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## Black Slaves, Christian Servants: Race and Legal Identity in Northampton and Middlesex Counties, Virginia, 1632-1705

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Black Slaves, Christian Servants: Race and Legal Identity in Northampton and Middlesex  
Counties, Virginia, 1632-1705

A thesis submitted in partial fulfillment of the requirement for the degree of Bachelor of  
Arts in History from The College of William and Mary

by

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(Honors, High Honors, Highest Honors)

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## Introduction

The English colonists who settled the Chesapeake in the 17<sup>th</sup> century were involved in a monumental undertaking. Eventually, after about a decade, some of the perilous urgency associated with the extreme physical challenges of biological and agricultural adaptation subsided. Through the efforts of the Virginia Company of London, the stream of immigration from England began to strengthen. Although relative peace with the Indians was shattered by the massacre of 1622, the aftermath of that conflict was devastating to the Powhatan Confederacy. Some specific signs indicated that white settlement in Virginia was to become permanent: the slow but increasing trickle of women into the colony starting in 1608 and the establishment of the House of Burgesses in 1619 suggest that long-term settlement had supplanted the colonists' early plans to get rich and quickly return to England. The saving grace of the colony was tobacco.<sup>1</sup> Tobacco allowed for the permanent existence and sedentary population of Virginia. The crop was lucrative enough to promise great fortune as long as one stayed in the colony, but not quite lucrative enough to enable a colonist to become wealthy enough to make a quick return to England like sugar could do for colonists in the Caribbean. Tobacco was an extremely labor-intensive crop, and prosperous planters exploited the labor of others to tend to their fields. Virginia was firmly on a trajectory towards not only continued existence, but also territorial dominance of the region. The settlers' task then became to forge their old English institutions into systems that could provide adequate government and order in a land that had never before seen sustained English or European settlement or civilization. Law, politics, religion, labor, gender customs, and other ideas were

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<sup>1</sup> James Horn, *A Land as God Made It: Jamestown and the Birth of America* (New York: Basic Books, 2005), 34.

transported straight from England when possible and adapted to fit unique colonial needs when not, due to conditions in the colony unlike anything yet seen in England or on the European mainland.

Slavery was the aspect of colonial Virginia society that most distinguished it from England, and the institution that would come to dominate the social and economic development of the colony. It had very little legal or social precedent in English common law or customs to which colonists could look for guidance.<sup>2</sup> Although Virginia colonists saw themselves as entirely English, heirs to English culture and tradition, many of the ways in which they understood their new civilization was borrowed from the non-English Atlantic world.<sup>3</sup> The system of beliefs and attitudes that developed was always changing. One of the most dynamic areas of uniquely colonial cultural development, and one that has drawn great interest from historians for hundreds of years, is how those involved in the formation of this new society conceived of racial and ethnic differences, what their attitudes towards race were, and what factors shaped them. These attitudes were influenced by other cultures, but they became uniquely Virginian, and this unfamiliarity and need to borrow or adapt new ways of thinking presented a host of social, legal, and economic questions for the colonists. What sort of space was to be created for imported or Virginia-born slaves? What rights and protections were enslaved individuals to be afforded? To what, if anything, were their owners entitled? As one would expect of a place and time as dynamic as colonial North America, the way Virginians approached

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<sup>2</sup> John Thornton, "The Twenty and Odd Negars," (presentation, 1619 and the Making of America Conference, Norfolk, VA, September 27, 2013).

<sup>3</sup> For example, recent scholarship by April Hatfield has pointed out how English attitudes towards Africans were heavily influenced by the Iberian practice of viewing them in terms of their socioeconomic status and relationship with the Spanish and Portuguese: April Lee Hatfield, "A 'very wary people in their bargaining' or very good merchandise': English traders' views of free and enslaved Africans, 155-1650," *Slavery & Abolition* 25 (2004).

these questions and the construction of the colony's society was nuanced, and scholarly interpretations abound.

Recently, historians have explored different interpretations of the degree of “racialization” that characterized the slave system in colonial Virginia. “Racialization” is understood to mean the question of whether or not Afro-Virginians were bound to be slaves solely due to the color of their skin, or if they were able to maintain some degree of social and economic autonomy in spite of their race. Certainly, by the mid-19<sup>th</sup> century, slavery in Virginia was intensely racial; those born of African descent or imported (before 1808) were virtually always subjected to lifetime servitude and legal ownership. In contrast, the racial environment in the 17<sup>th</sup> century was much less rigid. Afro-Virginians, in the first decades after the establishment of Jamestown, were not universally understood to be slaves. They had legal standing and property rights, owning land and even other Afro-Virginians. A well-known and illustrative example of this is the life of Anthony Johnson, who was born in Angola around 1600 and transported to Virginia where he earned his freedom. He went on to own a small plantation on the Eastern Shore and to win a court case against a white colonist before dying in 1660.<sup>4</sup> Johnson's experiences would have been virtually unheard of in the 19<sup>th</sup>-century American South, a time in which enslaved people could rarely free themselves, and could only benefit from being freed by outside forces under special circumstances. Even just one generation later, Johnson would not have been able to preserve his freedom.<sup>5</sup> It is then

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<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, 2005), 5.

<sup>5</sup> Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia*, (Chapel Hill: University of North Carolina Press for the Institute of Early American History and Culture, 1996), Kindle edition.

reasonable to conclude that change occurred over the course of those two centuries—at some point, the colonial and later American (or at least Virginian) conception of slavery became increasingly race-based until it resembled the famously racist and barbaric system of the antebellum United States.

The causes, effects, and timeline of this apparent change have all been subjected to recent scholarly scrutiny, and many historians have found that contemporary legal statutes are a useful lens through which to understand slavery in the colonial Chesapeake (notable among these are Kathleen M. Brown,<sup>6</sup> Paul Finkelman,<sup>7</sup> and John C. Coombs<sup>8</sup>). Any insight that historians have made concerning the role of the law in early Chesapeake history is largely thanks to the monumental efforts of 18<sup>th</sup>- and 19<sup>th</sup>- century Virginia lawyer William Waller Hening, who transcribed and compiled all of the laws passed by the General Assembly between 1619 and 1792 into a 13 volume set known as *The Statutes at Large; Being a Collection of All the Laws of Virginia, from the first session of the Legislature in the year 1619*.<sup>9</sup> Collectively known as Hening's *The Statutes at Large*, the volumes provide an extremely useful resource upon which many historians rely heavily. In the early decades of English settlement, the colony's small population and few statutes allow *The Statutes at Large* to clearly portray the colonial legislators' efforts to dominate and regulate the lives of coerced laborers, especially Afro-Virginian slaves.

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<sup>6</sup> Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs*, 2206.

<sup>7</sup> Paul Finkelman, *Slavery and the Law*, (Madison, Wisconsin: Madison House, 1997).

<sup>8</sup> John C. Coombs, "Beyond the 'Origins Debate': Rethinking the Rise of Virginia Slavery," in Doug Bradburn and John C. Coombs, eds., *Early Modern Virginia: Reconsidering the Old Dominion*, (Charlottesville and London: University of Virginia Press, 2011), pp. 239-78.

<sup>9</sup> William Waller Hening, ed., *The Statutes at Large: Being a Collection of All the Laws of Virginia, from the first session of the Legislature in the year 1619*, 1819.

Also helpful to historians of the colonial Chesapeake are the various transcriptions of the proceedings that took place in county courtrooms. In the late 20<sup>th</sup> century, county civil cases, criminal sentencing, recounting of wills and inheritance, and other miscellaneous legal necessities have been compiled into volumes known as order books. Just as Hening's statutes provide a useful chronology of laws, the order books provide insight into individual cases in Virginia's different counties.

Much has been written, especially by Paul Finkelman, with the aim of analyzing the effects and implications of some of the statutes enacted by 17<sup>th</sup>-century legislators and the decisions handed down by justices of the peace of the same era. Notable statutes that historians have emphasized for their role in the racialization of slavery include the 1630 Hugh Davis sexual misconduct case, in which a colonist was sentenced to corporal punishment for his illicit relationship with an unspecified "Negro," the 1640 requirement of white colonists to arm themselves which has often been interpreted as a measure meant to apply unequally to whites and blacks, and the 1662 provision that Virginia newborns would inherit the legal status of their mother, which left Afro-Virginian women more vulnerable to dehumanization and sexual violence than ever before. From the order books, historians have learned of important individual cases such as the unique Casor suit of 1655, in which a dispute between a wealthy free black man and his white planter neighbor resulted in the sentencing of another black man to servitude for life.

So, the importance of many of these specific laws and cases is well-known and has been studied exhaustively. In other words, historians understand much of what the colonists and lawmakers were trying to accomplish with their legislation. The object of this paper is to analyze these same sources, but to read them differently, thus seeing them

and learning from them in a new and different light. Instead of researching how a given law changed the course of slavery in Virginia, I will study the language used in *The Statutes at Large* and the order books in Northampton and Middlesex counties, Virginia, to take the analysis a step further; attempting to reveal attitudes towards race and slavery that even the colonists themselves may not have known that they held.

This analysis will be focused on not just the general language used, but more specifically, the language that is used to refer to people. It will rely on a key assumption that, while not unreasonable, must be established in order to comfortably assert and understand the conclusions that will be drawn. This assumption is that naming conventions, taken here to mean the specific words and sequences of multiple words that describe and categorize human beings, are indicative of the social status of those being described. This concept is widely accepted in modern society. On an informal, personal level, one usually goes by a first name alone. Professionally, a generic honorific such as “Mr.” or “Mrs.” can be applied. Professional accomplishments can bestow certain titles: “Doctor”, an “Esquire” at the end of a business card, or a whole host of military ranks and grades. To take an extreme example, on January 30, 1652, a contemporary court proceeding (the nature of which will be discussed in greater detail later on) records the royal style of King Charles II of England: “by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, etc.”<sup>10</sup> In 17<sup>th</sup>-century English society, no one was afforded more esteem and respect than the king. Contrast Charles II’s official title with a nearly anonymous “Negro boy named Kent” who was recorded in

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<sup>10</sup> Gail M. Walczyk, ed., *Northampton/Accomacke Orders, Deeds, and Wills: 1651-1654*, (Coram, New York: Peters Row, 2003), 27.

passing during William of Orange's reign in 1688.<sup>11</sup> Somewhere between the king and Kent is a figure such as Obedience Robins, an extremely wealthy and prominent landowner and Burgess of Northampton County, whose name is recorded at the beginning of each court session to include "Captain," his militia title. The fact that titles and naming conventions in the 17<sup>th</sup> century appear to indicate social standing very similarly to how they do so today. Therefore, it is reasonable to assume that the way in which certain individuals appear in the order books is significant; that is, any titles or naming conventions that are applied to them are deliberate and meaningful. This assumption, when applied to these specific sources, leaves the analysis open to some pitfalls that will be acknowledged in the chapter entitled "Sources".

Specifically, the paper will be focused on sources from 1619 to 1705. The beginning date was chosen to coincide with the first meeting of the House of Burgesses, and thus the first extant written records kept by the colonial legislators.<sup>12</sup> The approximate ending date was chosen because by the 1705 pronouncement of the Virginia Slave Code, the legal status of slaves was effectively coalesced and no longer in flux as it was during the 17<sup>th</sup> century.<sup>13</sup> The explicit phrasing and diction that the clerks at the General Assembly or in county court recorded reveal that although the legal status of Afro-Virginians remained fluid into the 1680s and 90s, evidence of developing racial prejudice is present even as early as the 1630s. A distinct regional difference was observed. Namely, in Northampton County, the attitudes that colonists held towards race

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<sup>11</sup> Ruth Sparacio and Sam Sparacio, eds., *Virginia County Court Records: Order Book, Middlesex County, Virginia, 1686-1690*, (Arlington: Antient Press, 1994), 19.

<sup>12</sup> The 1619-1705 timeframe is a useful parameter for the understanding of how what is learned from the sources changes over time, but the destruction or limited availability of some records prevents a rigid adherence to these specific years in this analysis.

<sup>13</sup> Breen and Innes, "*Myne Owne Ground*," p. 5.

were more flexible, whereas in Middlesex County, ethnicity was a much more influential and unchanging determinant of social status. Evidence of conscious distinction between black and white settlers pervades the entire time span of records in both counties, but the extent and timeline at which this recognition turned into prejudice and systematic racism varied. Several key historians' efforts to define some of these factors and establish a timeline will be evaluated against analysis of the order books and Hening statutes.

### **The Sources**

Before this analysis of language used in Virginia slave laws can be understood, it is necessary to briefly discuss the primary sources that will be used. Legal sources, both the statutes and the order books, require that some assumptions which are worth mentioning be made. The first of these is that legal sources in general are laden with a sort of inherent relevance that comes from the function of laws in society. This relevance is based on an assumption of the rationality of the lawmakers themselves and the idea that they would not spend time and resources on creating laws for no reason. Indeed, for the 17<sup>th</sup>-century burgess of the Eastern Shore, for example, it was not expedient or convenient to travel to James City or Jamestown, as the Chesapeake Bay Bridge-Tunnel was still three hundred years away. So, it is logical to assume that the laws enacted by the General Assembly were based on real, concrete problems that the colonial patriarchs felt absolutely had to be addressed in the legal code. Evidence of recurring issues being unsuccessfully legislated at the county level before being brought to the Assembly is clear. A good example is the various county ordinances that dealt with runaway slaves who refused to identify themselves or their masters. Both Northampton and Middlesex counties established their own responses to this issue before a 1672 proclamation held

that whites could legally wound or kill an enslaved person who was attempting to resist capture and to reward Indians who helped return slaves to their masters.<sup>14</sup> As such, the final response that applied to the whole colony was established. This anecdote illustrates two important points about the colony-wide laws: that they arise out of actual events, and, more specifically to the topic of this paper, that they were not created from a vacuum but rather represented the final say on issues that had previously existed in the counties.

Following from the implied importance of the law is another assumption that historians have made in order to better understand their topics: the degree of prevalence of legislation concerning an issue is a clue as to how important said issue was. Historians of 17<sup>th</sup>-century Virginia have had to take on the study of a time and place in which record keeping was sparse, and many records that were kept have been lost or were destroyed during the Civil War. As such, it is difficult to precisely track colonial demographics. Even Governor Berkeley could only offer vague and unconvincing estimates of the makeup of his domain in 1670:

We suppose, and I am very sure we do not much miscount, that there is in Virginia above forty thousand persons, men, women, and children, and of which there are two thousand black slaves, six thousand Christian servants, for a short time, the rest are born in the country or have come in to settle and seat, in bettering their condition in a growing country.<sup>15</sup>

Given the lack of statistically reliable primary sources, the prevalence of slavery-related laws and cases has helped historians conclude that it was an important and influential force in the colony.

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<sup>14</sup> Hening, ed., *The Statutes at Large*, vol. 2, pp. 299-300.

<sup>15</sup> Enquiries to the Governor of Virginia from the Lords Commissioners of Foreign Plantations. Answered by Sir William Berkeley in 1671. Hening, ed., *The Statutes at Large*, vol. 2, p. 515.

Yet another pitfall to be avoided in studying these documents is to interpret them as immutable, objective truth that was handed down from an infallible legal scholar. In fact, all of the court proceedings found in the order books are summaries of courtroom events that have been filtered through the lens of the individual clerk who was tasked with writing it all down. These clerks were not stenographers. Nothing was recorded verbatim, and although the names of the presiding officials are consistently recorded, the name of the clerks themselves is obscure until the mid-1680s in Northampton County and until after 1705 in Middlesex County when the clerks of both precincts included their own names. This increased specificity, roughly coinciding with the appearance of Latin legal phrases, was a part of the overall trend of increased formality of the Virginia court system that began with the 1634 state assembly requiring county-level meetings.<sup>16</sup> So, while understanding of the order books requires recognition of the role of the individual clerks, in a way, this can also be seen as beneficial. Clerks were charged with recording events as they heard them. They did not editorialize, and especially in earlier order books which are markedly less formal, it can be reasonably concluded that the language therein is reflective of prevalent colonial attitudes.

## **Chapter 1**

### **Northampton/Accomack County**

The territory that would later become Northampton County was incorporated in 1634 by King Charles I as a part of Accomack County, one of the eight original shires of

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<sup>16</sup> “County Formation during the Colonial Period,” *Encyclopedia Virginia*, last modified August 30, 2012, [http://www.encyclopediavirginia.org/County\\_Formation\\_during\\_the\\_Colonial\\_Period](http://www.encyclopediavirginia.org/County_Formation_during_the_Colonial_Period), accessed February 20, 2015.

colonial Virginia.<sup>17</sup> In 1643, perhaps as part of an effort to erase indigenous “savage” nomenclature from the geographical landscape or alternatively because of English Civil War conflicts, it was split and renamed, the northernmost counties remaining Accomack and the southern becoming Northampton.<sup>18</sup> It is, in many ways, an anomaly, characterized by development different from mainland Virginia counties in many ways. An obvious factor is geography. Northampton and Accomack counties make up Virginia’s Eastern Shore, a peninsular exclave across the Chesapeake Bay from the rest of the colony. This arrangement looks strange on maps today, but when English colonization in the mid-Atlantic was not more than a small cluster of settlements around the mouth of the bay, Virginia resembled a more centralized territory. However, distance from Jamestown as well as some cultural differences could lead to conflict. This isolation makes Northampton of interest as a contrast to mainland counties.

The first order book from Northampton/Accomack County begins in 1632, before the formal establishment of the county. A transcription exists of a copy compiled in the late 19<sup>th</sup> century by genealogist Thomas Upshur, published by Gail and Frank Walczyk of Peters Row. Frank Walczyk, who would himself transcribe later order books of both Northampton and Middlesex counties amongst a handful of other Virginia regions, makes note of the fact that he cross-checked Upshur’s transcriptions with the original documents, so they can be considered generally reliable. Photocopied images that are included in the volumes preceding the transcriptions further bolster the reliability of these

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<sup>17</sup> “Shire” is the English term roughly equivalent to “county”, as Northampton would eventually come to be known

<sup>18</sup> “County Formation during the Colonial Period,” *Encyclopedia Virginia*.

sources, as does an examination of the original documents at the Library of Virginia in Richmond.

### **The Legal Language of Race in Northampton County**

An early noteworthy instance of a Northampton County court dealing with race took place at Accomack Courthouse on August 8, 1636. Mr. John Wilkins went to the court for a somewhat unique reason. He presented “sufficient testimony to [the] court that all these persons here underwritten were and are his Servants, [they] therefore [certified] the same for a truth to the Governor and Council.”<sup>19</sup> What followed in the order book was a two-column list of these “Servants,” featuring, at the very bottom of the list, “1 Negro.”<sup>20</sup> From earlier entries, it seems that “Servant” is understood to mean an indentured servant of indeterminate race.<sup>21</sup> For example, on May 16, 1636, “Peter Varlow Servant to Mr. Cugley” appeared in court at Accomack, where he discussed the terms of “the expiration of his indenture” with a man named John Neale and the magistrates.<sup>22</sup> So, it is clear that Varlow was a servant with an explicitly defined indenture cogent enough to be discussed in court. This places Varlow in closer alignment with the modern popular conception of “indentured servant” than “slave.” This is further evidenced by the fact that he was referred to with both his first and last name. Generally, anyone appearing in the Northampton County order books with two names is white. To cite just one of many examples, in a 1651 list, each individual was listed with two names except for the ones

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<sup>19</sup> Gail M. Walczyk, ed., *Northampton/Accomacke Orders, Deeds, and Wills: 1632-1640*, (Coram, New York: Peters Row, 2003), 44.

<sup>20</sup> Ibid.

<sup>21</sup>This use of the word “Servant” contrasts with Middlesex County nomenclature. As will be discussed in a later chapter, Middlesex County lacked a catch-all term for laborers of both races; the order books reflect the predominant use of “servant” in reference to white indentured servants as “Negro” became virtually synonymous with “slave.”

<sup>22</sup> Walczyk, ed., *Northampton Orders, 1632-1640*, 44.

that were obviously black: "...Dorothy Burns, John Carey, Domingo, Sirria, and Pattama Negroes, John Jones..."<sup>23</sup> However, Varlow was still a "Servant," placed on the same level as the "1 Negro" on the Wilkins list.<sup>24</sup>

Taking a step back from the subtle implications of this specific word choice to examine the court case as a whole helps to elucidate how the record reflects an instance of racial bias. Why does this record exist? For some reason, Mr. John Wilkins traveled from his plantation to the county seat in order to appear in court. This trip in itself may not have been an easy task. He also appeared "by sufficient testimony" with aforementioned list "underwritten."<sup>25</sup> Although the order book leaves the exact meaning of this testimony unspecified, whatever Wilkins produced was enough to convince the court that a specific group of individuals was in service to him. Perhaps he came with notarized or otherwise officiated indentures or labor contracts. But why did he do this? Because it took a certain amount of time and resources to appear in court, it stands to reason that it must have bestowed some advantage upon Wilkins. A possible explanation is that he presented an official list of his servants in order to reap the benefits entitled to him under Virginia's headright system. The headright system, established in 1618 to attract permanent settlers to Jamestown, provided fifty acres of land to anyone who could pay his or her way to the colony. Crucially, it also allotted the same land to anyone who paid the way of another person, who would arrive as a laborer legally bonded to his or her sponsor. This arrangement tied the planter's interest in more land to the Virginia Company of London's interest in greater population, and it was eventually expanded in

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<sup>23</sup> Gail M. Walczyk, ed., *Northampton/Accomacke Orders, Deeds, and Wills: 1651-1654*, (Coram, New York: Peters Row, 2003), 14.

<sup>24</sup> Walczyk, ed., *Northampton Orders, 1632-1640*, 44.

<sup>25</sup> *Ibid.*

scope to include slaves as well as indentured servants. This illustrates a factor that may have played a role in Wilkins' decision to codify the status of his servants. Whether he had just arrived in Virginia, or just paid for the passage and associated land of a new group of servants, he had demonstrable, tangible interest vested in solidifying his claim to owning either these people or their labor.

When viewed through the lens of the headright system, the Wilkins case can be seen to illustrate contrast between legal and social attitudes. Wilkins thought it necessary to count each individual to maximize his own benefit. He was not alone in this—other similar lists that are found in the order books similarly reserve the listing of the “Negro” until last, and some conclude with multiple “Negroes.” The legal importance of the individual “Negro” servant is clear, and it contrasts sharply with the obvious difference that places this unnamed “Negro” in a separate position, both in the physical list and in the view of whoever wrote it down: the very fact that the “Negro” is unnamed. There is no other apparent difference between the status of the indentures listed and the “Negro” except for ethnicity. Indentures of both races got the same treatment legally. At the very least, they afforded Wilkins equal advantage per head. However, these individuals were very obviously treated differently. Whether the judge or the clerk or even Wilkins himself was responsible for the diction, at some point, a “Negro” was verbally excluded from a group of white settlers for no other discernible reason than race. This constitutes evidence of a developing race consciousness in 17<sup>th</sup>-century Northampton County, as well as a nascent prejudice against Afro-Virginians.<sup>26</sup>

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<sup>26</sup> The timing of this trend towards greater racial prejudice has been the subject of much recent scholarship. In the section entitled “Timeline” in Chapter 3, some key interpretations of this question will be considered and knowledge from the order books and Hening statutes will be applied.

Although the Wilkins case is evidence of racial prejudice, the picture is complicated by several later cases that paint a more fluid picture of race relations in Northampton County. One such case is the repeated involvement of Francis Payne in legal matters that came before the county court. Having purchased his freedom in 1649, Payne was a free black, and was involved in a series of court disputes beginning in 1651.<sup>27</sup> The first of these was a suit, brought by Payne, “against so much the estate of Joseph Edlowe of Maryland.”<sup>28</sup> The dispute arose from supposed non-payment on a heifer that Payne had sold to Edlowe, but more important than the specifics of the case are some details of the context and language used. First of all, it is notable that Payne was legally entitled to stand in court. This is important because it reflects an early privilege extended to Afro-Virginians that was not destined to last. In 1705, Afro-Virginians, both free and enslaved, completely lost their right to testify and represent themselves in court, unless they were called upon to testify against or in support of other black people. So, Payne’s presence in the Accomack courtroom that day is itself noteworthy, and has implications regarding the overall status of race relations in the county that will be discussed later. However, not only did Payne stand in court, he actually won the case. He was granted “the sum and quantity of three hundred and ten pounds of tobacco and cask...until a legal trial shall forthwith determine thereof.”<sup>29</sup>

However, in a later appearance that also gives some more insight into racial attitudes in the colony, Payne did not fare quite as well. On December 29, 1651, in a case against one Randall Revell, he lost an unspecified dispute for unspecified reasons, and

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<sup>27</sup> Walczyk, ed., *Northampton Orders: 1651-1654*, 29.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

was ordered to pay “four hundred pounds of tobacco and cask.”<sup>30</sup> Importantly, this judgment is very typical of what is found in the order books. Generally, tobacco was the dominant medium of transaction that colonial courts mandated. In fact, in the combined 100 years of order book records analyzed for this project, only one fine was paid in currency rather than tobacco, and it was made payable to someone living in England. Specifically, the amount that Payne was made to pay is also typical. Interestingly, it is even typical of some judgments rendered against some individuals known to be white planters, even extremely wealthy ones such as Eastern Shore big-shot Obedience Robbins. If Payne was expected to pay such a significant amount, it follows that there was some reasonable expectation that he could pay it. It appears that he did, in fact pay it: never again did this particular contract appear in the order books, and, had he found himself unable to pay, he probably would have been made to appear in court again. Evidence of Payne’s comparative affluence is bolstered by his final appearance in the Northampton County order books. In 1652, he paid Jane Eltonhead, the wife of his former master, the extremely large quantity of “sixteen hundred and fifty pounds of tobacco” and “two servants” in fulfillment of a stipulation in the terms of the 1649 contract that bought his freedom.<sup>31</sup> Clearly, Payne was a significant economic force despite his ethnicity and origins in slavery. His access to legal standing, legitimized by his success in the suit and guarantee of a trial, seems to contradict the idea of growing racial prejudice against Afro-Virginians.

However, the subtleties of how the order book referred to Payne support the idea of attitudes that acknowledged racial difference in a way that verged on prejudicial.

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<sup>30</sup> Ibid., 54.

<sup>31</sup> Ibid., 99.

Every time Payne was mentioned by name, he appeared as “Francis Payne Negro.”<sup>32</sup> He received a first and last name but also a racialized suffix. In a way, the order book depicted him as a hybrid of a white “Servant”, billed with a first and last name, and a black man whose status would come to be sufficiently summarized with only the word “Negro”, virtually synonymous with “slave.” By purchasing his own freedom, Payne gained a concrete, distinctly defined advantage: legal standing, taken in this case to mean the ability to act on his own behalf as a legally recognized person. Colonial justices of the peace also acknowledged this ability, as is evident in his legal victories. He also gained a symbolic marker closely associated with whiteness: his surname. The source of his surname came is unclear; certainly it was not from his former master and mistress, Jane and William Eltonhead. Perhaps it was chosen arbitrarily: after all, its importance lay not in its use as a family identifier but in how it functioned as an indicator of labor status. Payne was even able to achieve relative wealth to the degree that he functioned as more than a marginalized yeoman planter. However, he was unable to completely shed all vestiges of servitude, and, by what must have been a conscious decision by a clerk, he was saddled with a reminder of his ethnicity. Although it is basically impossible to truly get into the head of someone who lived 400 years ago on a psychoanalytical level, the fact that Payne’s signature was transcribed as only “Francis Payne” leads to some interesting, albeit ahistorical, conjecture on how he may have self-identified. It is difficult to attribute the decision of the clerk to transcribe Payne’s name as he did to anything other than some level of prejudicial thought. Legally, it did not matter that Payne was black. He was a free man, entitled to legal protection and agency. This agency appeared to be widely considered legitimate, as he appeared in front of the richest of the white

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<sup>32</sup> Ibid.

planter elite of his county and won a considerable sum of tobacco. Clearly, on some level, his race did matter, and it was allowed to shine through.

### **Race, Gender, and Legal Identity in Northampton County**

Some of the Northampton County cases also give insight into the role that gender played in the formation of legal identity. A notable trend in the Northampton order books is the tendency to refer to unnamed Afro-Virginian males as “Negros” and to refer to unnamed Afro-Virginian females as “Negro women” or slightly more rarely “Negro girl[s]” (although admittedly, the “Negro girl” identifier constitutes weaker evidence of a gender-based difference than does “Negro woman” because of frequent references to “Negro boys” and the complete absence of the term “Negro man;” an Afro-Virginian male, as previously discussed, is described as only a “Negro”). Due to the volume of dense content in the order books, a detailed description of each instance in which these terms are applied would be rather cumbersome. So, to once again cite only a few examples that are typical of a general trend, a 1652 registration of a 1642 document noted that Marylander Thomas Jacob gave away “[his] Negro woman Sussanna” to an Accomack couple, and on May 25, 1652, Captain Francis Pott submitted as evidence a document proving that he had sold a “Negro woman” to his brother in 1646.<sup>3334</sup>

Another interesting passage that deals with gender is the case of Emmanuel Driggus. In a court session held on May 24, 1652, Driggus, a servant of Captain Pott of Northampton County, purchased the freedom of his daughter Jane.<sup>35</sup> Many factors make this case unique. Firstly, Driggus was an Afro-Virginian man who was clearly identified

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<sup>33</sup> Ibid., 64.

<sup>34</sup> Ibid., 27.

<sup>35</sup> Ibid., 66.

as a servant. The May 1652 pronouncement leaves his status unspecified, but the following January, "...Emmanuel Driggus and Bashawe Farnandos Negroes" were revealed to be "now servants unto Capt. Francis Pott."<sup>36</sup> However, Driggus was still able to purchase the freedom of his eight-year old daughter. This legal ability was unique to pre-1705 Northampton County. No cases are found in most of the Middlesex County order books, and while this practice may not have become explicitly illegal in the 1705 slave code, a colonial magistrate most likely would have interpreted the law to forbid it.

The origin of Driggus' legal right to purchase his daughter's freedom is more easily understood in the context of Afro-Virginian access to legal standing as previously discussed in the analysis of Francis Payne. The economic factor that made the event possible is more subtle. After all, if Driggus was a servant to Captain Pott, where did he get the money? The exact price was unspecified, but the term "approved satisfaction and full payment" suggests a monetary exchange.<sup>37</sup> Furthermore, what source gave Driggus the necessary economic autonomy to take an action so incongruous with enslaved or indentured status? Lawyer and legal historian Paul Finkelman helps to account for this by explaining that during lulls in the colonial tobacco market, some servants and slaves were afforded the right to farm their masters' plots in their own right, and therefore entitled to a share of the profits: a system roughly analogous to 19<sup>th</sup>-century sharecropping.<sup>38</sup> Indeed, a later mention of Driggus in the order books bears this out, when in January of 1653, his meritorious care of several hogs caused his master to bequeath them to him.<sup>39</sup>

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<sup>36</sup> Ibid., 95.

<sup>37</sup> Ibid., 66.

<sup>38</sup> Paul Finkelman, *Slavery and the Law*.

<sup>39</sup> Walczyk, ed., *Northampton Order Books: 1651-1654*, 66.

Bearing the conditions of Driggus and his story in mind, the diction of the order books takes on a new significance. The Driggus case indicates that gender could act as a more fluid agent of change in social status than could race. It constitutes evidence that gender allowed you to shed a racial identifier but status did not. Emmanuel Driggus' daughter was not designated as a "Negro," but Driggus himself was. His daughter was probably not of mixed ancestry, because if she was, the order books certainly would have said so—they are rife with examples of servants being designated "Mulatto" in a similar way to how the "Negro" identifier was used.

One of the most important scholars of how race and gender interacted in colonial Virginia is Kathleen M. Brown, who addresses the subject in her book *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia*. In this volume, Brown introduces an important and convincing claim that, when expanded upon, helps to explain why gender may have been a more influential determining factor of social status than race. Brown points out the fact that there is no set of definite biological characteristics that is defined by "race" in the sense of black or white, and that the English colonists had yet to conceive of different ethnicities in this way. Brown cites various firsthand accounts of early European colonial voyages to Africa, and highlights that although obvious differences in complexion were noted, the essential discourse of white supremacy and black inferiority was absent.<sup>40</sup> Although, as will later be discussed, the order books indicate some racially prejudiced thought, these ideas were still very much in flux. Ultimately, gender roles that had been more firmly

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<sup>40</sup> Brown, *Good Wives*, 2266.

established in both English and African conceptions could sometimes prove to be more strong actors in the negotiation of identity than could race.

### **Anthony Johnson**

No history of race relations in Northampton County, or, indeed, even a general history of the county or the colony is complete without some mention of the remarkable life of Anthony Johnson. Johnson's story, as dynamic as the man himself, is remarkable for the unique insights it reveals. Much like Francis Payne and Emmanuel Driggus, Johnson was a free black man who was able to rise to great economic prominence and elevated social standing, arguably greater than most other Afro-Virginians. Due to this relative power and influence, Johnson left a paper trail through the courts that allows for the construction of a comparatively more comprehensive biography. T.H. Breen and Stephen Innes point out that Johnson has "fared poorly at the hands of historians."<sup>41</sup> They emphasize that centuries of historians, particularly before the American Revolution, viewed the 17<sup>th</sup> century as a time "filled with failures, massacres, and stupidity" and note that many "would not have found Johnson's story edifying."<sup>42</sup> In an effort to fill in this historiographical gap, Breen and Innes provide a narrative of Johnson's life in their volume entitled "*Myne Owne Ground*": *Race and Freedom on Virginia's Eastern Shore, 1640-1676*. Their narrative is more useful than what can be learned about Payne and Driggus because extends slightly farther than solely his appearances in the county court. One of the main takeaways from Breen and Innes' depiction of Anthony Johnson is the fact that he owned property was the most important factor that allowed him to accumulate

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<sup>41</sup> Breen and Innes, *Myne Owne Ground*, 14.

<sup>42</sup> *Ibid.*, 7.

wealth and respect from white neighbors while avoiding subjugation and enslavement: in short, “property made the difference.”<sup>43</sup> Breen and Innes effectively argue this claim, but only for the case of Anthony Johnson. However, the key difference that property made can also be applied to Francis Payne and Emmanuel Driggus.

Johnson is well known for his involvement in a protracted legal battle in the early 1650s known as the Casor suit. To summarize briefly, the dispute concerned John Casor, an Afro-Virginian who was working on Johnson’s estate under uncertain circumstances in October of 1653. It was just this uncertainty that led to the dispute. Casor claimed that he was an indentured servant who had fulfilled the terms of his contract, not a slave who owed Johnson a lifetime of service, and that Johnson had therefore held him illegally for “at least seven years”<sup>44</sup> In the legal kerfuffle that was soon to play out, Johnson claimed that he had never before seen this indenture. Casor’s rejoinder was that it was originally signed by a Mr. Sandys who lived “across the Baye.”<sup>45</sup> Although the veracity of this claim is not readily clear, the court seemed predisposed to rule in Casor’s favor. At least, Johnson thought so, as he made a formal statement that discharged “John Casor Negro from all service, claims, and demands” and also granted him freedom dues of “corne and leather.”<sup>46</sup> Crucial in this statement is the way that Johnson named Casor: John Casor Negro. This is identical to the way in which those Afro-Virginians known to be free were named, such as Francis Payne and Emmanuel Driggus.

Unfortunately for Casor, his play for freedom, whether real or imagined, failed. Johnson remained rankled by the decision, and brought the matter before the court for a

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<sup>43</sup> Ibid., 5.

<sup>44</sup> Ibid., 13.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

second time two years later, aiming to win Casor back. This time, he was victorious: “The said Jno [sic] Casor Negro shall forthwith bee returned unto the service of his master Anthony Johnson.”<sup>47</sup> In the second court pronouncement, Casor also appeared as “one Jno Casor a Negro,” “Jno Casor,” and “said Negro (Jno Casor).”<sup>48</sup> Although spelling during this era was far from standardized (perhaps the most amusing example of this is the York County manuscript in which “Philadelphia” is spelled four different ways a single paragraph), this varied diction is anomalous. Throughout the order books, naming conventions of individuals are stable, as they carry connotations of race and labor status such as those previously discussed. This makes the apparent confusion of the clerk conspicuous. Notable is that this confusion only exists in the second court proceeding, that is, the instance in which Casor’s status is unsure. In this way, the treatment that Casor receives in the diction of the courts can be seen to connect to his status, lending more validity to conclusions drawn from this sort of analysis. Furthermore, it is no coincidence that this uncertainty of status manifests itself so clearly in a record from the Eastern Shore, the location which has been demonstrated to be characterized by more fluid racial attitudes.

Raising the question of why Casor’s status was perceived as uncertain by the clerks reconnects the event with one of Breen and Innes’ main points: property. Obviously, Casor’s ethnicity and complexion did not change in the years of his freedom from Anthony Johnson. The only thing that changed was Casor’s personal wealth. Little is known about how Casor spent his short period of freedom, but emancipation due to a wealthy white patron-like figure coupled with freedom dues certainly constitutes a shove

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<sup>47</sup> Ibid., 15.

<sup>48</sup> Ibid., 14-15.

in the upwardly-mobile direction, and Johnson himself constitutes evidence that there was some mobility and opportunity for free black men on the Eastern Shore. Regardless of what Casor's economic fate may have been, the time in which he had increased access to personal wealth and property was when the law regarded him most similarly to a free man, and when his opportunities were limited by his bondage to Johnson, the legal records reflect the same.

Anthony Johnson's story can be analyzed with the same methodology applied to Varlow, Payne, and Driggus, and this analysis will further bolster Breen and Innes' claim that property made the difference in his life. The first references to Johnson in Virginia date to 1621 and describe him as "Antonio a Negro."<sup>49</sup> The difference between "Anthony" and "Antonio" is not to be ignored. It is evidence that Johnson was most likely originally enslaved by the Portuguese in Angola (it is believed that he was from Angola; his son John even named his Somerset, Maryland plantation "Angola" in 1677).<sup>50</sup> The Portuguese were known to introduce Africans they enslaved to Catholicism, occasionally even going to far as to baptize them on the shore before loading them onto slave ships.<sup>51</sup> It is thus very likely that Johnson was at least somewhat familiar with Portuguese Catholicism. Perhaps he had even practiced this religion, or was fluent in Portuguese. The English had long been familiar with and harbored considerable distrust and often open hostility towards Catholic institutions. In the 17<sup>th</sup> century, colonial holdings of the rival French loomed in New France and the Caribbean while memories of conflict of Spain, perhaps the most formidable colonial foe, were fresh. The first identity

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<sup>49</sup> Ibid., 8.

<sup>50</sup> Ibid., 17.

<sup>51</sup> Linda Heywood, "The Atlantic World and the African Diaspora," (presentation, 1619 and the Making of America Conference, Hampton, VA, September 26, 2013).

that Johnson had to establish in order to position himself in Virginia society was his own. His choice was to repudiate an Iberian identity that could have possibly been more distressing to Anglo-Virginians than an African one by Anglicizing his imposed name of “Antonio” into “Anthony.” This name change was most likely a deliberate move by Johnson rather than one imposed from without. The whole of his life story is marked by a remarkable degree of self-determination, and a simple name change was far from the most significant aspect of his existence over which he had clear control. Although Anglo-Virginians were not necessarily so uncomfortable with Iberian words creeping into their vocabulary that they would have forced Johnson to change his name (the very important word “Negro” being an example), his agency in such a decision ought not to be understated, as he proved himself extremely adept at navigating Virginia society.

By 1653, the date of Johnson’s next appearance in court records, his lot in life had changed drastically. He purchased his own freedom, married, and accrued a sizable estate and the fortune to go with it. His herd of cattle and swine probably began to grow in the 1640s, and he owned 250 acres of land through headrights alone.<sup>52</sup> This vast increase in wealth and property corresponded to a change in how the clerk of the county court recorded his name: he had become “old Negro Anthony Johnson.”<sup>53</sup> Much like Francis Payne, property and freedom bought Johnson a last name, legitimate legal status, and material wealth, but it did not rid him of the “Negro” modifier. However, the years between Johnson’s arrival in 1621 and his 1653 legal disputes bought him something that Payne could never achieve: old age. By 1653, Johnson was in his mid- to late 50s, an extremely old man by the standards of the day. Breen and Innes correctly point out that

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<sup>52</sup> Breen and Innes, *Myne Owne Ground*, 11.

<sup>53</sup> *Ibid.*, 14.

the modifier “old” is very unique. Nobody else in the Northampton County order books received it. It suggests that simply being able to survive the austere conditions of colonial Virginia merited a certain level of respect. It also suggests that age acted as another variable that played a role in the determination of status. The respect afforded to Johnson and his family is no mere abstraction. The elevated status that the Johnsons earned is evident in a 1653 case where Anthony petitions the court for aid after a fire devastated his plantation. The entire family was essentially placed on public aid, as Mary Johnson, Anthony’s wife, as well as his daughters, became tax-exempt. Afro-Virginian women being considered non-tithable was highly irregular, almost unheard of, as the 1629 colony-wide law explicitly stated that all those who worked in the ground were to be taxed: “It is thought fitt that all those that worke in the ground of what qualitie or condition soever, shall pay tithes to the ministers.”<sup>54</sup> This ruling was expanded upon in 1643 to include all Afro-Virginian women over 16 years of age, making the situation of the Johnson family even more unique: “Be it also enacted and confirmed that there be tenn pounds of tob’o. per poll & a bushel of corne per poll paid to the ministers within the severall parishes of the collony for all tithable persons, that is to say, as well for all youths of sixteen years of age as upwards, as also for all negro women at the age of sixteen years.”<sup>55</sup>

Subjecting the references to Johnson in legal documents supports Breen and Innes’ idea that property made the difference. Before he became a wealthy landowner, Johnson was simply “Antonio a Negro”. After years of successfully asserting his identity

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<sup>54</sup> Hening, ed., *The Statutes at Large*, vol. 1, p. 144.

<sup>55</sup> Hening, vol. 1, p. 242.

while growing his family and his personal wealth and influence, he earned a special title as well as special exemption to certain laws. This demonstrates that conceptions of race were so fluid in Northampton County that property as well as gender could overcome ethnicity as determining factors of social status.

## Chapter 2

### Middlesex County

As Northampton County was chosen to represent the Eastern Shore of Virginia, Middlesex County was chosen to represent the Middle Peninsula, a distinct geographical region located just across the Chesapeake Bay from Northampton, between the Rappahannock River to the north and the York River to the south. Middlesex County represents a different temporal period in colonial development as well as a different geographical one. Incorporated in 1669, the county's official status is slightly younger than Northampton's, and settlement also lagged behind by a few years.<sup>56</sup>

The order books that have been taken into account for this analysis cover the years 1680-1698, significantly later than those in the Northampton County chapter. Because the years chosen are so much later than the last section and the distance between Northampton and Middlesex counties is significant, it is logical to wonder whether or not the same methodology can be reasonably applied. Indeed, if a strictly experimental view of the project in the spirit of the scientific method is to be applied, then any conclusions would be invalid, because too many variables have changed. However, history is not so deterministic. Similar conditions can create different results just as the same methods can prove useful and valid even when conditions have changed. Furthermore, the 1680s in Virginia are of particular interest in a way that can be analyzed well with Middlesex County records. The difference between Middlesex and Northampton counties that is the most easily concluded from the order books is that residents of Northampton County

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<sup>56</sup> "County Formation during the Colonial Period," Encyclopedia Virginia, last modified August 30, 2012, [http://www.encyclopediavirginia.org/County\\_Formation\\_during\\_the\\_Colonial\\_Period](http://www.encyclopediavirginia.org/County_Formation_during_the_Colonial_Period), accessed February 20, 2015.

were far more dependent on animal husbandry, overwhelmingly hogs, than other Virginia counties. Breen and Innes agree: "...at mid-century, especially on the Eastern Shore, breeding cattle and hogs was as important to the local economy as growing tobacco."<sup>57</sup> The frequent references to hogs, cattle, and disputes over animal ownership in the Northampton order books stands in stark relief with the near total absence of references to hogs in Middlesex County. In Middlesex, the economy was far more dependent on tobacco cultivation. This development is far from incidental to the development of slavery and racial attitudes in the region. Because tobacco cultivation was labor intensive, it necessitated a greater number of laborers that rapidly increased along with demand from the planters who purchased them. Many historians have indicated the 1680s as the approximate point at which it became more economically efficient for a planter to import an African to perform this labor than to pay for the passage of an indentured servant from the British Isles.<sup>58</sup> It is true that statistically, the number of enslaved Africans brought to Virginia rose precipitously during this decade. It also appears that it was indeed cheaper to rely on imported African labor. But to attribute this important demographic change to a set of conscious economic decisions made by Middlesex County colonists assumes that they believed Afro-Virginian laborers were to serve for life while white laborers were expected to be afforded comparatively higher social standing. Otherwise, they would not have perceived the enslavement of an African to be more economically viable, as they would have anticipated freedom dues or some sort of contracted indenture. Did Middlesex County colonists expect permanent enslavement to be the final lot and only option available of Afro-Virginians? To what degree were their attitudes influenced by

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<sup>57</sup> Breen and Innes, "*Myne Owne Ground*," 11.

<sup>58</sup> Coombs, "Beyond the 'Origins Debate,'" 239-78.

racially prejudicial thought? One way to approach these questions is through the order books. So, the application of the same methodology to later sources does not allow for a rigorously scientific manipulation of dependent and independent variables. Instead, it provides a deeper understanding of a distinct time and region, while also featuring many comparisons that can be legitimately considered.

The opening order books of this analysis are those that begin in the year 1680. There are several important points to note at the outset. First is the increased formality of the order books that seems to parallel that of the Northampton County records. Official Latin legal language is widely used throughout the books, probably due to Middlesex County clerks having attended the same colony-wide training courses that their counterparts on the Eastern Shore attended, learning how to be clerks from the Secretary of the Colony at Jamestown. Additionally, Middlesex County courts seem to have applied a different standard concerning the types of disputes that made it to court for consideration. In Northampton County, the topics that appear in the order books can be roughly categorized into relatively few main groups: property disputes, labor and ownership disputes, issues of taxable people and property, appointments to county governmental positions, children of indeterminate origin, defamation of character, pay for county militiamen, horse thievery, a slave conspiracy to steal weapons, assault, runaway servants, and a large number of judgments that were rendered with no reference to the specifics of any case. The cases recorded in Northampton County are virtually all civil. In Middlesex County, a wider variety of cases can be found, both civil and criminal. One can find complaints of excessive abuse on the part of masters and planters, judgments concerning apprentices, and the execution of wills, to name a few. This was probably due

in large part to the larger population of Middlesex County giving rise to a greater number of legal issues that needed to be addressed. This fundamental difference in content is important to keep in mind for an analysis of these sources.

### **Gender, Race and Legal Identity in Middlesex County**

An example of a case of excessively harsh treatment towards a servant is a 1686 ruling in which Thomas Stapleton was “bound over to the court to answer the complaint of his Woman Servant named Sarah Bird for having unreasonably beat and abused her.”<sup>59</sup> This case is noteworthy for several reasons. It is reminiscent of the way in which white servants were named in the Northampton County records. Bird was referred to as a “Woman Servant” by both her first and her last name. As discussed in the Northampton County chapter, this makes for a relatively safe assumption that Bird was probably white. This assumption is made safer by the fact that the Middlesex County order books made it abundantly clear when an Afro-Virginian was present with liberal use of the “Negro” identifier; there are many examples of small cases that illustrate that naming conventions in Middlesex County could be indicative of race in the same way as Northampton County ones. For example, on July 4, 1687, the clerk noted a “Servant Boy named William Davis who came into [the] County without Indenture”<sup>60</sup> and on May 14, 1688, the justices of the peace inspected a “Negro boy named Kent” to determine his age.<sup>61</sup> In quick succession, the 1688 session continued to name “Mary Grant, servant” and “Negroes Jack, Betty, and Sary.”<sup>62</sup> So, the paradigm observed in Northampton County according to

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<sup>59</sup> Ruth Sparacio and Sam Sparacio, eds., *Virginia County Court Records: Order Book, Middlesex County, Virginia, 1686-1690*, (Arlington: Antient Press, 1994), 19.

<sup>60</sup> *Ibid.*, 25.

<sup>61</sup> *Ibid.*, 49.

<sup>62</sup> *Ibid.*

which white servants were named with two names and blacks by “Negro” and a first name is also borne out in Middlesex County. This point of continuity allows the same set of assumptions to be applied to the other county and later cases, which is an important point to understand in the application of this methodology.

Bird’s case represents an interesting dynamic that is at play concerning her gender as well as her race. The “Woman” in the manuscript was applied to her in a manner very reminiscent of how the word was applied to a female servant in much the same way that it was applied to an Afro-Virginian one in Northampton County. From this minimal bit of evidence, it would appear that gender filled a role that race had filled decades earlier and across the bay. However, a notable omission in the order books indicates that race may have been a more defining factor. Bird’s case involved her taking her master to court because of treatment that she deemed unfairly cruel. Although the justices of the peace dismissed the case and Bird did not receive a judgment, she demonstrated that she had the ability to cause Stapleton to appear in court at her urging. Between the years of 1686 and 1700, only two other cases like this one were recorded. The first was at a court on February 19, 1696, when a servant named Sarah Gambrell brought suit against Ann Davis on the grounds of excessively harsh treatment. After testimony was heard, Davis was found guilty and imprisoned. The second case, from August of 1696, was dismissed “for want of appearance.”<sup>63</sup> Notable is that all of these suits were brought by whites. This probably is not evidence that white servants were the only group dissatisfied with their treatment. Tales of horrific abuse of black slaves at the hands of white owners are a distinguishing feature of colonial English and American slavery. Although relatively little

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<sup>63</sup> Ruth Sparacio and Sam Sparacio, eds., *Middlesex County Order Books, 1694-1697*, (Arlington: Antient Press, 1994), 87.

is known of the daily life of 17<sup>th</sup>-century Afro-Virginians compared to their 19<sup>th</sup>-century counterparts, several examples of such atrocities are well-known. For example, Wendy Anne Warren has written a harrowing microhistory of the rape of a slave woman near Boston, Massachusetts in 1638 in “The Cause of Her Grief,”<sup>64</sup> and in Virginia William Byrd II recounted savage beatings of his slaves in a strikingly cavalier way in his diary.<sup>65</sup> So, lack of incentive to seek relief from harsh treatment is most assuredly not the reason why Afro-Virginians chose not to seek legal protection from abuse. Instead, it is likely that Afro-Virginians were denied the right to access this aspect of the legal system. This is evidence of racially prejudiced thought. It is certainly a clear departure from the way things had worked decades before in Northampton County, when free blacks like Francis Payne could successfully sue white colonists over issues far less dramatic than excessive abuse. Times had indeed changed.

However, as seems more often than not to be the case in historical analysis, additional narratives appear that tend to complicate otherwise clear and convenient ones. On September 3, 1688, the Middlesex County court rendered judgment of “three thousand eight hundred sixty & six pounds of good swt. scented tobaccoe and cask” to Mr. Christopher Robinson against Mary Williams.<sup>66</sup> The particular details of the dispute were not recorded. In the document, Williams was referred to as “a Negroe Wooman.”<sup>67</sup> This case is noteworthy because it would seem to contradict the conclusions drawn from close analysis of the abuse cases. Williams appeared to have the right to represent herself

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<sup>64</sup> Wendy Anne Warren, “The Cause of Her Grief: The Rape of a Slave in Early New England,” *Journal of American History* 93 (2007): 1031-1049.

<sup>65</sup> Brett Rushforth and Paul Mapp, eds., *Colonial North America and the Atlantic World: a History in Documents*, (Upper Saddle River, New Jersey: Prentice Hall, 2009), 248-261.

<sup>66</sup> Sparacio and Sparacio, eds., *Middlesex County Order Books, 1686-1690*, 61.

<sup>67</sup> *Ibid.*

in court. She probably had quite a significant amount of wealth or property, as the judgment against her is extremely steep. Of all the cases of wealthy and influential free blacks, the case involving Williams is the most anomalous. Even Anthony Johnson's story becomes more comprehensible when viewed in the light of flexible Eastern Shore attitudes. The order books alone fail to account for what must have been a remarkable situation for Mary Williams, and further research is warranted.

### **Apprenticeship**

Middlesex County is also distinguished by a labor system that had not yet appeared in Northampton County before 1650: the bound apprentice. On May 2, 1687, Rebecca Goodridge, "with the consent of her Brother in Law, Patrick Michill bindes herself Apprentice to Mrs. Margritt Parrott for the terme of seven yeares."<sup>68</sup> Although the agreement did not note the specific craft which Parrott was to teach to Goodridge, serving as an apprentice was fundamentally different from an indentured servant because the master of an apprentice had an obligation to teach a skill. English colonists would have understood this relationship, having been familiar with an apprentice system that dated back to the medieval era. They also would have understood how an apprenticeship differed from an indenture. After all, the apprentices and masters recorded in the order books felt the distinction significant enough to warrant appearing in court to formally establish it. By nature, an apprenticeship is a position that is devoted entirely to improving one's social status. In a more long-term sense, it also ensured that the apprentice would one day have the means to support him or herself with a specific skill. It is, at its core, a conscious effort to adopt a specific role in society. Clearly, in 17<sup>th</sup>-

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<sup>68</sup> Ibid., 24.

century Middlesex County, it was more desirable to be an apprentice than an indentured servant, and the preponderance of evidence suggests that it was restricted mostly to white individuals. Because there was no official proclamation limiting apprenticeship to whites, this disparity is better attributed to general attitudes rather than legislation.

### **“Slave,” “Servant,” and “Negro”**

Much of this paper has been concerned with the status of Afro-Virginian laborers who, most likely, were understood to have been bound to servitude for life: in other words, individuals who very closely fit the modern conception of a slave. Almost completely absent, however, is a primary source that uses the specific word “slave.” The word does not appear in any of the Northampton County order books. It is not seen until the 1686 Middlesex County records, and even then, it is used sparingly. A typical example of its usage is found on a ruling from November 11, 1689, in which “A Negroe girl named Jenney, slave to Mr. Deuell Pead, [was] adjudged two yeares of age.”<sup>69</sup> Another use, interestingly, applies not to an Afro-Virginian, but to an Indian. On March 30, 1692, “Cert. [was] granted to Jno. [sic] Bodgam for takeing up an Indian slave named Tom.”<sup>70</sup> Clearly, the word “slave” was familiar to Virginia colonists. There is no evidence suggesting that they would have had a fundamentally different understanding of what the term meant than how it is understood in the modern era. The way the word is approached in these sources raises two important questions: Why does the word “slave” not appear in Northampton County? This is comparatively easily explained. Settlers on the Eastern Shore had “servant,” a word that was far better suited to the reality of their

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<sup>69</sup> Ibid., 85.

<sup>70</sup> Ruth Sparacio and Sam Sparacio, eds., *Middlesex County Order Books, 1690-1694* (Arlington: Antient Press, 1994), 43.

time and place than “slave.” To Northampton County settlers, “servant” could refer to virtually anyone who was in service to another. It was not necessarily laden with ethnic connotations. Whites such as Peter Varlow were servants, and if an Afro-Virginian was mentioned in a way that was meant to connote their race, “servant” was consistently accompanied by “Negro.” In short, on the Eastern Shore, “Negro” was an adjective that modified a noun, usually “woman” or “girl” or “servant.” The reliance on “servant” and the less rigid definition thereof, reflects that attitudes towards race were more fluid in Northampton County.

Why, then, did “slave” remain extremely rare in Middlesex County? The answer to this second important question illustrates an important difference between the two counties and can also be used to help explain the development of slavery in North America into the 18<sup>th</sup> and 19<sup>th</sup> centuries. Settlers on the Middle Peninsula also had a term that was better suited to their situation. In their case, it was “Negro”. By the 1680s, in a crucial development, “Negro” was virtually synonymous with “slave.” In contrast to its meaning in Northampton County, it had become a rigidly defined noun that needed no further clarification, and it was used to discuss individuals who were presumed to be laborers for life. Rare cases such as that of Mary Williams existed and ought not to be ignored, but figures like Williams were always referred to with modifiers. In her case, this modifier is “woman,” but in other cases it could be “boy,” “girl,” and, occasionally, “man.” However, taken alone, “Negro” was understood to mean a laborer, clearly African or of African descent, who was bound in servitude to another human being and was to remain so for life. It reached the point at which, according to transactions recorded in the order books, “Negroes” were being bought and sold outright. Not “Negro servants,”

“negro men” or “slaves,” explicitly and specifically Negroes. Essentially, of the many words that were in use to describe the people of the colony, only the one that is inherently linked to a specific ethnic identity became synonymous with the lowest possible status in society. This demonstrates the ultimate culmination of racially prejudiced attitudes.

The order books display clear evidence of racial attitudes that differed between the two counties, but they do not offer much insight into why the situation developed in this way. As is the case with many historical questions, this one is best answered using a multitude of sources, but an explanation based on the sources considered in this analysis can be advanced using a series of connections. As alluded to previously, in 1629, the colonial legislature established that all persons, regardless of gender, ethnicity, or age, who worked with their hands in the ground, were subjected to “tithes:” “*IT is thought fitt that all those that worke in the ground of what qualitie or condition soever, shall pay tithes to the ministers.*”<sup>71</sup> In other words, their owners or masters were required to pay taxes on them as if they were property. Agricultural laborers became inextricably connected to the concept of property over personhood. Early on, free servants of any ethnicity were also tithable. This would not change until the second connection, property to a specifically African identity, was established due to a demographic shift that was the result of an economic need. At a rate that steadily increased beginning in the first decades of colonization, Virginia settlers were beginning to rely more heavily on tobacco, the crop hailed as the savior of Jamestown, for economic productivity. By the 1680s, the most efficient way for the wealthy, white planter elite to maximize tobacco production at minimal cost was to import Africans to do so for their entire lives. As the proportion of

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<sup>71</sup>Hening, ed., *The Statutes at Large*, vol. 1, p. 144.

Afro-Virginians engaged in agricultural labor as compared to white Virginians doing the same steadily rose, it follows that the average colonist would have become accustomed to interacting with black people exclusively in this context. In this way, the second connection was established. Africans and those of African descent became more closely associated with a type of labor that colonists had seen as inherently demeaning for sixty years. When compared, the Northampton and Middlesex County order books bear out this narrative. In Northampton County, a place less dependent on tobacco, the sources suggest a set of racial attitudes that were much more flexible than those in Middlesex County, and they reflect more frequent and more extreme instances of wealthy and prominent free blacks (although in neither county could free blacks become as wealthy and influential as the white planter elite). In Middlesex County, where tobacco cultivation was dominant, attitudes were far more rigid, and in this mainland county in the 1680s, permanent servitude took on the racialized nature that it would retain until abolition.

### Chapter 3

#### The Statutes

The conclusions that have been drawn from the Northampton and Middlesex order books are important in that they help to track the trajectory of slavery in its very beginnings in these two counties. They offer a glimpse into attitudes during a time that, due to the inaccessibility of sources, is much harder to analyze. However, they illustrate just that: attitudes. The motivations behind these judgments were not institutionalized; that is, they may have been indicative of how a small group of magistrates were inclined to rule, and the diction indicates individual attitudes, but they do not reflect the official “party line” of the House of Burgesses. Fortunately, thanks to the colossal efforts of 19<sup>th</sup>-century archivist and lawyer William Waller Hening, historians have access to a remarkable resource that allows a set of official legislative pronouncements (as opposed to judicial proceedings) to be subjected to the same methodology that has been applied to the Northampton and Middlesex order books.

The first important entry from the Hening statutes is already familiar: “IT is thought fitt that all those that worke in the ground of what qualitie or condition soever, shall pay tithes to the ministers.”<sup>72</sup> At first glance, this statute looks to apply to all genders and ethnicities equally. It does not contain a word that is specifically associated with one race; in fact, it emphasizes that it applies to all agricultural laborers “or what qualitie or condition soever.” In other words, it is not targeted at Afro-Virginians or Indians. Indeed, it may have genuinely been intended to be neutral. However, as discussed at the end of the previous chapter, the effects of the law were far from neutral.

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<sup>72</sup> Hening, ed., *The Statutes at Large*, vol. 1, p. 144.

The neutrality of the 1629 statute gives way to a famous incident in September of 1630 in which colonist Hugh Davis was “to be soundly whipped, before an assembly of Negroes and others for abusing himself to the dishonor of God and shame of Christians, by defiling his body in lying with a negro; which fault he is to acknowledge next Sabbath day.”<sup>73</sup> This judgment is often interpreted as Davis being punished for sex with a female slave, and cited as evidence of racially prejudiced thought early in Virginia’s colonial development. However, as legal historian Paul Finkelman points out, and as is confirmed by the wording of the order books, this interpretation is not consistent with the naming conventions of the period that have been examined in this paper.<sup>74</sup> Had Davis been found guilty of miscegenation, the record would have reflected that he had been caught lying with a “negro woman.” Instead, it records that he laid with a “Negro,” most likely a man, therefore making Davis’ a crime of homosexuality. Indeed, there is an example of an instance of miscegenation that is recorded in Hening’s statutes. In 1640, Robert Sweet was ordered “to do penance in church according to laws of England, for getting a negroe woman with child and the woman whipt.”<sup>75</sup> This judgment, from only a decade after the Davis case, lends further credence to the idea that Davis was convicted of sex with an Afro-Virginian man.

## **Timeline**

Finkelman rightly highlights that in the Davis case, gender, rather than race, was the aspect of colonial identity that played the most significant role in how and why the

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<sup>73</sup> Hening, ed., *The Statutes at Large*, vol. 1, p. 146.

<sup>74</sup> Paul Finkelman, “From Freedom to Slavery: How British Colonists Remade English Common Law to Create Slavery in Virginia,” (presentation, 1619 and the Making of America Conference, Hampton, VA, September 26, 2013).

<sup>75</sup> Hening, ed., *The Statutes at Large*, vol. 1, p. 552.

court reached its verdict. Indeed, due to the comparatively fluid conception of race that defined the attitudes of the early decades of colonization, gender may well have been the more important factor. Finkelman interprets the Davis case and others from its time to conclude that racial prejudice played no part whatsoever and that it would remain absent until the aforementioned economic developments of the 1680s brought it to the forefront. However, on aggregate, evidence from the order books and Hening's statutes shows that at least on the Eastern Shore, some level of racially prejudiced thought set Afro-Virginians under Anglos in the social order existed as early as the 1630s. Davis lived on the Virginia Peninsula, and it is possible that varying regional timelines account for this difference, but Finkelman's assertion seems to set the timeline of the development of racialized slavery back several decades too late. Further research on a wider geographical and temporal variety of sources is needed.

At any rate, this issue of a "timeline" of when and to what degree colonial Virginia slavery was driven by racial attitudes has been of great interest to historians. Various scholars over the years have weighed in on when, approximately, racial attitudes in the colony came to resemble the famously racist and inflexible system well-known to have existed in the 18<sup>th</sup> and 19<sup>th</sup> centuries. Taken as a whole, Alden Vaughan has described this discussion as the "origins debate."<sup>76</sup> In his 2011 essay "Beyond the 'Origins Debate': Rethinking the Rise of Virginia Slavery," John C. Coombs attributes the weaknesses of historiography on the subject to "insufficient attention to socioeconomic and geographic differences, unwarranted extrapolation from limited data,

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<sup>76</sup>Coombs, "Beyond the 'Origins Debate', 239.

or just plain unsupported assumption and assertion.”<sup>77</sup> Coombs introduces several important modes of thinking into the origins debate, the first being the “untapped wealth” of county-level resources rather than colony ones.<sup>78</sup> This paper is, in part, an effort to address this thin spot in the historical scholarship, and a county-by-county approach has been shown to be a valid and useful one. Coombs also emphasizes the unequal socioeconomic distribution of slaves. For example, he highlights that “between 1670 and 1700, officeholders claimed 70% of all black headrights awarded in land certificates”<sup>79</sup> and that “over three-quarters of inventoried elite decedents owned slaves in these decades.” These are only a couple examples of various charts, maps, and graphs that illustrate trends of slave ownership in the colony as well as on the “sub-regional” level.<sup>80</sup> Coombs’ statistical and numerical analysis is very comprehensive and well-researched, and it demonstrates a key point: that the individuals who were making the laws that governed labor policies and the ones who most often appeared in court to affirm the statuses of their slaves and servants were the same ones who owned the vast majority of them. In this way, he challenges the questions that historians have asked by demonstrating that many other variables were at play so as to complicate a simple issue such as establishing a timeline.

However, the issue of the timeline and the broader “origins debate” remains relevant, and Coombs does not critique this discourse in the way that he intends. The lesson to be learned from Coombs is not that regional differences, variations in the economy, and unequal distribution of servant ownership make tracking the trajectory of

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<sup>77</sup> Ibid., 240.

<sup>78</sup> Ibid., 243.

<sup>79</sup> Ibid., 249.

<sup>80</sup> Ibid.

Virginia slavery in time a less valuable venture. Instead, he highlights the many factors that would enrich and add to any argument for a cogent timeline.

This analysis has focused mainly on regional variations between Northampton County and Middlesex County, and it has demonstrated that even over relatively small distances, significant differences can be brought to the forefront. Coombs' vision presents an opportunity for further research that, taking into account the many factors that he highlights, could be extremely comprehensive. However, in order to conceptualize changes in Virginia slavery over time, the advancement of a timeline, however approximate, has been an integral part of the scholarship over the years and should remain so.

### **Christianity**

The Davis ruling also brings to light another aspect of the dynamic politics of identity that was developing: Christianity. Being baptized into the Christian faith (of the Church of England, of course, English colonists saw Catholicism as even more threatening than irreligion or African faiths) served, for some savvy navigators of colonial society, as a bulwark against the erosion of their rights. An example of how this identity could be utilized is found in a case contained in the second volume of the Hening statutes. In March of 1662, the legislature “enacted that what Englishman, trader, or other shall bring in any Indians as servants and shall assigne them over to any other, shall not sell them for slaves nor for any longer time than English of the like ages should serve by act of assembly.”<sup>81</sup> This act was a clear attempt to help Indian relations by providing

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<sup>81</sup> Hening, ed., *The Statutes at Large*, vol. 2, p. 143.

them a legal guarantee against slavery. (Interestingly, this is one of very few uses of the word “slave” in the Henning statutes, and, up to this point, it was used mainly to refer to Indians.) However, there is clear evidence that this law was challenged. Later that year, judgment was passed on the case of an Indian named Metappin: “METAPPIN a Powhatan Indian being sold for life time to one Elizabeth Short by the king of Wainoake Indians who had no power to sell him being of another nation, it is ordered that the said Indian be free, he speaking perfectly the English tongue and desiring baptism.”<sup>82</sup> It appears that the guarantee against Indian slavery was taken somewhat seriously. The diction of the ruling constitutes a logical non-sequitur. It had already been established that the Wainoake chief had no right to sell him because he belonged to a different tribe. The additional information concerning Metappin’s command of English and desire to be baptized ought to have been considered wholly irrelevant. Instead, it was included, as it served to bolster his bid for freedom.

The idea of Christianity as a defense against legally binding servitude was also applicable to Afro-Virginians. In a short yet meaningful passage from a 1671 inquiry by the Lords Commissioners on Foreign Plantations, Virginia governor William Berkeley estimates the count of the population of his colony thusly: “two thousand black slaves” and “six thousand Christian servants.”<sup>83</sup> Although short, this example can be given outside weight in proportion to its length because of the nature of the source. Berkeley, perhaps the most genteel and best-educated colonist of his day, wrote out this answer in response to a specific set of questions posed to him by those who were essentially his bosses. It can be assumed that his responses were deliberate, thought out, and accurately

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<sup>82</sup> Ibid., 155.

<sup>83</sup> Ibid., 515.

reflected what he intended to communicate (this is as opposed to entries in the order books, which, although they displayed increased formality over time, were not much more than rough summaries written down as events played out). Berkeley's careful diction lays out the racial dichotomy that was taking shape in Virginia in the starkest possible terms. He describes two disparate groups of people: black slaves on the one hand and Christian servants on the other. Clearly, the racialization of slavery had begun to manifest itself even in Berkeley's careful phrasing. Even before Berkeley's letter, the situation created by the "Christianity loophole" had been resolved quite specifically and deliberately. In 1667, the General Assembly ruled that baptism would no longer protect a slave from bondage: "It is enacted and declared by this grand assembly, and the authority thereof, that the conferring of baptisme doth not alter the condition of the person as to his bondage or ffredome."<sup>84</sup> This indicates that Berkeley's phrasing reflected an attitude that had been developing for some time, and that, by the time of his letter, had begun to become institutionalized.

Very deliberately, the wealthy, white legislators, the same individuals whom Coombs has demonstrated to have owned the vast majority of slaves, closed off a path towards freedom that many Afro-Virginians had taken. This is a clear effort that can be seen as a significant step in the tightening of control over their labor force. Importantly, they did so in a way that some colonists, especially in Middlesex County, would have understood to be racially targeted through their use of the word "slave."

Overall, the laws recorded in the Hening's Statutes are best understood as reactions to conditions in the far-flung Virginia shires that played out in courts on the

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<sup>84</sup> Ibid., 260.

county level. The documents can be interpreted as engaging in a conversation that took place over several decades. As questions of status and identity appeared in the counties and were recorded in the order books, they were, usually after some years, settled once and for all by the General Assembly. All the while, even in the diction of official legislation, closely held attitudes towards race and ethnicity were evident.

## **Conclusion**

The laws and court cases analyzed in this analysis represent only a minute fraction of the total volume of documentation that colonial institutions produced. They were chosen to highlight specific differences, but they in no way form a comprehensive treatment of all existing material. Such a comprehensive analysis may be difficult due to the fact that many colonial Virginia documents are scattered in various libraries and courthouses across the state or simply did not survive the Civil War. However, expanding this analysis forward through time and geographically to include a wider spread or larger number of counties would enhance and deepen how historians understand the trajectory of Virginia slavery and racial thought, especially now that this analysis has demonstrated that legitimate conclusions concerning varied development in different counties.

The trajectory of Virginia racial thought is worth academic study because it continued long after slavery was abolished. Even into the present day, people of African descent in Virginia and in the United States take part in the larger discourse by which they continually define and redefine their identity and role in American society. Just as in colonial times, this racial discourse continues to develop alongside and interact with the ongoing discourse of gender and sexual identity that has taken on a new dynamism and relevance in recent years. Like a distant mirror, analysis of the past aids our understanding of old narratives that affect the present day.

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