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Custom and law: The status of enslaved Africans in seventeenth-century Barbados

Jerome S. Handler

ABSTRACT

The island of Barbados provides an ideal case study to explore the beginnings of slavery and definitions of slave status in England's early American colonies. Africans and Europeans confronted each other earlier and on a larger scale in Barbados than in any other English colony. By tracing the development of slavery from the colony's settlement in 1627 this article argues that the legitimization or legalization of African slavery and the status of slaves were established in custom long before any slave laws were passed. Focus is on slave status as a point of analysis, implicitly defined by three major features: chattel property, lifetime (or permanent) servitude, and inheritance of slave condition from an enslaved mother. In examining the evidence for these features, the article contends they were part of the culture of the Euro-Atlantic world and English worldview by the time the island was settled. None of the features was ever defined in any law; rather, they were implicit in any Barbados law that mentioned slaves.

In February 1627, 'forty men or more' arrived from London to establish a colony in Barbados. The party was headed by Henry Powell, the captain of the ship *William and John*, in a venture sponsored by a syndicate led by the Anglo-Dutch merchants Peter and William Courteen. During the Atlantic crossing, the *William and John* captured a small number of Africans, probably from a Portuguese vessel, and took them as a prize to Barbados, uninhabited at the time. Nothing is known of this capture, but within a short time the Africans were identified as 'slaves'.¹

Sources on Barbados slavery are very scarce for this early period, and the enslavement of the original group of Africans is only attested in two letters by the same person. In August of 1627, 18-year-old Henry Winthrop, who had arrived in May with the second colonizing party of about '50 men', wrote to his uncle that, aside from English settlers, Barbados contained '50 slaves of Indynes and blacks'. Two months later, he notified his father that there were 'but 3 score of christyanes and fortye slaves of negeres and indyenes'.²

How these ‘indyenes’ came to Barbados will be discussed below, but by 1628 and 1629 about 1400 to 1850 English ‘men, women, and children’ and a small, but unknown, number of Africans and Amerindians lived on the island.³ The status of the early Amerindians may have been ambiguous, but from the very beginning of the new settlement, there was no ambiguity surrounding the status of the Africans; not only were they considered chattel property, but also a property that would serve in perpetuity and whose descendants would be enslaved if their mothers were slaves. These three essential features of New World slave status were also present in Virginia and other early English colonies long before slave laws were enacted.⁴ In Barbados they were never sanctioned or made explicit in any law though they were implicitly present in the worldview of Anglo-Barbadians when Africans arrived with the first colonizing party. In addition, African birth or descent, or ‘race’, was attached to slave status from the beginning of the colony, years before it was clearly implied in the island’s slave laws.

This article discusses the evidence for how these characteristics were established in Barbados and how customary practices and beliefs made their establishment possible without the need for written law (common law and statutory law).

From its initial settlement, Barbados quickly grew over the following decades. The shift from an economy initially based on small-scale farming of subsistence and export crops (e.g. tobacco and cotton) to an economy based on the large-scale production of sugar on slave plantations occurred fairly rapidly from the 1640s through the 1650s. As Barbados became increasingly attractive to European settlers, the white population grew to over 18,000 by the mid-1640s, including many indentured servants both voluntary and coerced. During this period, ‘Negro slaves’ increased to around 6000, a number that rapidly rose as sugar production intensified. By the mid-1650s, the European population of approximately 25,000 exceeded the roughly 20,000 Africans. This was the last period until slavery ended in 1834 that the number of whites surpassed the number of blacks. Despite high mortality rates among all population groups, the enslaved population averaged approximately 33,000 and the white population (indentured and free) about 21,500 at the zenith of the island’s sugar-based prosperity in the mid-1670s.⁵ By the second half of the seventeenth century, Barbados had become England’s wealthiest and most populous American colony. It remained so until the first several decades of the eighteenth century, when its prominence in Britain’s Caribbean empire was overshadowed by Jamaica.

Defining slave status: custom and law

This article examines the status of enslaved people in a colony whose ‘mother country’ did not have slavery or laws governing or defining it. Addressed is an observation by James Stephen, the early-nineteenth-century British lawyer,

prominent abolitionist, and authority on West Indian slavery, that slavery 'was introduced and established in our colonies ... for the most part, on the authority of custom alone'. He stresses that laws dealing with slaves in the West Indian colonies followed from social practices and assumptions, the 'authority of custom', established very early in colonization.⁶

Such laws, it is contended here, developed out of widely accepted ideologies about slavery in the Euro-Atlantic world, including that slaves were private property (a fundamental component of New World slave status), the absolute authority of the slave owner, and an assumption of African or 'Negro' inferiority. These ideologies were expressed in social practices (i.e. customary behavior) derived from Iberian slavery that were implicitly supported by English law. Despite the importance of laws, it was the force of custom and tradition that served as the basis for the enslavement and forced labor of Africans and their descendants in Barbados and in England's other early American colonies. Legal sanction by the English Crown was not required in order for slavery to be an acceptable labor practice outside of England.

From the founding of Barbados, no law defined the status of slaves in the colony. With one exception enacted in 1668, when Barbados had already passed laws regulating slave behavior, there was never such a law. Yet people identified as such in official documents, early laws, private correspondence, travelers' accounts, deeds and wills, and so forth became a crucial part of the island's social and economic system.

The precedents for the features of chattel property, lifetime servitude, and matrilineal descent in Barbados are here examined through 1) English perceptions of slavery as influenced by a variety of sources, ranging from the Bible to sixteenth -and seventeenth-century Iberian slaving practices in the Atlantic world; 2) English views of private property as encompassed in English law; 3) and the early statutes of Barbados, particularly those relating in one way or another to slaves.

Distinguishing between the *institution of slavery* and the major components or features of slave *status* helps focus this discussion. As scholars are well aware, many definitions of the institution are possible. In his major study of slave law in the Southern United States, for example, Thomas Morris underscores a widely shared view that, without 'the notion of the person as a *thing*, an object of property rights ... there was no slavery'. Arnold Sio pointed to slavery's 'main defining feature [as] the complete subordination of the slave to the will of the master'. Sio, in turn, was paraphrasing the Roman definition of slavery as given by Moses Finley, the distinguished scholar of slavery in classical antiquity. Some variation of this definition is given in many writings. Among the definitions that can be given of 'slavery' as an *institution*, K. R. Bradley's emphasis on 'social and economic exploitation' in Roman society serves present purposes. For him, the 'exploitative element' is crucial so that 'slavery by definition is a means of securing and maintaining an involuntary labor force by a group in society which

monopolizes political and economic power'. In slave societies, 'slave' was an ascribed status, a position in the society defined by custom or law and assigned at birth or involuntarily assumed later in life. In emphasizing the definition of slave *status*, this article examines how its fundamental features were embedded very early in the new colony of Barbados.⁷

While scholars of slavery occasionally mention the three characteristics of slave status emphasized here, these are rarely discussed together, identified as defining characteristics, or traced in terms of their historical development within a particular English colony. Among students of New World slavery, Michael Guasco, David Eltis, and particularly William Wiecek are unusual in that they even explicitly mention any of the characteristics. Guasco comprehensively discusses how the English perceived slavery in the early modern era and the external influences on these perceptions. While slavery was not technically legal in England itself, he shows how it was still central to the way that the English defined themselves and others. However, he scarcely notes the characteristics of slave status in a footnote. Eltis briefly mentions, as others such as Winthrop Jordan had observed much earlier, 'Africans went to the Americas as chattel slaves for life', and that their offspring 'were always slaves'.⁸

In an article which in certain respects more directly touches on the present work, William Wiecek observes that by the time of the American revolution nine of the mainland colonies 'had fairly elaborate slave codes that specified one or more of the four basic legal characteristics of American slavery'. These '*legal characteristics*' (emphasis added) or 'four basic elements of slavery' were: 'lifetime status'; 'partus sequitur ventrem' (the offspring follows the mother); 'racial identification'; 'slave-as-chattel'. With the adoption of these characteristics, '*slavery as a legal institution was fully fledged*' (emphasis added). Wiecek derived these characteristics from an examination of slave laws in all of the colonies, but particularly the nine 'with elaborate slave codes'. As with many other writers, Wiecek makes no distinction between 'slavery' and 'slave status', using the two terms interchangeably. More germane to the present thesis is that he stresses written laws, not custom, as a validation of slavery and its institutionalization.⁹ These characteristics, including a belief that enslaving Africans was socially acceptable, were embedded in the culture of the earliest English colonists and informed the ways in which Africans were viewed when they became part of the developing colonies.

Influences of Iberian slavery and English law

What exactly did 'slave' mean to the early settlers in English America? Winthrop Jordan raised this issue in his now classic *White over Black*. Acknowledging that Iberians had 'set an example' with respect to slavery which 'proved to be, at very least, suggestive to Englishmen', he asks what was 'contemporary English knowledge' of Iberian slaving activities and slavery in the late sixteenth century? He

concisely answers, 'Englishmen had easily at hand a great deal of not very precise information.'¹⁰

The early English settlers of Barbados and those who came in following years were certainly aware of slavery and forced servitude in general. A number of authors have addressed directly or indirectly Jordan's question and, more broadly, other cultural influences that affected how the English perceived and thought about slavery in the early modern era and in their new American colonies. Michael Guasco's detailed examination is particularly informative and demonstrates how English conceptions derived from a diversity of sources. These sources included the Bible, Greek literature and Roman law, as well as contemporary accounts of galley slavery in the Mediterranean. The late sixteenth-century trading and slaving activities of Englishmen such as John Hawkins, Francis Drake, and Christopher Newport, as well as the accounts of English merchants participating in the African slave trade, also informed English views. Conceptions of slavery from these sources had become embedded in English culture and English perceptions of the Atlantic world. Guasco observes that, 'Although there did not exist a single, monolithic understanding of slavery in early modern England, Englishmen were especially familiar with Iberian slavery.'¹¹ By the time Barbados was settled, Iberian slavery and slaving practices seem to have been the crucial influences on Anglo-Barbadians.

One aspect of Iberian slaving practices that influenced Anglo-Barbadian views on slavery was an ideology that made the exploitation and enslavement of Africans acceptable. In an early article, Alvin Thompson argues that the major prejudices that Europeans in the Americas held against blacks/Africans originated prior to 1600, so that when the transatlantic slave trade expanded, 'there was already a solid body of prejudicial literature in Europe, which could be exploited to "justify" this trade'.¹² Today, in one form or another, this is a fairly common view among students of transatlantic slavery. Elaborating on this theme, James Sweet concludes that although early English settlers in the New World 'did not bring with them a tradition of slavery from their homeland', they did have 'an ethos that allowed for the enslavement of peoples deemed to be social outsiders' – and Africans were quintessential outsiders. The English 'adopted many of the same negative attitudes towards Africans that Iberians had developed much earlier', and the word 'Negro' became for the English and other northern Europeans (including the Dutch), 'synonymous with "slave"', or at least with someone who could be enslaved.¹³ The fact that Iberians of the sixteenth and early seventeenth centuries focused their slaving activities on Africans, rather than other peoples, certainly contributed to the wider ideology of African enslavement that became pervasive in the culture of the Western world.

In addition to the potential for enslaving Africans, Iberian influence is also evident in the early English trade along the African coast. April Hatfield distinguishes between how Iberians viewed free African traders in Africa on the one hand and enslaved Africans on the other, and how English perceptions

initially were filtered through these two views. In the sixteenth and early seventeenth centuries, English merchants were aware of 'their relatively weak position and their need to conform to African practices in order to trade'. On the other hand, Hatfield argues, 'English mariners readily accepted enslaved Africans' status in the Atlantic world as trade goods, and the degradation' imposed on them by Iberian slave traders and slave owners. Hence, English perceptions of Iberian slavery greatly influenced their own 'colonization projects' and attitudes toward African slavery in the New World. Entering into the long-standing 'origins debate' of the status of the first Africans in Virginia, she concludes that they 'arrived as slaves, and English colonists purchased them as slaves. ... The English were not uncertain about the status of the Africans who arrived, because their status had already been defined for the English by the Spanish and the Portuguese.'¹⁴ All evidence indicates that Hatfield's general conclusions are equally applicable to the English who colonized Barbados.

Although one cannot say with certainty what early settlers in Barbados knew specifically about Iberian slavery and how they defined African enslavement, the major components of slave status in the Iberian world provide clues as to how these components were integral to English views of African enslavement in their early American colonies. The legal foundation for slavery in Spain and Portugal's early New World colonies were provisions included in the *Siete Partidas*. This comprehensive legal code compiled in mid-to late-thirteenth-century Spain was later adopted by Portugal, particularly during the unification of both kingdoms (1580–1640). Heavily influenced by Roman law, the *Siete Partidas* address several regulations related to slavery: enslavement through capture, the slave as private property over which 'a master has complete authority', the transmission of slave status from an enslaved mother, the right of a master to manumit or 'grant liberty' to his slave, and lifetime servitude.¹⁵ Given the prominence of Iberian slaving practices in the Atlantic world, the *Siete Partidas* set a framework for the definition of slave status. Thus, even if the English colonists did not know the details of the slavery provisions in the *Siete Partidas* (or did not articulate them), the features of slave status that are discussed in this article were part of the culture of the Euro-Atlantic World and its ideas concerning the enslavement of Africans by the time the English established their colonies.

The relevance of English law and conceptions of property

Regardless of the influence of the *Siete Partidas*, the English did not adopt Spanish slave law.¹⁶ As Thomas Morris has observed:

It was English law that provided the legal categories into which blacks as property could be placed. There was no need to adopt statutes to cover this; the common law of property already did, and it allowed wide authority to those who possessed property to use it as they pleased.¹⁷

Several aspects of English law probably shaped the way in which early English colonists viewed slave status that also were congruent with Iberian practices. In the seventeenth century, there were no English slave laws that could be adopted or modified by the early colonists. When the English settled North America and the Caribbean, slavery 'had not existed in England for hundreds of years'; a legal attempt to introduce a type of slavery in the late 1540s only lasted for two years.¹⁸

Despite the absence of slavery and laws governing it in England, the early settlers 'carried in their cultural baggage a comprehensive world view, whose norms and values were rooted in English culture'.¹⁹ This 'cultural baggage' included the fundamental notion of 'absolute property', which the English brought to Barbados along with other components of their legal culture or ideology. The jurist Sir William Blackstone, in his influential *Commentaries on the Laws of England*, clearly and minutely defined 'absolute property'. Blackstone considers 'property in chattels personal' of which one type is 'property in possession absolute'. This type of property is 'where a man hath, solely and exclusively, the right, and also the occupation, of any moveable chattels; so that they cannot be transferred from him, or cease to be his, without his own act or default'. Absolute property can include 'inanimate things' and domestic animals. 'Of all tame and domestic animals', he writes, 'the brood belongs to the owner of the dam or mother; the English law agreeing with the civil, that *partus sequitur ventrem* in the brute creation, though for the most part in the human species it disallows that maxim'. These features of English law were consistent with two major characteristics of slave status as embodied in Iberian slavery: chattel property and matrilineal descent of slave status. From their capture in Africa and sale in the Americas, enslaved Africans were considered property over which owners claimed total authority. Moreover, English law at the time, as noted above, accepted the notion that West Indian slaves were property.

As discussed earlier, the data for Barbados are too meager to ascertain the exact way in which the first English settlers defined the Africans brought to the island in 1627. The *Siete Partidas* and Iberian slavery, however, provide a strong clue to Africans' chattel status from the beginning. The Winthrop letters identify them (and Amerindians) as a servile population, distinguished from 'christyanes'.²⁰ Since the Africans were taken as a prize (the Indians had voluntarily arrived later; see below), I assume Anglo-Barbadians considered them as property, probably belonging to the Courteens, who had financed the expedition to Barbados. In addition, captive Africans arriving in Barbados in later months and years had been purchased from African sellers in West and Central African coastal areas by European slave traders, with Anglo-Barbadians occasionally sponsoring their own slaving voyages. They were resold in Barbados, as in other ports, by the captains of slaving ships, or by the companies or investors for which the captains worked. Thus, as with the first Africans taken as a prize in 1627, newly purchased and imported Africans were probably

soon, or in Richard Dunn's phrasing, 'very quickly treated ... as chattels'. From the outset, they were recognized by Anglo-Barbadian society as the private property of their owners; they were, as Christopher Tomlins observes, 'merchandise until sold and property thereafter'.²¹

It is important to note that these property rights were never specified as such in Barbados laws although they were implicit in any law or legal document dealing with slaves. Slaves were bequeathed in wills, sold in deeds, given as gifts, used to pay mortgages, used as security in loans, listed in plantation inventories along with other moveable property and livestock, and their value specified in currency or sugar.²² Over time, English practices and attitudes regarding voluntary and involuntary servitude, as well as legal traditions and common law concerning private property became the foundations on which Barbados slave laws were constructed. The chattel status of slaves, however, never required any law; it was firmly embedded in custom from the beginning of slavery in the colony.

Such was the case with another defining fundamental characteristic of slave status: inheritance of status from an enslaved mother. In this case, both the *Siete Partidas* and English law supported one another, both ultimately deriving from the concept in Roman law of *partus sequitur ventrem*. However, the specification of this descent rule for enslaved people is direct and explicit in the *Siete Partidas*, while in English law it applied to the ownership of domestic animals.

'Domestic animals', states Halsbury's authoritative *Laws of England*, 'like other personal and movable chattels, are the subject of absolute property'. The idea of 'absolute property' includes the rule that the offspring of domestic animals belong to the owner of the female parent. The 'sensible reason' behind this rule, observed William Blackstone in his influential treatise, *Commentaries on the Laws of England*, was given by a seventeenth-century German jurist:

not only because the male is frequently unknown; but also because the dam, during the time of her pregnancy, is almost useless to the proprietor, and must be maintained with greater expence and care: wherefore as her owner is the loser by her pregnancy, he ought to be the gainer by her brood.²³

The transference of *partus sequitur ventrem* from domestic animals to humans thus resulted in the characteristic of maternal transmission of slave status.

In the 1780s, Thomas Clarkson translated into English his Latin essay at Cambridge on the subject of slavery. This document became one of the more celebrated works in the anti-slavery literature. Clarkson made what was perhaps the earliest explicit observation on the connection between matrilineal inheritance of slave status in the colonies and Roman law. Arguing that African captives were enslaved in Africa through 'fraud or violence', he raised questions about the legitimacy of their ownership and also decried the application of the *partus sequitur ventrem*, 'which taught that all slaves were to be considered as

cattle', to slaves born in the colonies: 'It is then upon this, the old Roman law, and not upon any English law, that the planters found their right to the services of such as are born in slavery.'²⁴ In Roman law, a child born to a legally married couple of Roman citizens was considered legitimate, inherited the father's status, and was eligible to inherit his property. A child born out of wedlock took on the status of its mother. For example, the child of a slave master and an enslaved mother was the slave of the master, and one born to a freedwoman outside of marriage was free, but could not inherit the status or property of the father.²⁵

In civil law societies such as France, Portugal, and Spain, whose legal systems ultimately derived from Roman law, the status of the child followed that of the mother. However, in English common law the status of the father governed the legal status of the child, provided both father and mother were in a legally recognized marriage; if unmarried, the child could not inherit from the father and took on the status of the mother.²⁶ This rule was followed in England's New World colonies.

Sexual relations, forced or consensual, between free or indentured white males and enslaved women and girls (and occasionally the opposite) were fairly common in seventeenth-century Barbados as in all New World slave societies. Moreover, whites were not penalized for having sexual contact with slaves in Barbados, but marriage sanctioned by church and state was very rare. Although no law prohibited white men from marrying enslaved women, racist and ethnocentric views embedded in custom were sufficiently strong to largely prevent the practice.²⁷ Thus, unless a white father made special provisions, such as manumitting his offspring, his child by a slave woman was a slave.

It was this very issue that resulted in the 1662 Virginia law declaring that all children born in the colony 'shall be held bond or free only according to the condition of the mother'. This law, the earliest in the North American colonies to address this issue, was prompted because 'some doubts have arisen whether children got by an Englishman upon a negro woman should be slave or free'.²⁸ This descent principle was also incorporated into the *Siete Partidas*, as well as the 1685 *Code Noir* that governed the status of the enslaved in the French colonies.²⁹ In contrast, the principle was never codified in Barbados, although in practice it was fully operational from an early date. For example, in 1658 a suit was brought before the Barbados Council by 'Mary, a Negro' against a prominent planter and slaveholder, John Higginbotham. Mary, presumably a 'free Negro' at the time (one of the very few on the island), was asking for 'the freedom of three children born of her in this island'. The Governor and Council opined 'that if the said Mary was a slave at the time when the three children was born that then her master ought to have them'.³⁰

In his discussion of the 1662 Virginia law, Christopher Tomlins emphasizes that its 'genealogy is unclear; no such legal rule was then in place in any British colony, island, or mainland'. With respect to Barbados, he is absolutely correct.

Seventeenth-century Barbadian law, as was noted earlier, contained ‘no reference to matrilineal heritability’. In fact, among scholars of Anglo-American slave laws, there has been ‘some confusion as to the source’ of this legal norm or rule, although ‘there is no doubt’, Thomas Morris has observed, that the rule ‘was of importance in the legal history of slavery’.³¹

I have considered the *likely* genealogy of this rule in Barbados by suggesting its linear connection to English common law notions of absolute property as extended to animal ownership. Although direct evidence is lacking, I speculate that a long-standing custom in England with respect to domestic animals was carried along with other English customs and legal culture into the New World. There it took on a new meaning, heavily influenced by an Iberian ideology of African enslavement that viewed slaves as property, with its concomitant features of slave status. I further argue, as noted earlier, that these features were already incorporated into the belief system of Anglo-Barbadian culture before any laws articulated or implied their existence. The fact that the Barbadian legislature never felt a need to enact a law clarifying the matrilineal transmission of slave status, even after colonies such as Virginia and Maryland did so, strongly underscores that the principle was already firmly established in custom.

Documentary evidence for slave status in Barbados

With Iberian influences and English common law precedents in mind, the documentary evidence from Barbados is discussed to trace the emergence of the three characteristics of slave status. Though most of this evidence is indirect or inferential, it provides compelling clues as to the customary behavior and ideas that preceded any legislation relating to slavery or slave status. Alan Watson, among other scholars, has identified a common process that unfolded in England’s American colonies wherein there were slaves in the early years, ‘but no law of slavery. The law came into being bit by bit.’³²

Barbados was a proprietary colony for the first several decades of its life. The proprietorship was disputed for many years with political intrigues and machinations in London and Barbados as two factions led by William Courteen and the Earl of Carlisle, respectively, laid claim to the island. The issue of proprietorship was not resolved until around 1629–1630, but bitterness and tensions between the two sides continued for some years thereafter. Carlisle died in 1636 having bequeathed his right to Barbados to his son, but his right continued to be challenged by the Courteen syndicate, which tried to get compensation for their loss of Barbados from his heirs. The conflict between these two sides played out on the island itself.³³ As in other English colonies with the same form of government, the rights given by the Crown to a Proprietor included the power to make laws and he, in turn, could transfer his power to deputies. An appointed Governor normally exercised the proprietor’s powers and a Council assisted him. In Barbados, there were usually twelve Council members, invariably

prominent landowners/slaveholders. The Governors and Councils 'held supreme command', but in 1639 a House of Assembly was established. Selected by a small electorate defined by a very narrow franchise, the Assembly, in effect, represented the plantocracy and its interests. At first the Assembly was only an advisory body, but in 1641 it began to initiate legislation.³⁴

The first *documentary* evidence in Barbados for the characteristics of slave status, particularly property and perpetual servitude, dates to 1636 but only appears in a 1741 publication. As reported in *Some Memoirs of the First Settlement of the Island of Barbados*, in 1636 the new Governor Henry Hawley and his appointed Council 'resolved that Negroes and Indians, that came here to be sold, should serve for life, unless a contract was before made to the contrary'.³⁵ Under the Proprietorship this resolution had the effect of law, and if it ever had actually existed (see below) it *may* have been the earliest law defining slave status in England's New World colonies. From the middle of the nineteenth century to the present day, this resolution has been widely cited by students of Barbados history, as well as scholars of slavery in England's other early colonies.³⁶

It bears emphasis, however, that the *Memoirs* provide the only known primary-source reference to this resolution, and there is no corroborative evidence for it. Barbados laws pertaining to slaves after 1636 never mention it, and it would be no surprise if Barbadian lawmakers of subsequent generations were completely unaware of it. In any case, the resolution never appears in later slave laws and reference to it is absent in other primary sources, legal and otherwise.³⁷ In fact, the resolution may never have existed.

This possibility arises from comments made in the early-nineteenth century by Nathaniel (or Nathan) Lucas (b. 1761, d. 1828), the descendant of an old Barbadian planter family and a prominent member of the island's elite. Between 1818 and 1828, Lucas transcribed many seventeenth-century documents, including Council minutes, petitions, will probates, and similar materials; at the time, these were already in a very poor and deteriorating condition. Many of the originals no longer exist and the earliest Council minutes known today and since Lucas' time only begin in 1654. In his transcription, Lucas questions the veracity of Duke's 1741 *Memoirs* claiming, 'no reliance can be placed on it'. He challenges if there was ever any such resolution, stressing that since the minutes of the Barbados Council start after 1636

how he [Duke] could quote resolutions in Council, where no minutes existed, is singular enough. As to Negroes and Indians entering into articles of servitude, etc. with persons, who had either purchased them, as a commodity, or kidnapped them, is rather too much to be credited.

The lack of reference to the 1636 resolution in later legislation and other primary sources gives credence to Lucas' claims that the resolution never existed.³⁸

If the resolution had actually existed, the rationale for its passage is uncertain. Early settlers had no need to affirm the existence of slavery or to justify the enslavement of non-Europeans. The resolution may have been related to a dispute over the proprietorship of the island, which indirectly involved a group of Amerindians. This is suggested in a 1652 petition that was personally presented to the Barbados governor by Henry Powell, captain of the ship that landed the first colonizing party in 1627. Powell had returned to Barbados after an absence of many years to argue for Courteen's claim to the proprietorship of the island. At the time, Powell also petitioned for the liberation of the survivors of Amerindians he had brought to Barbados from the Dutch colony in Guiana (Essequibo) shortly after the 1627 landing. The Amerindians had come to Barbados voluntarily and as 'free people' under an agreement that Powell and the Dutch governor developed to the Indians' satisfaction. Within two to three years after the Indians' arrival, the agreement was broken and, according to Powell, 'the former government, of this island ... hath taken them by force and made them slaves'. With this and only one other known exception related to Amerindians, there is no evidence that other Amerindians or Africans brought to the island in later years arrived under anything resembling a contractual agreement.³⁹

Whether or not the 1636 resolution actually existed, Duke's *Memoirs* has led scholars of early English America and Barbados in particular to accept the resolution as the legal articulation of enslavement and lifetime servitude. However, like chattel property status, perpetual servitude for enslaved Africans was an established convention in the Euro-Atlantic world before the settlement of Barbados. This convention was accordingly in place long before Richard Ligon wrote of the Barbados he knew in 1647–1650: 'The Iland is divided into three sorts of men, viz. Masters, Servants, and Slaves. The slaves and their posterity, being subject to their Masters for ever.' Around the same period, other visitors independently reported, 'ingones and miserable negors [are] born to perpetual slavery, they and their seed' and 'the Negros and Indians ... they & the generation are slaves to their owners to perpetuity'. Perpetual servitude was also implicit in any reference to slaves in legal or other writings and sometimes made quite explicit as when a planter in 1643 bequeathed his small plantation, including 'two women Negroes ... for the termes of their natural lives'.⁴⁰

From 1641, when the House of Assembly began to initiate legislation, to 1661, when two major comprehensive laws were enacted applying to slaves and indentured servants, at least 204 laws were enacted in Barbados. This number has been arrived at from a chronologically arranged list of the titles of seventeenth-century laws, which had expired or had been repealed. With a few exceptions, most of these laws are known by title only, copies of the originals having been long since lost.⁴¹ These laws include a 30 August 1644 act 'concerning Negroes', which may have been the *earliest* law that specifically addressed the governing of slaves (see note 48). Of the 204 laws, eight dealt with only 'servants',

one with 'servants and slaves', two with 'servants and Negroes', and seven with only 'Negroes'. The terminological distinctions in these laws certainly suggest that the terms 'Negro' and 'slave' were used interchangeably at this time, and that Anglo-Barbadian society and colonial authorities assumed that persons identified as 'Negro', including those of mixed racial ancestry, were enslaved.⁴² In effect, then, the term 'slave' was an accepted legal category that was also found in documents such as deeds and wills. The interchangeability of the terms 'Negro' and 'slave' is also evident in the first published compilation of the island's laws for which the texts are known. In late 1651, the Commonwealth forces under Admiral George Ayscue assumed control of the island's administration from the Royalist government. Daniel Searle was appointed deputy-governor in March of 1652, and became governor in the following year. During Searle's administration (1652 – c.1660), all earlier laws enacted under the Royalist government were voided. Some of these laws were then reaffirmed because they were germane to contemporary conditions, while new ones were added which 'were thought necessary for the good government of the island'.⁴³

All of these acts were assembled in a slim volume published in 1654 (reprinted, 1656), the earliest publication of Barbados laws. Some of these laws had been enacted from the 1640s to late 1651, when the forces of Parliament took over the island from the Royalist administration. While Ayscue had signed a few of the laws in March 1652, the new governor Searle affirmed or approved most of them between October 1652 and July 1654. The volume contains 102 Acts in force as of July 1654, with some overlap with the 204 laws mentioned above. Twelve of the 102 concern, or refer to, 'servants' and the conditions of their servitude. Two additional laws address 'servants and Negro's' and were designed to inhibit or curtail the 'wandering' of these groups. An additional three laws mention 'Negro's', though none define slave status. For example, an act delineated punishments for persons who attempt 'to persuade any Negroes to leave their masters service (*to whom they are slaves*), with an intent to carry them ... out of this island' (emphasis added). None of the 102 laws, however, applied solely to slaves or 'Negroes'. As with the 204 laws discussed above, the 1654 laws make a clear terminological distinction between 'servants' (never referred to as 'Christian servants') and 'Negroes'. In fact, the laws clearly indicate that persons identified as 'Negroes' were slaves, and that status distinctions along 'racial' lines were legally recognized at least ten or more years before they were made explicit in two major comprehensive 1661 laws, one dealing with slaves, the other with indentured servants (see below).⁴⁴

Both indentured and enslaved people were legally restricted in their movements from their places of residence, and the legal system also circumscribed their lives in a variety of other ways, regardless of how effectively the laws were followed or enforced. Yet there were significant status and legal differences between the groups. For one, slaves had no legally recognized rights and could petition no authority, judicial or civil, for grievances. They were regarded as

private property over which owners claimed absolute authority and disciplinary actions were meted out by masters as individuals or through membership in the so-called slave courts. On the other hand, servants had rights and could, for example, take a master to court, even sue for freedom, though chances were slim that a servant could succeed in the face of a judicial and legal system that favored the planter class.⁴⁵

Although masters claimed servants as property for the period of their indentures, afterwards they were free and, if they had the resources, they could leave the island. No slave could ever legally leave the island without permission, and slaves were enslaved for life. Servants were obliged for a fixed number of years, which, however, could be extended as punishment for some legal transgression, but never for a lifetime. In addition, servitude was not transmitted to the child. While many servants had come voluntarily with contracts specifying their terms of service, many others came without contracts; upon landing in Barbados they received these contracts, under terms of the so-called custom of the country.⁴⁶ Slaves were never given contracts, and no African ever came to Barbados voluntarily. There were also many differences in the way each group was governed, policed, and punished in law and custom. Finally, no European servant was ever governed by slave laws or considered enslaved by colonial authorities or the Barbadian plantocracy (though some English servants viewed themselves in such terms⁴⁷).

While slave status in Barbados was never defined in law, from the beginning of the colony Anglo-Barbadians assumed that Africans and their children were property for the duration of their lives. As the enslaved population grew, the plantocracy found it increasingly necessary to address issues relating to its control and policing, and to construct separate laws governing indentured servants who constituted a different category of labor and posed different issues of control. Earlier slave laws were deemed ineffective because they did not accomplish what the lawmakers had intended.

The island's first comprehensive slave law for which the full text is known was passed in 1661.⁴⁸ The preamble to this law mentions the earlier passage of 'many good laws and ordinances ... for the governing, regulating, and ordering the Negro slaves in this island'. Such laws, the preamble notes, had been ineffective because slave owners and the white population in general did not comply with them. Moreover, 'many clauses' in these laws were deficient because they did not fully consider the nature of the 'slaves, their Negroes, an heathenish, brutish and an uncertain dangerous kind of people'. The 1661 law repealed all former laws relating to slaves, but it incorporates some features of laws enacted in the 1640s and early 1650s that were relevant to current issues and conditions. While most clauses in the 1661 law relate to public order and policing, a characteristic feature of most West Indian slave laws, slaves still required protection from 'the arbitrary rule and outrageous wills of every evil disposed person, and thus they should be protected *as we do many other*

goods and chattels' (emphasis added).⁴⁹ Although this act does not define the status of 'slave', it is the first law which explicitly identifies slaves as chattel property. It bears emphasis that the language of this law does not suggest it is creating a new understanding of slave status, but rather merely clarifying an already existing dimension of it.

That the slave was viewed as chattel is also found in an April 1668 law, passed when Barbados contained approximately 40,000–50,000 persons identified as slaves. This was the first law to define any aspect of slave status, but only under certain conditions. The 1668 act declared that slaves whose ownership was disputed because an owner had died intestate 'shall be held, taken, and adjudged to be Estates Real, *and not Chattels*, and shall descend unto the heir and widow of any person dying intestate' (emphasis added). The phrase 'and not Chattels' certainly indicates that slaves were already considered chattel property. The purpose of declaring slaves to be real estate if their owner died without leaving a will was to prevent court-appointed executors from selling them off separately. As Claire Priest points out, the law 'secure [d] slaves to the land they worked upon', and, in a colony dependent on sugar production, it could 'prevent the interruption of the estates' operations'. The first of its kind in the English colonies, the 1668 law was modified in 1672 to emphasize that, although 'Negroes' could still be considered real estate, they would 'continue chattels for the payment of debts' and could be sued for and recovered in personal lawsuits. The 1672 law was renewed several times and was made 'perpetual' in 1681 with no terminal date specified. As far as can be discerned, the 1668 law was the *only* Barbados law that codified the *chattel* status of slaves; as such, it was the first Barbados law to define slaves as *property*. It gave formal legal authority to customary practices in existence for many decades, and explicitly acknowledged that the enslaved were moveable property like any other chattel.⁵⁰

The force of custom with respect to property is also illustrated in the case of manumission, a subject that was very much a part of Roman slave law as well as the *Siete Partidas*, both of which declared the right of a master to free his human property. When George Fox, the Quaker leader, visited Barbados in 1671, he gave a sermon that encouraged Quakers to ultimately manumit 'the Negroes and Blacks, whom they have bought with their money'. Neither Fox nor his critics questioned the 'right' of slave owners to free their human property, nor was it a consideration in the manumission process. There is evidence for slave manumissions in Barbados as early as the 1650s. Although manumission was regulated by the island's legislature from time to time (in the form of fees paid to the public treasury), Barbados never had a law that authorized or permitted owners to free their slaves, if they so chose, or to prevent manumission. The right to manumit derived from the right of a property owner to dispose of or relinquish title to property in general.⁵¹

Conclusions

This article has argued that with the arrival of the first Africans taken as a prize in 1627, the English settlers brought with them a notion of enslaved status that included the characteristics of chattel property, matrilineal descent, and lifetime servitude, in addition to a conception of slavery that gave the owner absolute authority over his human property and the enslavement of Africans ideological sanction. As time passed and the institution of slavery came to dominate the society, Anglo-Barbadian slave owners did not require formal legal codification or statutory law for viewing slave status in these terms. Their early slave laws did not create slavery, but rather they codified and sometimes clarified a status that already existed in custom. Nor did these slave-owners require laws or approbation from the English Crown for the system of slavery that was crucial to the island's socio-economic system and of major importance to the seventeenth-century economy of the 'mother country'.

Eugene Sirmans observed in an early study of the influence of Barbadian laws on South Carolinian slavery that 'the colonists [in Barbados] disliked specific legal definitions of slavery and preferred the institution to be defined by custom rather than by law'.⁵² It was not, however, that Anglo-Barbadians 'disliked' constructing legal definitions of slavery, but rather that they had no need for such definitions. This article has maintained that Anglo-Barbadian views of slave status, although not necessarily articulated in writing, were derived from an Iberian ideology of African enslavement that was widespread in the Euro-Atlantic world and buttressed by English common law relating to property, particularly the ownership of domestic animals. These views were part of the ideology and legal culture that English colonists brought with them to Barbados and to other English colonies in the Caribbean and North America. The available evidence, including early laws and legal and financial documents, suggests that owners and local elites incorporated these ideas from the earliest presence of Africans on the island and that they became fundamental elements in the way Anglo-Barbadians viewed their society. Moreover, an inference from the admittedly sparse direct evidence indicates that racist assumptions about Africans and the ideological acceptability of their exploitation and enslavement were already present among the English who settled Barbados. Social practices included an equation between 'Negro' and slave, and thereby an assumption of Black/African as slave; that is, slavery was connected to phenotypic characteristics ('race') from its very beginning on the island.

These ideas and practices were elements in the culture of Anglo-Barbadian society and were passed down from generation to generation of slaveholders. Furthermore, as far as English imperialism and colonial developments were concerned, the legality of slavery in the seventeenth-century colonial world was never questioned. The Crown and the Colonial establishment accepted it, and there is no evidence that any seventeenth-century Anglo-Barbadian or English

merchant with trading interests in the Atlantic world considered the enslavement of Africans as intrinsically illegitimate, immoral, or unlawful.

James Stephen unhesitatingly made this point in the early 1830s in discussing the British West Indian colonies:

the law of slavery is to be found only in the customs of the colonies, and in the acts of their assemblies; but chiefly in the former ... the law of slavery is principally to be found, in those principles and maxims, which without any positive law, are evidenced by general practice, and are received in their courts as legal.⁵³

Both custom and laws rested on the concept of 'absolute property' and the power that owners had over their human property. To suggest that English settlers required statutory law to legalize slavery is to ignore the historically created and socially perpetuated practices that had the force of law. Enslavement of Africans was socially acceptable and legal in the English colonies from the moments Africans were obtained in Africa and landed in the New World.

Notes

1. Description of these events is largely based on first-hand accounts given about three decades after the landing took place. Although several accounts agree that some Africans arrived with the first colonizing party, their number is not certain. The ship's boatswain, reported 'ten negroes taken in a prize' while the ship's carpenter gave '2 or 3 blacks'. John Smith had learned from two early settlers that there had been 'seven or eight Negroes'. Materials on the first landing and early settlement of Barbados are derived from a variety of documents relating to conflicting claims to the proprietorship of the island. Henry Powell's Examination, 25 February 1657. MS. G. 4. 15, 157–61. Trinity College, Dublin; The first plantation of Barbados, in Breviat of the Evidence given into the Committee of the House of Commons by the Petitioners against the Earl of Carlisle's patent [1647]. MS. G. 4. 15, 80–4, *ibid.*; The Humble Petition of Capt. Henry Powell to the Right Honourable Daniel Searle, n.d. [ca. 1652], Rawlinson MS. C94, Bodleian Library, Oxford (published in V.T. Harlow, ed., *Colonising Expeditions to the West Indies and Guiana* [London: Hakluyt Society, 1924], pp. 36–8); 'An Abstract of some principal passages concerning Sir William Courteen [*sic*], his heirs and their claim in and to the Island of Barbados, taken by John Darell from Captain Henry Powell, John Powell and others', June 1660, PRO 30/24/49, no 2b, The National Archives, London [TNA]; John Smith, *The True Travels, Adventures, and Observations* (London, 1630), pp. 55–6.
2. Henry Winthrop, Letter to Emmanuel Downing, 22 August 1627; *ibid.*, Letter to John Winthrop, 15 October 1627. Winthrop Papers (vol. 1, 1645–9: 356–7, 361–2), Massachusetts Historical Society, Boston.
3. 'A True State of the Case between the Heires and Assignes of Sir William Courteen, Deceased, and the Late Earl of Carlisle', 1644, MSS. 2395, fol. 602, British Library [BL]; John Darrell, 'Abstract of Some Principal Passages Concerning Sir William Courteen's Heirs and their claim in and to the Island of Barbados', 1660, PRO 30/24/49, no. 2b, TNA.
4. In surveying the literature, in addition to more general works on slavery, I have focused on works that address the beginnings and early development of African slavery in

England's Caribbean and North American colonies. The sample of this literature extends considerably beyond the items cited in this article. Barbados is often mentioned or discussed in such works and modern historians who focus on seventeenth-century Barbados invariably mention slavery or discuss it at length. However, none of these writers specifically address, or only very marginally consider, the issue of slave status and its development.

5. Figures compiled from: 'True State of the Case'; Jonathan Atkins, 'An Account of His Majesty's Island of Barbadoes and the Government Thereof, 1676, CO 1/36, no. 20, TNA; Peter Colleton, Letter to Council for Trade and Plantations, 28 May 1673, in *Calendar of State Papers Colonial, America and West Indies*, vol. 7, 1669–1674, ed. W. Noel Sainsbury (London: HMSO, 1889) p. 495; 'Some Observations on the Island of Barbadoes', CO 1/21, no. 170, TNA; Planters of Barbados, 'Petition to the Crown', 1655, Additional MSS. 11411, fol. 9b, BL; John Scott, 'The Description of Barbados', 1668, Sloane MSS. 3662, fols. 54–62, BL. As in virtually all New World slave societies the actual number of slaves is unknown for specific years in the earliest periods. Barbados is no exception and the reliability of figures is often problematic.
6. James Stephen, *The Slavery of the British West India Colonies* (London, 1824), 14.
7. Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill: The University of North Carolina Press, 1996), 425–6; Arnold Sio, 'Interpretation of Slavery: The Slave Status in the Americas', *Comparative Studies in Society and History* 7 (1965): 289–308; M. I. Finley, ed., *Slavery in Classical Antiquity* (New York: Barnes & Noble, 1968), 307; K.R. Bradley, 'On the Roman Slave Supply and Slavebreeding', in *Classical Slavery*, ed. M.I. Finley (London: Frank Cass, 1987), 1.
8. Michael Guasco, *Slaves and Englishmen: Human Bondage in the Early Modern Atlantic World* (Philadelphia: University of Pennsylvania Press, 2014), 287n14; David Eltis, *The Rise of African Slavery in the Americas* (Cambridge: Cambridge University Press, 2000), 73. Essentially the same point was made by Carl Degler in an early critique of Oscar and Mary Handlin's contention that the 'legal institution' of slavery in England's colonies, particularly in the Chesapeake, only started with written laws ('Slavery and the Genesis of American Race Prejudice', *Comparative Studies in Society and History* 2 (1959): 60; Handlins, 'Origins of the Southern Labor System', *William & Mary Quarterly* 7 [1950]: 199–222).
9. William M. Wiecek, 'The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America', *William and Mary Quarterly* 34 (1977): 262–4.
10. Winthrop D. Jordan, *White over Black, American Attitudes Toward the Negro, 1550–1812* (Chapel Hill: The University of North Carolina Press, 1968), 57, 61.
11. Guasco, *Slaves and Englishmen*, 92, 172, passim; cf. Degler, 'Slavery'; Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492–1800* (London: Verso, 1997), 42–93; Edward Rugemer, 'The Development of Mastery and Race in Comprehensive Slave Codes of the Greater Caribbean during the Seventeenth Century', *William & Mary Quarterly* 70 (2013): 432.
12. Although Jordan (*White over Black*, 3–43) discusses the negative cultural and physical characteristics Englishmen attributed to Africans, Thompson's critique is justifiable, viz.

Jordan seems to have put too little emphasis on the prejudices in existence by 1600 in England and other European societies against Africans. In fact, he did not pay sufficient attention to European works on the subject between 1450 and 1600.

Alvin O. Thompson, 'Race and Colour Prejudices and the Origin of the Trans-Atlantic Slave Trade', *Caribbean Studies* 16 (1976–77): 29–59.

13. James Sweet, 'Spanish and Portuguese Influences on British Slaving 1480–1619', (Unpublished MS, 2013), held privately by the author; cf. Jordan, *White over Black*, 56–63; Degler, 'Slavery'.
14. April Lee Hatfield, 'A "Very Wary People in Their Bargaining" or "Very Good March-andise": English Traders' Views of Free and Enslaved Africans, 1550–1650', *Slavery & Abolition* 25 (2004): 3, 12–13; cf. Guasco, *Slaves and Englishmen*, 80–120; John C. Coombs, 'Beyond the "Origins Debate": Rethinking the Rise of Virginia Slavery', in *Early Modern Virginia: Reconsidering the Old Dominion*, ed. Douglas Bradburn and John C. Coombs (Charlottesville: University of Virginia Press, 2011), 239–78; Blackburn, *New World Slavery*, passim.
15. Robert Burns, *Las Siete Partidas*, vol. 4, 'Family, Commerce, and the Sea' (Philadelphia: University of Pennsylvania Press, 2001), 977–86; Sally Hadden, 'Slave Codes', *Oxford Bibliographies, Atlantic History* www.oxfordbibliographies.com (accessed March 3, 2014).
16. For possible reasons, see Hatfield, *Atlantic Virginia*, 285n102; Alan Watson, *Slave Law in the Americas* (Athens: The University of Georgia Press, 1989), xii; and particularly Elsa Goveia, 'The West Indian Slave Laws of the 18th Century', *Chapters in Caribbean History* 2 (Barbados: Caribbean Universities Press, 1970), 12, 21, 25, 35.
17. Morris, *Southern Slavery*, 42.
18. Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (New York: Cambridge University Press, 2010), 418–9; Bradley Nicholson, 'Legal Borrowing and the Origins of Slave Law in the British Colonies', *The American Journal of Legal History* 38 (1994): 42.
19. Gary A. Puckrein, *Little England: Plantation Society and Anglo-Barbadian Politics, 1627–1700* (New York: New York University Press, 1984), 7; cf. Larry Gragg, *Englishmen Transplanted: The English Colonization of Barbados* (Oxford: Oxford University Press, 2003).
20. Slaves were occasionally baptized in seventeenth-century Barbados, the first baptism occurring in 1651, but baptism and claiming to be a Christian would not *ipso facto* free a slave; this also applied to slaves who claimed baptism in Africa. In fact, throughout the period of slavery, no Barbados law made manumission possible for baptized slaves, nor was it accepted in custom. Unless under exceptional circumstances such as reward from the legislature, only owners could manumit their slaves, an extension of their property rights. Jerome S. Handler, *The Unappropriated People, Freedmen in the Slave Society of Barbados* (Baltimore: The Johns Hopkins University Press, 1974), 30–47; Katharine Gerbner, 'Christian Slavery: Protestant Missions and Slave Conversion in the Atlantic World, 1660–1760' (PhD dissertation, Harvard University, 2013), 1–36.
21. Richard Dunn, *Sugar and Slaves: The Rise of the Planter Class in the English West Indies, 1624–1713* (Chapel Hill: University of North Carolina Press, 1972), 227; Tomlins, *Freedom Bound*, 429.
22. The Barbados Department of Archives, Bridgetown [BDA] contains many examples in various deeds and wills (e.g., RB 3/1, fols. 55–6, 61; RB 3/3, fols. 122, 443); also Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004).
23. Hardinge S. G. Halsbury, *The Laws of England*, vol. 1 (London: Butterworth & Co., 1907), 365; William Blackstone, *Commentaries on the Laws of England, Book 2* (Oxford: Clarendon Press, 1766), 389–90; Morris, *Southern Slavery*, 389–90.
24. Thomas Clarkson, *Thoughts on the Necessity of Improving the Condition of the Slaves in the British Colonies*, 3rd ed. (London, 1823), 8. Tomlins has made a similar argument apparently without being aware of Clarkson's statement (*Freedom Bound*, 456–7,

- 456n174). Scholars writing about slavery in the early English colonies occasionally mention this matrilineal rule, but they rarely address its possible origin. A recent exception is William Merkel whose article only came to my attention after a late draft of the present article had been completed and I had already reached a similar conclusion. William G. Merkel, 'A Founding Father on Trial: Jefferson's Rights Talk and the Problem of Slavery During the Revolutionary Period', *Rutgers Law Review* 64 (2012): 595, 615.
25. Richard Saller, 'Slavery and the Roman Family', in *Classical Slavery*, ed. M.I. Finley (London: Frank Cass, 1987), 71–2; Watson, *Slave Law*, 50, 62, 121.
 26. Taunya Lovell Banks, 'Dangerous Woman: Elizabeth Key's Freedom Suit – Subjecthood and Racialized Identity in Seventeenth Century Colonial Virginia', *Akron Law Review* 41 (2008): 799, 815–16; Theodore F. T. Plucknett, *A Concise History of the Common Law*, 2nd ed. (Rochester, NY: Lawyers Co-operative Publishing Co., 1936), 297–300; Thomas Wood, *A New Institute of the Imperial or Civil Law* (London, 1704), 31; Blackstone, *Commentaries*, 459.
 27. Two laws enacted in the late 1640s or early 1650s penalized male servants who impregnated female servants and the latter for having become pregnant; in addition, male and female servants were prohibited from marrying without the permission of their masters or mistresses. These stipulations were considerably expanded in two clauses of the 1661 'Act for the good governing of servants'. Slaves are not mentioned in either of these laws and Beckles errs in his interpretation. He also cites Dunn, but Dunn only refers to Antigua, not Barbados, and Hatfield relying on both sources erroneously writes that in 1640, the Barbados Assembly outlawed 'interracial sex between white men and black women'. John Jennings, *Acts and Statutes of the Island of Barbados* (London, 1654), 18–9, 33; Richard Hall, *Acts, Passed in the Island of Barbados* (London, 1764), 36–7. Hilary McD. Beckles, *Natural Rebels: A Social History of Enslaved Black Women in Barbados* (London: Zed Books, 1989), 8; Dunn, *Sugar and Slaves*, 228; April Lee Hatfield, *Atlantic Virginia: Intercolonial Relations in the Seventeenth Century* (Philadelphia: University of Pennsylvania Press, 2004), 160.
 28. William W. Hening, *The Statutes at Large; Being a Collection of all the Laws of Virginia from the First Session of the Legislature in the Year 1619*, vol. 2 (Richmond: Samuel Pleasants, 1810), 170. See also Warren Billings, 'The Law of Servants and Slaves in Seventeenth-Century Virginia', *The Virginia Magazine of History and Biography* 99 (1991): 45–62; Tomlins, *Freedom Bound*, 455–9; Morgan, *Laboring Women*, 93–4.
 29. *Code Noir*, <http://chnm.gmu.edu/revolution/d/335> (accessed April 7, 2015). See particularly article XIII.
 30. 'Minutes of the Barbados Council, 1654–1658', PRO 31/17/43 [1654–1656], 31/17/44 [1656–1658], TNA; cf. Morgan, *Laboring Women*, 79–85.
 31. Tomlins, *Freedom Bound*, 455–9, 455n171; Morris, *Southern Slavery*, 43. Barbados never had such a law, but Beckles has claimed, without providing evidence, that 'the slave codes of Barbados consistently held that all children at birth took the status of their mothers' (*Natural Rebels*, 133). April Hatfield implies that the 1662 Virginia law was adopted from the Barbados slave code, while Jenny Shaw asserts just the opposite; neither author provides any supportive evidence (*Atlantic Virginia*, 157; Jenny Shaw, *Everyday Life in the Early English Caribbean: Irish, Africans, and the Construction of Difference* [Athens: University of Georgia Press, 2013], 65). In an unusual variation on the rule of transmission, a 1664 Maryland law declared if a 'free born' white woman had a child by a slave man, the child was considered enslaved. The law was amended several times and in 1715 specification of parentage was omitted and the

- law merely stated that the children of slaves were slaves (Tomlins, *Freedom Bound*, 458–9; Morgan, *Laboring Women*, 72; cf. Degler, ‘Slavery’, 61).
32. Watson, *Slave Law*, 64; cf. Tomlins, *Freedom Bound*, passim; Morris, *Southern Slavery*, passim.
 33. N. Darnell Davis, *Cavaliers & Roundheads of Barbados 1650–1652* (Georgetown, British Guiana: Argosy Press, 1887); Vincent T. Harlow, *A History of Barbados* (Oxford: The Clarendon Press, 1926; repr., New York: Negro Universities Press, 1969), 3–13; Dunn, *Sugar and Slaves*, 49–51; Puckrein, *Little England*.
 34. F. G. Spurdle, *Early West Indian Government* (Palmerston, New Zealand: published by author, 1963); P. F. Campbell, *Some Early Barbadian History* (Barbados: Caribbean Graphics, 1993), 57–81; Hume Wrong, *Government of the West Indies* (1923; repr., New York: Negro Universities Press, 1969).
 35. Although authored anonymously, the book was written by William Duke, clerk of the Barbados Assembly from 1735 to 1765, when he died. The *Memoirs*, according to Duke, were ‘extracted from ancient records, papers and accounts’ that had been in the possession of ‘some of the first settlers’. William Duke, *Some Memoirs of the First Settlement of the Island of Barbados* (London, 1741); E.M. Shilstone, ‘The Lucas Manuscript Volumes in the Barbados Public Library’, *Journal of the Barbados Museum and Historical Society* [JBMHS] 10 (1943): 16; Jerome S. Handler, *A Guide to Source Materials for the Study of Barbados History, 1627–1834* (Carbondale: Southern Illinois University Press, 1971), 30.
 36. For example, Robert Schomburgk, *The History of Barbados* (London: Longman, Brown, Green and Longmans, 1848), 265–6; Jordan, *White Over Black*, 64; Carl and Roberta Bridenbaugh, *No Peace Beyond the Line: The English in the Caribbean 1624–1690* (New York: Oxford University Press, 1972), 32; Dunn, *Sugar and Slaves*, 228; Beckles, *History*, 18; Betty Wood, *The Origins of American Slavery: Freedom and Bondage in the English Colonies* (New York: Hill and Wang, 1997), 40; Rugemer, ‘Mastery and Race’, 433.
 37. For example, Handler, *Guide*; *ibid.*, *Supplement to a Guide to Source Materials for the Study of Barbados History, 1627–1834* (Providence: Brown University, The John Carter Brown Library, 1991).
 38. Quoted in E.M. Shilstone, ‘The Ancestry of Dr. Nathan Lucas’, *JBMHS* 8 (1941): 107–17. For details on Lucas’s life, the earliest records of the Barbados Council, and the Lucas transcriptions themselves, see *ibid.*, ‘Ancestry’; *ibid.*, ‘Lucas Manuscript Volumes’; Michael J. Chandler, *A Guide to Records in Barbados* (Oxford: Basil Blackwell, 1965); Handler, *Guide*, 123, 150–1. In discussing the 1636 resolution in this article, Shilstone’s published transcription of Lucas’s transcription is used.
 39. There is suggestive evidence that the Indians were enslaved because they objected to the harsh treatment they received from the Earl of Carlisle’s representatives and their identification, through Powell, with Courteen. Jerome S. Handler, ‘The Amerindian Slave Population of Barbados in the Seventeenth and Early Eighteenth Centuries’, *Caribbean Studies* 8 (1969): 38–64; also, see references, note 1.
 40. Richard Ligon, *A True & Exact History of the Island of Barbadoes* (London, 1657), 43; Henry Whistler, ‘A Journal of a Voardge [sic] from Stokes Bay’, 1655, Sloane MSS. 3926, BL; ‘A briefe Description of the Ilande of Barbados’ [ca. 1651], quoted in V.T. Harlow, ed., *Colonising Expeditions to the West Indies and Guiana* (London: Hakluyt Society, 1924), 42–8; Will of John Sawyer, 25 July 1643, RB 3/1, fol. 61, BDA.
 41. Hall, *Acts*, 459–68.
 42. This assumption persisted to the very end of the slave period. It caused particular hardships for manumitted slaves and freeborn persons of African ancestry, regardless of how

modestly their physical features reflected this ancestry. A telling example of this interchangeability of terms is that throughout his classic work, Richard Ligon uses the word 'slave' and 'Negro' synonymously. Handler, *Unappropriated People*, 59–65; Ligon, *History*.

43. Duke, *Memoirs*, 28.
44. Jennings, *Acts and Statutes*; Hall, *Acts*, 459–68. I interpret the historical record quite differently than Rugemer who, focusing on laws, maintains 'a racialized slavery' was not formalized in Barbados until 1661 when these laws became the earliest in England's colonies 'to create clear distinctions between the status of "Christian servants" and that of "Negro slaves"' ('Mastery and Race', 431, 433). My interpretation is not only that these legal distinctions occurred in earlier laws (i.e. were formalized), but also were well established in custom before any laws were enacted.
45. For example, Hilary Beckles, *History of Barbados* (Cambridge: Cambridge University Press, 1990), 86–8.
46. In England, this phrase referred to traditions or customary usages that had existed for so long that they had the validity or power of law. It seems to have been mainly applied in disputes concerning lease agreements between landowners and farming tenants. J.H. Balfour Browne, *The Law of Usages and Customs* (London, 1875), passim; William Woodfall, *The Law of Landlord and Tenant* (London, 1814), passim; James Bird, *The Laws Respecting Landlords, Tenants, and Lodgers* (London, 1802), 44, 85.

However, in early Barbados, Virginia, and Maryland, the 'custom of the country' applied only to indentured servants who had not paid for their passages and arrived without contracts. Planters paid the costs of passage on arrival and the terms and conditions of service were covered by the 'custom of the country'. The 'custom' was initially unwritten and varied by colony; over time, also varying by colony, other features were added and were incorporated into statutory law. Tomlins, *Freedom Bound*, 32n28; David W. Galenson, *White Servitude in Colonial America* (New York: Cambridge University Press, 1981), 190, 249n23.

In Barbados, the phrase is occasionally found in manuscript deeds in the 1640s, 1650s, and 1660s, without being defined, but its earliest published appearance was in the 1661 servant act, again not defined, in reference to servants who had arrived without contracts. Not until 1699 did Barbados law define Custom of the Country by specifying the amounts and types of food and clothing each servant should receive (Hall, *Acts*, 35–6, 41, 157).

47. Marcellus Rivers and Oxenbridge Foyle, *England's Slavery: Or Barbados Merchandize* (London, 1659); Henry Pitman, *A Relation of the Great Sufferings and Strange Adventures of Henry Pitman, Chyrurgion to the Late Duke of Monmouth* (London: Andrew Sowle, 1689).
48. 'An Act for the Better Ordering and Governing of Negroes', 27 September 1661. CO 30/2, 16–26, TNA. I modernize the spelling and punctuation and say 'first known with a text' because in August 1644 the legislature passed 'An Act Concerning Negroes', but this law is known by title only (Hall, *Acts*, 460, Act 22). It was later repealed, probably in the early 1650s or, perhaps, by the 1661 law itself. 'An Act for the good governing of servants, and ordaining the rights between masters and servants', was also passed on the same day, but it was published (Hall, *Acts*, 35–42). I view these two laws, not primarily in racial terms, but rather as reflecting different issues of social control for two subordinate laboring populations with different legal statuses. Both populations were considered potentially dangerous to the social order, but the enslaved were considered more so at this period and this is reflected in the 1661 law itself. Of its 23 clauses, not one

defines the status of the slave. Virtually the entire act treats the control of slaves and their policing, and well over half of the clauses deal with fugitives/runaways.

49. The law has only one so-called protective clause dealing with the food rations of arrested runaways while jailed.
50. Hall, *Acts*, 93–4, 105; Claire Priest, 'Creating an American Property Law: Alienability and its Limits in American History', *Harvard Law Review* 120 (2006): 417, 420.
51. George Fox, *Gospel Family-Order, Being a Short Discourse Concerning the Ordering of Families* (London, 1676), 16; Handler, *Unappropriated People*, 29–59; *ibid.* and John Pohlmann, 'Slave Manumissions and Freedmen in Seventeenth-Century Barbados', *William and Mary Quarterly* 41 (1984): 390–408.
52. Eugene Sirmans, 'The Legal Status of the Slave in South Carolina', *The Journal of Southern History* 28 (1962): 443, 463.
53. Stephen, *Slavery*, 24–5.

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