69</sup> Thus, lawmaking depended on subordinates, even if their voices were excluded in most of the surviving written records generated by elite white men. Edwards’ claims about function of the peace in the post-Revolutionary Carolinas hold true for South Carolina’s earlier years. References to protecting the colony’s peace, public order, and safety are ubiquitous in legal records.<sup>70</sup>

The peace helps explain the visitor’s criticism of South Carolina’s legal culture. The range of people in South Carolina commenting on the alleged murder may have struck the

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<sup>68</sup> Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge, London, New York: Cambridge University Press, 1987) and Edwards, *The People and Their Peace*.

<sup>69</sup> Edwards, *The People and Their Peace*, p. 4.

<sup>70</sup> Many things, including domestic strife and conflict with foreign enemies could disrupt the peace. References to protecting: the peace, “the Public,” “the private and public Welfare of the Province,” “the safety of the Province,” “the public safety” and “the public peace and order” are just a few of the ways government officials wrote about and referred to the concept of the peace. A sampling of these references are: A.S. Salley, Jr., ed., *Journal of the Grand Council of South Carolina, April 11, 1692-September 26, 1692* (Columbia, SC: Printed for The Historical Commission of South Carolina by The State Company, 1907), pp. 6, 12; Easterby, *The Journal of the Commons House of Assembly, Sept. 10, 1745-June 17, 1746*, pp. 22, 70; A. S. Salley, ed., *Journal of the Commons House of Assembly of South Carolina, November 20, 1706-February 8, 1706/7* (Columbia: Printed for The Historical Commission of South Carolina by The State Company, 1939), p. 41; Easterby, *The Journal of the Commons House of Assembly, September 12, 1739-March 26, 1741*, p. 392; Easterby, *The Journal of the Commons House of Assembly, September 10, 1746-June 13, 1747*, pp. 85, 260; Cooper, *The Statutes at Large of South Carolina... Vol. II*, pp. 7, 25; McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 348, 367, 370, 397.

visitor as odd because he was unaccustomed to viewing slaves or even free blacks as part of the social and legal order. England lacked a strong historical and legal precedent for racial slavery, so relatively few people of African descent resided there. People occupying lower stations in life actively participated in the legal process in England, but those people were not enslaved or of African descent, as commonly occurred in South Carolina.<sup>71</sup>

The English colonists' conceptions of social relations explain the situation in which slaves participated in the colony's legal culture. White settlers understood social relations from a standpoint of subordination and dependency. Scholarship that uses gender as a key analytical concept has shown that all people were part of a continuum of subordination that helped define the basic workings of pre-industrial societies, in which there were hierarchical structures of dependency according to sex, class, and color.<sup>72</sup> Everyone in South Carolina occupied a position subordinate to the Crown, although a wide variance in status existed. As in other patriarchal societies, wealthy light-skinned men tended to possess the most power and authority in South Carolina, while dark-skinned females typically occupied lower positions in society and held virtually no power or authority.<sup>73</sup> People had relations to one

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<sup>71</sup> Herrup, *The Common Peace*.

<sup>72</sup> Nancy Fraser and Linda Gordon, "A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State," *Signs* 18, no. 2 (1994): pp. 309-336.

<sup>73</sup> Power and authority were not synonymous terms in the early modern era, even though they are often used interchangeably in the modern day. Robert Olwell provides an excellent explanation of eighteenth-century conceptions of "power" and "authority." He explains: "In the eighteenth century, the terms 'power' and 'authority' carried very different meanings. While authority rested on 'trust and opinion ... strengthened and confirmed by custom and habit' and deserved 'willing obedience,' power was synonymous with brute force. When masters talked of 'the arbitrary power of an Overseer' or warned their overseers 'not to make an ill use of your power,' they were suggesting the tenuous, and violent basis of the overseers' rule." Robert Olwell, *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Lowcountry 1740-1790* (Ithaca, NY and London: Cornell University Press, 1998), p. 212.

another through family and kinship ties but also through coerced affiliations, such as the relationship between masters and slaves.<sup>74</sup> Slaves and servants were dependants of their masters, much like wives were subordinates to and dependants of their husbands.

Subordinates such as servants and slaves had to obey and respect the authority of their masters. In turn, masters and heads of households were bound to maintain the order of their households, to provide adequately for their subordinates, and to treat their subordinates in a fair manner, as defined by local legal custom. While local legal customs affected all residents of South Carolina, historians often do not notice them. Lawmakers did not explicitly document customs. People took them for granted and only infrequently inscribed them into written texts. However, a local customary legal practice can be identified when a problem arose, or a person challenged an existing custom. At such times lawmakers might record a custom and how they either reaffirmed or attempted to change it.

Revisiting the case of Arrah illustrates how customary practices often appear in the shadows of the written record. In 1746 the slave Arrah petitioned the South Carolina legislature for his freedom after having acted loyally to the colony during wartime. The French had captured him during the War of Jenkins's Ear and enticed him to fight with them, but he refused. Arrah endured a lengthy ordeal under multiple imperial powers. He chose to return to South Carolina where he was a slave even though the governor in St. Thomas, a neutral Danish island, granted him legal freedom.<sup>75</sup>

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<sup>74</sup> Family ties and relations were not only patriarchal in nature. In her groundbreaking study, Lorri Glover unearths the important ties between siblings among the South Carolina gentry. Glover, *All Our Relations*.

<sup>75</sup> I base my discussion of this case on the statute that eventually freed Arrah, and the General Assembly's proceedings. The Commons House journals refer to Arrah and his (former) owner, from Arrah's petition on

Legal proceedings that took place following Arrah's return to South Carolina demonstrate how unwritten legal custom worked in South Carolina and how statutes acknowledged the presence of custom. Statutes often worked with customs, either confirming or altering them. A debate occurred in the legislature after Arrah's (former) owner, Hugh Cartwright, submitted a counter-petition. Claiming that no legislative precedent existed for granting a loyal slave legal freedom, Cartwright sought monetary compensation for his property loss should the legislature manumit Arrah. Prior to Cartwright's counter-petition, legislators referred to the action of "confirming" Arrah's legal freedom, an action that indicates they recognized his customary right to legal freedom because of his heroic wartime actions. Moreover, when Arrah returned to South Carolina, an unnamed person informed him that he would become free once he "confirmed" his freedom with the legislature. Even more indicative of the power of custom, legislative journals recorded that Arrah was "intitled" to have his freedom, language that implies existing customary practices granted freedom to loyal slaves who returned to the colony after capture.

Cartwright's desire for compensation complicated the legislature's confirmation of Arrah's freedom. Arrah worked as a pilot, which meant he possessed valuable skills. As slaveholders, the legislators sympathized with Cartwright's plea for financial compensation, but they also needed to respond to Arrah's request. If they failed to free a loyal slave who

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November 29, 1746 through June 13, 1747, when the legislature passed, and the governor assented to, the act that granted Arrah freedom. Easterby, *The Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747*; McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 419-420; William Backshell, Clerk of Council, *The Journal of the Proceedings of the Upper House of Assembly, From the 4<sup>th</sup> day of June 1747*, pp. 50-51 in the *Journal of the Upper House of Assembly of South Carolina 1743/4-1750*, S.C. A.1a, Reel 4 1743/44-1750, Unit 3, microfilm, South Carolina Department of Archive and History, Columbia, South Carolina.

had ample opportunity to fight against the British, their actions would have consequences. Without sufficient incentive, other slaves might choose to work for wartime captors. In the end, the legislature granted freedom to Arrah and compensated Cartwright. But a subtle, yet crucial, change occurred during the legislative debates about Arrah's and Cartwright's petitions: when legislators recognized Cartwright's right to compensation for the loss of slave property they did not "confirm" Arrah's freedom, but rather, they felt compelled to "give" it to him, a seemingly altruistic act. By changing the bill's language from "confirming" to "giving" Arrah freedom, the legislature simultaneously acknowledged Arrah's customary right to freedom and Cartwright's customary right to receive compensation for the loss of slave property. Despite the legal debates that ensued while the legislature responded to Cartwright's counter-petition, the legislature passed an act that reaffirmed the existing customary practice of freeing loyal slaves.

South Carolina slaves were subordinates, but as Arrah's case demonstrates, they were not "outsiders," a characterization of slaves' status made by the scholar Moses Finley, and later furthered by others such as Orlando Patterson and Diana Paton. For these scholars, slaves' alienation from the society in which they labored and lived helped define their status. Patterson prefers the term "natal alienation" because it emphasizes a slave's severance from birth ties.<sup>76</sup> But the point of alienation from society becomes clouded once the analysis moves beyond first-generation slaves who had been born free, but became enslaved later in

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<sup>76</sup> Moses Finley, "Slavery," *International Encyclopedia of the Social Sciences* (New York: Macmillan Co. and Free Press, 1968), vol. 14, pp. 307-313; Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge Massachusetts and London: Harvard University Press, 1982), p. 7. According to Diana Paton, slave law and slave courts "in Jamaica ... emphasized the outsider status of the majority of the population." Paton, "Punishment, Crime, and the Bodies of Slaves in Eighteenth-Century Jamaica," *Journal of Social History* 34, no. 4 (2001): p. 945.

life. For people born into slavery, their immediate natal ties were to slavery and the complex relations among slaves and between masters and slaves that emerged from the institution. Moreover, much of the recent scholarship on slavery stresses the negotiated relationship between masters and slaves, a dynamic that suggests slaves in colonies like South Carolina were anything but outsiders or natal aliens.<sup>77</sup> Whites needed slaves for their agricultural, artisanal, and reproductive labor production, and also for their work and loyalty during times of conflict and war.<sup>78</sup> Endemic conflict shaped the colony and how whites depended on slaves, which the previous chapters have shown. As the primary labor producers in the colony, and as people on whom whites depended, slaves provided critical services to the colony. These services extended to maintaining the peace. Loyal slaves reported slave plots to whites, and the South Carolina legislature rewarded numerous slaves for their aid in suppressing rebels during the 1739 Stono slave revolt. The preamble to the 1740 comprehensive slave Act following the revolt asserted that “slaves are under the government, so they ought to be under the protection, of master and managers of plantations.”<sup>79</sup> Slaves

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<sup>77</sup> Chapter Four addresses negotiation in the master-slave relationship. Scholars that recognize negotiation between masters and slaves in British colonial societies include Ira Berlin, Robert Olwell, and Philip Morgan.

<sup>78</sup> Slaves’ varied roles during conflict and warfare are the subject of Chapter Two. Philip Morgan discusses the wide-ranging jobs and work responsibilities of slaves’ in Morgan, *Slave Counterpoint*, pp. 146-254. Peter H. Wood first argued for the African introduction and cultivation of rice in South Carolina, a claim Judith Carney furthers in her study of rice production in the Americas. Wood, *Black Majority*, pp. 35-62; Judith Carney, *Black Rice: The African Origins of Rice Cultivation in the Americas* (Cambridge, Massachusetts: Harvard University Press, 2002). For an analysis of women’s agricultural and reproductive labors in South Carolina, and how women’s reproductive identities helped determine the construction of racial slavery in the colony see: Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004).

<sup>79</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 411.

may not have possessed rights in the modern sense of the word, but they certainly were not outsiders to the colony that desperately relied on them.

As members of the social order of South Carolina, slaves participated in the formal legal system but that involvement was marked by manipulation and coercion. The Goose Creek men, a powerful political faction during the colony's early period who acquired the name because of their plantations' geographic location, allowed people of African descent to vote. Scholars have debated the role of these influential men with most viewing them as an anti-proprietary faction.<sup>80</sup> A recent revisionist account, however, highlights the Goose Creek men's prioritization of the Indian slave trade and their self-interested actions. L.H. Roper bluntly asserts that "When circumstances suited, they [the Goose Creek men] cooperated with the proprietors... when it did not suit them, they did not cooperate."<sup>81</sup> Walter Edgar notes that the Goose Creek men desired "the control of the colony's government, and they were willing to use any means at their disposal to achieve it...they were guilty of being devilish, crafty, and cunning."<sup>82</sup> With such self-serving motives, the Goose Creek men allegedly permitted men of African descent to cast ballots in the early-eighteenth century to obtain more votes.<sup>83</sup> By one account, "Malatoes and Negroes were Polled," while another

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<sup>80</sup> Walter Edgar, *South Carolina: A History* (Columbia: University of South Carolina Press, 1998), pp. 83-85.

<sup>81</sup> Roper, *Conceiving Carolina*, p. 7.

<sup>82</sup> Edgar, *South Carolina: A History* p. 85.

<sup>83</sup> L. H. Roper, "The 1701 'Act for the better ordering of Slaves': Reconsidering the History of Proprietary South Carolina," *William and Mary Quarterly*, Third Series 64, no. 2 (2007): pp. 395-418, 400. For more on South Carolina's internal political struggles and factions during the proprietary period, see Roper, *Conceiving Carolina*.

specified that “free Negroes” voted.<sup>84</sup> This civic engagement shows people of African descent’s involvement in the formal legal system, but that short-lived voting privilege stemmed from conflict within South Carolina’s leadership.

An understanding of slave governance leads to an appreciation of the participation of slaves in the judicial system and the function of slave courts.<sup>85</sup> Much of the literature on the master-slave relationship supports the idea that masters had the authority to punish their slaves at will, but this was not an unrestricted privilege. Local customs could enable slaves to flee to sympathetic white neighbors, who at times intervened for the slaves and advocated for their masters to take better care of them.<sup>86</sup> In theory, members of the larger community ensured that masters did not treat their slaves egregiously. If individual masters were guilty of neglect or maltreatment, they could face consequences from the formal legal system. Slave statutes established limits for what types of punishments masters could carry out and for

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<sup>84</sup> John Ash, “The Present State of Affairs in Carolina, by John Ash, 1706,” in *Narratives of Early Carolina, 1650-1708*, ed. Alexander S. Salley Jr. (New York: Charles Scribner’s Sons, 1911), p. 271; Walter Edgar, *South Carolina: A History*, p. 92.

<sup>85</sup> I am basing my characterization of the statutory law governing slavery on my assessment of slave law that appears in the next two chapters.

<sup>86</sup> Anne King Gregorie, ed., *American Legal Records Volume 6, Records of the Court of Chancery of South Carolina 1671-1779*, with an Introduction by J. Nelson Frierson (1950; Millwood, N.Y.: Kraus Reprint Co., 1975), pp. 178-201. Works that forefront the master’s role in punishing slaves includes Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA: The Belknap Press of Harvard University Press, 1998), esp. p. 9; Morgan, *Slave Counterpoint*, pp. 273-277, 391-398; Lorena S. Walsh, *From Calabar to Carter’s Grove: The History of a Virginia Slave Community* (Charlottesville and London: University Press of Virginia, 1997), pp. 83, 118; Michael Stephen Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980); and Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (1972; New York: Vintage Books, A Division of Random House, New York, 1976), pp. 37-49, 383-655. Philip J. Schwarz and Thomas D. Morris focus on the formal laws of slavery in their studies, but they too, recognizes the pervasiveness of slaves being punished by their masters. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge: Louisiana State University Press, 1988), pp. 10-11, 37, 52, 53; Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill and London: The University of North Carolina Press, 1996), pp. 198, 247, 249.

what crimes. They did so to better regulate slavery by trying to curb the most problematic behaviors carried out by both owners and their slaves. An inept master or overseer could provoke slaves to rebel or commit other crimes, such as running away or theft. Such intervention in the individual master-slave relationship helped maintain the peace and security of the colony, even if it meant that individual slaveholders relinquished some power over their slaves. The legislature created the slave courts as a part of the laws regulating slavery. They helped uphold slavery and maintain the colony's peace. The most heinous crimes, as defined by the comprehensive slave Acts, almost always warranted government intervention and regulation. Such intrusion occurred in the form of a trial.

Slaves may have viewed the trials as mechanisms of terror. Authorities subjected slaves and free people of color to special slave courts that justices and freeholders convened at or near the site of an alleged crime. Slave courts could be held anywhere in South Carolina. Slaves and free people of color primarily experienced the slave court as defendants or witnesses. They could not formally approach justices of the peace to lodge a grievance. For slaves, their only hope of something akin to proactively approaching a justice of the peace was to initiate contact with sympathetic whites who might advocate on their behalf. But even that came at great risk because contacting a white benefactor most likely required a slave to run away. Convening a slave court near the scene of the crime ensured minimal interruption of plantation routine, and confirmed the separate and subordinate positions of blacks by prohibiting them from testifying in a court room that free white people used.<sup>87</sup> That

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<sup>87</sup> Olwell, *Masters, Slaves, and Subjects*, p. 73.

structure of justice—the slave court—could appear anywhere, with little warning or time for preparation by the enslaved defendant.

When comparing slave courts to trials administered to free, white people, Robert Olwell lucidly remarks: “The justice dispensed in the slave court was both distinctly separate and unmistakably unequal.”<sup>88</sup> Most legal proceedings for white people took place in Charlestown during set court sessions. Whites also had the benefit of a jury trial when they faced criminal accusations. Outside of Charlestown, a white person could approach a local justice of the peace regarding a monetary concern for a value of forty shillings or less. Justices of the peace could also determine certain legal matters between masters and indentured servants. Servants could complain to a justice of the peace of unfair treatment. Additionally, parties had the right to an appeal to the Governor and Council.<sup>89</sup> In contrast, the slave court did not offer a right of appeal or any other protection to people of color.

Unlike modern trials that occur months, and sometimes years after a person’s arraignment, formal criminal proceedings against slaves occurred swiftly. The *South Carolina Gazette* reported in 1733 that a “Negro Fellow” accused of stealing a horse and material goods including valuable clothing items “was Taken on Sunday, on Monday brought to [Charles] Town, tried, and condemned; and the next Day, about Noon, he was hanged.”<sup>90</sup> The newspaper did not provide additional details, but the “Negro Fellow” most likely became a defendant in a slave court, in which white freeholders tried and convicted him. In 1742, The *South Carolina Gazette* reported another crime in which a slave received quick

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<sup>88</sup> Ibid.

<sup>89</sup> Cooper, *The Statutes at Large of South Carolina... Vol. III*, pp. 14-21.

<sup>90</sup> *South Carolina Gazette*, January 20, 1733.

judgment. A “Negro Fellow” broke into Mr. Brest’s house in Charlestown in the week before January 9. On January 9, the newspaper reported that the man had already faced trial, received the death sentence, and would be executed on January 22.<sup>91</sup>

The very nature of the slave court prohibits extensive study of slaves’ trials because the colony did not keep court records of the proceedings. The only well-documented South Carolina slave trial in this era dates from 1749. While the trial was routine, its documentation was not.<sup>92</sup> If judges from slave courts kept records, they did not get filed with other government records. These circumstances mean that modern researchers must use creative techniques to identify when slaves underwent trial. One such way of identifying a probable slave trial is by examining petitions to the legislature that sought compensation for an executed slave. Not only did slave statutes regulate slaves, but they also established avenues for masters to receive compensation if the government condemned one of their slaves to death. If the government took a person’s property, then under most circumstances of slave crime it compensated the owner for his or her loss.<sup>93</sup> In 1741, for instance, justices from the slave court presented the legislature with a certificate attesting to the value of Isaac, a black slave whom “was executed for Felony.” They valued Isaac at £200 and recommended that his owner receive £178 for his loss and that another man, Edward Perry, receive £22 “for Dammages [sic] done him by the Felon.” Isaac robbed Perry in the amount of £22, for

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<sup>91</sup> For studies of eighteenth century British slave trial records, see: Paton, “Punishment, Crime, and the Bodies of Slaves,” p. 949; fn 11. *South Caroline Gazette*, January 9, 1742.

<sup>92</sup> Olwell, *Masters, Slaves, and Subjects*, pp. 59-61.

<sup>93</sup> See Chapter Five for a discussion of compensation provisions in comprehensive slave laws.

which he underwent trial at the slave court.<sup>94</sup> Other compensation claims reveal that slave courts tried slaves and sentenced them to the death penalty for crimes that included: “attempting to set” Charlestown on fire, “wounding a white Man,” and killing a white person.<sup>95</sup>

Even with a judicial system constructed to benefit slaveholders, slave court justices took their jobs seriously. Records from the legislature reveal that the justices held trials according to procedures prescribed in the comprehensive slave statutes and offered compensation to owners based on the terms of the law. In 1746 and 1747 the legislature considered a petition from Burrell Massingberd Hyrne in which he reminded the lawmakers that the government owed him £400 for two executed slaves. The petition noted that the slaves “were tried agreeable to the said Act by two Magistrates and five Freeholders.” The justices determined after the court carried out “a long and particular Examination of all the Witnesses and a deliberate Consideration of the Circumstances” that the enslaved men were guilty of homicide but not murder.<sup>96</sup> In another case, justices William Whiteside and Paul Trapier arrested and placed Kate in jail while she awaited trial for murdering an enslaved child. Kate confessed to the murder, but the justices found her case troubling. During their investigation, they learned that Kate had been “out of her Senses” and “reputed Mad” for a full year prior to committing the murder. The justices believed that executing Kate would

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<sup>94</sup> Easterby, *The Journal of the Commons House of Assembly, May 18, 1741- July 10, 1742*, p. 364, 416.

<sup>95</sup> *Ibid.*, pp. 378, 379; Easterby, *The Journal of the Commons House of Assembly, September 10, 1745- June 17, 1746*, p. 99.

<sup>96</sup> Easterby, *The Journal of the Commons House of Assembly, September 10, 1745- June 17, 1746*, p. 99; Easterby, *The Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747*, pp. 156, 258.

not have been appropriate, given her poor mental health. But they also realized her owner was too poor to maintain her without assistance. When Whiteside and Trapier approached the legislature, they stated they were “at a Loss how to Act in this unprecedented Case” because no law in South Carolina “provided for poor Creatures under such miserable Circumstances.” Because Whiteside and Trapier had no precedent or law to guide them, and because they knew releasing Kate would be a danger to other residents, the men asked the legislature to recommend an appropriate solution.<sup>97</sup>

Slave courts legitimated violence against slaves, a point Diana Paton argues convincingly. She claims that statutes’ criminalization of slave resistance enabled slaveholders to turn “naked violence into legitimate punishment.” Thus, while Paton characterizes slaves as outsiders, her work implicitly recognizes slaves’ inclusion within the legal system. Paton’s assessment of Jamaican slave governance, which links slave punishment and dependency, proves true in South Carolina. “The law,” Paton writes, “domesticated and naturalized the conflict between master and slave, analogizing it into the equivalent of the relationship between husband and wife, or father and child.” She continues: “At the same time, the existence of the slave courts asserted that this privatized ‘correction’ operated within an overall system of law.”<sup>98</sup> The inclusion of slaves in Jamaica’s legal system made slave punishment perpetually legal. In South Carolina, slaves participated in the colony’s legal culture even though that primarily meant that they were burdened and oppressed by it. The law circumscribed their actions more so than those of other residents. Slave courts could

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<sup>97</sup> Easterby, *The Journal of the Commons House of Assembly, September 10, 1745- June 17, 1746*, pp. 43-45.

<sup>98</sup> Paton, “Punishment, Crime, and the Bodies of Slaves,” p. 944.

mete out harsh and often deadly punishments. Nevertheless, the engagement of slaves with the colony's legal culture points to slaves as subordinate members of society, and not merely a class of residents solely characterized by social ostracism.

In *Many Thousands Gone: The First Two Centuries of Slavery in North America*, Ira Berlin writes that “the master-slave relationship provided the model for all social relations” in slave societies.<sup>99</sup> That model applied to the law as well. In South Carolina, slaveholders and proprietors equally desired slavery to function as a profitable institution, and they incorporated that desire in the ways they ran the legal system and the government, including its foreign policy. During the colony's early years the proprietors and local colonists developed government foreign policy to benefit their slaveholding interests. Internally, legal structures such as statutory laws and courts unequivocally subjugated slaves and treated them as inherently unequal to their masters and other free white members of society. Thus, the formal legal system worked to promote slavery and to oppress slaves.

But it is noteworthy that slaves participated in the legal culture. Slaves did so because the broader legal culture—including those aspects of legal reality that are sometimes difficult for historians to document, such as local legal customs and the peace—demanded it. Slaves were members of society, not outcasts. South Carolina's legal culture included the concept of the peace, which charged slaves with helping to protect the stability of the colony. The acquisition of localized legal knowledge by some slaves accompanied this responsibility, perhaps as an unintended by-product of the peace because in England it functioned in communities that lacked slavery. This colonial context may account for the South Carolina

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<sup>99</sup> Berlin, *Many Thousands Gone*, p. 8.

visitor's criticism of a black (probably enslaved) man's understanding of the law. To him, slaves' knowledge of legal matters, and even the name "Lawyer" may have seemed incompatible with a person who technically was property. But no contradiction in logic existed for South Carolina residents.

This fuller understanding of South Carolina's legal system and broader legal culture reveals at least two key mechanisms in the colony. First, slavery and the law were intimately linked. South Carolina's legal culture and even government policies hinged on slavery, the enslaved, and the interests of slaveholders. Second, South Carolina's legal culture included slaves, even if their participation was marked most clearly through the punishments they received. Although it is difficult to determine when and how slaves partook in customary legal practices, their presence is apparent through close reading of available sources. As the next chapter shows more particularly, a definite dialogue existed between slaveholders and slaves in formal legal institutions, and slaveholding lawmakers considered the presence and actions of slaves when crafting slave laws.

## Chapter 4: Protecting Slavery and the Colony: Slaves in the Crafting of Slave Law

In 1717 Eleana Wright became entangled in a messy court case.<sup>1</sup> As administratrix of her deceased husband's estate, Wright faced a lawsuit from John Brown, a man who had leased a 900-acre plantation and its slaves from Eleana's husband. During the legal proceedings, Brown, Wright, and witnesses presented crucial information regarding the actions and pleas of fifteen black and Indian slaves who worked the plantation.<sup>2</sup> Some of the slaves fled the plantation multiple times, and *Brown v. Wright* included a debate about whose responsibility it was to pay the jailer for the slaves' maintenance while they were detained.

*Brown v. Wright* reveals how slaves' actions could become key components of a witness's testimony. Wright testified that slaves ran away from the plantation to her residence in Charlestown to protest Brown's horrible treatment of them. Wright claimed that the slaves complained "they were ill used and almost starved and threatened to hang themselves or cut their throats if they were sent back again to the plantation." Wright

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<sup>1</sup> Unless otherwise noted, all information about this lawsuit is from: Anne King Gregorie, ed., *American Legal Records Volume 6, Records of the Court of Chancery of South Carolina 1671-1779*, with an Introduction by J. Nelson Frierson (1950; Millwood, N.Y.: Kraus Reprint Co., 1975), pp. 178-201.

<sup>2</sup> Scholars of the late-eighteenth and nineteenth centuries have recognized the important place slaves occupied in the judicial system, beyond their role as defendants in criminal cases. In particular, see: Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009) and Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, NJ: Princeton University Press, 2000). Slaves used the judicial system in hopes of securing or maintaining legal freedom in the antebellum South and in the British colonial context. See: Judith Schafer, *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* (Baton Rouge: Louisiana State University, 2003); Kelly Kennington, "River of Injustice: St. Louis's Freedom Suits and the Changing Nature of Legal Slavery in Antebellum America," (Ph.D. dissertation, Duke University, 2009); Warren M. Billings, "The Cases of Fernando and Elizabeth Key: A Note on the Status of Blacks in Seventeenth-Century Virginia," *The William and Mary Quarterly*, Third Series 30, no. 3 (1973): pp. 467-474; and Samuel J. Hurwitz and Edith F. Hurwitz, "A Token of Freedom: Private Bill Legislation for Free Negroes in Eighteenth-Century Jamaica," *The William and Mary Quarterly*, Third Series 24, no. 3 (1967): pp. 423-431.

“persuade[d]” the slaves to go back to the plantation by telling them she had no food to share and that “Mr. Brown would loose [sic] his Crop” if they failed to return, a situation that would make the slaves’ bad situation worse.<sup>3</sup> The slaves’ complaints made it into the lawsuit because Wright blamed Brown for their actions, which could have cost her money if the court decided that she had to pay the jailor’s fees because she owned the slaves (even though she did not oversee them). Wright aimed to sway the judges by demonstrating Brown’s unfitness as a slave manager, and thereby diminish his credibility.

As *Brown v. Wright* makes clear, the legal system routinely considered the presence of slaves in South Carolina. It did so because slaves’ actions forced legal officials to realize the colony’s vulnerabilities to and dependence on slaves, facts that constrained legal decisions. Slaves’ presence in the formal mechanisms of law is particularly evident in colonial legislation in which lawmakers perpetually tried to draw the boundaries around slavery.

Recognizing how the formal legal system considered the presence and actions of slaves bridges the work of social and legal historians. Social historians assume that everyday people affected colonial society.<sup>4</sup> Historians such as Peter Wood have emphasized that legislators reacted to the 1739 Stono slave rebellion by passing a comprehensive slave act aimed at crushing a resistive slave population.<sup>5</sup> In this way, slave rebellion influenced the law.

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<sup>3</sup> Gregorie, *Records of the Court of Chancery*, p. 183.

<sup>4</sup> Robert Olwell considers how slaves shaped slave society, despite their inferior status. In his study of colonial South Carolina Olwell claims that “slaves were not merely the passive subjects of the slave society but were intelligent agents whose choices and actions, while always shackled by their condition, nonetheless helped to shape the world they lived in.” Olwell, *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Lowcountry 1740-1790* (Ithaca, NY and London: Cornell University Press, 1998), p. 7.

<sup>5</sup> Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 Through the Stono Rebellion* (New York: W.W. Norton, 1974).

Legal scholars, in contrast, frequently view law as separate from society. They sometimes assume that lawmakers create laws, and then apply them. But slave law scholars often acknowledge that no one really knows how colonial officials enforced law.<sup>6</sup> Scholars of slave law also frequently focus on the distillation of ideas. For instance, legal scholars have highlighted how slave laws reflected the master class's idealized version of slavery. Christopher Tomlins argues that "statute law expresses the desire of the legislator," while William Wiecek claims "Statutory law is a distillation of . . . the values of the class that wields the hegemonic power that produces laws."<sup>7</sup> This chapter uses the approaches of social historians to shed light on the legal history of slavery. The focus lies not with how lawmakers applied laws, but rather, with how laws were generated. Examining slave laws'

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<sup>6</sup> A sampling of excellent legal histories of slave law that generally treat the law in isolation from the lived realities on the ground, see: Bradley J. Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," *The American Journal of Legal History* 38, no. 1 (1994): pp. 38-54; Alan Watson, *Slave Law in the Americas* (Athens: The University of Georgia Press, 1989); William M. Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," *The William and Mary Quarterly*, Third Series 34, no. 2 (1977): pp. 258-280. For equally impressive studies that explore slavery and master-slave relationships in society, but largely treat law as something separate, and discrete from daily societal concerns, see: Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA and London: The Belknap Press of Harvard University Press, 1998); Edmund Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W.W. Norton & Company, 1975); Philip Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry* (Chapel Hill and London: Published for the Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 1998); Wood, *Black Majority*. For studies that recognize the centrality of law to the early American experience, see: Peter Charles Hoffer, *Law and People in Colonial America, Revised Edition* (1992; Baltimore, MD and London: Johns Hopkins University Press, 1998); and Christopher L. Tomlins and Bruce H. Mann, eds., *The Many Legalities of Early America* (Chapel Hill: University of North Carolina Press, 2001).

<sup>7</sup> Wood, *Black Majority*, p. 324; Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (New York: Cambridge University Press, 2010), p. 508. The argument that slave law generally reflects the desire of legislators and those in power is not new. The main thrust of colonial slave law scholarship suggests that comprehensive slave laws represented the ideals of the slaveholding lawmakers. Similar to Tomlins's and Wiecek's views, in her assessment of eighteenth-century slave laws, Elsa Goveia remarks that the laws "mirror the society that created them," thereby revealing the dominance of European colonizers and complete subordination of slaves. Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," p. 280; Elsa Goveia, "The West Indian Slave Laws of the Eighteenth Century," *Revisa de Ciencias Sociales*, 4, no. 1 (1960): pp.75-105, 75.

origination reveals a dialogue between slaves and lawmakers.

The statutes legislators enacted in the years following the Stono slave rebellion of 1739 point to a new understanding of South Carolina's legal system. Historical studies of early South Carolina often contain an assumption that whites held power and authority over their bound subordinates (of all backgrounds) and rarely had to make concessions to their slaves in court or in statutory law.<sup>8</sup> Yet many statutes fly in the face of that claim. Legislators did not craft proactive legislation. Rather, many factors, including slaves' behaviors, forced legislators to take a defensive stance when they revised existing, and created new, legislation. White South Carolinians—notorious for their self-serving nature—acted against their own short-term economic interests with the passage of such statutes.<sup>9</sup> They regulated each other and their slaves in the self-serving hope of securing the colony from future slave uprisings.

Slave laws are the written result of masters considering many factors, most notably the presence and actions of slaves in the colony. The laws show how slaveholders grappled with what it meant to live in a slave society. As such, slave laws express much more than slaveholders' perception of ideal slave behavior or an idealized version of slavery. On the surface, statutes pertaining to slavery appear to serve only the interests of legislators who

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<sup>8</sup> Even while they acknowledge that personal relationships between masters and slaves involved negotiation, compromise, and accommodation, scholars generally assume the judicial and legislative systems were immune to the need to grant slaves concessions. Berlin, *Many Thousands Gone*; Morgan, *Slave Counterpoint*; Olwell, *Masters, Slaves, and Subjects*; Wood, *Black Majority*.

<sup>9</sup> Walter Edgar writes that despite the fear whites had of their slaves, they remained so committed to the profitable institution of slavery because "greed was a more powerful stimulant than fear." Edgar, *South Carolina: A History* (Columbia: University of South Carolina Press, 1998), p. 80. Alan Galloway argues: "If the Carolinians ... were a law-abiding people, they obeyed only those laws that suited them and then used the law to secure their place in power and the subjection of their social inferiors. If they were a civil people it was a civility of convenience." Alan Galloway, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (New Haven, Connecticut: Yale University Press, 2002), p. 357.

constructed them and of other slaveholders in the colony. In broad strokes, this observation is accurate. Even with statutes that helped slaves, legislators aimed to preserve their own interests. But through their actions, such as running away and resisting slavery in other ways, slaves shaped the day-to-day interests of slaveholders. The mere presence of slaves in Charlestown and their gatherings in the streets induced slaveholders to pass a law requiring men to keep loaded guns in their church pews during service. Statutes indicate that sometimes, larger concerns about colonial stability circumscribed legislators' individual personal motivations and economic ambitions. Slaves' behaviors, along with varying inter-imperial contexts, directly affected what issues legislators debated and what new laws they enacted. Slave laws reveal some ideals of the master class, but more so the complicated reality in which legislators tried to maximize their input in slave governance while also performing a difficult balancing act of controlling a restless and growing slave population.

Statutes about slavery are useful for understanding South Carolina slave society because they point to how legal officials considered the actions of slaves when enacting legislation. They also expose how the terms and conditions of slavery evolved within the formal legal system. The South Carolina legislature passed numerous comprehensive slave statutes, beginning in 1691.<sup>10</sup> Most of these laws contain articles that regulated, policed, and punished slaves; implicated all whites (whether or not they owned slaves) in the slave regime;

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<sup>10</sup> For political reasons, Governor Philip Ludwell disallowed the 1691 comprehensive slave law at the request of the colony's proprietors. Other slave statutes passed in later years were not disallowed. Thomas J. Little, "The South Carolina Slave Laws Reconsidered, 1670-1700," *The South Carolina Historical Magazine* 94, no. 2 (1993): pp. 86-101 (especially pp. 98-99); Eugene M. Sirmans, "The Legal Status of the Slave in South Carolina, 1670-1740," *The Journal of Southern History* 28, no. 4, (1962): pp. 462-473, esp. 465. For a recent account of South Carolina's political history, see: L.H. Roper, *Conceiving Carolina: Proprietors, Planters, and Plots, 1662-1729* (Palgrave Macmillan, 2004).

and established a compensation system for owners whose slaves were executed by the colony's government. Legislators refined statutes pertaining to slavery during the period 1670 - 1747.<sup>11</sup> Generally, comprehensive slave statutes were meant to be in force for a specified time. But the legislature often chose not to reenact or revise them within that time frame. This raises questions about their reasons for doing so. Who or what, for example, prompted legislators to go through the tedious task of revising slave laws? Examining select laws chronologically reveals how the legislators' decisions depended on multiple factors, including the actions of slaves.

A close look at the South Carolina comprehensive slave Act of 1712 unveils multiple impulses that prompted legislators to revise existing legislation. L.H. Roper's recent discovery of a South Carolina comprehensive slave Act from 1701 provides new insights into the Act of 1712.<sup>12</sup> Contextualizing the 1712 Act, especially in relation to the 1701 comprehensive slave Act, sheds light on the pressures that legislators felt by living in a slave society. Many of these stresses originated with slaves and foreign enemies. Slaveowners (and thereby legislators) had to respond to their slaves and take them into consideration when crafting legislation. If they did not, slaves could jeopardize the colony's safety by fleeing to and aiding political enemies.<sup>13</sup> Slaves could also rise up and kill their masters and other

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<sup>11</sup> Chapter Five details these elements of comprehensive slave law.

<sup>12</sup> David J. McCord, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. VII, Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers* (Columbia, SC: A.S. Johnston, 1840), pp. 352-365; L. H. Roper, "The 1701 'Act for the better ordering of Slaves': Reconsidering the History of Proprietary South Carolina," *William and Mary Quarterly*, Third Series 64, no. 2 (2007): pp. 395-418.

<sup>13</sup> In Chapter Two, I provide a full treatment of slave desertion and its political and security implications for South Carolina.

whites. This happened more than once in South Carolina's colonial period. Those concerns clearly shaped the 1712 comprehensive slave Act.

Between 1701 and 1712 the colony's political situation changed drastically. In 1701, South Carolina had not yet become embroiled in the War of the Spanish Succession. During the legislative sessions when lawmakers debated the Act of 1712, South Carolina was mired in war. The Spanish and French even attempted to invade Charlestown in 1706.<sup>14</sup> In 1712, colonial authorities needed to ensure the stability of the colony in order to prepare for further acts of war that might directly affect South Carolina.

Demographic changes between 1701 and 1712 also explain modifications in the 1712 slave Act. In recent years, scholars have brought to light Indian slavery's importance to the South Carolina economy until the Yamasee War, which demographic information supports.<sup>15</sup> The gross number of Indian slaves within the colony rose during the period 1703 through 1708 from 350 to 1,400, an increase of 1,050. Enslaved Indian men, women, and children increased 400 percent, 300 percent, and 200 percent, respectively. In some of the colony's earliest documents, dating until the 1680s, the term "slave" usually referred to Indian slaves;

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<sup>14</sup> Lords Proprietors' Council, "Account of 1706 Invasion of South Carolina," September 16, 1706, Lords Proprietors' Council, Copies of Correspondence Relating to the Spanish and French Invasion, 1706, South Carolina Department of Archives and History, Columbia, South Carolina; British Public Record Office, Indexed by A. S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1701-1710*, (Columbia, SC: Printed for The Historical Commission of South Carolina by Crowson-Stone Printing Company, 1947), pp. 161-187.

<sup>15</sup> Recent works about Indian slavery's importance in the southeast include: Christina Snyder, *Slavery in Indian Country: The Changing Face of Captivity in Early America* (Cambridge, Massachusetts and London: Harvard University Press, 2010); Galloway, *The Indian Slave Trade*; Alan Galloway, ed., *Indian Slavery in Colonial America* (Lincoln: University of Nebraska Press, 2009). See Chapter Three for examples of how white colonists' interests in Indian slavery shaped governmental policy.

when a writer mentioned slaves of African descent, he qualified the term by writing “Negro slaves.”<sup>16</sup>

During the years between the creation of the 1701 and 1712 slave Acts, South Carolina became a colony with an enslaved majority. By 1708 enslaved Africans (4,100) outnumbered whites (4,080), which shifted the colony’s dynamics, as Peter Wood has established.<sup>17</sup> Slaves numerically surpassed free and indentured white people by 1,420 (34.8 percent) when calculations include Indian slaves (1,400). Enslaved black men outnumbered free white men by 440 (32.4 percent), while all unfree men (inclusive of black slaves, Indian slaves, and indentured white men) outnumbered free white men by 1,000 (73.5 percent). Between 1703 and 1708 the black slave population increased by 1,100 (36.7 percent). The rate of change for white residents in the colony between 1703 and 1708 increased modestly (7.4 percent), but if population calculations exclude white children, then the rate of change for white residents falls to negative levels (-8.5 percent). A net increase of 280 white people only occurred because of an additional 500 children within the colony. The colony had a net loss of 100 free white men, 40 free white women, 50 white servant men, and 30 white

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<sup>16</sup> The term “slave” did not automatically refer to a person of African descent. A careful reading of records from the British Public Record Office from the colony’s first years shows how people of European descent qualified the term “slave” with “Negro” in order to differentiate from Indian slaves. British Public Record Office, Indexed by A.S. Salley Jr, *Records in the British Public Record Office Relating to South Carolina, 1663-1684*, (Atlanta, GA: Printed for The Historical Commission of South Carolina by Foote & Davies Company, 1928).

<sup>17</sup> Although other scholars, such as Eugene Sirmans noted that South Carolina had an enslaved African majority, Peter H. Wood wrote the foundational book discussing this demographic uniqueness and its importance among the British mainland colonies in *Black Majority: Negroes in Colonial South Carolina*. I draw my demographic data directly from a 1708 letter that appears in: British Public Record Office, Indexed by A. S. Salley, *Records in the British Public Record Office Relating to South Carolina, 1701-1710*, pp. 204-204. For Sirmans’ and Woods’ discussions of the black demographic majority, see: Sirmans, “The Legal Status of the Slave in South Carolina, 1670-1740,” pp. 462, 473, 469; and Wood, *Black Majority*, pp. 131-166.

servant women.<sup>18</sup> By 1708, white adult men, including servants, only accounted for 34.8 percent of the white population, and a low 14.8 percent of the total population. (See Table 1.)

**Table 1: Population Numbers and Percentages in South Carolina, 1703 and 1708.**

	<b>Projected Figures for 1703</b>	<b>Reported Changes since 1703</b>	<b>% change from 1703 to 1708</b>	<b>Reported Figures for 1708</b>
Free White men	1460	-100	-6.8%	1360
Free White women	940	-40	-4.3%	900
Free White children	1200	500	41.7%	1700
White servant men	110	-50	-45.5%	60
White servant women	90	-30	-33.3%	60
<b>Total Whites</b>	3800	280	7.4%	4080
Black men slaves	1500	300	20.0%	1800
Black women slaves	900	200	22.2%	1100
Black children slaves	600	600	100.0%	1200
<b>Total Black slaves</b>	3000	1100	36.7%	4100
Indian men slaves	100	400	400.0%	500
Indian women slaves	150	450	300.0%	600
Indian children slaves	100	200	200.0%	300
<b>Total Indian slaves</b>	350	1050	300.0%	1400
<b>Total slaves</b>	3350	2150	64.2%	5500
<b>Total Population</b>	7150	2430	34.0%	9580
			<b>1703</b>	<b>1708</b>
% White of Total Population			53.1%	42.6%
% Men (free and servants) of White Population			41.3%	34.8%
% White Men (free and servants) of Total Population			22.0%	14.8%
% Black Slaves of Total Population			42.0%	42.8%
% Indian Slaves of Total Population			4.9%	14.6%
% Slaves of Total Population			46.9%	57.4%

Source: adapted from Wood, *Black Majority*, p. 144.

<sup>18</sup> Wood, *Black Majority*, p. 144.

South Carolina's demographic shift to a greater proportion of enslaved residents provides insights into the pressures lawmakers faced. Free white residents became more fearful of and vulnerable to acts of resistance. Moreover, the slight increase in the white population occurred because of children, who most likely did not contribute in any significant way to the colony's security. Despite the different categories used to describe residents in early South Carolina, people of varying backgrounds sometimes acted together in rebellion, thus reminding contemporary readers that status and shared grievances could unite people more than differing racial or ethnic backgrounds might divide them. During Bacon's Rebellion, which occurred in 1676 in the English Atlantic-coast colony of nearby Virginia, modestly wealthy whites, indentured servants, and African slaves joined forces against Indians, Governor Berkeley, and his non-Indian allies. Three decades earlier, in July 1640 in Lower Norfolk County, Virginia, indentured servants and a black man named Emanuel rebelled. Later events speak to the willingness of whites and blacks to work together in rebellion. In New York, a white married couple was convicted of "Confederating with the Negroes" in the 1741 slave conspiracy. For that conspiracy, a newspaper article noted, "white People were privy to and Fomenters of so unparallel'd a Villainy." White servants and black slaves sometime ran away together. This is what "a white servant Boy named Peter Lister" and an "Angola Negro" did in South Carolina in 1736.<sup>19</sup> During the early eighteenth-century, the dichotomous racial categories of "black" and "white" that later

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<sup>19</sup> Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York and London: W. W. Norton & Company, 1975), pp. 268-269; Warren M. Billings, "The Law of Servants and Slaves in Seventeenth-Century Virginia," *The Virginia Magazine of History and Biography* 99, no. 1 (1991): pp. 45-62, 59; *South Carolina Gazette*, May 15, 1736, July 16, 1741, and July 23, 1741.

became associated with slave and free status had not yet fully developed, thus increasing the likelihood that people of diverse statuses would rebel against colonial elites. These contexts gave South Carolina legislators great incentive to maintain power over bound subordinates of all backgrounds with the aid of statutory law.

Political and demographic contexts converged in 1711, prompting the governor of South Carolina to order a revision of the existing 1701 comprehensive slave Act. In 1711, South Carolina inhabitants became terrified when a runaway “Spanish Negro” slave named Sebastian attacked residents, and even killed another slave. Sebastian, along with other maroons, represented a foreign and domestic threat simultaneously. The colony’s authorities took the maroons’ violent attacks seriously. Governor Robert Gibbes remarked to the legislature: “[I] do think it a matter worthy of y[ou]r highest consideration, [to] immediately draw up ... a Bill for the better ordering of Slaves.” The governor demanded that the new legislation “effectively prevent those fears and jealousies wee now lye under from the Insolence of the Negroes we have already in this province & the numbers that are daily brought unto us.”<sup>20</sup> Gibbes responded to Sebastian’s attacks, recognizing that the growing number of slaves would pose an even greater threat to the colony should legislators fail to alter the existing modes of slave governance.

Sebastian’s actions may have forced legislators to believe that their existing legal structures, and even law from England, did not set a solid precedent for the current needs of slave governance. England lacked a strong legal foundation for slavery, which perhaps

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<sup>20</sup> *Journal of the Commons House of Assembly, 1710-1712*, South Carolina Department of Archives and History, in Timothy James Lockley, *Maroon Communities in South Carolina: A Documentary Record* (Columbia: University of South Carolina Press, 2009), pp. 8-9.

explains the piecemeal fashion of the creation of slave laws in English colonies.<sup>21</sup> The lack of English legal precedent may have been particularly salient at that time because only six months after the 1712 slave Act's ratification, South Carolina lawmakers enacted almost 200 English laws they deemed applicable to the colony. When reviewing English laws, legislators may have recognized that English laws insufficiently addressed the needs of New World slavery.<sup>22</sup>

As Gibbes's orders demonstrate, Sebastian's actions, as well as those of other maroons, directly influenced the legislature's creation of a more elaborate comprehensive slave Act than its 1701 predecessor. The preamble of the 1701 Act only hinted at the trouble white people might face because of slaves' freedom of movement. It noted the "mischief" slaves might engage in because of their "liberty." The statute correlates an increasing number of slaves with a rise in their freedom of movement and "mischief." Beyond the aims of limiting any disorder to white society that slaves caused and defining who should be

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<sup>21</sup> Salley E. Hadden, "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras," in *The Cambridge History of Law in America Vol. 1 Early America (1580-1815)* ed. Michael Grossberg and Christopher Tomlins (Cambridge: Cambridge University Press, 2008): pp. 253-287; Jonathan A. Bush, "Free to Enslave: The Foundations of Colonial Slave Law," *Yale Journal of Law & the Humanities* 5 (1993): pp. 417-470, 419; Christopher L. Brown, "Empire without Slaves: British Concepts of Emancipation in the Age of the American Revolution," *The William and Mary Quarterly*, Third Series 56, no. 2, (1999): pp. 273-306, 296.

<sup>22</sup> Thomas Cooper, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. II, Containing the Acts from 1682 to 1716, Inclusive* (Columbia, SC: Printed by A. S. Johnston, 1837), pp. 401-583. The origins of English slave law, and its legal precedence has been the topic of numerous scholarly inquiries. Some works emphasize the impetuses that led to slave laws' construction in the colonies, while others focus on a variety of English (and even French and Spanish) legal traditions that influenced the crafting of comprehensive slave laws. Jonathan L. Alpert, "The Origin of Slavery in the United States—The Maryland Precedent," *The American Journal of Legal History* 14, no. 3, (1970): pp 189-221; David Barry Gaspar, "'Rigid and Inclement': Origins of the Jamaica Slave Laws of the Seventeenth Century," in *The Many Legalities of Early America*, pp. 78-96; David Barry Gaspar, "'With a Rod of Iron': Barbados Slave Laws as a Model for Jamaica, South Carolina, and Antigua, 1661-1697," in *Crossing Boundaries: Comparative History of Black People in Diaspora*, ed. Darlene Clark Hine and Jacqueline McLeod (Bloomington: Indiana University Press, 1999): pp. 343-366; Jonathan Bush, "Free to Enslave;" Nicholson, "Legal Borrowing;" Hadden, "The Fragmented Laws of Slavery;" and Tomlins, *Freedom Bound*, pp. 401-508.

considered a slave, the only other stated intent of the 1701 comprehensive slave Act act was for the “better ordering of slaves.”<sup>23</sup> By contrast, the preamble of the 1712 slave Act reveals how legislators viewed slaves as a particular threat and in need of a separate body of laws to govern them. Lawmakers rendered slaves “wholly unqualified to be governed by the laws, customs, and practices” of South Carolina. The legislators determined “that it is absolutely necessary, that ... other constitutions, laws, and orders, should ... be made and enacted.”<sup>24</sup>

The objectives stated in the 1712 Act’s preamble point to legislators’ belief that slaves needed special laws to rule them. The 1712 Act contended that slaves were barbarous, wild, and savage, an assertion the 1701 comprehensive slave Act lacked. Whereas earlier Acts accepted that slaves might commit crimes, or (understandably) want to flee from their condition, they did so without claiming that such actions occurred because of slaves’ savagery, barbarity, or a natural inclination for disorder. Rather, the laws characterized those behaviors as logical responses to enslavement. This change may reflect a growing racial awareness and prejudice against the increasing number, and proportion, of black slaves. Whereas the 1701 comprehensive slave Act noted “Negroes, mulattos, & Indians,” the 1712 Act deemphasized Indians by referencing “Negroes and other slaves” in the preamble.<sup>25</sup> Equally important, the comprehensive slave Act of 1712 aimed to protect South Carolina’s free residents and keep them safe from their slaves, a wholly new objective.

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<sup>23</sup> Roper, “The 1701 ‘Act for the better ordering of Slaves,’” p. 408.

<sup>24</sup> McCord, *The Statutes at Large of South Carolina...Vol. VII*, p. 352.

<sup>25</sup> Roper, “The 1701 ‘Act for the better ordering of Slaves,’” p. 408; McCord, *The Statutes at Large of South Carolina...Vol. VII*, p. 352.

Placing the 1712 comprehensive slave Act in the context of legislation about slaves bearing arms indicates how, in a few short years, lawmakers changed from focusing on how slaves could help protect the colony to concentrating on how whites could protect themselves from their slaves. Amidst the stresses of war, the legislature enacted statutes in 1704 and 1708 that addressed enlisting in the militia “trusty” slaves who would act loyally to the colony during times of alarm.<sup>26</sup> The legislature did not enact until 1719 another statute that allowed for armed slaves’ enlistment in the militia, even though the 1708 law expired after only two years. The 1719 law established a proportional limit on the number of enslaved militiamen to white militiamen, an unprecedented measure that suggests lawmakers recognized the possible problems associated with arming large numbers of slaves, even if those slaves were among the most “trusty” in the colony.<sup>27</sup> Although the custom of relying on slaves during war prevailed in practice, the legislature did not craft another statute on that topic for nearly thirty years. A provision to arm slaves appeared in the colony’s 1747 militia law.<sup>28</sup> That law made the number of slaves who could serve in the militia a much smaller proportion than the 1719 law. Whereas the 1719 allowed for equal numbers of slaves and free men, the 1747 permitted only one-third the number of slaves as free whites to serve in

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<sup>26</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 347-351.

<sup>27</sup> Thomas Cooper, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. III, Containing the Acts from 1716 to 1752, Inclusive* (Columbia, SC: Printed by A. S. Johnston, 1838), pp. 108-111.

<sup>28</sup> For instance, in 1742 Lt. Gov. William Bull submitted a request to the Commons House of Assembly on behalf of seventy-six slaves who asked for a “small reward” for their service of serving on vessels sent to aid Georgia. J. H. Easterby, ed., *The Journal of the Commons House of Assembly, September 14, 1742- January 27, 1744* (Columbia: South Carolina Archives Department, 1954), p. 81; David J. McCord, ed., *The Statutes at Large of South Carolina; Edited, Under Authority of the Legislature Vol. IX, Containing the Acts Relating to Roads, Bridges and Ferries, with an Appendix, Containing the Militia Acts Prior to 1794* (A. S. Johnston: Columbia, SC, 1841), pp. 645-663.

the militia. It also demanded that at least one-fourth of the men in each company stay in their respective parishes during times of alarm. The latter requirement stemmed from legislators' recognition that "in time of invasion, if the militia of the whole Province were to be assembled, great dangers might arise from the insurrections or other wicked attempts of slaves."<sup>29</sup> Clearly, lawmakers acknowledged that slaves could jeopardize the colony's safety.

The 1712 comprehensive slave Act also regulated slaves' daily activities more rigorously. In addition to conducting slave patrols on Sundays as the comprehensive slave Act of 1701 ordered, the 1712 Act added holidays, including Christmas and Easter.<sup>30</sup> Entirely new clauses or articles of the Act provided guidelines about searching slave quarters every two weeks and trading with slaves. The 1712 Act charged each "master, mistress or overseer" with ensuring slave houses were "diligently and effectually" searched for "fugitive and runaway slaves, guns, swords, clubs, and any other mischievous weapons."<sup>31</sup> The Act also forbade anyone from trading with slaves who possessed stolen goods.<sup>32</sup> The 1712 slave Act also set forth procedures for dealing with petty larcenies that "negroes and slaves" committed.

Legislators developed more sophisticated ways of coping with and punishing slaves' actions that they deemed particularly problematic. The frequency of slave desertion compelled them to treat it as one of their gravest concerns. The 1701 Act admonished

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<sup>29</sup> McCord, *The Statutes at Large of South Carolina... Vol. IX*, p. 653.

<sup>30</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 354.

<sup>31</sup> *Ibid.*, p. 353.

<sup>32</sup> *Ibid.*

people who encouraged slaves to “run away with them out of this government,” but it did not establish a unique punishment for people convicted of such a crime. If “lawfully convicted,” the offender would be “deemed a felon & suffer accordingly.” In contrast, by 1712 the legislature included detailed information about punishments for “divers evil and ill-disposed persons” who tried to steal slaves under the “pretence of promising them freedom in another country.”<sup>33</sup> The 1701 and 1712 Acts also differed when describing the punishments that should be meted out to slaves who attempted to flee South Carolina. The 1701 Act acknowledged the possibility that slaves might try to escape from the colony, but the 1712 Act provided additional detailed guidance on different types of incriminating actions and the appropriate punishments.<sup>34</sup> These measures addressed Spanish officials’ practice of offering sanctuary in Florida to runaway slaves from South Carolina, but they may also have referred to French enemies as well. In its reference to compensation given to owners if their slave or slaves died as a result of punishment for running away, the 1712 Act also included an explicitly stated rationalization for compensating slaveowners. Slaveholding legislators realized that without compensation, owners would hesitate to report activities of slaves that statutory law criminalized. Offering compensation ensured that the public’s “safety...is hereby provided for and intended.”<sup>35</sup>

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<sup>33</sup> Roper, “The 1701 ‘Act for the better ordering of Slaves,’” p. 414; McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 357.

<sup>34</sup> Roper, “The 1701 ‘Act for the better ordering of Slaves,’” p. 411; McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 357-358.

<sup>35</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 358.

The 1712 comprehensive slave Act illustrates how government intervention in the individual master-slave relationship depended on South Carolina's local conditions. Legislators exercised restraint when they refined restrictions on settlement patterns. The 1701 slave Act forbade anyone from settling or managing a plantation, cow pen, or stock house that used slave labor if its location was more than six miles away from the owner's permanent residence, unless "one or more white men" lived at the new settlement.<sup>36</sup> This regulation limited absentee ownership of plantations and slaves. In 1712 though, legislators altered the law by making a distinction based on the number of slave laborers; it prohibited settling a plantation, cow pen, or stock house that relied on *six or more* slaves if that settlement was further than six miles away from the owner's normal place of residence. The law also switched from requiring that at least one white man should live at the location, to mandating "one or more white persons," suggesting that women might be eligible to oversee the enslaved workers.<sup>37</sup> By 1712, widespread slave ownership in the colony compelled legislators to allow absentee ownership, even if the practice increased the threat of rebellion at the hands of unsupervised slaves.<sup>38</sup> Although slave ownership data during this time remains difficult to quantify, it is known that during 1722-1726, 78.6% of South Carolina

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<sup>36</sup> Roper, "The 1701 'Act for the better ordering of Slaves,'" p. 416.

<sup>37</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 363.

<sup>38</sup> For a possible link between revolt and absentee ownership, see: David Barry Gaspar, *Bondman and Rebels: A Study of Master-Slave Relations in Antigua* (Durham, NC and London: Duke University Press), pp. 218-219. Absentee ownership in South Carolina was often different than absenteeism in the British Caribbean, in which plantation owners often resided in Great Britain. In South Carolina, owners frequently lived in Charlestown for part of the year, and or owned multiple settlements, thereby making it impossible to literally being in more than one place at a time for slave management. S. Max Edelson posits the idea that having an owner present might have increased the change of slave revolt because the owner might drive the slaves too hard in order to achieve financial gain. Edelson, *Plantation Enterprise in Colonial South Carolina* (London and Cambridge, MA: Harvard University Press, 2006), pp. 7, 124-125, 152, 172-173, 219-220.

estates contained slaves. During the same period, 96.2% of the farmers owned slaves, with 66.6% of them owning between four and nineteen slaves.<sup>39</sup> Given the enslaved majority by 1708, a similarly high percentage of residents probably owned slaves when the legislature passed the 1712 Act.

Slave Acts such as the one enacted in 1712 highlight the extent to which white masters and colonists relied on and feared those whom they enslaved. The 1712 slave Act is the first comprehensive slave Act passed after the colony had an enslaved black and Indian majority, and it shows how legislators considered the presence of slaves when crafting laws. In response to the maroons' attacks and the changing demands of a society engaged in warfare, legislators adjusted the laws about absentee ownership and made changes in other ways. Laws passed in 1714 and 1717 supplemented the 1712 slave Act, and they speak to the ongoing amendments in the laws governing slavery that slaveowners made in response to the presence of slaves and their sometimes violent and rebellious actions.<sup>40</sup>

Legislators' anxieties toward slaves are especially evident in an Act the legislature passed in 1739, just a few months before slaves carried out the Stono rebellion. The legislature reacted to an increased incidence of slave resistance during the late 1730s by enacting legislation that required white men to arm themselves during church services.<sup>41</sup>

Whites had expressed concern about slaves conspiring in the streets. In Grand Jury

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<sup>39</sup> Using William George Bentley's terminology, I define farmers as people engaged in agricultural pursuits who owned fewer than 20 slaves. William George Bentley, "Wealth Distribution in Colonial South Carolina" (Ph.D. dissertation, Georgia State University, 1977), pp. 82, 83, 87.

<sup>40</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 365-370.

<sup>41</sup> Wood has chronicled the rising tensions and increased slave resistance during the 1730s. Wood, *Black Majority*, p. 285-326.

presentments from 1737, men reported “it is a Grievance that the Negroes are suffered publickly to cabal in the Streets of this Town” on Sundays “while the Inhabitants are at divine Service.” Beyond observing slaves’ habit of loitering in the streets, the men cautioned that if the custom continued, the colony could face a “fatal Consequence.”<sup>42</sup> Acting on such concerns, the government intervened in slaveholders’ lives in a very personal way. Almost all white men who by law had to serve in the militia, and who owned at least ten slaves, now were required to arm themselves when they attended church. The law required men to carry “a Gun or pair of Pistols ... with at least six Charges of Gun Powder and Ball.” It also compelled each man to keep the weapon or weapons in his respective “Pew or other seats where such Person shall sit” because legislators were concerned that men would ignore the spirit of the law.<sup>43</sup> The message was clear: white men could worship God, but first they had to arm themselves. Whites did not worry needlessly, as Peter Wood’s analysis of the Stono rebellion made apparent. During this violent incident in which slaves rose up near the Stono River, at least several dozen slaves burned buildings, committed murder, and wreaked havoc

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<sup>42</sup> *South Carolina Gazette*, March 19, 1737.

<sup>43</sup> *South Carolina Gazette*, August 11, 1739. The full title of statute is: An Act for the better Security of the Inhabitants of this Province against the Insurrections and other wicked Attempts of Negroes and other Slaves. The statute’s text has received minimal intense scholarly scrutiny because an original copy has not been located. Fortunately, *South Carolina Gazette* published the law in its entirety, which permits analysis of the act. Wood has incorporated the statute into his analysis of the events leading up to the Stono rebellion and posits that slaves knew the law would start being enforced on September 29, and so they executed their plans of rebellion prior to that date. Wood, *Black Majority*, p. 313. Legal scholars have largely overlooked this piece of legislation. An original copy of the statute is not available at the South Carolina Department of Archives and History (which houses South Carolina’s colonial statutes). Accessibility of the statute is further complicated because the statute compilations that scholars most frequently consult—Cooper and McCord’s *The Statutes at Large of South Carolina*—only lists the statute as “The original not to be found,” thereby giving no indication that *South Carolina Gazette* published the law in its entirety. Cooper, *The Statutes at Large of South Carolina... Vol. III*, p. 525.

on the countryside.<sup>44</sup> After authorities suppressed the revolt, legislators revised the current comprehensive slave Act.

As Wood has argued, the Stono rebellion forced lawmakers to contemplate how the existing slave system could best control the slaves held within its bounds. During the revision process, legislators made many changes to the comprehensive slave Act of 1735. These alterations ultimately constrained slaves' activities and the powers of individual slaveowners, while reinforcing the slave regime.<sup>45</sup> Before the violent outburst, legislators were more compelled to allow the master-slave relationship to play out between individuals. Earlier slave Acts almost never addressed the protection of slaves, beyond the most basic safeguards against their murder. The actions of slaves called attention to issues within the slave system, and legislators responded not only by placing more restrictions on slaves and masters, but also by guaranteeing at least a few protections for slaves. In the process, laws governing slavery also explicitly governed and constrained masters because slaveowners saw

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<sup>44</sup> The standard account and analysis of the Stono rebellion is still found in Wood's *Black Majority*. Mark M. Smith's edited volume is also valuable to scholars studying the Stono rebellion. Smith, ed., *Stono: Documenting and Interpreting a Southern Slave Revolt* (Columbia: University of South Carolina Press, 2005). The latest interpretation of Stono can be found in: Peter Charles Hoffer, *Cry Liberty: The Great Stono River Slave Rebellion of 1739* (New York: Oxford University Press, 2010). Hoffer maintains that the rebellion was unplanned and that there were several bands of rebels who terrorized the countryside.

<sup>45</sup> The foundational argument about the ways in which a master's authority was both circumscribed and supported by the state can be found in Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (1972; New York: Vintage Books, A Division of Random House, 1976), pp. 25-49. Scholars of eighteenth-century slave societies have built on and refined Genovese's claim. In his study of the South Carolina low country, Robert Olwell employs the terminology "the culture of power" and argues that: "Domination was continuously and publicly asserted, legitimized, and naturalized as well as resisted, accommodated, and refuted . . . Masters needed the collective power of the slave society to impose and enforce their rule. Slaves had to know, quite literally, that there was nowhere to run. In the institutions of the law, the church, the slave patrol, and the militia, masters acted together to shore up their individual power on their own plantations." Olwell, *Masters, Slaves, and Subjects*, pp. 6, 186. In a study of eighteenth-century Jamaican slave courts, Diana Paton finds that slave law and the courts did little to limit a master's authority, but rather "backed up and legitimated the private power of slaveowners." Diana Paton, "Punishment, Crime, and the Bodies of Slaves in Eighteenth-Century Jamaica," *Journal of Social History* 34, no. 4 (2001): pp. 923-954, 954.

the need to regulate each other. Legislators reacted to rebellious and discontented slaves by reducing some of the control slaveowners held over their slaves. They did so in order that slaves might have more consistent, uniform, and reasonable treatment.

The 1740 comprehensive slave Act receives scrutiny from historians as a harsh response to the Stono rebellion in which slaves faced ruthless suppression.<sup>46</sup> The Act intended to increase slave surveillance.<sup>47</sup> Punishments became more severe and many customary slave activities were prohibited. Legislators expressly prohibited slaves from renting houses, rooms, stores, or plantations; traveling on highways together in groups larger than seven; and learning to write, among other restrictions.<sup>48</sup> The restriction on learning to write hindered slaves' practice of writing travel tickets for other slaves without the "Consent or Privity" of masters.<sup>49</sup> Moreover, the Act sanctioned all of the violent actions used to stop the Stono rebellion: "all and every act, matter and thing, had, done, committed, and executed, in and about the suppressing and putting all and every the said negro and negroes to death, is and are hereby declared lawful."<sup>50</sup>

But lawmakers also responded to slaves' actions by demanding substantial *protections* for them.<sup>51</sup> The legislators' intent to offer slaves protection by limiting the power of owners

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<sup>46</sup> For example, see Wood, *Black Majority*, pp. 323-324.

<sup>47</sup> *Ibid.*, p. 324.

<sup>48</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 412-413.

<sup>49</sup> J. H. Easterby, ed., *The Journal of the Commons House of Assembly, September 12, 1739- March 26, 1741* (Columbia: South Carolina Archives Department, 1952), p. 68.

<sup>50</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 416.

<sup>51</sup> The 1740 comprehensive slave Act was not the only law to offer protections to slaves, but it certainly offered more protections than any of its predecessors. The 1691 Act for the Better Ordering of Slaves prohibited

over them appears in the preamble. For the first time in a comprehensive slave Act's preamble, lawmakers formally acknowledged that some masters treated their slaves too harshly.<sup>52</sup> The preamble noted that the power of owners "over such slaves ought to be settled and limited by positive laws ... and the owners and other persons having the care and government of slaves may be restrained from exercising too great rigour and cruelty over them." The preamble linked the treatment of slaves with their likelihood to rebel and ended with a comment about the Act's objective of preserving "the public peace and order of this Province."<sup>53</sup>

As Robert Olwell has argued, the preamble's contents changed significantly from that of earlier comprehensive slave Acts. In particular, Olwell highlights the preamble's departure from the opening lines of previous Acts in its unapologetic assertion that the colony used slave labor.<sup>54</sup> Whereas earlier slave Acts tended to present slavery as a necessary evil and an aberration from English law, the 1740 comprehensive slave Act located slavery squarely within the English legal tradition: "in his Majesty's plantations in America, slavery has been introduced and allowed." Earlier comprehensive slave laws often contained hints of regret linked to white colonists' reliance on slave labor, but the 1740 comprehensive Act

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killing a slave out of "willfulness, wantonness, or bloody mindedness," and required "convenient clothes" to be provided to slaves once a year. This statute, however, was disallowed shortly after its enactment. The 1735 slave statute offered a very minimal protection to slaves in that it forbade owners from "cruelly or willfully" killing a slave. McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 343, 346-347, 393.

<sup>52</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 397; Olwell, *Masters, Slaves, and Subjects*, pp. 29, 62-67.

<sup>53</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 397.

<sup>54</sup> Olwell, *Masters, Slaves, and Subjects*, pp. 64-65.

conveyed no such remorse. According to Olwell, colonial leaders explicitly placed slavery and slave laws within Great Britain's legal tradition.<sup>55</sup> As a result of the legislature's formal inclusion of slaves within the British Empire's legal order, the 1740 slave Act included more legal protections for slaves than previous versions.

The 1740 slave Act enumerated penalties for masters who failed to comply with its regulations and protections for slaves.<sup>56</sup> The lengthy Act's thirty-eighth article mandated that "any person or persons, on behalf of" any slave should report to authorities any slaveowner who denied, neglected, or refused to provide "sufficient cloathing, covering or food" to his or her slaves.<sup>57</sup> Other articles likewise addressed what legislators viewed as improper slave-owning practices. Legislators realized that slaveowners ignored social norms and customs surrounding slave-owning when other whites did not reside nearby. "[I]nhabitants are far removed from each other," the Act noted, "and many cruelties may be committed on slaves, because no white person may be present to give evidence of the same." Legislators reasoned that "slaves are under the government, so they ought to be under the protection, of masters and managers." Because slaves were members of the social order and common peace of the colony, legislators recognized that it was in their best interests to afford slaves at least minimal protections against excessive cruelty. The Act's inclusion of both harsh measures and protections reflect lawmaker's intent to regulate slavery as an essential part of the social

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<sup>55</sup> Ibid., p. 67.

<sup>56</sup> Chapter Five discusses the varied ways slave laws implicated all whites in maintaining the South Carolina slave regime.

<sup>57</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 411.

order. If the colony failed to eliminate extreme brutality, legislators believed that slaves might be more inclined to resist their enslavement.

Beyond the requirements of better treatment, and providing food, clothing, and shelter to slaves, the comprehensive slave Act of 1740 also regulated slave labor. Stating that “many owners of slaves ... do confine them so closely to hard labor, that they have not sufficient time for natural rest,” the Act acknowledged the government’s need to intervene in the customary slave governance that occurred between an owner and his or her slaves. To counteract the tendency of masters to overwork the slaves, the Act ordered masters not to work their slaves more than fifteen hours per day from March 25 to September 25, and no more than fourteen hours per day for the remainder of the year. People found guilty of disobeying the law would face a penalty of between £5 and £20 South Carolina currency for each offense.<sup>58</sup>

Limiting the number of hours that slaves worked reflected contemporaries’ belief that overwork contributed to the Stono slave rebellion.<sup>59</sup> In 1770, recalling the revolt, Governor William Bull (son of Lt. Governor Bull who encountered the rebels) noted that the insurrection occurred because “far too great a number” of slaves “had been very

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<sup>58</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 413.

<sup>59</sup> Peter Charles Hoffer’s recent interpretation of the Stono rebellion argues that the initial rebels were members of an exhausted and overworked drainage crew. His analysis runs contrary to the more common belief that the rebels belonged to a roadwork crew. Hoffer claims that the group of men, who some historians believe were a roadwork crew, were actually a public work crew digging out trenches, or drainage ditches. Much of his analysis, however, is problematic because—as Hoffer readily admits—it is speculative. Hoffer bases his claim that the slaves were working on a drainage project because that project received government funding, whereas records are lacking for any road projects along the Stono River during that time. Regardless of the discrepancies in historical interpretation, contemporary accounts link the rebellion to slaves being overworked on a public works project. Hoffer, *Cry Liberty*, pp. 62-65; Michael Mullin, *Africa in America: Slave Acculturation and Resistance in the American South, 1736-1831* (Urbana: University of Illinois Press, 1992), p. 43.

indiscreetly assembled and encamped together ... to do a large work on the public road; with a slack inspection.”<sup>60</sup> A Lutheran minister’s contemporary account also links the revolt with overwork. The minister, Johann Martin Boltzius, reflected that Lutherans recognized slaves’ right to retaliate against such treatment.<sup>61</sup> The debates that went on in the South Carolina legislature in December 1739 during the process of revising the 1735 comprehensive slave Act also indicate a link between rebellion and overwork. The Committee spearheading the Act’s revision recommended, in sequential order, that “the Manner of Negroes working on the high Roads,” be regulated “so as to prevent too great a Number of them from being suffered to work together at the same place,” and “to appoint and regulate the Time when Slaves shall be kept to work, so as to provide against their being over wrought.”<sup>62</sup> Contemporaries believed that excessive labor demands contributed to the uprising, so legislators decided to limit the tendency of masters and any “others who have the care, management and overseeing of slaves” to work slaves more than fourteen to fifteen hours per day.<sup>63</sup>

The Act identified the fine line masters walked by being both Christians and slaveowners. In an article aimed “to restrain and prevent barbarity” toward slaves, the Act states “cruelty is not only highly unbecoming of those who profess themselves christians,

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<sup>60</sup> Governor William Bull, “A representation of the present state of religion, polity, agriculture and commerce,” Charleston, South Carolina, 1770, in *Stono*, ed. Smith, p. 30-31.

<sup>61</sup> *Detailed Reports on the Salzburger Emigrants Who Settled in America ... Edited by Samuel Urlsperget*, vol. 6, 1739, trans. and ed. George Fenwick Jones and Renate Wilson (Athens: University of Georgia Press, 1981), p. 226 in *Stono*, ed., Smith, p. 11.

<sup>62</sup> Easterby, *The Journal of the Commons House of Assembly, September 12, 1739- March 26, 1741*, p. 68.

<sup>63</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 413.

but is odious in the eyes of all men who have any sense of virtue or humanity.”<sup>64</sup> Although slaveowners unquestionably accepted extreme inequality and hierarchy, Christian beliefs encouraged them to disparage cruelty. Missionaries from the Society for the Propagation of the Gospel (SPG) had visited South Carolina for decades, although foreign British missionary activities during the early decades of the eighteenth century were, according to historian Susan Thorne, “sporadic and haphazard.”<sup>65</sup> Missionaries believed South Carolina’s residents suffered from “moral laxness.”<sup>66</sup> When SPG missionary Reverend Charles Wesley traveled to Georgia and South Carolina in 1736, he recorded “some horrid instances” of master’s brutality toward their slaves. His journal points to a near disbelief in what Wesley observed. He wrote, “It were endless to recount all the shocking instances of diabolical cruelty which these men (as they call themselves) daily practise [sic] upon their fellow creatures.”<sup>67</sup> Such criticism may have influenced the debates in the legislature. Orlando

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<sup>64</sup> Ibid, pp. 410-411.

<sup>65</sup> Susan Thorne, *Congregational Missions and the Making of an Imperial Culture in Nineteenth-Century England* (Stanford, CA: Stanford University Press, 1999), p. 28. For more information about SPG missionary activities in South Carolina as they pertain to educating slaves, see: Shawn Comminey, “The Society for the Propagation of the Gospel in Foreign Parts and Black Education in South Carolina, 1702-1764,” *The Journal of Negro History* 84, no. 4 (August 1999): pp. 360-369.

<sup>66</sup> Thorne, *Congregational Missions*, p. 28.

<sup>67</sup> Wesley recounted the “common practice” of master’s giving “a child a slave of its own age to tyrannize over, to beat and abuse out of sport.” One Mr. Star apparently nailed a male slave up by the ears, had the man whipped “in the severest manner,” and had “scalding water thrown over him,” which led to the man’s incapacitation for four months. A Colonel Lynch cut off a slave’s legs and killed several slaves each year due to his “barbarities.” Men and women both suffered through brutal assault, and Wesley also related the story of a woman who was punished for overfilling a teacup. Her master, Mr. Hill, whipped her so much “that she fell down at his feet for dead.” A physician helped her recover, after which Mr. Hill continued the whipping “with equal rigour, and concluded by dropping hot sealing wax upon her flesh.” Given Wesley’s background as a reverend trained in a country without widespread slavery, and that he was unaccustomed to witnessing the grinding, daily efforts it took whites to oppress and subordinate their enslaved property, his account may not reflect the most common punishments meted out to slaves. He may have been struck by cruelties he deemed most severe or unfamiliar and thereby felt the need to record what he observed. Nevertheless, the slave regime

Patterson, among other scholars, has argued that over time, manumission came to be perceived as a pious act that helped a slave owner secure salvation and entrance into heaven.<sup>68</sup> Likewise, slaveholders could construe treating slaves less harshly as virtuous.

British officials in the mother country also considered the presence of slaves in South Carolina by pressuring colonists to improve the treatment of slaves.<sup>69</sup> This happened decades before antislavery proposals called for the protection of slaves out of humanitarian and moral concerns.<sup>70</sup> During the era of the American Revolution even some lawmakers within southern colonies condemned slavery. Loyalist North Carolina Chief Justice Martin Howard critiqued slavery in 1772 and pointed out the contradictions of colonists demanding freedom from Great Britain at the same time that they held slaves.<sup>71</sup> Officials in England were concerned about the treatment of slaves much earlier, but for different reasons. They worried about slave insurrection. When legislators crafted the 1740 slave Act they responded

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in South Carolina relied on rigorous physical punishment as one way of controlling the enslaved populations. Wesley's observations, moreover, should not be viewed as anti-slavery rhetoric; the SPG sent missionaries who owned slaves to South Carolina. Charles Wesley, *The Journal of the Rev. Charles Wesley M.A. Sometime Student of Christ Church, Oxford, The Early Journal, 1736-1739* (Taylors, South Carolina: Methodist Reprint Society, 1977), pp. 68-69. Shawn Comminey, "The Society for the Propagation of the Gospel in Foreign Parts and Black Education in South Carolina, 1702-1764," pp. 363-364.

<sup>68</sup> Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA and London: Harvard University Press, 1982), pp. 224-226.

<sup>69</sup> David Brion Davis, *The Problem of Slavery in Western Culture* (New York and Oxford: Oxford University Press, 1966), p. 214.

<sup>70</sup> Christopher L. Brown discusses how emancipation proposals written during the age of the American Revolution posed slavery as a moral problem. Brown argues that antislavery proposals were couched on the basic, elastic principal that slaves were subjects of Great Britain and should be accorded some protections. Brown, "Empire without Slaves."

<sup>71</sup> Don Higgenbotham and William S. Price, Jr., "Was It Murder for a White Man to Kill a Slave? Chief Justice Martin Howard Condemns the Peculiar Institution in North Carolina," *The William and Mary Quarterly*, Third Series 36, no. 4 (1979): pp. 593-601.

to the Stono rebellion, but probably also to imperial orders. Ironically, just two days before slaves rose up in that rebellion official instructions from Britain to Governor James Glen ordered him to make sure that a law got passed “if not already done” that would restrain “any Inhumane Severity which by ill Masters or Overseers may be used toward their Christian Servants and their Slaves.” Moreover, that law should have set up procedures for executing anyone convicted of willfully killing “Indians and Negroes” and established a penalty for maiming them. Although the instructions did not clearly state that poor treatment of slaves might cause an insurrection, such a conclusion can be inferred because they also noted that the preponderance of slaves might lead to insurrection. Surely, reprehensible treatment of slaves could not have *lessened* the likelihood of revolt, and so authorities in England wanted a law that offered at least minimal protections to the enslaved majority within the colony.<sup>72</sup> Having such a law would provide for a more stable, and perhaps more profitable, colonial environment.

Through its protections for slaves and regulation of the behavior of masters, the 1740 slave Act reflects an enhanced system of government intervention in the master-slave relationship. The Act demonstrates that legislators, and even officials in England, took slaves’ actions into consideration even if slaves’ voices never appear in the Act. Arguably, without the risk of rebellion and the violent carrying out of slave resistance during the Stono rebellion, British officials and South Carolina lawmakers probably would not have sought such specific protections for slaves within a comprehensive slave Act.

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<sup>72</sup> George R., “Instructions to James Glen, Esqr. Governor of South Carolina,” Court of Kensington, September 7, 1739, James Glen (1701-1777), DS 7 Sept. 1739, Oversize Folder 1, James Glen Papers, 1738-1777, South Caroliniana Library, University of South Carolina, Columbia, South Carolina.

Other statutory measures legislators took in 1740 and 1741 to protect the white population also point to the ways slavery and slaves could influence lawmakers' decisions when they created colonial legislation. Insurrectionary slave behavior drove legislators to act against their financial self-interest in order to enhance the colony's security from its slaves. Taxpayers helped finance an attack on St. Augustine, a Spanish colonial enclave that white South Carolinians blamed for causing widespread slave desertions.<sup>73</sup> Whites of all classes devoted time and money to create a more effectual watch and guard.<sup>74</sup> Legislators took steps to actually *reduce* the number of incoming African "saltwater" slaves to the colony by passing a law that placed high taxes on newly imported slaves. They also enacted statutes that aimed to make slave patrols more effective; that set new guidelines "for the better ordering and governing" of slaves, and that were intended to increase the number of white, Protestant residents by offering them incentives to settle in the colony.<sup>75</sup> By this time, the reliance on Indian slaves had decreased dramatically. The laws outside of the comprehensive slave Acts

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<sup>73</sup> Cooper, *The Statutes at Large of South Carolina... Vol. III*, pp. 546-553.

<sup>74</sup> Ibid, pp. 568-573. The development and implementation of slave patrols is examined in: Salley E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge, MA and London: Harvard University Press, 2001).

<sup>75</sup> Pointing to legislators' collective aims, three of these acts were passed successively. On April 5, 1740, the General Assembly enacted "An Act for the better strengthening of this Province, by granting to His Majesty certain taxes and impositions on the purchasers of Negroes imported ...," which implemented a costly tax on all newly imported slaves. Just one month later (and before any other known act was passed), on May 10, 1740 the Assembly enacted both "An Act for the better ordering and governing Negroes and other slaves" and "An Act for the better establishing and regulating Patrols." Laws enacted in 1741 aimed at increasing white settlement include "An Act to encourage and induce handicraft Tradesman, Shopkeepers and others, to settle in Towns and Villages upon the Passes and Rivers and other Places in this Province" and "An Act for further securing his Majesty's Province of South Carolina by encouraging Protestants to become settlers therein." McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 556-573, 591-592, 593-594.

tended to focus on “Negroes” and whites, not on Indians.<sup>76</sup> With these laws legislators strove to achieve a more balanced ratio of enslaved and free inhabitants, and to increase slave surveillance. Although the goals to reduce the colony’s reliance on black labor ultimately failed, it is significant that slaves’ striking out against their oppression led to statutory efforts to decrease the number of new slaves subjected to South Carolina slavery.

Legislative journals of 1743 show in clear detail how the presence of slaves in the colony hemmed in lawmakers’ governing tactics and vision for the colony. In 1743, the legislature reenacted the 1739 law that required men to arm themselves during church, but the new statute contained subtle amendments.<sup>77</sup> Legislators made several important changes in response to threats from slaves, hoping that they could increase white residents’ personal safety. A debate and decision about men in Charlestown (as opposed to the rest of the colony) carrying arms during church deserves special attention.

The legislative discussions about whether men in Charlestown should arm themselves disclose the topic’s sensitivity because such an obligation would have shaped the way outsiders perceived the colony. Like the 1739 law, the 1743 law excluded Charlestown in its requirement that men must bear arms during church services, but this continuity in legislation came after much debate. The earlier 1739 law forced all white men to arm themselves in church, *except* for men who resided in St. Phillip’s parish in Charlestown. By

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<sup>76</sup> Gally, *The Indian Slave Trade*; William Ramsey, *The Yamasee War: A Study of Culture, Economy, and Conflict in the Colonial South* (Lincoln and London: University of Nebraska Press, 2008).

<sup>77</sup> The lengthy title is: “An Act for the better security of the Province against the Insurrections and other wicked attempts of Negroes and other Slaves; and for reviving and continuing an Act of the General Assembly of this Province, entitled ‘An Act for the better ordering and governing Negroes and other Slaves in this Province.’” McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 417.

1743, lawmakers reconsidered the Charlestown exception. In the wake of the Stono rebellion that occurred on a Sunday in September 1739, and a December 1739 plot that allegedly involved slaves storming and taking over Charlestown, the South Carolina legislature recognized that Charlestown needed greater defense.<sup>78</sup> Perhaps even more influential in the legislators' minds was a revolt that reportedly occurred just two months before they started active discussions of reenacting and amending the 1739 statute. On January 8, 1743 William Stephens, Secretary of Georgia, recorded that "A strong Rumour went out this Evening, of a New Attempt of the Negroes rising, and that 40 of them were got on horseback in Carolina, whereof their pursuers had killed two."<sup>79</sup> The apparent persistent efforts of the slaves to reject enslavement no doubt occupied the legislators' minds when they considered amending the 1739 law. During the debates, the Commons House of the legislature voted to alter the exception and require that men in Charlestown carry weapons to church.

Yet, for political reasons, the Upper House of the legislature expressed concern about the plan, making its argument in five points.<sup>80</sup> First, Charlestown already had a watch

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<sup>78</sup> In his discussion of the aftermath of the Stono rebellion, Wood details the subsequent slave plots between Stono and the enactment of the 1740 slave law that were uncovered before slaves executed them. At least one of these plots seems to have been larger in scope than the Stono uprising. More than a year after the Stono uprising, and six months after the enactment of the 1740 slave code, residents in Charlestown were, again, fearful of another revolt. In November of 1740, merchant Robert Pringle recorded that Charlestown residents were also "very apprehensive" of another slave revolt, making the local watch and guard be active "Constantly night & Day." Walter B. Edgar, ed., *The Letterbook of Robert Pringle, Volume One: April 2, 1737-September 25, 1742* (Columbia: Published for the South Carolina Historical Society and the South Carolina Tricentennial Commission By the University of South Carolina Press, 1972), pp. 163, 273; Wood, *Black Majority*, p. 320-323.

<sup>79</sup> The Commons House initially considered revising the act on December 1, 1742, but the first discussions of substantive changes occurred on March 2, 1743, not quite two months after the uprising that Stephens recorded. E. Merton Coulter, ed., *The Journal of William Stephens 1741-1743* (Athens: University of Georgia Press, 1958), pp. 158-159; Easterby, *The Journal of the Commons House of Assembly, September 14, 1742- January 27, 1744*, pp. 76, 260-261.

<sup>80</sup> Easterby, *The Journal of the Commons House of Assembly, September 14, 1742- January 27, 1744*, p. 261.

that guarded the town on Sundays. Second, sailors and other people occupied the streets during church services; thereby the streets were never without whites. Third, because not all church services occurred at the same time, the number of whites who were “passing and repassing” along the streets increased. Fourth, the “Country” (where most of the insurrections occurred or were allegedly supposed to have unfolded) and Charlestown had different needs, so it did not make sense to extend the requirement to Charlestown. Fifth, the Upper House of the legislature thought that only half of the watch should work on Sundays. The fourth concern bears further explanation because the Upper House of the legislature fully explained why it hesitated to have Charlestown residents arm themselves:

The Upper House are [sic] also against extending the Act to Charles Town for this further Reason that they apprehend such an Extension will tend greatly to affect the Credit of the Province should we discover so great Apprehensions of Danger as by a Public Law to declare that it was necessary for the Inhabitants of the Metropolis of the Province to go armed to Church to guard against the Attempts of the Domestics.<sup>81</sup>

As appointed members of the legislature, the Upper House worried about the colony at the local level and also about how outsiders and potential settlers would view it. Who would want to live in a town so under siege from its slaves that the white residents had to arm themselves in church? Logic argued against requiring men from the largest town in South Carolina to arm themselves during worship. Doing so might discourage white Protestants from migrating to the colony, a migration colonial authorities hoped would mitigate the threat of the colony’s rebellious slaves. By using the standing watch instead, the colony could maintain the semblance of calm and order, while providing current and potential residents

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<sup>81</sup> Ibid, p. 307.

the belief that the watch would guard against foreign attack. Nevertheless, all locals would have known that the watch also guarded against domestic enemies.

With the passage of the 1743 statute, legislators compromised with each other hoping to increase colonial safety from their slaves and project an outward image of serenity in order to attract possible new settlers. All men eligible to serve in the militia had to arm themselves, not just men who owned 10 or more slaves (as the previous law of 1739 had required). The law still exempted Charlestown from the requirement, but it charged all members of the watch to work on Sundays during worship services. For this they received extra compensation.<sup>82</sup> During this time, the lower house of the legislature asserted its authority within the legislature. In the process of passing this piece of legislation, members of the lower house did not concede to having only half of the watch stand guard, as the Upper House of the legislature desired.

An analysis of colonial legislation reveals that slaveholders wrestled with the realities of living in a slave society, and they did so through the formal legal system. By the late 1730s, lawmakers recognized that severe restrictions on slaves could provoke rebellion and other forms of resistance. Restrictions could lead down a dangerous path, such as when lawmakers became so concerned with rebellion that they passed a law requiring men to arm themselves while at church. After the Stono rebellion, slaveholders explicitly acknowledged in statutory law that slaves were members of the social order. This had implications for how the legal system prescribed rules for enslaved members of society. Earlier laws, as in the slave Act of 1701, left most of the day-to-day workings of slavery primarily in the hands of individuals,

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<sup>82</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 418.

and noted that slaves were “unfit” to be governed by the colony’s laws.<sup>83</sup> In contrast, the 1740 comprehensive slave Act explicitly confirmed the membership of slaves in the colony’s social order by declaring that slavery was “introduced and allowed” in the British Empire. As a result of this official inclusion in the social order, lawmakers became more prone to regulate not only restrictions on slaves but protections as well.

Lawmakers’ decisions to enact colonial legislation stemmed from multiple sources, including slaves. The voices of slaves may not be directly audible in South Carolina’s statutory laws, but the actions of enslaved men and women certainly shaped the creation of the laws and helped dictate the terms of slave governance. Slaves molded the legislative agenda most visibly through outward forms of attack on the white population, but the statutory law of slavery was also heavily influenced by colonial custom.

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<sup>83</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 385.

## Chapter 5: Regulating Slavery: Custom and Statutory Law in South Carolina

In 1747, the South Carolina legislature granted legal freedom to Arrah, an enslaved pilot when he returned voluntarily to the colony. Arrah had petitioned the legislature for his freedom because he had remained loyal to the British after French privateers captured him.<sup>1</sup> The South Carolina legislature decided to free Arrah after debating both the legal status of slaves who willingly returned to the colony after being captured by an enemy, and the masters' property rights in those slaves. Arrah's case shows how custom and statutory law both had a role in slave governance. Arrah received legal freedom only after a complex ordeal that involved the legislature's intervention and a conflict between Arrah and his (former) owner, Hugh Cartwright. Cartwright initially supported Arrah's quest for legal freedom but had a change of heart when he learned that the legislature might not grant him financial compensation for his property loss, something Cartwright assumed he would receive because of existing custom and statutory law. In order to safeguard his right to Arrah, Cartwright acted on the long-standing customary understanding that a master could control his slave. He took custody of Arrah and placed him in the Charlestown workhouse while the legislature considered Arrah's case. Cartwright later removed Arrah, who then escaped from Cartwright's oversight. After hearing about the chain of events, the South Carolina legislature placed Arrah under its protection and found Cartwright guilty of "Contempt of the Authority and Breach of the Privileges." The legislators did so because they believed

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<sup>1</sup> J.H. Easterby, ed., *The Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747* (Columbia: South Carolina Archives Department, 1958), pp. 71-72; David J. McCord, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. VII, Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers* (Columbia, SC: A.S. Johnston, 1840), pp. 419-420.

Cartwright illegally took possession of his (former) slave while they were determining Arrah's status. The legislature protected Arrah but held his (former) owner in custody. This, in effect, was a direct intervention in the master-slave relationship.<sup>2</sup>

Arrah's story provides insight into slavery's critical role in South Carolina and the colony's method of slave governance. When the Lords Proprietors put forth the Fundamental Constitutions during South Carolina's founding, they took for granted that custom—defined here as all elements of colonial culture that could have the force of law, including local understandings of law and social norms—would govern slavery. The colony's founding document established that a master held power over his slaves and that custom would govern the institution when it declared “Every Freeman of Carolina shall have absolute power & Authority over his Negro Slaves.”<sup>3</sup> Yet the colony's founding document also positioned the enslaved as part of the social order, even though the white colonists did not consider slaves to be English subjects.<sup>4</sup> Custom governed slavery. However, the government also regulated slavery through statutory law because it had authority over both masters and slaves.

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<sup>2</sup>A person's legal or social status was not necessarily permanent or fixed at this time. I intentionally use parentheses around “former” because Arrah's status as a slave and Cartwright's status as his owner were uncertain. Easterby, *Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747*, pp. 205-206.

<sup>3</sup> A. S. Salley, Indexer, *Records in the British Public Record Office Relating to South Carolina, 1698-1700* (Columbia, South Carolina: Printed for The Historical Commission of South Carolina by Crowson-Stone Printing Company, 1946), p. 38. Colonists never ratified the founding document, “The Fundamental Constitutions,” which the Lords Proprietors originally adopted in 1669. Regardless, it provides a window into the worldview and ideals of the Lords Proprietors.

<sup>4</sup> See Chapter Three for a fuller description of the claim that slaves were a part of the social order.

Arrah's case highlights the relationship between statutory law and custom in South Carolina's dynamic slave governance system. When historians and legal scholars investigate slave governance in English New World colonial settings, frequently they examine either customary methods of governing slaves or statutes pertaining to slavery.<sup>5</sup> They do so because statutes pertaining to slavery are widely available compared to the relative dearth of extant case law about slaves. The minimal amount of case law that scholars can consult

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<sup>5</sup> The literature about slave governance through master-slave relationships is vast. For the classic understanding of the paternalistic nature of slavery in the nineteenth-century South, see: Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slave Made* (1972; New York: Vintage Books, A Division of Random House, 1976). For a study that examines the change in South Carolina from patriarchal understandings of slave governance to a paternalistic one, see: Robert Olwell, *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Low Country, 1740-1790* (Ithaca, NY and London: Cornell University Press, 1998). Philip D. Morgan also addresses the shift from patriarchy to paternalism in the eighteenth-century South: Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry* (Chapel Hill and London: Published for the Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 1998), especially pp. 273-293. For a study of master-slave relations outside of the North American mainland, see: David Barry Gaspar, *Bondmen and Rebels: A Study of Master-Slave Relations in Antigua* (Durham and London: Duke University Press, 1985).

The most comprehensive book about slave law in the South primarily focuses on the antebellum era, even though the title suggests otherwise. Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: The University of North Carolina Press, 1996). An earlier work that examines both northern and southern colonies is A. Leon Higgenbotham, Jr., *In the Matter of Color Race & The American Legal Process: The Colonial Period* (New York: Oxford University Press, 1978). A comparative view of slave law can be found in: Alan Watson, *Slave Law in the Americas* (Athens: The University of Georgia Press, 1989). A sampling of the numerous articles and chapters published about colonial statutory slave law include: Bradley J. Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," *The American Journal of Legal History* 38, no. 1 (1994): pp. 38-54; David Barry Gaspar, "'Rigid and Inclement': Origins of the Jamaica Slave Laws of the Seventeenth Century," in *The Many Legalities of Early America*, ed. Christopher L. Tomlins, and Bruce H. Mann (Chapel Hill: University of North Carolina Press, 2001): pp. 78-96; David Barry Gaspar, "'With a Rod of Iron': Barbados Slave Laws as a Model for Jamaica, South Carolina, and Antigua, 1661-1697," in *Crossing Boundaries: Comparative History of Black People in Diaspora*, ed. Darlene Clark Hine and Jacqueline McLeod (Bloomington: Indiana University Press, 1999): pp. 343-366; Salley E. Hadden, "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras," in *The Cambridge History of Law in America Vol. 1 Early America (1580-1815)*, ed. Michael Grossberg and Christopher Tomlins (Cambridge: Cambridge University Press, 2008): pp. 253-287; Elsa V. Goveia, "The West Indian Slave Laws of the Eighteenth Century," *Revista de ciencias sociales* 4 (1960): pp. 75-105; Jonathan A. Bush, "Free to Enslave: The Foundations of Colonial Slave Law," *Yale Journal of Law & the Humanities* 5 (1993): pp. 417-470; William M. Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," *The William and Mary Quarterly*, Third Series 34, no. 2 (1977): pp. 258-280.

suggests that custom was an integral feature of the slave governance system.<sup>6</sup> Both frameworks of scholarly inquiry have yielded rich results about colonial slavery, but a divide exists between the two approaches, making it difficult to assess the connections between statutory law and customary legal practices. Some scholars of colonial slave law argue that statutory law may not have always reflected lived reality. Scholars also widely acknowledge that little evidence is available to know whether whites actually enforced statutes.<sup>7</sup> Moreover, the tendency of colonial legislatures to borrow almost verbatim other colonies' slave laws complicates scholars' assessment of slave governance and the role of statutes in overseeing slavery.<sup>8</sup> As a result, determining the full function of slave laws in slave societies such as South Carolina, and their relationship to customary practices, remains difficult. This chapter explores the operation of custom in South Carolina, and how statutory law and custom worked together to subjugate slaves. It argues that custom primarily governed slavery in South Carolina during the period 1670-1747, but that legislators intervened in customary practices when they believed imperial rivals or slaves threatened the colony's security and

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<sup>6</sup> Most court proceedings do not include slaves because they underwent criminal trials at special slave courts. Authorities convened slave courts quickly, oftentimes at the site of a crime, and did not record the court proceedings. Case law involving slaves that scholars locate for South Carolina's colonial period reflects merely a smattering of what actually occurred. These cases can be gleaned through personal records, but more frequently through reports appearing in *South Carolina Gazette*. For the lone exception in which a criminal trial for a South Carolina slave exists, see Olwell, *Masters, Slaves, and Subjects*, pp. 59-61, 83-89, 100. For additional information regarding slave courts, see Chapter Three. In non-criminal court cases that refer to slaves, the slaves are often incidental to the case and its outcome.

<sup>7</sup> Hadden, "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras," p. 262; Thomas J. Little, "The South Carolina Slave Laws Reconsidered, 1670-1700," *The South Carolina Historical Magazine* 94, no. 2 (1993): pp. 86-101, 101; Walter Edgar, *South Carolina: A History* (Columbia: University of South Carolina Press, 1988), p. 77.

<sup>8</sup> Alan Watson's scholarship on comparative slave law argues that the statutes governing slavery in a given location may not accurately reflect the local realities or needs of the location. Watson, *Slave Law in the Americas*, esp. xv, 3, 126, 129.

stability. They interceded when they believed the customary practices jeopardized the colony's peace.<sup>9</sup>

Laws pertaining to slavery reveal three focal issues through which lawmakers determined that the institution of slavery needed their oversight. First, slave laws sought to curb slave desertion and rebellion by restricting mobility, autonomy, personal enterprise, and property ownership. Second, slave laws implicated all whites in the slave system by requiring their participation, whether or not they owned slaves. As a result, slave laws regulated all colonists of European descent. Third, legislators created a system of rewards and compensation to encourage widespread compliance to the slave laws. South Carolina legislators did not develop this delicate relationship between statutory and customary law on their own. They looked to another English slave society, Barbados, for insight and guidance.

According to scholar Jonathan A. Bush in his study of British colonial slave law, "Slavery ... simply evolved in practice, as a custom, and then received statutory recognition."<sup>10</sup> Unlike their rivals, the French, who relied on the *Code Noir*, and the Spanish, who referred to *Las Siete Partidas*, English colonists did not have an overarching framework of law that regulated slavery.<sup>11</sup> In Elsa Goveia's study of Caribbean slave laws, she determined that law was not the "original basis" of slavery in the West Indies; rather, "before the slave laws could be made, it was necessary for the opinion to be accepted that

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<sup>9</sup> For more about the concept of the peace as it functioned in South Carolina at this time, see Chapter Three. For the peace's role in early modern England, see: Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge and New York: Cambridge University Press, 1987).

<sup>10</sup> Bush, "Free to Enslave," p. 420.

<sup>11</sup> Goveia, "The West Indian Slave Laws of the Eighteenth Century"; Watson, *Slave Law in the Americas*.

persons could be made and held as slaves.”<sup>12</sup> Applying Winthrop Jordan’s influential analysis of the turn toward racial slavery in English America as an “unthinking decision,” it appears that the colony’s adoption of slavery was an unthinking decision within the formal legal system as well—or at least a decision that whites never challenged or found contentious.<sup>13</sup> From a legal standpoint, slavery was already a legitimate institution governed by individual slaveholders prior to the passing of any law about slavery in South Carolina. The institution evolved with relatively minimal intervention from formal legal institutions, such as courts and legislatures.

The evidence supports this conclusion because the South Carolina legislature was an active governing body, but very few laws explicitly pertained to slavery. From 1682 to 1747 the South Carolina legislature enacted at least 806 public and private laws, yet only twenty-eight of them were plainly about slaves and slavery.<sup>14</sup> Approximately 3.5 percent of the

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<sup>12</sup> Goveia, “The West Indian Slave Laws of the Eighteenth Century,” p. 346.

<sup>13</sup> Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Williamsburg, VA: University of North Carolina Press, 1968), pp. 3-98.

<sup>14</sup> I tallied 806 statutes by consulting original manuscript statutes housed at the South Carolina Department of Archives and History, with the aid of: Thomas Cooper, ed., *The Statutes at Large of South Carolina, Edited Under the Authority of the Legislature, Vol. I, Containing Acts, Records, and Documents of a Constitutional Character* (Columbia, SC: Printed by A. S. Johnston, 1836), p. 58-59; Cooper, *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. II, Containing the Acts from 1682 to 1716, Inclusive* (Columbia, SC: Printed by A. S. Johnston, 1837), pp. v- xxiv; Cooper, *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. III, Containing the Acts from 1716 to 1752, Inclusive* (Columbia, SC: Printed by A. S. Johnston, 1838), pp. iii- xxviii; McCord, *The Statutes at Large of South Carolina... Vol. VII*; and Charles H. Lesser, *South Carolina Begins: The Records of a Proprietary Colony, 1663-1721* (Columbia: South Carolina Department of Archives and History, 1995), pp. 257-271. I totaled 28 statutes pertaining to slavery by including all known slave codes, other statutes directly about slaves (listed or reprinted in *Vols. II, III, and VII of The Statutes at Large of South Carolina*), as well as laws meant to prohibit trading with servants and slaves, and to establish patrols. I included laws that specifically aimed to address issues pertaining to slavery, but not ones that mentioned slaves only incidentally. Given that some laws have disappeared from the historical record, this tally is a faithful, yet admittedly limited, quantification of slave laws. I excluded from my total number of statutes 186 statutes that the legislature adopted from England in 1712. Those 186 statutes passed into law under a single law that the

colony's 806 laws thus focused on slavery. Of those twenty-eight laws, nearly half were revisions of a code that colonists originally borrowed from Barbados, and then adapted to fit South Carolina's needs.<sup>15</sup> The legislators crafted such statutes and others in response to various pressures, including those coming directly from slaves.

South Carolina slave laws reveal the various ways in which custom governed slavery. The statutes intervened in existing customs, presumably because legislators determined a specific practice jeopardized South Carolina's security. Custom policed a range of behaviors, including masters' granting liberties to slaves and treating slaves too harshly. Occasionally a clause openly explained a prevailing custom and how the new law sought to alter it. South Carolina's first known slave Act (1691) prohibited masters, mistresses, managers, or overseers from giving slaves free time on Saturday afternoons, "as hath accustomed formerly."<sup>16</sup> The 1722 comprehensive slave Act recognized that slaveowners allowed slaves "to go whither they will, and work where they please." The legislature attempted to curtail such mobility in two ways. First, it forbade (under financial penalty) owners, masters, or

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General Assembly enacted. If those 186 statutes are included in the total number of statutes, then the percentage of laws explicitly about slavery drops to approximately 2.8 percent of all statutes.

<sup>15</sup> Nine of the 28 laws were versions of "An Act for the Better ordering of Slaves," which the South Carolina General Assembly passed in 1691, 1693, 1696, 1698, 1701, 1712, 1722, 1735, 1740. Two more of the slave statutes, dating from 1714 and 1717, were additions to the 1712 slave code. Another was an amendment in 1745 of the 1740 slave code. All total, 12 of the 28, or 42.9%, of the statutes pertaining to slavery were outgrowths of Barbadian slave codes. Some of the other statutes were also reenactments of and additions to existing laws. For instance, six of the 28 statutes were meant to prohibit trading with servants and slaves and three were explicitly aimed at preventing insurrection. The relatively small number of slave laws extends to other colonies of the English empire. Scholars have noted that slave laws in English colonies were fragmented, "incomplete," and a "patchwork of provincial codes" when compared to the slave codes of other empires. Hadden, "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras," pp. 253-287; Bush, "Free to Enslave," p. 419; Christopher L. Brown, "Empire without Slaves: British Concepts of Emancipation in the Age of the American Revolution," *The William and Mary Quarterly*, Third Series 56, no. 2 (1999): pp. 273-306, 296.

<sup>16</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 347.

mistresses from permitting their slaves to hire themselves out. Second, it penalized individuals who hired slaves who traveled and worked without proper documentation.<sup>17</sup> In a later statute, the legislature prohibited slaves from owning personal property in the form of livestock, and from engaging in trade, even though existing custom allowed the practice. That clause noted that “owners of slaves have permitted them to keep canoes, and to breed and raise horses, neat cattle and hogs, and to traffic and barter ... for the particular and peculiar benefit of such slaves.”<sup>18</sup> These clauses suggest that lawmakers crafted slave law in order to limit the role of custom. At least for some slaves, customary understandings of slavery allowed more leniency than statutory law, and in daily living, slaves may have had more opportunities for personal endeavors than their technical definition as property would indicate. But customary practices could also be incredibly harsh. Legislators occasionally tried to protect slaves from cruelty, such as in the 1740 comprehensive slave Act.<sup>19</sup> Sometimes, statutes aimed to supersede custom, but they did not directly refer to the existing practice. The phrase “any law, custom, or usage to the contrary notwithstanding” were frequently cited in the laws.<sup>20</sup>

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<sup>17</sup> Ibid., p. 380.

<sup>18</sup> An earlier statute from 1735 suggests that legislators believed slave mobility and autonomy enabled by their keeping of canoes and horses could allow slaves to communicate and conspire against whites. Clause XXXI of the 1735 statute proclaimed: “And *whereas*, great inconveniences do arise from negroes and other slaves breeding and keeping horses, whereby they convey intelligence from one part of the country to another, and carry on plots and mischievous contrivances.” In a similar vein, the following clause, XXXII, attempted to curtail illegitimate travel of slaves by requiring “every person who shall send any slaves with perriaguas, boats, or canoes, shall give them a ticket for that purpose.” Ibid., pp. 394-395, 409.

<sup>19</sup> Ibid., pp. 397-417. Chapter Four discusses protections in the 1740 comprehensive slave law.

<sup>20</sup> For instance, see: 1691 slave code, clause XII; 1696 slave code, clause XVII; 1701 slave code; 1712 slave code, clause XXX; 1717 statute “A Further Additional Act to an Act Entitled An Act for the Better Ordering and Governing of Negroes and All Other Slaves; And to an Additional Act to an Act Entitled An Act for the

Slave laws tended to be reactionary because slavery occurred in practice, and then legislators tried to amend custom, as they deemed necessary. For many issues addressed in the slave laws, members of the General Assembly legislated *against* common practices, such as slave mobility, property ownership, and crime, as well as actions carried out by whites that legislators found detrimental to the society as a whole. The statutes suggest that colonial lawmakers got involved with “governing and ordering slaves” when they believed the existing system contained flaws, or if they felt that the general welfare of the colony was at stake. Otherwise, they permitted the relationships between masters and slaves, and society and slaves, to play out with minimal governmental intervention.

Legislators intervened in slavery then when customary practices failed to police slave behavior that they believed threatened the public order. The legislature ascertained that custom inadequately dealt with desertion and rebellion. The slave laws tended to mention a host of possible slave crimes, but none gained as much legislative attention as desertion and rebellion. Those two crimes threatened the stability and security of South Carolina society in ways that other crimes did not. Desertion was a particularly common form of resistance. South Carolina’s proximity to Spanish Florida and that colony’s policy of welcoming fugitive slaves from British territories encouraged slaves to flee there.

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Better Ordering and Governing of Negroes and All Other Slaves,” clause I; 1722 slave code, clause XXXI; and 1735 slave code, clauses XXVIII and XXXVI; 1740 slave code, clauses XXXIX and XLIX. In 1740, the phrase also sometimes appeared slightly different, reading: “any law, statute, usage or custom to the contrary notwithstanding.” See 1740 slave code, clauses VI and XIV. The second clause in the 1747 statute that freed Arrah had similar language as well: “any law, usage or custom to the contrary thereof in any wise notwithstanding.” General Assembly, Acts, Bills, and Joint Resolutions, 1691-2004, Volume 6, Governor Archdale’s Laws, 1696, pp. 60-66, South Carolina Department of Archives and History, Columbia, South Carolina; McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 347, 364, 369, 381, 394-395, 396, 399, 402, 411-412, 415, 420; L. H. Roper, “The 1701 ‘Act for the better ordering of Slaves’: Reconsidering the History of Proprietary South Carolina,” *William and Mary Quarterly*, Third Series 64, no. 2 (2007): pp. 395-418, 414.

Slave desertion was a normal feature of everyday life in South Carolina, even if slaveowners despised slaves' tendency to flee. The earliest comprehensive slave Act discussed runaways in an offhand manner, specifying which slaves should be considered runaways and for how long a person could keep custody of a runaway. Slave laws also established the monetary compensation a person received for apprehending and returning runaways and ordered the militia to search for runaways.<sup>21</sup> Simply put, statutory law treated slave desertion as a fact of colonial life. The strong paternalism apparent in the post-Revolutionary era in which slaveowners may have viewed themselves in a fatherly role to slaves did not yet exist. Colonists understood that their slaves would try to escape from bondage.<sup>22</sup>

South Carolina's early slave laws make clear that lawmakers did not view all acts of slave desertion uniformly. Slave laws assigned a slave's punishment based on the duration of absence and whether the slave ran away habitually. The South Carolina slave Act of 1701 declared that a slave at least sixteen-years old who ran away for the first time for at least fourteen days should be "branded with the letter R on the right cheek."<sup>23</sup> If that slave ran away again, for at least thirty days, the punishment escalated to castration for a man and loss of an ear for a woman. If a slave ran away only once, but for longer than thirty days, legislators decided that the appropriate punishment would be the same as if the slave had

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<sup>21</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 343-344, 346.

<sup>22</sup> Morgan, *Slave Counterpoint*, p. 278. Robert Olwell deftly addresses the patriarchal nature of early South Carolina and the post-Revolutionary shift from patriarchy to paternalism. See: Olwell, *Masters, Slaves, and Subjects*, especially pp. 281-283. For the foundational understanding of paternalism in the nineteenth-century South, see: Genovese, *Roll, Jordan, Roll*.

<sup>23</sup> Roper, "The 1701 'Act for the better ordering of Slaves,'" p. 410.

been a repeat offender. Punishment became even more severe if a male slave ran away for a third time. His punishment was to have “the cord of one of his legs be cut off above the heel,” causing permanent impairment of mobility.<sup>24</sup>

The descriptive details of the slave laws suggest that slave desertion may have been a greater problem for South Carolina than for Barbados, an English slave society in the Caribbean based on plantation agriculture. South Carolina legislators borrowed slave laws extensively from Barbados, but precise descriptions of crime and punishment pertaining to runaways are absent from Barbados’s early slave laws.<sup>25</sup> South Carolina lawmakers elaborated appropriate levels of punishment for runaways, reflecting the fact that desertion had many more and different implications for mainland South Carolina than it did for the small (166 square miles in area) and mostly flat island of Barbados.

Revisions of the 1701 South Carolina comprehensive slave Act indicate that desertion was so common that legislators considered government intervention necessary only if it threatened the larger community. Although legislators considered slave management the responsibility of individual masters, some masters failed to control their slaves. The slave Act of 1712 identified the appropriate punishment for a slave who ran away up to *five* times, a measure that underscores the problem of serial offenders. The legislature responded to the issue by increasing the number of times a person could abscond before facing death or mutilation, either through castration or severing of the Achilles tendon.

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<sup>24</sup> Ibid, p. 411.

<sup>25</sup> Barbados Manuscript Laws, “An Act for the better ordering and governing of Negroes,” Colonial Office Series, Class 30, Vol. 2, pp. 16-26; Barbados, *Acts of Assembly, Passed in the Island of Barbados, From 1648, to 1718, inclusive* (London: Printed by John Baskett, 1721), p. 137-144.

Punishments began with whipping for the first offence and progressed to execution or cutting the Achilles tendon for the fifth offence. The 1712 comprehensive slave Act granted a slave a trial before he or she faced death or mutilation by cutting the Achilles tendon, whereas the slave Act of 1701 did not require trials for any of the offences.<sup>26</sup> The 1712 slave Act also left punishment to the master's discretion when a slave absconded for fewer than twenty days. It is unclear why lawmakers withheld the most serious punishments until a slave had an extensive history of running away. They may have sought certainty that the slave threatened society by being a troublesome, habitual runaway, as opposed to someone, for instance, who left for a few days to visit a loved one.<sup>27</sup> Granting a trial to a slave whom colonists suspected of running away a fifth time also supports the notion that legislators wanted to ensure they issued the most severe punishments (and killing or mutilating very valuable property) only to the worst offenders.

Legislators considered the desertion of slaves with the intent to leave South Carolina a more serious crime than simply running away within the colony, because of its political implications. The gravity of slave flight to Florida, in particular, alarmed South Carolina lawmakers, who sought to establish harsh punishments and curtail slave mobility. In the realm of statute law, desertion to Florida was one of the worst crimes a slave could commit. First, less serious cases of recalcitrant slave behavior did not involve colonial legal authorities. Judgment and punishment remained in the master's hands. Usually, only the most grievous

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<sup>26</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 357-358.

<sup>27</sup> Philip Morgan has quantified the number of runaway slaves whom masters believed were visiting relatives. Of these 1,056 runaways, 323, or 31% left to visit family members. Morgan, *Slave Counterpoint*, pp. 525-530.

crimes warranted an actual trial. Beginning with the 1712 slave Act, running away “with intent to go off from this Province” necessitated a trial by two justices and three freeholders.<sup>28</sup> Second, starting with the same slave Act, slaves received the death penalty for trying to flee South Carolina. Previously, the punishment as set forth in the slave Act of 1701 was severe, but the offending slave did not face execution.<sup>29</sup>

Beyond prescribing procedures for dealing with the various forms of desertion, slave laws attempted to maintain South Carolina’s security by providing colonists detailed guidance for handling slaves suspected of rebellious activities. Insurrection was too great a threat for lawmakers to leave solely in the hands of custom. The terms of the laws aimed to reduce the risk of rebellion, to encourage whites to bring their rebellious slaves to authorities, and to standardize the way in which slaves experienced trials and punishments. In general, the laws directed two justices of the peace and three freeholders to conduct a trial for a slave whom colonists suspected was guilty of murder, actual rebellion, preparing for rebellion (with “arms as powder, bullets, or any offensive weapons”), or conspiring to mutiny or

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<sup>28</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 357.

<sup>29</sup> Punishment was gelding for men and losing an ear for women according to the 1701 slave code. Roper , “The 1701 ‘Act for the better ordering of Slaves,’” pp. 410-411. Despite the South Carolina legislature’s stern stance on slave flight, slaves reacted to the Spanish incentive and fled by both land and sea. They attempted to leave via South Carolina’s extensive waterway system and by the Atlantic Ocean. Such efforts prompted members of the South Carolina General Assembly to pass legislation, much like British slave societies in the Caribbean, that regulated slaves’ access to watercraft because of their concerns that slaves would use them to the colony’s disadvantage. Legislation from 1740 and 1743 prohibited slaves from keeping canoes, boats, or perriaugers for their own use. For an instance of slaves fleeing via water, see: *South Carolina Gazette*, September 12, 1741; McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 409, 418, 419; Montserrat, *Acts of Assembly, Passed in the Island of Montserrat; From 1668, to 1740, inclusive* (London: Printed, by Order of the Lords Commissioners of Trade and Plantations, by John Baskett, Printer to the King’s Most Excellent Majesty, 1740), p. 70; Gaspar, *Bondmen and Rebels*, pp. 204-205.

rebel.<sup>30</sup> The laws permitted judges to issue a death sentence or “any other punishment” to slaves they convicted.<sup>31</sup> Beginning in 1712, South Carolina legislators established procedures if judges refrained from sentencing all guilty slaves involved in the same crime to death. Suggestive of dominant British perceptions of justice, judges could order one or more slaves to “suffer death as exemplary” and return the rest to their masters.<sup>32</sup> The laws encouraged whites to comply. They mandated that people had to pay fines for concealing a suspect or refusing to bring him or her to justice.<sup>33</sup> In a colony with an enslaved majority, the *way of life* and the *actual lives* of the colonists were at stake if the slaves staged a successful rebellion and so the legislature addressed the issue carefully.

The legislators possessed legitimate concerns about rebellion. In 1739, slaves rebelled near the Stono River. This event prompted a revision of the existing 1735 comprehensive slave Act. As Peter Wood and other historians have argued, the 1740 comprehensive slave Act was a direct response to the Stono rebellion.<sup>34</sup> The 1740 slave Act attempted to curtail slave mobility, communication, commercial enterprise, and education more stringently than

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<sup>30</sup> Governor Archdale’s Laws, 1696, pp. 60-66, 62; Roper, “The 1701 ‘Act for the better ordering of Slaves,’” p. 409.

<sup>31</sup> Roper, “The 1701 ‘Act for the better ordering of Slaves,’” p. 409.

<sup>32</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 356.

<sup>33</sup> Roper, “The 1701 ‘Act for the better ordering of Slaves,’” p. 409; McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 356

<sup>34</sup> The 1735 slave code was up for reevaluation prior to the Stono Rebellion because lawmakers intended it only to be in force for three years, but the Stono Rebellion influenced the passage of the more restrictive 1740 slave code. The foundational, and still influential, book about the 1739 Stono slave rebellion is Wood, *Black Majority*. In his study of the South Carolina lowcountry, Robert Olwell notes “there was clearly a causal link between the uprising and the passage of a new slave code the next year,” but “interest in redrafting the slave code had been expressed prior to the rebellion.” McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 397; Olwell, *Masters, Slaves, and Subjects*, p. 25.

earlier statutes. Lawmakers deemed it “absolutely necessary to the safety of this Province, that all due care be taken to restrain the wanderings and meetings of ... slaves at all times, and more especially on Saturday nights, Sundays and other holidays.”<sup>35</sup> The Act forbade slaves from possessing and using weapons, drums, horns, and other “loud instruments,” and also traveling on highways without a white person if there were more than seven enslaved men en route. It also banned slaves from learning to write, keeping canoes or other watercraft, raising and breeding horses, cattle, or hogs, and renting homes, among other restrictions. These regulations placed greater restraint on the slaves and also increased government oversight of their everyday activities that lawmakers considered problematic.<sup>36</sup>

South Carolina’s inter-imperial connections influenced how legislators viewed the Stono rebellion. Historians have argued persuasively that the Stono rebels were attempting to flee to Florida.<sup>37</sup> One historian has gone so far as to claim that the incident was “less an insurrection than an attempt by slaves to fight their way to St. Augustine.”<sup>38</sup> The thoughts of the slaves who chose to rebel remain unknown, but white colonists probably considered the

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<sup>35</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 410.

<sup>36</sup> The legislature passed a subsequent law in 1743 that was aimed at regulating colonists’ behavior, in order to prevent revolts. The law mandated that white men eligible for the militia arm themselves when they went to church. See: “An Act for the Better Security of this Province Against the Insurrections and other Wicked Attempts of Negroes and Other Slaves; And for Reviving and Continuing an Act of the General Assembly of this Province, Entitled ‘An Act for the Better Ordering and Governing Negroes and Other Slaves in this Province’” in *Ibid.*, pp. 417-419.

<sup>37</sup> Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 Through the Stono Rebellion* (New York: W.W. Norton, 1974), pp. 308-317

<sup>38</sup> M. Eugene Sirmans, *Colonial South Carolina: A Political History 1663-1763* (Chapel Hill: University of North Carolina Press, Published for the Institute of Early American History and Culture at Williamsburg, Virginia, 1966), p. 208. Other scholars have a different view of the Stono rebellion and argue that slaves were not primarily trying to reach St. Augustine because of their slow pace of travel. Olwell, *Masters, Slaves, and Subjects*, p. 22.

slaves' actions as both a rebellion and a desertion, given the long-standing hostility with Spanish Florida. In this instance, desertion and rebellion were one and the same.

Inter-imperial contexts shaped the way South Carolina leaders responded to threats of slave desertion and treasonous activities for several years after the Stono rebellion. The South Carolina legislature took a markedly different strategy in dealing with slaves who might aid an imperial rival when they freed Arrah in 1747, the slave who voluntarily returned to South Carolina after gaining freedom in St. Thomas. The law that rewarded Arrah for loyal behavior by granting him legal freedom extended to other slaves in similar circumstances. The law, moreover, did not specify when it would expire, a feature that is uncharacteristic of colonial legislation regarding slaves. The South Carolina legislators thus presumably offered a permanent incentive to slaves taken from South Carolina who resided in foreign territory to make their way back to the colony.<sup>39</sup> As such, the South Carolina law served as a permanent counter to the Spanish Crown's ongoing policy of promising legal freedom to slaves of the British Empire who fled to them. Legislators' concerns about the potential disaster to South Carolina if large numbers of slaves cooperated with or willfully defected to wartime enemies prompted this legislative measure. That imperial context also appeared in the complaints of Arrah's owner, Hugh Cartwright. He argued that slaves would use the opportunity to undermine South Carolina's interests: "slaves will not then fly from but embrace every Opportunity of throwing themselves in the Enemies' Way, excited by the Prospect of Freedom."<sup>40</sup> Cartwright's concerns about large numbers of slaves gaining their

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<sup>39</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 419-420.

<sup>40</sup> Easterby, *Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747*, p. 160.

freedom did not materialize. Only nine other enslaved men gained legal freedom under the law that originated with Arrah's petition. In terms of colonial policy, South Carolina legislators' efforts to counter Spanish policy clearly failed miserably.<sup>41</sup>

It is unclear how often colonists followed procedures and punishments of the slave laws, but anecdotal evidence suggests they abided by their commands at least some of the time. When eight men returned from Florida shortly after the legislature passed the law that freed Arrah, authorities recognized their right to legal freedom and documented it in public records.<sup>42</sup> The colony's newspaper reported some of the most heinous crimes and the outcomes of the subsequent criminal investigations that followed. Theft and breaking and entering were sometimes capital offenses. The newspaper reported in 1736 that a "Negro Fellow" who robbed Mr. Streater on a road "was executed," but gave no further details.<sup>43</sup> Another incident involved a "Negro Fellow" whom colonists tried, found guilty, and sentenced to death for "breaking open" Mr. Brest's house.<sup>44</sup> A robbery committed by four "Negro Boys" warranted more explanation in the newspaper, perhaps because of the high value of the stolen goods and the young age of the offenders. The boys approached Mr.

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<sup>41</sup> Prince, Jemie, Robin, Jack, Billy, Lewis, Kingson, and John Dick all had their free status recorded by the Secretary of the Province simultaneously, thereby suggesting that the men voluntarily returned from Spanish Florida as a group. Another man, Benjamin Elden, also received freedom as a result of the passage of the act that freed Arrah. South Carolina. John D. Duncan, *Servitude and Slavery in Colonial South Carolina, 1670-1776* (Emory University, Ph.D. dissertation, 1972), p. 383; South Carolina, South Carolina Miscellaneous Records of the Secretary of the Province, Main Series, Vol. GG, pp. 233-234, 354-355.

<sup>42</sup> South Carolina, South Carolina Miscellaneous Records of the Secretary of the Province, Main Series, Vol. GG, pp. 354-355.

<sup>43</sup> *South Carolina Gazette*, Nov. 20, 1736.

<sup>44</sup> *Ibid.*, Jan. 2, 1742.

Moses Mitchel's house at night. Three of them stood watch while Harry "went in and carried away a Trunk with Paper Currency, Notes of Hand, gold Buttons, and silver Buckles to the Value of 600 l. [pounds]." The authorities caught the offenders because of their "liberal spending" of the money and then tried them "according to Law." They sentenced three children who acted as lookouts "to be whipt through the Town, not exceeding 30 Lashes each." The judges deemed Harry the ringleader and a greater threat than the other culprits because they sentenced "the young Rogue" either to be "burnt with an R on his forehead," or to be transported out of the colony, pending permission of the Lieutenant Governor.<sup>45</sup>

The authorities of South Carolina also tried slaves suspected of arson. This was a crime that also clearly threatened the security of colonial societies. In the wake of the alleged 1741 New York slave conspiracy involving suspicious fires, the *South Carolina Gazette* reported on that plot, as well as other cases of arson closer to home, and the methods of bringing arsonists to justice.<sup>46</sup> In July 1741, the newspaper reported that authorities in Wilmington, North Carolina accused Catherine, a female slave, of arson. They tried Catherine "according to Law," convicted her, and sentenced her to death, notwithstanding her refusal to confess.<sup>47</sup> Shortly thereafter, colonists in Charlestown feared slaves had a "malicious and evil Intent of burning down the remaining Part of the Town" after a house in

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<sup>45</sup> Ibid., June 18, 1737.

<sup>46</sup> Ibid., July 23, 1741. Scholars continue to debate whether a plot to burn New York City actually existed. The first scholarly monograph on the subject is still an excellent recounting of the events. It purports that a large-conspiracy did not exist, but that many of the accused and executed slaves were guilty of arson and theft. Thomas J. Davis, *A Rumor of Revolt: The "Great Negro Plot" in Colonial New York* (New York: Free Press, 1985).

<sup>47</sup> The newspaper also reported cases of arson in other North American and Caribbean colonies, including Massachusetts and Jamaica. *South Carolina Gazette*, December 14, 1734, January 15, 1737, July 30, 1741.

which Mrs. Snowden resided caught fire. Officials determined their fears were unfounded after conducting trials for Kate, a female slave, and a male slave who worked as a boatswain. The trials included a “strict Examination” of other suspects as well as listening to the testimony of an enslaved woman named Jenny. The authorities concluded that only Kate and the boatswain carried out arson, but they pardoned Kate in exchange for her confirmation that the man served as her accomplice. The boatswain, who according to the newspaper, “looked upon every white Man ... as his declared Enemy,” was “burnt to Death.”<sup>48</sup>

The records of South Carolina indicate that authorities followed the procedures established in the slave laws for conducting a slave trial and carrying out the punishment in a desertion case. In 1739, the *South Carolina Gazette* reported that two of William Romsey’s slaves, Caesar and Alloboy, stood trial before two justices of the peace and three freeholders, pursuant to the current slave Act. The Attorney General charged both men with “deserting from their Master’s Service” in an attempt to run from South Carolina “either to Augustine or some other Place.” The judges found Caesar and Alloboy guilty, but they received different sentences. The judges sentenced Alloboy to a whipping, while they condemned Caesar to die. After Caesar’s execution, his corpse was hung up “in Chains at Hang-Man’s Point ... in sight of all Negroes passing and repassing by Water.” The public display of Caesar’s body served as a warning to other slaves about the consequences of improper behavior. His execution, too, was at least a semi-public affair because the record implies that at least some slaves attended the event. Before his execution he delivered a “very sensible

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<sup>48</sup> Ibid., August 6, 1741.

Speech to those of his own Colour, exhorting them to be just, honest and virtuous, and to take warning by his unhappy Example.”<sup>49</sup> Caesar’s death served as a punishment, but authorities also intended that it should deter other slaves from trying to flee the colony.

A reviewing of the treatment of slaves in the Jamaican legal system during the eighteenth century is instructive because there are reasons to believe that the handling of crime and punishment there may have been similar to that in South Carolina. Both were British slave societies based on plantation agriculture that initially borrowed from Barbados’s slave laws. Furthermore, slave desertion plagued both colonies. White Jamaican colonists inflicted similar punishments on slaves and experienced comparable forms of slave crime as South Carolina. In her study of rare slave trials from St. Andrew’s parish for the period 1746-1782, Diana Paton found that running away was one of the primary concerns of slaveholders (theft was the other). The Jamaican trials involved 202 defendants, 41 of whom the authorities prosecuted for running away. Because Anglo-Jamaicans tried very few slaves who ran away for less than six months, Paton argues that running away for shorter periods was “considered a normal part of the pattern of resistance and accommodation that made up daily life.”<sup>50</sup> Officials in Jamaica carried out punishments in the form of flogging, mutilation, execution, and transportation on convicted slaves. Overall, these punishments were similar to those that are supported by South Carolina’s anecdotal evidence.<sup>51</sup>

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<sup>49</sup> Ibid., April 5, 1739.

<sup>50</sup> Diana Paton, “Punishment, Crime, and the Bodies of Slaves in Eighteenth-Century Jamaica,” *Journal of Social History* 34, no. 4 (2001): pp. 923-954, 928-930.

<sup>51</sup> Ibid., pp. 937-938.

The slave laws of South Carolina tried to enhance the colony's security by restricting slaveowners' discretion in handling their slaves and by placing mandates on other colonists. The lawmakers found common practices troubling. They intended that the slave laws should eliminate some of the worst abuses that colonists carried out on slaves, circumscribe some of the slaves' liberties, and ensure that all colonists participated in the collective effort of safeguarding South Carolina from slave attack. These efforts show how the public interest could override the decisions of individual white colonists, particularly slaveowners. The lawmakers reasoned that by standardizing how slaves experienced slavery and how free people participated in the institution, slaves' abilities to resist their condition or aid an enemy would be reduced.

The legislators sought to regulate both slaves and masters for the sake of South Carolina's safety. The 1740 comprehensive slave Act summarized their concerns. After noting that "slavery has been introduced and allowed," the Act's preamble set forth the conundrum white colonists faced due to the near limitless power masters had over their slaves:

[T]he people commonly called negroes, Indians, mulattoes and mustizos, have been deemed absolute slaves, and the subjects of property in the hands of particular persons, the extent of whose power over such slaves ought to be settled and limited by positive laws, so that the slave may be kept in due subjection and obedience, and the owners and other persons having the care and government of slaves may be restrained from exercising too great rigour and cruelty over them, and that the public peace and order of this Province may be preserved.<sup>52</sup>

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<sup>52</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 397.

Without adequate government intervention, masters' merciless treatment of slaves could propel slaves to rebel or threaten the colony's security in other ways. The recent Stono rebellion influenced lawmakers to create the comprehensive slave Act. The preambles of earlier slave Acts focused on slaves' "barbarous, wild" and "savage" nature but did not consider a master's inhumanity toward a slave unlike the comprehensive slave Act of 1740.<sup>53</sup>

The legislators of South Carolina aimed to minimize slave unrest by censuring the most brutal treatment from masters and other colonists by assigning heavy penalties for murdering or committing severe bodily harm to slaves. The 1691 slave law forbade killing a slave out of "wilfulness [sic], wantonness, or bloody mindedness." The 1740 comprehensive slave Act provided slaveowners a detailed description of both outlawed and permissible methods of physical violence. Its predecessor, the 1735 slave Act, prohibited the "cruelly" and "willfully" killing of a slave, but did not delineate the acceptability of other forms of bodily harm. In response to the 1739 Stono rebellion, legislators showed greater willingness to ending the most heinous treatment that slaves experienced. The 1740 slave Act spelled out the upper boundaries of punishment a master could inflict (as opposed to a government official). Guilty persons would forfeit one hundred pounds currency if they "cut out the tongue, put out the eye," amputated a limb, or "cruelly" scalded or burned a slave. They also had to pay the same fine for carrying out "any other cruel punishment" on a slave. The statute enumerated methods for controlling slaves that legislators viewed as necessary and allowable. Whipping and beating a slave with a horse-whip, cow-skin, switch or small stick

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<sup>53</sup> Ibid., pp. 352, 371, 385. See Chapter Four for a further discussion of the 1740 comprehensive slave law.

were acceptable. So was punishment through confinement, imprisonment or putting irons on a slave.<sup>54</sup>

The slave laws also sought to protect the colony and the stability of slavery by reducing liberties to which slaves had access. South Carolina's first comprehensive slave Act prohibited slaveowners and overseers from permitting slaves "to go out their plantations," unless they possessed a ticket validating their reason for travel, or traveled with "one more white men [sic] in their company."<sup>55</sup> That same Act forbade masters, mistresses, managers, and overseers from giving their slaves free time on Saturday afternoons. These restrictions limited opportunities for slaves to interact with each other and, potentially, to plot rebellious activities.<sup>56</sup> Later laws placed even greater restrictions on masters' oversight of their slaves, thereby reducing an owner's discretion in caring for his or her slaves. Other laws prohibited them from allowing slaves to own "houses of entertainment or trade," to wear clothes above their status, to plant various crops, and to raise certain animals.<sup>57</sup>

Even before the Stono rebellion, legislators wanted to ensure that white colonists did not encourage a slave insurrection. There were already some laws that sought to limit slaves' access to arms. The South Carolina comprehensive slave Acts of 1696, 1701, 1712, 1722, and 1735 regulated how and where masters and heads of households stored their guns and other weapons, under penalty of a fine. The 1701 and 1712 slave Acts ordered masters to store

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<sup>54</sup> Ibid., pp. 346-347, 393-394, 410-411.

<sup>55</sup> Ibid., p. 343.

<sup>56</sup> Ibid., p. 347.

<sup>57</sup> Ibid., p. 396.

weapons “in the most private and least frequented room in the house,”<sup>58</sup> while the 1696, 1722, and 1735 laws tried to make arms even more difficult to obtain illicitly by specifying that masters had to lock up the weapons.<sup>59</sup>

Laws passed in 1739 and 1743 regulated the colonists’ use of weapons, but in a dramatically different manner than earlier legislative measures. The 1743 “Act for the Better Security” of South Carolina “Against the Insurrections and other Wicked Attempts of Negroes and Other Slaves” required white males who were qualified to serve in the militia to arm themselves when they attended church on Sundays or on Christmas day.<sup>60</sup> This provision tried to minimize the chance that whites would find themselves unprepared should slaves revolt, as they did on a Sunday during the Stono rebellion in 1739 before the first version of the law went into effect. Sundays and the Christmas holidays were traditionally days of rest when slaves had greater opportunity to rebel.<sup>61</sup>

All colonists, regardless of their relationship to individual slaves, were required to participate in slave governance in order to guarantee South Carolina’s safety. Subjugating slaves was clearly a collective and public effort. Laws pertaining to slavery implored civil servants to carry out their duties to avoid negligence. Lawmakers wanted to ensure that the

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<sup>58</sup> The wording from the 1701 Act is inconsequentially different: “in the most private & least frequented rooms in his house.” Roper, “The 1701 ‘Act for the better ordering of Slaves,’” p. 410; McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 354.

<sup>59</sup> Governor Archdale’s Laws, 1696, p. 62; McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 373, 387.

<sup>60</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 417. The act’s full title is: “An Act for the better security of this Province against the Insurrections and other wicked attempts of Negroes and other Slaves; and for reviving and continuing an Act of the General Assembly of this Province, entitled “An Act for the better ordering and governing Negroes and other Slaves in this Province.”

<sup>61</sup> Morgan, *Slave Counterpoint*, p. 195.

marshal or gaoler (jailer) carried out his duties prudently and with care. A marshal or a gaoler incurred a fine if an apprehended runaway slave under his care escaped or died while in custody.<sup>62</sup> The enforcement of the slave laws also involved members of the military, forcing them to search for runaways.<sup>63</sup> Justices and constables, too, had to abide by the statutes. The laws frequently directed justices to issue a sentence based on the slave's crime. Suggesting the presence of another form of law and sense of justice, the slave laws listed punishments for officials, should they refuse to execute a sentence. Citing that "there being no law to compel" officials to carry out sentences, the 1735 comprehensive slave Act blatantly stated that slaves went unpunished because marshals and constables "refused to execute the sentence awarded by the justices and freeholders."<sup>64</sup> To facilitate the infliction of punishment, laws authorized constables and marshals to impress slaves to administer sentences on fellow slaves, but the government officials had to compensate the impressed slave five shillings. If marshals or constables inflicted the punishments themselves, they received full monetary compensation for their work.<sup>65</sup> Tracking down runaways, ably maintaining apprehended

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<sup>62</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 344, 379, 391-391. Roper, "The 1701 'Act for the better ordering of Slaves,'" p. 412.

<sup>63</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 346, 362, 380, 392.

<sup>64</sup> The statutes also laid out penalties for slaveowners who refused to carry out punishments on their slaves. For instance, the 1701 slave code penalized slaveowners if they neglected to cut the Achilles tendon of a slave who ran away for a period of thirty days or more after he already had been gelded for a previous attempt at running away. Ibid., p. 395; Roper, "The 1701 'Act for the better ordering of Slaves,'" p. 411.

<sup>65</sup> For instance, see 1722 slave code, Clause XXXVII; 1735 slave code, Clause XXXIII. The 1740 slave code specified that a slave could be pressed to carry out the punishments and would be awarded five shillings for his efforts. Should a slave refuse, he or she would suffer a whipping, "not exceeding twenty lashes." McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 383-384, 395, 404.

fugitives, and carrying out punishments helped legislators reduce loopholes in the slave regime.

The laws regulated white colonists differently depending on their relationship to a slave, but the overall message remained clear: colonists were supposed to be vigilant and make sure that they did not contribute to any disorder involving slaves. The laws stipulated how whites should treat “strange” blacks they met. They also made it illegal to trade with or buy from slaves if the consumer suspected the slave stole the merchandise, or if the slave did not have a ticket from his or her master.<sup>66</sup> Whites were the everyday police, who should always note aberrant behavior of slaves they encountered.<sup>67</sup> The slave Act of 1712 went so far as to criminalize whites’ failure to apprehend a runaway if it was in their power to do so.<sup>68</sup> The lawmakers created these and other measures to ensure that all colonists did their part to control the South Carolina enslaved majority.

The legislature’s efforts to define slave crime, bring criminal slaves to justice, and place responsibility on all colonists for slave governance were not enough, however, to ensure South Carolina’s safety. The lawmakers focused also on another issue meant to enhance the colony’s security, one that custom did not address: rewards and compensation.

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<sup>66</sup> For instance, see: 1712 slave code, Clause IV; 1714 slave code, Clause VII; 1740 slave code, Clause XXXI. McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 353, 367, 408. Salley Hadden discusses Barbados regulations against slaves selling goods, a practice that is also known as huckstering. Hadden, “The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras,” pp. 262-263.

<sup>67</sup> Like Caribbean islands and other mainland colonies, South Carolina lawmakers also established a slave patrol, which served as an additional method of slave surveillance. For further discussion of the creation and evolution of slave patrols see: Salley E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge, MA and London: Harvard University Press, 2001).

<sup>68</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 352.

Laws pertaining to slavery reflect the patriarchal nature of society by marking a distinction between rewards and compensation. Both were financial awards, but lawmakers used the term “reward” when discussing subordinates, such as slaves or free people of color, while they employed “compensation” when referring to whites. Lawmakers believed that whites deserved “compensation,” while people of color received “rewards” for acting loyally or capturing runaways. Without a government-operated system of rewards and compensation, little incentive existed for people to risk personal safety by apprehending runaways, or alternatively, by turning in one’s slave who committed a crime.<sup>69</sup>

A government-sanctioned compensation system assured whites that they would receive funds for risking their safety or property in protecting the colony. The slave Act of 1691 granted compensation for apprehending runaways and for delivering them to their owners.<sup>70</sup> The law ordered the slave catcher to turn the runaway over to the sheriff or gaoler if the slave’s owner was unknown. The sheriff or gaoler would receive compensation from

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<sup>69</sup> Offering compensation was a common feature of slave codes in English America. Several publications about colonial slavery discuss compensation, but it is somewhat surprising that compensation is rarely the focus of a study, given its prominent place in many slave laws. David Barry Gaspar, “‘To Bring Their Offending Slaves to Justice’: Compensation and Slave Resistance in Antigua 1669-1763,” *Caribbean Quarterly*, 30 no. 3/4 (1984): pp. 45-59; Michael Kay and Lorin Lee Cary, “‘The Planters Suffer Little or Nothing’: North Carolina Compensations for Executed Slaves, 1748-1772,” *Science and Society* 40 (1976): pp. 288-306; Marvin L. Michael Kay and Lorin Lee Cary, *Slavery in North Carolina, 1748-1775* (Chapel Hill and London: The University of North Carolina Press, 1995); Nicholson, “Legal Borrowing and the Origins of Slave Law in the British Colonies;” Paton, “Punishment, Crime, and the Bodies of Slaves in Eighteenth-Century Jamaica,” pp. 935-936; Roper, “The 1701 ‘Act for the better ordering of Slaves;” Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Law of Virginia, 1705-1865* (Baton Rouge: Louisiana State University Press, 1988); Wiecek, “The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America.”

<sup>70</sup> The person returning the slave received “eight pence per mile for the first five miles, and six pence per mile for every mile more,” not to exceed seventy shillings. Later laws altered the amount awarded to people returning runaways. For instance, see: 1712 slave code, Clause XX; 1722 slave code, Clause XXI; 1735 slave code, Clause XVIII; 1740 slave code, Clause XXV. McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 344, 360-361, 378, 390-391, 405.

the slave's owner for maintaining the slave.<sup>71</sup> Catching runaways could be a dangerous and demanding undertaking. The slave laws included terms to provide compensation to anyone who became "maimed, wounded or disabled, either in pursuing, attacking or taking any runaway negro or slave."<sup>72</sup> By 1740, the legislature expanded its offering by compensating the "heirs, executors or administrators" of a person, including a slave, who died while trying to capture a runaway.<sup>73</sup> In 1743, John Pagett petitioned the legislature under the 1740 slave Act and sought compensation for Harry's death. Harry, who was identified as a "valuable young Negro Fellow," and another slave, tried to apprehend Hannibal, an armed runaway slave, who came to Pagett's plantation one night. During the attempt to capture Hannibal, the fugitive used a knife to stab Harry in the heart, which killed him immediately. After considering Pagett's petition, the lawmakers recommended that he receive £300 "Current money" for his loss.<sup>74</sup>

When determining compensation rates, the South Carolina legislature was aware of Spanish Florida's policy of welcoming slaves. Beginning in 1740, the legislature enacted separate provisions related to people who apprehended slaves trying to escape to Florida. Compensation was higher than if they caught slaves closer to home. This difference in compensation reflected colonists' concern with capturing runaways who were fleeing to a

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<sup>71</sup> Ibid., p. 344.

<sup>72</sup> Ibid., p. 380. Also see: Roper, "The 1701 'Act for the better ordering of Slaves,'" p. 413; McCord, *Statutes at Large of South Carolina, Vol. VII*, p. 362.

<sup>73</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 400.

<sup>74</sup> J. H. Easterby, ed., *The Journal of the Commons House of Assembly, September 14, 1742- January 27, 1744* (Columbia: South Carolina Archives Department, 1954), pp. 387-388.

rival's territory. The 1740 slave Act prescribed compensation based on a runaway's gender and age, whether the catcher took the slave alive, and whether the catcher scalped the runaway. The remuneration also depended on the location of the plantation from which the slave fled, as well as the place of apprehension. Higher compensation rates were also offered for slaves captured at long distances from their normal place of work. The further a slave had traveled, the higher the reward. Slaves who reached the south side of St. John's River in Florida brought in the highest rewards.<sup>75</sup>

Lawmakers of South Carolina were so concerned about slave flight that they offered rewards to free people of color, slaves, and Indians, as well as white colonists. Some clauses of slave Acts did not specify who could claim rewards, while others explicitly stated that enslaved people could collect rewards for loyal service to the colony. Passages from various clauses of the slave Acts that refer to all people being able to qualify for rewards imply that free people of color, slaves, and free Indians were entitled to them, yet it remains unclear whether the laws, in fact, applied to those groups. The 1691 slave Act suggests they did not because it contained a separate clause that offered a reward specifically to slaves who apprehended runaways.<sup>76</sup> Legislators crafted later slave laws similarly, with separate clauses

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<sup>75</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 413-414. The payments were as follows: "for each grown man slave brought alive, the sum of fifty pounds; for every grown woman or boy slave above the age of twelve years brought alive, the sum of twenty five pounds; for every negro child under the age of twelve years, brought alive, the sum of five pounds; for every scalp of a grown negro slave, with the two ears, twenty pounds; and for every negro grown slave, found on the south side of St. John's river, and brought alive as aforesaid, the sum of one hundred pounds; and for every scalp of a grown negro slave with the two ears, taken on the south side of St. John's river, the sum of fifty pounds."

<sup>76</sup> *Ibid.*, p. 345.

that applied to people who were not white colonists, but who apprehended fugitive slaves.<sup>77</sup> The 1722 comprehensive slave Act, however, departed from this form and did not specify that slaves or Indians could collect a reward. But the 1735 comprehensive slave Act stated that “any person or persons whatsoever, whether free man or a slave” could receive an award for capturing a runaway.<sup>78</sup> Runaways were such a problem that lawmakers wanted everyone, regardless of status, to help capture them.

The laws provided opportunities for slaves to gain legal freedom for acting valiantly during an invasion because attack from imperial rivals threatened South Carolina’s security. The 1708 “Act for Enlisting Such Trusty Slaves as Shall Be Thought Serviceable to This Province in Time of Alarms” offered legal freedom as a reward to any slave who “in actual invasion” killed or captured at least one enemy, or to any slave who became disabled while in the colony’s service. The colony would maintain the injured slave through the use of public funds. Ever mindful of the former owner’s financial concerns, legislators made sure that the law affirmed that public funds would compensate the slaveowner if his or her slave earned legal freedom, died, or suffered maiming while in the colony’s service. The statute also affirmed that owners would receive compensation from the public if their so-called “trusty” slaves escaped to the enemy while in the colony’s service.<sup>79</sup> An earlier Act of 1703 about

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<sup>77</sup> Roper, “The 1701 ‘Act for the better ordering of Slaves,’” p. 412; McCord, *The Statutes at Large of South Carolina...* Vol. VII, p. 362.

<sup>78</sup> The 1740 also included a similar provision, that anyone whether free or slave, would receive an award. McCord, *The Statutes at Large of South Carolina...* Vol. VII, pp. 392, 405.

<sup>79</sup> *Ibid.*, pp. 349-350.

building and maintaining the infrastructure of Charlestown also contained provisions for slaves to gain freedom based on heroic behavior when fighting enemies.<sup>80</sup>

The legislators thought critically about compensation procedures and the best method of doling out money. So many slaves received punishment in South Carolina that the legislators had to reconcile the need for a compensation system with the financial stress it placed on the public treasury. The 1712 slave Act noted the importance of a compensation system by stating that “the loss of the negroes and other slaves that shall suffer death, or be killed, by this Act, would prove too heavy for the owners of them to bear.” In order to offset the financial burden of slave punishments and to ensure that “the owners of negroes and slaves may not be discouraged to detect and discover the offences of their negroes and slaves,” the legislators included a provision that the financial loss of the owners “may be borne by the public.”<sup>81</sup> In his study of compensation in seventeenth and eighteenth-century Antigua, David Barry Gaspar notes that non-slaveholders subsidized compensation for slaveowners because the money came out of public funds.<sup>82</sup> South Carolina’s method of reimbursing slaveowners for their financial losses was similar to those of Antigua: payment came out of the public treasury for most slave crimes.

South Carolina authorities punished so many slaves that the compensation system established by the 1712 comprehensive slave Act quickly proved to be unworkable. The effects of that law were especially burdensome because owners received “the full and true

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<sup>80</sup> Ibid., pp. 28-33.

<sup>81</sup> Ibid., p. 349.

<sup>82</sup> Gaspar, “‘To Bring Their Offending Slaves to Justice’: Compensation and Slave Resistance in Antigua 1669-1763,” p. 49.

value” of their deceased slave.<sup>83</sup> In 1714, the legislature passed a law that amended the 1712 law by reducing the financial impact of punishing slaves on the public treasury. An owner could receive a maximum of £50 currency per slave, the same amount that the earlier 1701 comprehensive slave Act allotted, because “the public treasury hath been very much exhausted by the extraordinary sums that have been allowed for criminal slaves.”<sup>84</sup> But the 1714 amendment did not satisfactorily solve the problem of compensation’s high costs. In 1717, the legislature passed another Act aimed at addressing the public treasury’s diminishing funds. This Act changed the compensation system in two significant ways. First, owners would again receive the full value of the deceased slave. Second, and more significantly, the law held the slaveholding residents from the parish where the slave committed the crime responsible for compensating the owner of the deceased slave. The assessed value of the deceased slave would be “equally laid on the owners or possessors of slaves” in the parish.<sup>85</sup> If carried out, the measure should have eased the public burden of compensation. Equally important, these and other measures strongly suggest that the legislators meant to send a stern message to their fellow slaveowners that owners needed to control their slaves through custom or else they would literally and figuratively (in case of widespread rebellion) pay the price.

The compensation crisis of the 1710s was one of several times when the legislature sent a message that customary governance of slavery should be deployed to curtail criminal

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<sup>83</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 358.

<sup>84</sup> *Ibid.*, p. 366.

<sup>85</sup> *Ibid.*, p. 369.

behavior of slaves, otherwise owners of troublesome slaves would face financial consequence. The 1712 comprehensive slave Act addressed slaves who mutinied, participated in insurrections or rebellions, or made preparations for such collective resistance. Those slaves experienced punishment differently than slaves who committed crimes individually. Whites probably viewed such criminal activity as more severe than when slaves acted alone, and so the law made clear that the Governor and Council would become involved in determining slaves' sentences, as opposed to only justices of the peace and freeholders. When the authorities convicted multiple slaves of this type of criminal activity, the law permitted the Governor and Council to withhold the standard punishment—execution—for some of the slaves. The slave or slaves who lost their lives would “suffer death as exemplary” and the authorities would return the other slaves to their respective owners. The owners of the spared slaves did not thus evade consequences. The law ordered them to pay proportionally the value of the executed slave or slaves to the respective owner or owners. It further specified that the proportion the owners of pardoned slaves had to pay should not exceed one-sixth the value of their spared slave. In case the sum did not equal the value of the executed slave or slaves, the public treasury would provide the remainder. By statutory law, then, owners whose slaves became involved in rebellions or collective mutinous behavior had to pay a higher proportion of the compensation costs than if their slaves committed a different crime. Legislators included similar provisions in later comprehensive slave Acts.<sup>86</sup>

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<sup>86</sup> Ibid., pp. 369, 375, 389.

There were many other cases in which the slave laws sent a message to owners to control their slaves, which overwhelmingly points to lawmakers' desire to leave the bulk of slave governance in the hands of individual masters. The comprehensive slave Act of 1722 determined that if a "gang" of slaves attempted to flee South Carolina, one or two would suffer death and the owners of the pardoned slaves would pay proportionally the compensation costs to the executed slave's or slaves' respective owner(s).<sup>87</sup> The same Act also forced masters to reimburse people victimized by slave theft, and charged them with paying the marshal's or constable's fees for carrying out punishment on their slave.<sup>88</sup> The irony and underlying message would not have been lost on the owners; should they fail to properly control their slaves, slaveowners could be required to pay someone to damage (punish) their enslaved property. Furthermore, some of the slave laws compelled owners to punish their slaves themselves. If they failed to carry out the punishment, a justice of the peace could order the slave to be punished and then force the owner to pay the administration fee. One law of the 1712 comprehensive slave Act obliged owners to severely whip slaves who ran away for ten days. The law acknowledged an element of community involvement because "any person whatsoever" could complain to a justice of the peace if an owner neglected to carry out the punishment. At that point, the justice could order the slave to be "publicly and severely whipped" and require the "person neglecting to have such

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<sup>87</sup> A later slave law included a similar clause. McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 369, 390.

<sup>88</sup> *Ibid.*, pp. 374-375, 383-384.

runaway negro whipped” to bear the charges from the whipping.<sup>89</sup> The 1735 comprehensive slave Act declared that if a slave was convicted of a “heinous” crime, or of “burning stacks of rice, tar kilns, barrels of tar, pitch or turpentine,” then the owner had to pay the cost of prosecution.<sup>90</sup> That same Act specified how much an owner would have to pay an injured party should a court convict a slave of a lesser crime.<sup>91</sup> The legislators also knew that slaves sometimes ran away “for want of a sufficient allowance of provisions.”<sup>92</sup> They therefore included in various comprehensive slave Acts a requirement that masters adequately provide for their slaves, or else pay a fine.<sup>93</sup>

The system of rewards and compensation encouraged South Carolina free persons to enforce the laws pertaining to slavery, but the laws also sent a firm warning to owners that they needed to control their slaves. An underlying assumption is evident throughout the South Carolina slave laws: if masters effectively governed slaves through custom, then colonists would not need to invoke laws because slaves would not act in a way that threatened South Carolina’s security. Owners of slaves often received compensation for the loss of their human property, but other slaveowners living within the same parish, or who had slaves involved in the same crime, had to pay out compensation to the deceased slave’s

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<sup>89</sup> Ibid., p. 359.

<sup>90</sup> This provision was a change from the prior version (1722), which had a similar clause but did not specify who would pay the trial costs. Ibid., pp. 373-374, 388.

<sup>91</sup> Ibid., pp. 387-388. Interestingly, the legislature granted an exception to owners who had their slaves executed for the lesser crimes, of theft amounting to less than twenty shillings and of felonies “where a white man is allowed the benefit of clergy.”

<sup>92</sup> Ibid., p. 378.

<sup>93</sup> Ibid., pp. 378, 391, 411.

owner. The system of rewards and compensation thereby facilitated community involvement in slave governance, as well as oversight of masters' treatment of their slaves. For the colonial authorities, the true ideal of slave governance was to have minimal government intervention: to have custom govern slavery. Governing through custom permitted masters to exercise the greatest amount of discretion when managing their slaves. The slaveholding lawmakers of South Carolina sought government regulation of slavery primarily to remove or regulate practices that proved problematic to the colony's overall security.

When custom did not adequately safeguard South Carolina's security, legislators looked to a more mature English slave society, Barbados, for guidance. Barbados, a tiny island in the eastern Caribbean, was the leader in regulating slavery through statutory law in English America. Scholars have recognized that legislators from other English colonies determined that Barbados slave law could help govern slavery in their respective colonies.<sup>94</sup> Barbados slave law influenced South Carolina's first attempts at enacting a comprehensive slave Act in 1691 and later in 1696.<sup>95</sup> Other English colonies borrowed Barbados's 1661 slave Act both earlier and later. Jamaica passed it into law in 1664 shortly after the arrival from Barbados of its new governor, Thomas Modyford. Antigua adopted it in 1697. Georgia

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<sup>94</sup> Gaspar, "Rigid and Inclement: Origins of the Jamaica Slave Laws of the Seventeenth Century"; Gaspar, "With a Rod of Iron: Barbados Slave Laws as a Model for Jamaica, South Carolina, and Antigua, 1661-1697"; Hadden, "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras"; Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies"; Watson, *Slave Law in the Americas*.

<sup>95</sup> South Carolina's first slave law that attempted to be comprehensive was enacted in 1691 but disallowed by the Lords Proprietors. Barbadian slave laws influenced that earlier statute, too. It is erroneously dated as 1690 in McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 8. Bradley J. Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," p. 52. The South Carolina General Assembly also enacted a slave law in 1693, but no known copy exists. It is highly likely that Barbados statutory law influenced its contents.

enacted a revised version of the South Carolina comprehensive slave Act in 1755.<sup>96</sup>

Scrutinizing the way South Carolina legislators copied and adapted their statutory slave law from Barbados slave law reveals the complexity of legal borrowing. South Carolina colonists adjusted and adapted pre-existing slave laws to fit their perceived needs, a process I refer to as adaptive borrowing.

Scholars acknowledge readily that South Carolina borrowed extensively from Barbados's 1661 comprehensive slave Act, but it is less recognized that the legislators adopted measures from the 1688 comprehensive Barbados slave Act.<sup>97</sup> The South Carolina legislature *continued* to consult Barbados slave codes well after it originally looked to the small island for guidance when drafting the earliest slave laws in the 1690s. A detailed examination of how Barbados and South Carolina slave laws addressed people who either stole slaves away from the colonies or enticed them to run away illustrates the manner in which South Carolina legislators drew from multiple pre-existing slave codes when creating laws to govern slavery.

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<sup>96</sup> Georgia prohibited slavery until 1750. In 1750 it enacted a slave code, but five years later chose to adopt South Carolina's code, which was more comprehensive than its own code. Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," pp. 52-53. A. Leon Higgenbotham, Jr. discusses Georgia's acceptance of African slavery even though it began as a colony that prohibited the institution. Higgenbotham, *In the Matter of Color Race & The American Legal Process*, pp. 216-266.

<sup>97</sup> For instance, Bradley Nicholson writes in the context of the 1661 slave law, that "the Barbadian slave code was also transported to mainland North America. It became the law in South Carolina in 1696." Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," p. 52. Richard S. Dunn's mention of 1661 slave code's adoption notes that the code was modified, but that "it" (meaning the 1661 version) was adopted by other colonies. He writes: "It was reenacted with slight modifications by later Barbados assemblies in 1676, 1682, and 1688, was copied by the assemblies of Jamaica, in 1664, South Carolina, in 1696, and Antigua, in 1702." Dunn, *Sugar & Slaves: The Rise of the Planter Class in the English West Indies, 1624-1713*, (1972; Chapel Hill: University of North Carolina Press, 2000), p. 239. Alan Watson, however, directly recognized the influence of the 1688 Barbados slave code on the 1691 slave code, (which he incorrectly dates 1690). Watson, *Slave Law in the Americas*, p. 68. In a more recent publication, Salley E. Hadden recognizes that South Carolina also borrowed from Barbados' 1688 slave code. Hadden, "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras," p. 270.

Through its slave laws, the Barbados legislature hoped to eradicate a practice slaveowners found troublesome: people, who had different goals from English plantation owners, stole slaves and even encouraged them to flee, sometimes to other islands. The 1661 Barbados Act recognized that “evil disposed persons” attempted to “steal away Negroes by spurious pretenses of promising freedom in another Country.” The Barbados legislature acknowledged it lacked an effective manner of dealing with the issue: “noo [sic] punishment suitable hath been yett [sic] provided.” The legislature set forth a procedure to deal with people who enticed slaves to abscond.<sup>98</sup> The 1661 slave Act declared that a person guilty of encouraging slaves to run away would have to pay the slave’s master “five thousand pounds of Muscavado sugar.” If the offender (who was assumed to be male) failed to make payment, he would become a servant to the “party injured” for seven years. Punishments were more severe if the slave or slaves successfully ran away; the offender had to pay the owner “three times of the value” of the slave or slaves who absconded.<sup>99</sup> The Barbados Act of 1688 reveals how its legislature addressed the same issue. The clause in that Act is similar to the one from 1661, but there are two noteworthy differences when put in the context of how South Carolina borrowed from Barbados. First, the 1688 law specified that the offending party must pay “twenty-five pounds Sterling” instead of making payment with sugar. Second, it reduced the time of servitude if the guilty party could not pay, from seven years to five years.<sup>100</sup>

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<sup>98</sup> Barbados Manuscript Laws, “An Act for the better ordering and governing of Negroes,” p. 21.

<sup>99</sup> Ibid.

<sup>100</sup> Barbados, *Acts of Assembly*, p. 140.

South Carolina legislators only borrowed legal codes when it fit their needs. Scholars have noted that the legislators borrowed South Carolina's 1696 comprehensive slave Act almost wholesale from Barbados, yet the clause concerning "evil disposed persons" in Barbados's 1661 slave code did not appear in South Carolina's 1696 or 1701 slave Acts. This suggests that the legislators only enacted sections of the Barbados Act they considered relevant. The South Carolina legislature, however, adopted (with amendments) the measure from the 1688 Barbados slave Act in its 1712 slave Act. The resemblance in wording suggests that South Carolina lawmakers largely borrowed from the 1688 Barbados slave Act and not the Barbados slave Act of 1661 when they adopted the provision that considered people who encouraged slaves to flee.<sup>101</sup>

Despite their similarities, there were also important differences between the 1688 Barbados comprehensive slave Act and South Carolina's 1712 slave Act, thus highlighting the ways South Carolina legislators adaptively borrowed existing slave laws. The Barbados slave Act established procedures and punishments for dealing with a "Person" who tempted slaves to flee. While the Barbados slave Acts of 1661 and 1688 did not explicitly categorize punishments according to race, the South Carolina law did. It made a distinction based on race, in that an offender could only be a white person, "either free or servant." In a following clause, it prescribed different and more severe punishments to blacks convicted of the same crime.<sup>102</sup>

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<sup>101</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 357-358.

<sup>102</sup> Barbados, *Acts of Assembly*, p. 140; McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 357-358.

The South Carolina legislature provided greater guidance than Barbados's laws for dealing with people who tempted slaves to flee. This offers more evidence of adaptive borrowing. The 1712 South Carolina slave Act clarified that the punishment of servitude for whites was for a *maximum* of five years, as opposed to the 1661 and 1688 Barbados Acts that dictated punishment would be for seven and five years, respectively. The South Carolina Act also fined offenders an increased amount if they had "tempted and enticed" more than two blacks or slaves, whereas the Barbados codes did not. It dictated that if a person enticed two "negroes or slaves" to flee, then an offender would "pay the sum of ten pounds for each negro or slave so ... tempted or persuaded." The legislature imposed a larger fine according to the number of blacks an offender "tempted," suggesting that lawmakers had concerns about large numbers of slaves running away and that instigators who encouraged slaves to abscond could be quite persuasive. Additionally, the South Carolina legislature placed limitations on when the injured party could sue, a feature the 1661 and 1688 Barbados slave Acts lacked; a victim could take the case to the Court of Common Pleas "at any time within six months after the offence committed." In a similar vein, if the guilty party remained in prison for three months without being able to pay the fine, the law permitted the chief justice to sentence the offender to servitude for up to five years. Finally, if a white person was convicted of actually removing a slave from the province, or was caught "in the very act of taking or carrying" a slave out of South Carolina, the person would be declared a felon and sentenced to death.<sup>103</sup>

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<sup>103</sup> McCord, *The Statutes at Large of South Carolina...* Vol. VII, p. 357.

Tracing this single clause in multiple Acts illustrates the dynamics of legal borrowing. South Carolina legislators ratified sections of the Barbados code only when and if it suited their needs. Yet discussions of legal borrowing can unintentionally imply that colonists enacted laws wholesale, transferring entire bodies of law from one colony to another. In his foundational work about comparative slave law, Alan Watson argues that legal systems are borrowed so frequently that they may not accurately reflect the society that employs them.<sup>104</sup> Watson accurately claims that colonies borrowed virtually entire slave laws, but it is unlikely that legislators would have enacted legal codes that they deemed irrelevant to their own society, especially when those laws directly affected them as private citizens and as slaveholders. This can be seen in South Carolina, where legislators borrowed less from Barbados slave Act in 1691 than they did in the later slave Act of 1696, and when they waited until 1712 to enact measures found in Barbados's 1661 and 1688 slave Acts.

Whether colonies borrowed law from one another is not really the point. Various colonies, all with different situations and circumstances, found the basic outlines of one comprehensive slave Act, and its subsequent revisions, relevant. Regardless of the origins of slave laws of South Carolina, however, the laws reflect the local contexts of South Carolina and how legislators handled certain aspects of slave governance.<sup>105</sup>

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<sup>104</sup> Watson, *Slave Law in the Americas*, pp. xv, 3, 126, 129.

<sup>105</sup> Although unexplored in this chapter, South Carolina colonists would have drawn from their pre-existing understanding of English legal precedent when adopting and adapting Barbados slave law. David Barry Gaspar makes a compelling case that English legal principles and traditions influenced the development and content of the slave codes in the seventeenth-century English sugar islands, as well as South Carolina. He determines that legislators drew from common law, apprenticeship regulations, martial law, treason law, and police laws when they created their slave codes. Salley Hadden makes a broader claim by arguing that Spanish and French slave laws also influenced Barbados' slave laws. Gaspar, "Rigid and Inclement": Origins of the Jamaica Slave Laws of

Governing a restless body of enslaved laborers was no easy task. Slave-holding colonists and lawmakers relied on many measures to control the people they enslaved, including custom, statutory law, and community vigilance. They adaptively borrowed laws from Barbados when they considered them applicable to their slave society. Statutory law has gained substantial scholarly attention for understanding the methods colonists used to oppress the enslaved, but such law also reveals some of the dominant understandings about prevailing customary law in colonial South Carolina. This perspective points to an enhanced understanding of the institution of slavery in the colony because it reveals that whites primarily relied on custom when governing slavery. The legislature only got involved when custom was insufficient to manage certain situations, such as endemic slave flight, or if lawmakers considered common practices threatening such as unsupervised slave self-hire. This understanding of slave governance helps reconcile two seemingly contradictory aspects of South Carolina's history. The documentary record is filled with colonists' anxieties and concerns about their enslaved population, yet they enacted relatively few laws about controlling slaves. The slave laws, although limited in their application, sent a stern message to owners. Not only should owners control their slaves for their own sake, but they were also commanded to do so. Thus, slave laws provided guiding principles for policing, prosecuting, and punishing slaves, but they also regulated masters and the entire population.

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the Seventeenth Century," p. 88; Hadden, "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras," p. 260.

## Chapter Six: Slavery and the Articulation of Freedom

During the 1739 Stono slave rebellion, an enslaved man named July saved his master's life. According to notes from the South Carolina legislature, July "was very early and chiefly instrumental in saving his Master and his Family from being destroyed by the rebellious Negroes." Moreover, July "had at several Times bravely fought against the Rebels, and killed one of them." The Commons House of the legislature recommended that as a reward for July's valiant actions and "faithful service," it would grant him "his Freedom, and a Present of a Suit of Clothes, Shirt, Hat, a Pair of Stockings, and a Pair of Shoes." The members believed that rewarding July would be "an Encouragement to other Slaves to follow his Example in Cases of the like Nature."<sup>1</sup> Rewarding July served the interests of the colonial elite. Freeing one man might avert another rebellion.

July's rewards were noteworthy during South Carolina's colonial period, but they were not unique. Slaveholders granted manumission to slaves they deemed exceptionally loyal or faithful. They also offered material or monetary gifts to slaves, such as July, whose actions they regarded as especially valuable. Individual slaveholders manumitted slaves very rarely and the legislature handed out monetary and material rewards only infrequently. Legislators hoped that their decision to give a few slaves rewards would serve as a powerfully positive example to other slaves.

Offering manumission and rewards to select slaves served the slaveholding agenda. Scholars who have studied manumission in other locales and contexts have acknowledged

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<sup>1</sup> J.H. Easterby, ed., *The Journal of the Commons House of Assembly, September 12, 1739-March 26, 1741* (Columbia: The Historical Commission of South Carolina, 1952), pp. 63-64.

this.<sup>2</sup> By singling out and rewarding a handful of slaves for positive reasons, slaveholders reiterated what they considered the proper status of the majority of slaves—subservient unfree members of society who lacked material and financial resources. Moreover, legal freedom afforded former slaves only very limited opportunities and thereby mitigated the benefits that came with being a free person. Freedom for people of African descent typically meant something radically different than the freedom experienced by a person of European descent. Societal structures generally worked to the detriment of free people of color, although a few freed people managed to live comfortable lives as land and slave owners.

Granting manumission and rewards, along with other tactics initiated by free white colonists, helped make clear distinctions between slave and free for the vast majority of the population. By the 1730s and 1740s whites used the formal legal system to articulate the enslavement of people of African descent and their inferior place in society in even more transparent ways than they had previously.<sup>3</sup> They did so through several actions. First,

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<sup>2</sup> Orlando Patterson, *Slavery and Social Death: A Comparative Study*, (Cambridge, MA: Harvard University Press, 1982), pp. 205, 220; James H. Sweet, “Manumission in Rio de Janeiro, 1749-54: An African Perspective,” *Slavery & Abolition* 24, no. 1 (2003): pp. 54-70.

<sup>3</sup> My analysis focuses on manumission of people of African descent. Records that document slaveholders freeing Indian slaves are very rare. More research needs to be conducted to determine whether the incredibly rare case of Indian manumission reflects: the fewer number of Indian slaves in the British colonies, the relative dearth of records available for study during the times that the most Indians were enslaved (pre-Yamasee War), whether slaveholders were even more reluctant to free slaves of Indian descent than African-descended slaves, or other reasons. An exception to this rule occurred during the Yamasee War when the South Carolina government decided to free all Tuscarora slaves after the Tuscaroras decided to ally themselves with the colonists. To date, I have not discovered a private manumission that unquestionably freed an Indian slave (male or female). In 1729, Ephraim Mickell (Mikele) declared in his will that Jinny, his “Indian wench,” would become free upon his death pending her payment of an annual fee. Whether Jinny ever became free is unknown. In 1741, a married couple set free “Titus an Indian man” who “served his time duly.” In the documents pertaining to Titus, however, Titus was never referred to as a slave, and the wording of serving “his time” leaves open the possibility that Titus’s bondage was something more akin to an indenture than enslavement. Charleston County Will Book 1727-1729 in Charleston County, South Carolina Wills No. 1, 1671-1724 (microfilm transcripts), pp. 82-83, South Carolina Department of Archives and History, Columbia, South Carolina; Miscellaneous Records of the Secretary of the Province, Main Series, Vol. EE, pp. 156-157, 195-196,

legislators continued to intervene in the individual master-slave relationship by passing statutes that regulated slavery. The comprehensive slave Act of 1740 contained more detailed guidance regarding the proper treatment and condition of slaves and masters' responsibilities toward slaves than prior laws. Second, through legal action, whites continued to offer rewards and manumission to only a small number of slaves, an action that strengthened the slave regime. White colonists provided slaves these awards by taking legislative action and by filing legal documents with the Secretary of the Province. By creating a very small population of free people of color, free white colonists underscored the usual unfree status of people of African descent. Finally, white society used the legal system to place constraints on free people of color, which further differentiated slave from free for most of society. Lawmakers singled-out people of African descent when crafting legislation in ways that they did not for whites.

These mechanisms to exert control over the enslaved and formerly enslaved population had a far-reaching effect. Slavery as an institution shaped freedom. White colonists helped define who could be free and what that freedom meant by delineating proper and ideal slave behavior and action. Although all whites did not have access to all of South Carolina's legal structures for various reasons, statutory law did not regulate whites in the same manner as they did blacks. More than just strengthening slavery, manumission, rewards, and slaveholders' commitment to the legal regulation of slavery helped define freedom.

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South Carolina Department of Archives and History; William L. Ramsey, *The Yamasee War: A Study of Culture, Economy, and Conflict in the Colonial South* (Lincoln and London: University of Nebraska Press, 2008), pp. 164-165.

Multiple factors converged during the 1730s and 1740s to influence white colonists' articulation of slavery and freedom for South Carolinians of both African and European descents. Persistent hostility from both slaves and foreign enemies influenced the government's lawmaking agenda. During those years, legislators passed numerous laws that regulated or directly pertained to slavery. They did so hoping to create a more secure colony. They passed laws about taxing the slave trade, securing the colony, increasing the proportion of white residents, and freeing slaves who demonstrated loyalty when captured by imperial rivals.<sup>4</sup>

By 1740, South Carolina's legal system formally incorporated slaves into the British Empire's legal order. This inclusion facilitated white colonists' oppression of people of African descent as a perfectly legal measure. From the late-seventeenth century through 1747, the South Carolina government intervened in the individual master-slave relationship especially when it passed comprehensive slave Acts.<sup>5</sup> The government's growing intervention in customary forms of slave governance throughout this period helped define in the formal legal system the role and place of slaves in society. By 1740, lawmakers expressed their views that slaves fell under the legal order of the British Empire by omitting a once standard phrase in comprehensive slave Acts.<sup>6</sup> Whereas earlier Acts noted that slaves were "unfit to be governed by the laws, customs and usages of England," no such assertion appeared in the

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<sup>4</sup> Thomas Cooper, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. III, Containing the Acts from 1716 to 1752, Inclusive* (Columbia, SC: Printed by A. S. Johnston, 1838), pp. 525, 556, 568, 593, 595, 608, 698.

<sup>5</sup> Chapter Five argues that slave law intervened in the individual master-slave relationship.

<sup>6</sup> See Chapter Four for a further discussion of the claim that colonists positioned slaves within the Empire's legal order.

1740 slave Act.<sup>7</sup> In this way, lawmakers communicated their understanding that slaves were not only part of South Carolina's social order but also members of the formal legal order as well. With the passage of each comprehensive slave Act, lawmakers honed their governing of slavery. Unlike an early slave Acts dating from 1691 that had only fifteen articles, by 1740 the Act regulating "Negroes and Other Slaves" contained an extensive forty-three articles.<sup>8</sup> Such legal regulation was meant to more clearly define the institution of slavery and the status of slaves than when the first permanent colonists arrived on South Carolina's shores in the late-seventeenth century.

Similar to comprehensive slave Acts, manumission and offering rewards to slaves also helped establish the status and life condition of most people of African descent. A detailed discussion beginning with an overview of manumission studies reveals how manumitting and granting rewards to slaves helped distinguish slave and free for most residents of South Carolina. When scholars examine manumission in the colonial British context, they often do not make a distinction between different forms of manumission, which distorts our understanding of the practice. Scholars generally categorize manumissions according to who *received* the manumission, but they do not critically question who *initiated* it. Most frequently, these analyses shed light on the freed slaves' age, sex, shade of skin color, and occupation. Such studies have provided readers with a clearer picture of the "typical" person who became manumitted, even though the scholars conducting such research have

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<sup>7</sup> David J. McCord, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. VII, Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers* (Columbia, SC: A.S. Johnston, 1840), p. 385.

<sup>8</sup> *Ibid.*, pp. 343-347, 397-417.

usually focused on manumission in a single colony and have not intended to make sweeping statements about *all* manumitted. These studies collectively point to the gendered and racist nature of manumission, with women usually receiving manumission more often than men, and mulattos more than blacks.<sup>9</sup> However, a more complex depiction of manumission emerges in South Carolina when one considers who decided to free a slave—whether it stemmed from the members of the colonial government or an individual slaveholder. For this analysis, I refer to these two aspects of manumission’s origination as public and private, respectively.<sup>10</sup> Categorizing manumission in South Carolina as either public or private leads to new insights into the practice and purpose of freeing enslaved people and how manumission fit within the slave regime.

In South Carolina, public manumissions exclusively granted enslaved men freedom, a practice that differs from the gendered trends of private manumission. The government’s blanket emancipation of Tuscaroras slaves during the Yamasee War may have been the exception.<sup>11</sup> Except for this one instance, government officials only manumitted a handful of men through 1748, and they did so on an individual basis because they believed that freeing

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<sup>9</sup> See for example: Robert Olwell, “Becoming Free: Manumission and the Genesis of a Free Black Community in South Carolina, 1740-90,” in *Against the Odds: Free Blacks in the Slave Societies of the Americas*, ed. Jane Landers (London: Frank Cass, 1996), 1-19; David Barry Gaspar, “‘To Be Free is Very Sweet’: The Manumission of Female Slaves in Antigua, 1817-26,” in *Beyond Bondage: Free Women of Color in the Americas*, ed. David Barry Gaspar and Darlene Clark Hine (Urbana: University of Chicago Press, 2004), pp. 60-81; Jerome S. Handler and John T. Pohlman, “Slave Manumissions and Freedmen in Seventeenth-Century Barbados,” *The William and Mary Quarterly*, Third Series 41, no. 3, (1984), 390-408; and James H. Sweet, “Manumission in Rio de Janeiro, 1749-54: An African Perspective.”

<sup>10</sup> John Donald Duncan uses the terms private and public to describe manumissions in colonial South Carolina, but he does not analyze the significance between the two different types of manumission. Duncan, “Servitude and Slavery in Colonial South Carolina, 1670-1776,” (Ph. dissertation, Emory University, 1971), pp. 377-405.

<sup>11</sup> Some of the freed slaves may have been women and children. Ramsey, *The Yamasee War*, p. 165.

the men benefitted the colony. In all cases where the specific reason the government freed the slave is available, the slave acted in a way that helped colonial security. These manumissions point to slaveholders' reliance on slaves acting as loyal members of the social and legal order. They also reveal how unusual one's actions had to be in order to have the chance of being manumitted.

Most public manumissions clearly relate to slaveholders' desire to enhance South Carolina's safety by encouraging slaves to act and behave in a particular way, as in the case of the slave July.<sup>12</sup> Likewise, the legislature freed the slave Arrah in 1747 after he remained loyal to the colony during wartime. French enemies captured Arrah, but after a long ordeal, he voluntarily returned to South Carolina and petitioned for his freedom. The legislature not only freed Arrah but also took the unprecedented step of creating a law that freed him and other slaves in similar situations. In this case, the legislators worried that slaves who wound up in enemy territory, especially Spanish Florida, would work against British interests.<sup>13</sup>

The legislators of South Carolina demonstrated their commitment by freeing at least nine more slaves from the enactment of the law that freed Arrah in 1747 through 1748. Eight of those men returned to South Carolina from Florida in 1748. Shortly thereafter, they had their freedom confirmed and recorded by the colonial government.<sup>14</sup> A ninth manumitted man, Benjamin Elden, had his freedom documented by the Secretary of the Province a mere three weeks after the law's ratification, indicating that news of the law

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<sup>12</sup> Easterby, *The Journal of the Commons House of Assembly, September 12, 1739-March 26, 1741*, pp. 63-64.

<sup>13</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, pp. 419-420.

<sup>14</sup> South Carolina, *South Carolina Miscellaneous Records of the Secretary of the Province, Main Series, Vol. GG*, pp. 233-234, 354-355, South Carolina Department of Archives and History.

spread quickly.<sup>15</sup> Elden already had returned to South Carolina before the legislature ratified the law that freed Arrah. Happily for Elden, he found out about the law, secured witnesses who verified his escape from enemy territory, and had his freedom recorded. But enemies did not necessarily have to capture slaves in order for them to receive their freedom.<sup>16</sup> In practice, slaves whose British owners sold them to the Spanish in St. Augustine also became free when they returned to South Carolina.<sup>17</sup> This last point underscores lawmakers' desire to minimize the number of slaves who worked for imperial rivals.

Some cases of public manumission do not specify why enslaved men became free, but contextual evidence suggests that government officials rewarded them because they acted meritoriously. In 1706, the Commons House of the legislature voted to free John Corker after its members considered his petition "relateing to his freedom."<sup>18</sup> They debated whether Corker should be free "according to the Act," yet the legislative journals never mention to which Act the House referred.<sup>19</sup> It may have related to the 1701 comprehensive slave Act, which declared that the South Carolina government would consider "all Negroes,

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<sup>15</sup> Scholarship that discusses slave communication networks include: Julius S. Scott, "The Common Wind: Currents of Afro-American Communication in the Era of the Haitian Revolution" (Ph.D dissertation, Duke University, 1986); David Cecelski, *The Waterman's Song: Slavery and Freedom in Maritime North Carolina* (Chapel Hill and London: University of North Carolina Press, 2001); and W. Jeffrey Bolster, *Black Jacks: African American Seamen in the Age of Sail* (Cambridge, MA and London: Harvard University Press, 1997). Contemporary sources from South Carolina also point to how slaves communicated amongst each other, and how certain slaves served as conduits of information. See: Chapter Two, footnote 84.

<sup>16</sup> South Carolina, South Carolina Miscellaneous Records of the Secretary of the Province, Main Series, Vol. GG, pp. 233-234.

<sup>17</sup> For instance, see *Ibid.*, pp. 354.

<sup>18</sup> A.S. Salley, ed., *Journal of the Commons House of Assembly of South Carolina November 20, 1706-February 8, 1706/7* (Columbia: Printed for the Historical Commission of South Carolina by The State Company, 1939), p. 12.

<sup>19</sup> *Ibid.*, p. 15.

mulattos, & Indians” as slaves, except those “Negroes mulattos, mustees, & Indians” that became free because of “some particular merit” or who could “prove they ought not to be sold for slaves.”<sup>20</sup> This information implies that the South Carolina colonial government created an avenue for slaves to petition or sue for freedom, based on exemplary behavior or previous freedom.<sup>21</sup> In another case of manumission that contains only minimal information, “a Negro man” named Tom became free after petitioning the South Carolina Court of Common Pleas in 1724, “pursuant to the Act of General Assembly.”<sup>22</sup> Two years earlier, the legislature passed an Act that permitted slaves to petition for freedom based on “some particular merit.”<sup>23</sup>

Public manumissions freed “Negro” men. For these black men, meritorious actions that served the colony’s security enabled them to gain legal freedom; they did not receive special treatment due to generosity stemming from direct blood ties or sexual relations.

Arrah’s former owner, Hugh Cartwright, consented to Arrah’s public manumission only if

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<sup>20</sup> L. H. Roper, “The 1701 ‘Act for the better ordering of Slaves’: Reconsidering the History of Proprietary South Carolina,” *William and Mary Quarterly*, Third Series 64, no. 2 (2007): pp. 395-418, 408.

<sup>21</sup> Freedom suits have gained the most attention from late-eighteenth and nineteenth-century historians. See: Emily Blanck, “Seventeen Eighty-Three: The Turning Point in the Law of Slavery and Freedom in Massachusetts,” *The New England Quarterly* 75 (2002): pp. 24-52; Kelly Marie Kennington, “River of Injustice: St. Louis’s Freedom Suits and the Changing Nature of Legal Slavery in Antebellum America” (Ph.D. Dissertation, Duke University, 2009); Michael L. Nicholls, “‘The Squint of Freedom’: African-American Freedom Suits in Post-Revolutionary Virginia,” *Slavery & Abolition* 20 (1999): pp. 47-62; Judith Kelleher Schafer, *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* (Baton Rouge: Louisiana State University Press, 2003); Sue Peabody, “‘Free upon Higher Ground’: Saint-Domingue Slaves’ Suits for Freedom in US Courts, 1792-1830,” in *The World of the Haitian Revolution*, ed. David Patrick Geggus and Norman Fiering (Bloomington: Indiana University Press, 2009), pp. 261-283.

<sup>22</sup> Tom’s certificate of freedom appears in the 1751 volume of the Miscellaneous Records of the Secretary of the Province, yet he petitioned the Court of Common Pleas in 1724 and Chief Justice Thomas Hepworth wrote and signed Tom’s certificate of freedom in 1725. I have been unable to find this case in the Court of Common Pleas records. Miscellaneous Records of the Secretary of the Province, Main Series, Vol. II, 1751-1754, pp. 133-134, South Carolina Department of Archives and History.

<sup>23</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 371.

the colonial government granted Cartwright compensation for his property loss. Yet Cartwright freed two other slaves upon his death—a mulatto boy named Dick and a mulatto girl named Salley.<sup>24</sup> Cartwright also privately manumitted another slave, Francis Cartwright, “in consideration of the love, favour, and affection” he had toward Francis.<sup>25</sup> Slaveholders rarely conveyed such fondness when writing manumissions, especially when a master freed a male slave. Hugh never referred to Francis’s skin color, but Francis may have been his mulatto son. Francis was the only one of Hugh’s slaves to share his last name, and he received manumission unconditionally without having to pay for it. In any case, the available information about the manumissions of Cartwright’s other slaves implies that Arrah was the only one who was not a mulatto.

Most cases of public manumission suggest that military and political conflict set up the conditions for men to gain freedom. The government’s wholesale emancipation of Tuscaroras slaves during the early-eighteenth century occurred because of such conflict. During the Yamasee War, members of the legislature realized that it was bad policy to enslave Tuscaroras allies. William Ramsey, an expert on the Yamasee War, argues that the emancipation of the Tuscaroras would have been “unthinkable in peacetime.”<sup>26</sup> The slave July earned his freedom because of the upheaval that occurred during the Stono slave rebellion. The slave Arrah and the nine other men who gained freedom shortly after him would have never become free if Britain was not engaged in warfare with Spain and France

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<sup>24</sup> South Carolina, South Carolina Miscellaneous Records of the Secretary of the Province, Main Series, Vol. II, pp. 205-206.

<sup>25</sup> Ibid., pp. 356.

<sup>26</sup> Ramsey, *The Yamasee War*, p. 165.

in the 1740s. The tensions that persisted between the imperial rivals caused white South Carolinians to feel vulnerable if their slaves ended up in enemy territory. Like foreign enemies, “domestic” enemies posed a threat to South Carolina’s stability. In the wake of the devastating 1740 Charlestown fire, one writer lumped foreign enemies and slaves together. The government placed an embargo at Charlestown on all ships for thirty days because “it is not known how far this Accident may encourage our *Negroes and other Enemies* to form some dangerous Scheme.”<sup>27</sup> The constant war-induced and other tensions that afflicted South Carolina pushed government officials to free loyal slaves occasionally because it depended on them during times of upheaval.

South Carolina’s policy of freeing a few slaves in recognition of their service and loyalty to the colony was probably part of a larger colonial phenomenon. Jamaica, another British slave society plagued by internal and external conflict, had a law that offered freedom to slaves who deserted from “the Enemy.” Almost at exactly the same time as Arrah and the other men in South Carolina became free, Governor Edward Trelawny freed at least fourteen male slaves in recognition of their success in fleeing from an imperial enemy and making their way to Jamaica.<sup>28</sup> Trelawny provided each man with an individual certificate of freedom, in which he affirmed that “an Act of this Island” declares that slaves who “desert the Enemy are deemed free.” This parallel occurrence suggests that colonial officials in New World British settlements other than South Carolina recognized the strategic advantage of

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<sup>27</sup> Emphasis is mine. A Letter from Charles Town in South Carolina, Nov. 22, 1740, *Gentleman’s Magazine*, Vol. 11, January 1741, p. 55, James Glen (1701-1777), 6 MSS 25 May 1738- [c. 1750], Folder 1, James Glen Papers, 1738-1777, South Caroliniana Library, University of South Carolina, Columbia, South Carolina.

<sup>28</sup> Trelawny freed the men between November 1747 and October 1748. Jamaica, Manumission of Slaves, 1B/11/6/5, pp. 5-7, 11-14, Jamaica Archives and Records Department, Spanish Town, Jamaica.

keeping their slaves within the British Empire's domain. Moreover, those officials were willing to offer legal freedom to slaves in order to entice them to return to British colonies.

South Carolina legislators issued rewards other than manumission to slaves who demonstrated their fidelity during times of crisis. The slave July received clothing items because of his valiant actions during the Stono rebellion. Other slaves benefitted personally from the rebellion, too. In the aftermath of the insurrection, white colonists rewarded nearly as many slaves for "faithful Services" and "Fidelity" as they killed during and immediately after the revolt.<sup>29</sup> Approximately forty slaves died as a result of the rebellion. The South Carolina legislature rewarded material goods and money to at least thirty-two slaves and nineteen Indians for their actions during and after the uprising. Numerically, the insurrection benefitted more non-whites than it harmed. Most male slaves received "a Suit of Clothes, Hat, Shirt, a Pair of Shoes and a Pair of Stockings," while the women got "a Jacket and Petticoat, a Shirt, a Pair of Stockings and a Pair of Shoes." Loyal slaves also received cash disbursements in the amount of twenty pounds, ten pounds, or five pounds, depending on their actions.<sup>30</sup>

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<sup>29</sup> Easterby, *The Journal of the Commons House of Assembly, September 12, 1739-March 26, 1741*, pp. 64, 65.

<sup>30</sup> *Ibid.*, pp. 64, 65, 377. Mark M. Smith's edited volume about the Stono rebellion is an excellent source to examine the differing counts of deaths during the rebellion. Although the sources vary, in general, historians accept that approximately 40 slaves and 20-24 free whites died. See Mark M. Smith, ed., *Stono: Documenting and Interpreting a Southern Slave Revolt* (Columbia: University of South Carolina Press, 2005).

By the 1730s, the vast majority of slaves in South Carolina were of African descent. Thus, references to Indians indicate a free status, although white colonists still considered Indians inferior to people of European descent. White colonists referred to Indian slaves if an Indian was enslaved, whereas they presumed all "Negroes" were slaves, unless noted otherwise. For the rise and fall of South Carolina Indian slavery, see: Alan Galloway, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717* (New Haven, CT: Yale University Press, 2002); Ramsey, *The Yamasee War*.

Rewarding slaves after the Stono rebellion is analogous to what Diana Paton argues about slave punishment in eighteenth-century Jamaica. Paton claims that Jamaican lawmakers legitimated whites' punishment of slaves by criminalizing slave resistance, thus turning outright violence into acceptable punishment that occurred within a system of law.<sup>31</sup> The action of rewarding certain slaves affirmed lawmakers' beliefs about proper slave behavior. In contrast to the rebellious slaves who were executed, lawmakers rewarded the slaves who protected their masters and helped subdue the revolt. Giving gifts through legal avenues underscored the inferior legal and social positions of the slaves in society.

The motive in rewarding individual slaves was to persuade more slaves and free Indians to act in a similar way. Legislators assumed that at least some slaves would resist their condition. Lawmakers tried to mitigate the negative consequences of resistance not only by delineating permissible methods of slave punishment through slave laws but also by encouraging slaves to remain loyal by granting rewards. After the Stono rebellion, the legislature determined that future rebellions might be prevented by rewarding slaves who "had been any Ways serviceable against the Negroes in the late Insurrection."<sup>32</sup> The legislature considered these rewards very carefully and even decided to increase the money given to two Indians because it deemed the original amount proposed by the lower house of the legislature insufficient. After considering a recommendation from the Upper House of the legislature, the Commons House of the legislature agreed to increase the reward to Titus

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<sup>31</sup> Diana Paton, "Punishment, Crime, and the Bodies of Slaves in Eighteenth-Century Jamaica," *Journal of Social History*, 34, no. 4 (2001): pp. 923-954.

<sup>32</sup> Easterby, *The Journal of the Commons House of Assembly, September 12, 1739-March 26, 1741*, p. 63.

and Simon to fifty pounds and twenty-five pounds, respectively. “It is our Opinion,” the Upper House of the legislature stated, “that the Indians should be encouraged in such Manner as to induce them always to offer their Service whenever this Government may have Occasion for them.” Members of the Commons House of the legislature agreed without substantial debate to raising the rewards.<sup>33</sup> It determined which slaves and Indians the government should recognize and then recommended to the Upper House of the legislature that the awards to the slaves “should be given as soon as possible and before the Christmas Holy Days.” Customarily, slaves received time off for the holiday, which whites feared gave them more opportunity to plot and implement an insurrection.<sup>34</sup> Lawmakers hoped that rewarding slaves prior to the holiday would lessen any chance of additional rebellions. Perhaps slaveholders believed that issuing the rewards would provide ample incentive for slaves to report a slave conspiracy or to defend whites in case of another revolt.<sup>35</sup>

Statutory law and official proclamations sanctioned rewards. The government took these measures hoping to reduce the frequency of incidents that colonial officials considered problematic, such as slave desertion and trading with slaves. As early as 1691, a statute offered a reward to slaves who captured runaway slaves.<sup>36</sup> Later comprehensive slave Acts

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<sup>33</sup> Ibid., pp. 65, 76, 82, 83, 85.

<sup>34</sup> Ibid., p. 69, 86.

<sup>35</sup> Shortly after the Stono rebellion, a slave reported a planned revolt. An enslaved man named Peter notified whites of an “Intended Insurrection” in Berkley County. In August 1740 the Commons House of Assembly decided to give Peter “a Suit of Cloths [sic], Hat, Shoes and Stockings, and 20 Pounds in Cash” in acknowledgement of his “Services” to the colony. Ibid., p. 377, 378.

<sup>36</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 345.

offered similar rewards.<sup>37</sup> The 1735 comprehensive slave Act acknowledged the dangers in apprehending runaways and established procedures for determining the support a person, free or slave, would receive if that person became “wounded, maimed, or disabled,” while pursuing a runaway slave.<sup>38</sup> Financial incentives sometimes encouraged slaves to capture or kill free Indians. In 1735, Lieutenant Governor Thomas Broughton issued a proclamation offering to any “Freeman or Slave” fifty pounds South Carolina currency for killing a Tuscarora Indian and sixty pounds local currency for capturing and delivering a Tuscarora Indian to the colonial Treasurer.<sup>39</sup> Lawmakers worried that people purchased stolen goods from slaves, so the legislature attempted to eliminate the practice of trading with slaves. A law stipulated that enslaved informants would receive monetary awards if they identified white people buying items from slaves.<sup>40</sup>

In contrast to public manumissions and rewards that stemmed from slaves’ exemplary behavior to the colony, private manumissions shed light on other means by which slaves obtained and experienced legal freedom. In Robert Olwell’s examination of the Miscellaneous Records of the Secretary of the Province in South Carolina during the period 1737-1785, he analyzed 379 private manumissions and drew conclusions about who became

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<sup>37</sup> For instance, see General Assembly, Acts, Bills, and Joint Resolutions, 1691-2004, Volume 6, Governor Archdale’s Laws, 1696, p. 64, South Carolina Department of Archives and History; and McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 363, 405. In these three comprehensive slave laws from 1696, 1712, and 1740, respectively, free Indians were also eligible for receiving a reward for apprehending a runaway slave.

<sup>38</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 392.

<sup>39</sup> *South Carolina Gazette*, June 14, 1735.

<sup>40</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 367.

manumitted and why. His analysis, like others about manumission in the British colonial context during the era of slavery, reveals that women were more likely to become free than men, and that mulattos were more likely to gain freedom than blacks. Olwell also notes that sexual exploitation, and perhaps legitimate mutual affection between masters and female slaves, prompted manumission.<sup>41</sup> In one case, a man freed his enslaved wife. It also appears that slaves became free for what masters considered loyal service, such as when women raised the master from infancy. Masters also occasionally acknowledged slave children as their progeny.<sup>42</sup>

Olwell's study reveals that private manumission could have an insidious side. Although a master had to be willing to free a slave, twenty-eight percent of the time (105 manumissions), the slave had to purchase him or herself. Self-purchase was a precarious way to gain manumission because nothing prevented a master from pocketing the slave's hard-earned money without granting him or her freedom; as property, slaves had no legal protection to money they may have earned out of their industriousness. No laws existed that enforced agreements made between masters and slaves. Also, many masters only granted a slave conditional manumission, meaning that a slave became and stayed free only if he or she fulfilled a specific set of requirements. Alternately, some masters promised slaves

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<sup>41</sup> Considering sexual relations between masters and female slaves as anything but exploitive rarely occurs in the North American context, but scholars of the Caribbean often have a more favorable view of such relations. For an excellent overview of this tendency and the possible problems associated with only considering female slaves as victims, see: Trevor Burnard, "Do Thou in Gentle Phibia Smile" Scenes from an Interracial Marriage, Jamaica, 1754-86," in *Beyond Bondage: Free Women of Color in the Americas*, pp. 82-105, 84-85.

<sup>42</sup> Olwell, "Becoming Free."

postmortem manumission.<sup>43</sup> Masters would receive all that they could from the slave, but the heirs would not benefit from the slave's service. In these cases, the slave had great incentive to please and obey the master, but the heirs faced minimal financial consequences because they frequently inherited many slaves.

Examples of private manumissions dating from the era before Olwell's study compliment his findings. In 1696, Nicholas Trott freed a hard-working slave who labored on Trott's ship, *The Providence*. Trott manumitted the enslaved "Negro ... for services done me and that he continue on board my ship." After the vessel completed its transatlantic voyage, the man had his freedom recorded in 1699.<sup>44</sup> In one noteworthy case, Joseph Pendarvis not only freed his black slave, Parthenia, and her six children but also willed his property to them, indicating that he was passing his possessions down to his children.<sup>45</sup> Pendarvis manumitted Parthenia and their children in 1735, but by the time his will was recorded one year later they had another child together, and Parthenia had died. Pendarvis prudently designated trustworthy guardians for his seven children until they reached adulthood, upon which time they inherited all his possessions, including land and slaves. As a result of Pendarvis's care in providing for his family, Joseph and Parthenia's children became prominent South Carolina slaveholders. Their oldest son, James, owned 155 slaves at the time of his death in 1798, and

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<sup>43</sup> Olwell, "Becoming Free."

<sup>44</sup> Caroline T. Moore, ed., *Records of the Secretary of the Province of South Carolina, 1692-1721* (Columbia, SC: R.L. Bryan Company, 1978), p. 172.

<sup>45</sup> Joseph Pendarvis to Parthenia, Miscellaneous Records of the Secretary of the Province, Main Series, Vol. AB, pp. 90-92, South Carolina Department of Archives and History; Will of Joseph Pendarvis, Record of Wills, (microfilm) Charleston Country, South Carolina, Vol. 3, 1732-1737, pp. 240-242, South Carolina Department of Archives and History.

according to historian Larry Koger, James was “the largest acknowledged colored slaveholder in South Carolina.”<sup>46</sup>

The gendered nature of private manumission points to the especially precarious position female slaves needed to be in if they had any chance of becoming manumitted. Scholars speculate that men freed their slave mistresses, which clearly seems to be the case between Joseph Pendarvis and Parthenia. Generally, a woman’s chance of becoming free increased if the master knew her well, which typically occurred only if she worked as a domestic. Domestic service often included sexual services. As Trevor Burnard asserts, “to be a house slave was a mixed blessing.”<sup>47</sup> Laboring as a house slave offered the woman an enhanced status but also subjected her to greater master oversight and more risk of sexual exploitation than if she had been a field worker.<sup>48</sup> In one manumission in South Carolina, Thomas Thompson freed Nany. His knowledge of Nany motivated him to manumit her. Thompson wrote that he was freeing Nany “For diver Causes and Considerations,” but “more Especially from a true Sence (sic) I have of ... [her] Faithfull Service and honest Behaviour.”<sup>49</sup> The former phrase is formulaic in private manumissions, but the latter

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<sup>46</sup> Larry Koger, *Black Slaveowners: Free Black Masters in South Carolina, 1790-1860* (Columbia: University of South Carolina Press, 1985), p. 109.

<sup>47</sup> Trevor Burnard, “Do Thou in Gentle Phibia Smile’: Scenes from an Interracial Marriage, Jamaica, 1754-86,” pp. 82-105, 91.

<sup>48</sup> *Ibid.*, esp. pp. 88-92.

<sup>49</sup> Thomas Thompson to Nany, Miscellaneous Records of the Secretary of the Province, Main Series, WPA Transcripts, Vol. 75, p. 54, South Carolina Department of Archives and History.

expression is unique among South Carolina's private manumissions to 1747, thus implying that Thompson knew Nany extremely well.<sup>50</sup>

Some people experienced freedom only with strict conditions set forth by the owner, thus highlighting the quite limited nature of freedom for some manumitted slaves. A conditional manumission may have required a person to serve a master for a set number of years before becoming legally free, to pay an annual fee, or even to live in a certain location. When Joseph Pendarvis willed everything to his formally enslaved children, he also freed two elderly slaves, Sambo and Phillis, under the condition that they remain on the plantation with Pendarvis's children. He also required Sambo and Phillis each to pay an annual five-shilling fee to the will's executors. For other slaves, the promise of conditional manumissions enticed them to serve their masters loyally while still enslaved. In 1743, Peter Benoist wrote a conditional manumission for Caesar, in acknowledgement of how Caesar "has always Demean'd and Behaved himself as a good faithfull and Obedient Slave." Moreover, Caesar helped Benoist succeed financially because "by his Care and Diligence in my business and Occupation [he] has been the means of increasing my Worldly interest and Estate." For such loyal servitude, Benoist promised Caesar that he would free him upon his

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<sup>50</sup> The phrase "for diverse causes and considerations" appeared in manumissions from colonial times and beyond. Indicative of its prevalence in manumissions, one scholar has even titled an article using the phrase. Stephen Whitman, "Diverse Good Causes: Manumission and the Transformation of Urban Slavery," *Social Science History* 19 (1995): pp. 333-70.

death.<sup>51</sup> Another manumission dating from 1746 specified that if a slave served a master well for a certain number of years, then the slave would receive his freedom.<sup>52</sup>

As these manumission cases demonstrate, manumission came with a literal or figurative price for nearly all South Carolina slaves. Some slaves who received public manumission risked their lives escaping imperial enemies, such as the men who became free after fleeing Florida. Others worked tirelessly to accumulate enough capital to purchase their freedom. In one case, Frances Trent was already living in St. Augustine in 1738 when she paid Caleb Davis 600 pieces of eight in order to secure her freedom from him.<sup>53</sup> Other slaves only gained manumission after working as a house servant under greater supervision than fieldworkers. Once manumitted, newly freed slaves may have still endured oversight from heirs who resented that the slave obtained his or her legal freedom. Such a situation could have occurred if a slave received a conditional postmortem manumission and the former owner required the slave to reside on his or her plantation. This happened to Sambo and Phillis. Freed slaves may have also faced emotional turmoil knowing that they became free, yet their friends and family—including their spouses and children—remained enslaved. In the unusual but telling case from 1737 of the married couple “free Sampson” and Swarry,

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<sup>51</sup> Peter Benoist to Caesar, Miscellaneous Records of the Secretary of the Province, Main Series, WPA Transcripts, Vol. 75, p. 239, South Carolina Department of Archives and History.

<sup>52</sup> In this instance, William Stone indicated that he would free Tartar after eight years, if Tartar served him well. True to his word, Stone freed Tartar even earlier than he had promised, after six years. William Stone to Tartar, Miscellaneous Records of the Secretary of the Province, Main Series, Vol. FF, p. 434, South Carolina Department of Archives and History.

<sup>53</sup> Caleb Davis, Miscellaneous Records of the Secretary of the Province, Main Series, WPA Transcripts, Vol. 75, p. 338, South Carolina Department of Archives and History.

Sampson had purchased Swarry from Ann Elliott. Immediately after the purchase, Sampson declared that Swarry “Shall be a free Woman,” indicating that he purchased his wife and then freed her. The couple intended to live together freely as husband and wife, but colonial officials only permitted them to do so after they formally agreed to a stipulation: if the pair separated, then Swarry would revert to being a slave.<sup>54</sup> In this way, Swarry was only permitted to be free if she was bound to her husband through marriage. Clearly, manumission may have benefitted a person only marginally. This characterization is supported by studies about manumission in other colonial locations.<sup>55</sup> As free people, most manumitted probably lived out their lives in very constrained circumstances.

Lawmakers singled out blacks for regulation, which profoundly affected how both free and enslaved blacks experienced life. Despite the legality of manumission, the slave laws contained an assumption that all people of African or Indian descent were slaves, unless such people could prove otherwise.<sup>56</sup> That belief was exhibited clearly in the titles of

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<sup>54</sup> Free Sampson and Swarry his Wife, Miscellaneous Records of the Secretary of the Province, Main Series, WPA Transcripts, Vol. 75, pp. 3-4, South Carolina Department of Archives and History.

<sup>55</sup> David Barry Gaspar analyzes a remarkable document about the life conditions of manumitted women from Antigua and points to the tenuous nature of freedom for freed women. Although many freed women lived “comfortably,” others did not. No parallel document exists for South Carolina, but anecdotal evidence implies that manumitted women and men in South Carolina also experienced a range of conditions, varying from despair to being land and slave owners. In South Carolina’s later colonial period, there is some documentation of free women owning land, such as Judith West, also known as Free Judy. In the earliest decades, however, little specific and individualized information is known about freed men or women other than information that can be gleaned from manumission records. Occasionally, a legal document referred to a “free Negro,” such as John Primatt, who owned land, or Glasgow, “a freed Negro” who owned at least one slave. Gaspar, “To Be Free is Very Sweet,” Clara A Langley, *South Carolina Deed Abstracts 1719-1772 Vol. III, 1755-68, Books QQ-H3* (Easley, SC: Southern Historical Press, 1984), p. 30; Charles Codner, Memorials Book 3, p. 162, South Carolina Department of Archives and History; Martha Logan to Glasgow, Miscellaneous Records of the Secretary of the Province, Main Series, Vol. EE, p. 423, South Carolina Department of Archives and History.

<sup>56</sup> An exception existed for Indians who were on good terms with the South Carolina government. Colonists recognized them as free. McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 398.

comprehensive slave Acts, which commonly referred to “Negroes and *Other Slaves*.”<sup>57</sup> The slave laws also conflated race and legal status by mentioning “negroes or slaves.”<sup>58</sup> The 1712 comprehensive slave Act asserted that South Carolina could not function without “the labor and service of negroes and other slaves,” pointing to white colonists’ assumption that all “negroes” were slaves.<sup>59</sup> The Act, along with later comprehensive slave Acts, acknowledged the presence of free people of color within the colony but determined that the South Carolina Governor and Council would decide whether the person was legitimately free according to South Carolina custom and laws.<sup>60</sup> A statutory measure from as early as 1722 served as a constant threat to freed slaves. The statute regulated manumission, dictating that a freed slave must leave the colony within twelve months of his or her freedom, or face reenslavement.<sup>61</sup> These measures suggest that manumitted slaves faced the threat of reenslavement despite their free legal status.

The 1740 comprehensive slave Act was the first of its kind to refer to “free negroes” separately from slaves except when the laws addressed manumission, yet the Act’s increased acknowledgement of free people of color did not benefit them. In that Act, the legislature

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<sup>57</sup> Emphasis is mine.

<sup>58</sup> For example, see *Ibid.*, pp. 355-7, 362-363, 367, 368, 372, and 380.

<sup>59</sup> Emphasis is mine. *Ibid.*, p. 352.

<sup>60</sup> *Ibid.*, p. 352, 371, 385. In later comprehensive slave laws, it was not always the governor or council who decided whether a person was legitimately free; sometimes courts made those decisions.

<sup>61</sup> The exception to this law was if both Houses of Assembly approved and confirmed a person’s free status, which it occasionally did. I have never found any evidence that whites reenslaved manumitted slaves for remaining in the colony for more than a year. I am grateful to Peter Wood for his thoughts on this matter, and for sharing with me that he also never found evidence of whites reenslaving manumitted slaves based on this statute. *Ibid.*, p. 384.

determined that “any slave, free negro, mulattoe, Indian, or mustizo [person of Indian and European descent]” who committed arson, poisoning, or stealing a slave with the intent to take him or her out of the colony “shall suffer death as a felon.”<sup>62</sup> Free or slave, a person of African (or Indian) descent faced the death penalty for committing those crimes. A free person of color also ran the risk of being sold at public auction if the authorities determined that the person harbored a runaway.<sup>63</sup> No such penalty—being sold into slavery—existed for white people convicted of the same crime because white colonists reserved slavery for people of color.

Lawmakers conflated race and caste when regulating whites but in a remarkably different way than they did for people of African descent. Colonial officials assumed all whites were free, unless there were explicit reasons to believe otherwise, namely, indentured servitude. In cases of crime, the 1744 Act regulating white servants declared that “where a free man is punishable by fine,” a servant “shall receive corporal punishment.”<sup>64</sup> Other laws targeted specific classes of people, such as “impotent or burdensome people,” “masters and apprentices,” “hawkers and peddlers,” soldiers, privateers, and pirates.<sup>65</sup> In other words, lawmakers regulated fellow white colonists based on occupation or class, not just on the basis of European descent.

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<sup>62</sup> Ibid., p. 402.

<sup>63</sup> Ibid., p. 407.

<sup>64</sup> Cooper, *The Statutes at Large of South Carolina... Vol. III*, p. 627.

<sup>65</sup> Thomas Cooper, ed., *The Statutes at Large of South Carolina; Edited Under the Authority of the Legislature, Vol. II, Containing the Acts from 1682 to 1716, Inclusive* (Columbia, SC: Printed by A. S. Johnston, 1837), pp. 7, 25; Cooper, *The Statutes at Large of South Carolina... Vol. III*, pp. 23, 41, 487, 491, 544.

South Carolina legislators regulated unfree white servants, but the number of servants affected by the laws paled in comparison to those affected by the slave laws. Only a relative handful of white servants lived in South Carolina by the 1730s and 1740s, whereas there were more than 39,000 black slaves there in 1740.<sup>66</sup> Comprehensive slave Acts stand alone in their detailed prescriptions or regulations for the treatment of slaves, the governance of slavery and, the number of people they affected.

How free people of color faced criminal prosecution was perhaps most different from how whites experienced freedom. The 1740 comprehensive slave Act determined that free Indians and slaves could testify against free people of color, which they could not do against white people. Moreover, accused free people of color underwent trial in a slave court, rather than the courts used for whites.<sup>67</sup> With the 1740 comprehensive slave Act, no difference existed between a free person of color and a slave in the court for trying a defendant.

A rare occurrence reported in the *South Carolina Gazette* points to the circumscribed conditions free people of color faced beyond the formal legal system. In 1736, the newspaper reported that “a Free Negro Fellow” named Johnny Holmes had run away. Holmes, who was “bred a Wheelwright and Carpenter,” had been an “indented Servant” to Nicholas Trott, and was “well known” in South Carolina. Trott, however, sold Holmes’s indenture to a man living in Savannah, Georgia. This situation points to the difficulties some

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<sup>66</sup> For an account of indentured servitude, see: Warren B. Smith, *White Servitude in Colonial South Carolina* (Columbia: University of South Carolina Press, 1961). Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 Through the Stono Rebellion* (New York: W.W. Norton, 1974), p. 153.

<sup>67</sup> McCord, *The Statutes at Large of South Carolina... Vol. VII*, p. 402.

free blacks faced. Was Holmes simultaneously a free person and a bound laborer at the mercy of a master? At best, his situation reflected that of a white indentured laborer, not a free white person. The new master would have most likely required Holmes to move away from South Carolina to his home in Georgia. That situation may have prompted Holmes to abscond, especially if he considered South Carolina to be home.<sup>68</sup> For a black man like Holmes, freedom carried considerably different meaning than it did for his free white master.

Some South Carolina whites believed that free people of color created trouble for the colony and that there should only be a small number of them living there. Examining Hugh Cartwright's actions regarding his (former) slave, Arrah, illustrates this point. In a 1747 petition to the legislature, Cartwright communicated his negative views about free people of color. Cartwright claimed that Arrah was still his rightful slave, and he suggested to the legislature that Arrah would become a nuisance to South Carolina society should he become legally free. After stating that Arrah was "always sure of civil Treatment" as Cartwright's slave, the petitioner then suggested the problematic nature of granting Arrah freedom. The colony, according to Cartwright, would be better off having Arrah as a slave, "than by adding him to the Number of those, who are already become too numerous, and who are frequently the Authors of much Disorder."<sup>69</sup> Despite Cartwright's assertion, very little documentary evidence indicates that free people of color commonly committed crimes or caused "disorder." The *South Carolina Gazette* virtually never reported crimes committed by

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<sup>68</sup> *South Carolina Gazette*, Nov. 6, 1736.

<sup>69</sup> J.H. Easterby, ed., *The Journal of the Commons House of Assembly, September 10, 1746- June 13, 1747* (Columbia: South Carolina Archives Department, 1958), p. 160.

free people of color, even though it regularly described other criminal activity. Nevertheless, whites clearly felt apprehensive about the influence of free people of color, even if the evidence of their “misbehavior” was nonexistent.<sup>70</sup>

A letter written to the *South Carolina Gazette*'s editor highlights the ways in which some whites felt challenged by free people of color who managed to succeed in the colony. The author critiqued mulattos, but more specifically, “the Molatto Gentleman.” The letter reflected the presence of a small population of free people of color and the backlash against them if they became financially successful. The author asserted that he was nothing more than an “ordinary Mechanick” who knew his “Station” in life. He expressed his uneasiness with mulattos. He critiqued mulattos generally, but focused his attention on “the Molatto Gentleman.” Asserting that mulattos “are seldom well below’d either by the Whites or the Blacks,” the author lambasted mulatto men who assumed the position and demeanor of gentlemen, whom he considered “*the true Gentry*.” Seeing the identities of “molatto” and “gentleman” as incongruent, the author hypothesized that mulatto gentlemen were like “*half Gentry*,” newly-rich people who imitated the established true gentry. Even more damning, he issued a vivid description of how men from his station in life viewed a mulatto gentleman: “we below cannot help considering him as a Monkey that climbs a Tree, the higher he goes, the more he shews his Arse.” He ended his letter with the final comment: “none appear to me so monstrously ridiculous as the *Molatto Gentleman*.” The author’s purported race and

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<sup>70</sup> In South Carolina’s later colonial period, whites tied free people of color to slave resistance, but I have found no verifiable claims that freed people plotted against the colony through 1747. For later episodes of free blacks who whites suspected of conspiring against the colony, see: Olwell, “Becoming Free,” p. 2; William R. Ryan, *The World of Thomas Jeremiah: Charles Town on the Eve of the American Revolution* (New York: Oxford University Press, 2010).

class amplify the critique against mulatto gentlemen. He claimed he was a mechanic and signed the letter “BLACKAMORE.” Although an educated white person almost certainly wrote the letter, the author took on the position of a black skilled laborer. In doing so, he suggested that mulatto gentlemen were targets of ridicule even from people, who according to patriarchal societal structures, were inferior to them.

Much like the comprehensive slave Acts, manumission and other rewards for slaves helped strengthen slavery. The government and individual slaveholders effectively—and implicitly—made a statement about the legitimacy of slavery by providing avenues for slaves to better their lives. The incentives that white colonists offered almost certainly prompted slaves to uncover plots or other contrivances against whites. Indeed, whites learned about slave plots through slaves, who subsequently received rewards.

Conservative measures taken by slaveholders also helped articulate the differences between, and the meanings of, slave and free. A few slaves gained legal freedom, but the atypical circumstances that led to their freedom and the constraints placed on them clearly showed everyone living in South Carolina that freedom carried different meanings for people of African descent than it did for people of European descent. Whites never faced the threat of enslavement nor did they endure the injustices of a slave court. But free blacks did. Whites commonly held dozens and sometimes even hundreds of slaves; free blacks rarely acquired more than a small plot of land or a few slaves. Jamaica Governor Edward Trelawny’s remarks quite tellingly reflect the circumstances of South Carolina because they highlight that freedom for blacks did not carry the same meaning as it did for whites.

Trelawny instructed each man that he freed, that he was “at Liberty to Get his Livelyhood in

the Same Manner *as other free Negroes do.*"<sup>71</sup> The words could not be clearer: free blacks lived under a different set of rules than free whites. Achieving freedom only marginally increased the status of people of African descent. When slaveholders in British colonial societies such as South Carolina created a group of marginalized free people of color, they made a striking statement about what freedom meant. Slaveholders and the formal legal structures they created boldly demonstrated that freedom carried an entirely different meaning for free people of color than it did for most whites.

By the 1730s and 1740s, the focus of the white colonists of South Carolina on managing and strengthening the slave regime helped link freedom to whiteness. To be sure, class and gender stratification existed within white society. Women, regardless of race, did not partake in the formal legal system in the same ways as men. They never cast a ballot, served on a jury, or held an elected or appointed government position. For men, laws created strict guidelines regarding who could serve on juries, vote, and hold office.<sup>72</sup>

Depending on where a man lived, he may have found it difficult to access certain courts because they met in Charlestown. Nevertheless, social mobility and an absence of strict legal codes enabled some white colonists to improve their lives, such as when indentured servants lived out their contracts and received a certificate of freedom and new clothes.<sup>73</sup>

The crafting of slave laws by the white ruling class through the colonial legislature, the offering of manumission and rewards, and the restricting of the activities of free people

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<sup>71</sup> Emphasis is mine. Jamaica, Manumission of Slaves, 1B/11/6/5, pp. 5-7, 11-14, Jamaica Archives and Records Department.

<sup>72</sup> Cooper, *The Statutes at Large of South Carolina... Vol. II*, pp. 682-691; Cooper, *The Statutes at Large of South Carolina... Vol. III*, pp. 2-4, 50-55, 135-140, 274-287; 541-543; 656-658, 692-693.

<sup>73</sup> Cooper, *The Statutes at Large of South Carolina... Vol. III*, pp. 14-21, 621-629.

of color, all aided in articulating who could be free and what that freedom meant. By 1747 and 1748 when the legislature of South Carolina freed Arrah and other loyal slaves, it was perfectly clear that as free blacks, these men would almost certainly lead more constrained lives than their white counterparts. The South Carolina legal system ensured it.

## Conclusion

Since the publication of Edmund Morgan's *American Slavery, American Freedom*, scholars have recognized the "American paradox"—that the rise of freedom and the commitment to equality and liberty accompanied the rise of racial slavery. The oppression of black slaves helped solidify what it meant to be free and white in colonial Virginia, and ultimately what it meant for the definition of freedom in the United States.<sup>74</sup> While Morgan's work established the relationship between slavery and freedom in terms of social and class relations, this study reveals that slavery and freedom also developed in tandem in South Carolina's legal system. Thus, slavery and freedom evolved not just in social relations but in the law as well. From South Carolina's founding through the end of this study (1747), legislators refined slavery through their enactment of laws. Through that process, they also helped define freedom.

Freedom in South Carolina did not have a universal meaning, and people of free statuses interacted with the government and legal system in varied ways. Racial background influenced the type of freedom a person experienced. When the government freed Arrah in 1747, everyone in South Carolina would have known that his freedom meant something remarkably different than the freedom experienced by a white man. Free people of color encountered legal restrictions that mimicked the constraints legislators placed on slaves. Perhaps most telling, free people of color faced criminal trials just like slaves, in the slave court without the benefit of a jury. Class status also mitigated freedom. Even for free whites,

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<sup>74</sup> Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York and London: W. W. Norton & Company, 1975).

access to the legal system often depended on financial resources and one's ability to travel to Charlestown. The freedom to participate in government, such as through voting or serving as a civil servant, hinged on wealth and property requirements. In South Carolina's later years, Rachel Klein has shown how white settlers in the backcountry developed forums for judicial proceedings because the lowcountry's centralized legal system proved itself unreachable.<sup>75</sup> In contrast, wealthy slaveholders had access to the legal system and to many privileges it ensured, such as the right to vote and hold office. As the dissertation has shown, slaveholders used their free status to their advantage by making sure the legal system reinforced the institution of slavery.

Perhaps the most visible exercise of freedom occurred when masters governed their slaves. Slaveholders were shrewd and did not waiver in their commitment to amassing wealth at the expense of slaves. Except for when slave laws specified restrictions on punishments, masters decided when, where, and how a slave got punished and for what transgression. Masters did not control all aspects of slaves' lives, but they certainly played a very strong role in determining slaves' work schedules, job tasks, clothing, mobility, and even their reproductive lives.<sup>76</sup>

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<sup>75</sup> Rachel N. Klein, *Unification of a Slave State: The Rise of the Planter Class in the South Carolina Backcountry, 1760-1808* (Chapel Hill and London: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by The University of North Carolina Press, 1990), pp. 39-41.

<sup>76</sup> Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA and London: The Belknap Press of Harvard University Press, 1998); Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004); Philip Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry* (Chapel Hill and London: Published for the Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 1998); Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 Through the Stono Rebellion* (New York: W.W. Norton, 1974).

Yet white South Carolinians of all classes experienced a much narrower vision of freedom than the “Life, Liberty, and the pursuit of Happiness” that the Declaration of Independence espoused decades later and that modern Americans associate with the term today. Tracing the legal trajectory of slavery reveals how statutory law limited both enslaved and free people. Slave laws highlight some of the realities free whites faced because of their choice to live in a slave society. Out of necessity, slaveholders relinquished some of their power and authority over their slaves for the sake of maintaining order in the colony. Free whites allowed a higher authority—the government—to mediate certain concerns regarding slaves; through the enactment of slave laws, slaveholding government officials made it everyone’s responsibility to uphold slavery. As such, slave law shaped everyone’s identity. Free whites, as residents of South Carolina, were not just responsible for their own slaves but for other people’s as well. Even individuals who did not own slaves had to help uphold slavery. Freedom was defined by the responsibilities people took on regarding slavery, such as when free white men served on slave patrols or when taxpayers financed the compensation paid to the owners of executed slaves.

Decades ago, Morgan uncovered the “American paradox,” yet this study shows that freedom *itself* was a paradox. Freedom was characterized by some of the most extreme forms of liberty one can imagine, such as the right to own and corporally punish people. But those same liberties led to restrictions in freedom. The way people lived out their free lives was directly related to slavery. Slavery defined freedom not just in the sense of an absence of servitude but also in some very basic ways that people lived day-to-day. Freedom meant arming oneself while at church. Freedom meant considering slaves when generating laws.

Freedom meant using law to define slavery and one's responsibilities to sustain the institution. Freedom meant that in times of alarm some white members of the militia had to refrain from protecting the colony from foreign enemies because those militiamen had to guard against their domestic ones. Freedom meant risking personal safety because the government charged all members of society to try to apprehend runaway slaves. Freedom meant a nagging fear that slaves may rebel at any moment, and especially during sacred days, such as Christmas. Ultimately, slavery not only gave form to freedom, but through law, it constrained it as well.

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## **Biography**

Heidi Scott Giusto was born in Youngstown, Ohio in 1981. She received her B.A. in History and Political Science from Youngstown State University's honors program in 2003. She earned a Master's degree in History and a certificate in Historic Preservation from Youngstown State University in 2004. Since 2009, she has worked as a Writing Tutor at the Thompson Writing Program Writing Studio at Duke University. While at Duke, she was fortunate to receive multiple fellowships and awards, including: the History Department Award for Summer Research (2006), the International Pre-Dissertation/Dissertation Research Travel Award (2007), the Summer Research Fellowship for Advanced Graduate Students (2008, 2010), the Aleane Webb Endowment Fellowship (2009), the Robert K. Steel Family Graduate Fellowship (2008-2009), and the Richard Watson Fellowship (2011-2012).