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Author(s): Philip J. Schwarz

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Jefferson and the Wolf: The Sage of Monticello Confronts the Law of Slavery

Philip J. Schwarz

The American revolutionaries so revered the rule of law that they relied on the law to help rule their slaves. An apostle of republicanism in the United States, Thomas Jefferson is no exception to this generalization. He faced the same dilemma as did other slave-holding American revolutionaries. How could the defenders of liberty simultaneously deny liberty to the African Americans whom they held to slavery? How could they be slave holders without denying liberty itself? Some revolutionaries answered these questions by freeing their slaves. Jefferson chose not to (1). Thomas Jefferson's legal transactions concerning his bondspeople reveal that part of his answer to the problem of slavery in a revolutionary, republican society was to make certain of the legality of his behavior as a master. He believed that conformity to the law of slavery constituted a civic duty, protected him from some of the dangers inherent in slavery, preserved his liberty to hold humans in bondage, and even secondarily gave some personal security to the enslaved.

Jefferson's legal oversight of African Americans at Monticello and elsewhere is revealed in his legal transactions concerning his human property, which spanned more than half a century. These transactions created a unique, rich, and nearly

unrivalled record of the relationship between written laws and human behavior in a representative, developed slave society (2). This essay focuses on the manner in which Jefferson translated statutory law into practice or made practice into customary, unwritten law, that is, his plantation rules. Thanks to Jefferson's careful

How could the defenders of liberty simultaneously deny liberty to the African Americans whom they held to slavery?

retention of his papers, we can reconstruct a better picture of his legal relationship to the bondspeople under his dominion than in almost any other case (3).

For example, among Jefferson's papers are agreements, wills, and other documents by which slaves were transferred from one generation of the Jefferson family to another. To be sure, these transfers normally benefitted Jefferson, but these and Jefferson's other legal transactions concerning slaves show how the law of

slavery also placed him and other slave owners within the confines of a prescribed system that was supposed to command their obedience just as it was meant to help them command their slaves. The day-to-day transactions of slave holders, such as those by which Jefferson family members inherited human property, are notable for their routine, prosaic quality. One can find similar transactions concerning bondspeople in the records of slave societies throughout the Western Hemisphere. These arrangements provided some predictability and security, two essential aspects of law. But the system of property laws, other civil laws, and criminal laws reflected in these documents also constrained slave owners—whether they held two or two hundred people.

Control was the *sine qua non* of slave ownership. The law of slavery helped people like Jefferson control the wills of their human chattel to some extent. Uncontrolled, the wills of chattel could become the wills of human beings, threatening slavery and endangering property or people. However, neither statutory nor customary laws concerning slave governance were as effective in controlling bondspeople as were straightforward property laws in safeguarding ownership of human property. Treating people as property to be bought and sold was one thing.

It was quite another thing to act as if those human commodities lacked wills. None did, so enslaved people always had the potential of contradicting the neat categories by which slave holders attempted to rule, even when those categories were incorporated into laws. Consider the constant worry of slave holders about fugitives, as reflected in Jefferson's often-quoted *Virginia Gazette* advertisement of 1769 for a runaway slave (4). Old Dominion law gave owners of "slaves who stole themselves" some help in finding them, and it assured that once they did, there were legal means of establishing ownership. It is questionable, however, how much good the law did Jefferson: while almost every man who ran away from him was initially captured and returned, nearly every one of these runaways ultimately proved uncontrollable and often ran away again, sometimes permanently.

Still, *noblesse oblige* was within the reach of the slave master. The law of

slavery allowed for acts that could reassure slave holders of their legitimacy. The rationale for the customary laws of slavery by which Jefferson was supposed to control his slaves was that bondspeople must be extensions of the will of their owner. This paradoxically allowed Jefferson to delegate to African Americans powers ordinarily reserved to whites. He could even base important decisions about his slaves on their preferences or behavior; he also sometimes paid them for unusual tasks. But Jefferson was unquestionably capable of angrily asserting his rights when slaves claimed at least by their actions that they had customary rights that clashed with his.

Private and public accusations of criminal behavior against Jefferson's slaves involved both customary law and statutes. "Misbehavior"—violations of Jefferson's mostly spoken plantation or customary law—occurred fairly regularly, bringing into play his conception of himself as lawgiver and law enforcer. Jefferson could order whippings or even far more

severe punishment when he thought it necessary. He also had fairly clear ideas concerning the differentiation between his enforcement of plantation law and governmental enforcement of statutes. When a Bedford County slave court gave three of his Poplar Forest slaves a light sentence after convicting them of attacking their overseer, Jefferson promptly sold the three.

It was part of the customary law of his plantations for Jefferson to provide at least minimal protection of his slaves against various dangers, such as neglectful or brutal hirers, as a corollary to his shielding of himself and his agents from certain slaves. Jefferson paradoxically assumed, however, that the ultimate method of protecting his bondspeople was to keep them in bondage. Hence there are few manumissions recorded in Jefferson's papers, most of them in his will. But when Jefferson chose to free any of his human property, he had to contend with statutes that both empowered and limited him in more complex ways than did any laws concerning run-

Mount Vernon Ladies' Association Archaeology Department



Artifacts recovered from the excavation of a slave quarter cellar at Mount Vernon.

aways or alleged criminals. Jefferson's attitude toward both bondpeople and the laws of Virginia influenced his decision to free several members of the Hemings family. His testamentary petition for an exception to the Old Dominion law that required most emancipated people to leave the state reflects his assumptions that the state lawgivers would grant his wish and that only these enslaved men would be capable of living in freedom.

Still another way Jefferson encountered the strictures of the slave code underlines the reciprocal nature of his link to that body of laws. That was when other people entrusted him with the disposition or protection of their slave property as a trustee, agent, legal advisor, or lawyer. In these and other instances, Thomas Jefferson accepted the laws of Virginia,

creativity from Thomas Jefferson than from other slave owners of his time? Relatively vigorous in his public pronouncements on abolition in the 1770s and 1780s, he maintained silence thereafter. His greatest creativity concerning his bondpeople was limited to the *de facto* manumissions of Beverley and Harriet, children of Sally Hemings, and his unusually clear articulation of his slaves' *peculium*, or right to the fruits of some of their labor. The problem was that the law of slavery virtually stifled any more creativity than this.

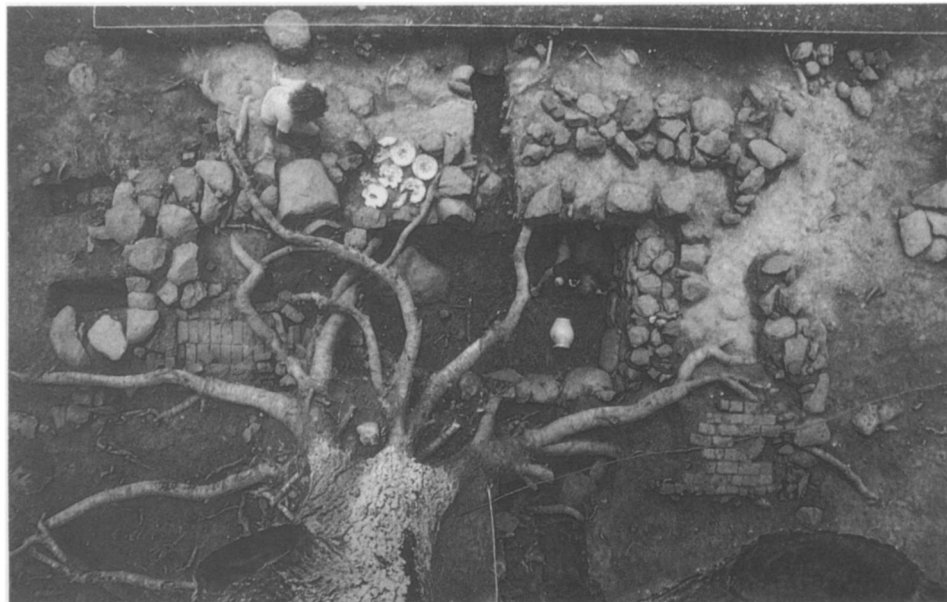
The root of Jefferson's subjection to the law of slavery was his decision to remain a slave holder. As long as he held human property, Jefferson never could escape from slave law. While in public office, he was called upon to make legal decisions about slaves and slavery. Dur-

nation (6). Sought after regularly for his opinion concerning slavery during his years of retirement, Jefferson insisted upon public silence. Under the heavy pressure of events such as the Missouri controversy, he privately pronounced with insight on the nation's problem of slavery without being able to offer a solution. His tortured formulation of the dilemma he thought lawmakers and enforcers like him faced—to his mind the impossible choice between giving up the benefits of the law of slavery and eliminating that law's self-evidently unjust consequences—reflects his pain and ambivalence: "But as it is, we have the wolf by the ear, and we can neither hold him, nor safely let him go. Justice is in one scale and self-preservation in the other" (7).

This is not to say that Jefferson was a mere product of his times who failed to solve a problem that very few people solved. In other respects, Jefferson helped to "produce" his times. Yet he refused to go as far as his neighbor Edward Coles, who emancipated his slaves; Jefferson also failed to emancipate more than a handful of slaves in his will—in contrast to such contemporaries as George Washington and John Randolph of Roanoke. "Was Thomas Jefferson an Authentic Enemy of Slavery?" David B. Davis asked in 1970 (8). Was Thomas Jefferson willing and able to act against his own interest in slave property? The latter is a question that hits close to home because it touches on how Jefferson lived, on what the laws of his slave society allowed, and on his conception of himself as an enlightened ruler.

Slave owners did enjoy a certain amount of independence from governmental oversight of their "management" of slaves. In return for the protection provided by the laws and judiciary of any slave society, however, slave holders had to pay the price of abiding by the regulations that laws and the judiciary applied to owners. Jefferson and other holders were unwilling to take the risk of rejecting governmental regulation of them and their human chattel because of the very nature of their legal relationship with bondpeople. They regarded slaves as

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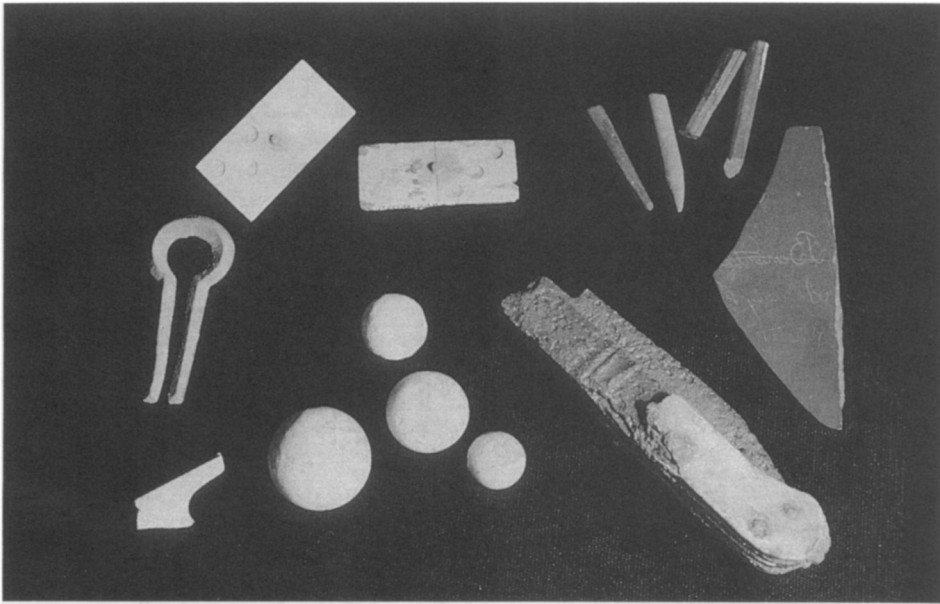
Overhead view of the largest of the slave dwellings on Mulberry Row at Monticello.

the ethics of his one-time profession of lawyer, and the canons of his class. Living in a world of shared obligations, preserving their reputation among slave-holding peers, and choosing to keep their slaves, Jefferson and other slave owners had no choice but to acknowledge the force of slave law.

Yet is it not fair to expect more legal

ing the early years of his public service he made some antislavery pronouncements (5). His governmental actions, which carried greater practical weight than did his pronouncements, were rarely antislavery. Every time he took the side of Progress and Enlightenment, he encountered self-interest and the hard realities of economic and political life in the new

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Archaeological excavations on Mulberry Row unearthed an assortment of objects used by the slaves after work and on Sundays or holidays. Shown here are a fragment of a writing slate (with inscribed words), pencils, a penknife, dominoes, marbles, a jew's harp, and part of a fiddle bow.

their property. Had they rejected the governmental regulation of that “species of property,” they would have jeopardized much of the law of property and the society and economy in which they lived. The only way out of these difficulties was to free all of one’s slaves. This Thomas Jefferson was unwilling to do.

Jefferson’s legal transactions concerning human chattel reveal that he had the wolf by just one ear, a particularly precarious circumstance. It was as if slavery were the wolf, and the law of slavery could not always protect slave owners from trouble that could ultimately be blamed on that wolf. “In a word,” declared an anonymous letter writer in 1800, “if we will keep a ferocious monster in our country, we must keep him in chains Slavery is a monster—the most horrible of all monsters” (9). The law of slavery only supported, and did not guarantee, the security of slave owners. That was to be expected: no law has ever been able to guarantee security.

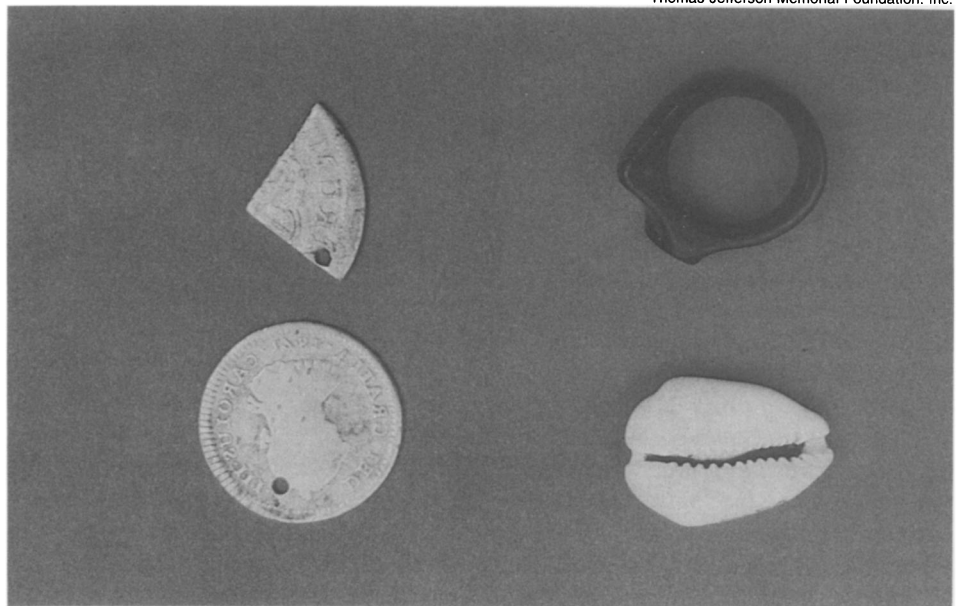
But the wolf (slavery) was especially dangerous. Jefferson also could not escape the contradiction between his role of master and the ideals of the American

Revolution. Subjecting himself to the rule of law—required behavior for any republican leader—did not work. “The slave holder can never be a Democrat,” declared a “gentleman” in a newspaper letter in

1800 (10). What then was a leader of a republican revolution and of the Democratic-Republican Party to do if he also chose to keep his slaves? The best he could do was to act like an enlightened monarch whom laws limited and empowered, and who reserved the right to make some laws of his own.

It is this “bargain” between the ostensibly independent slave owner and the government that helps considerably to explain the sharp conflict between Jefferson’s pronouncements about slavery and his actual ownership of bondspople. Jefferson could not have it both ways: as a slave owner, he either had to obey the laws of slavery while he kept African Americans in bondage or else free all slaves and not have to abide by the slave code. Anyone who acted like an enlightened monarch could not be a republican leader of human beings when they were in bondage. No matter how beneficent a master he may have been, he still was an owner of personal chattel. That committed him to support the law of slavery and to preserve the Peculiar Institution. Unique and extraordinary in some ways, and often the beneficiary of the laws, he was just as

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Some objects found during excavations of Mulberry Row show that African traditions were very much alive within the Monticello slave community. Pictured here are a cowrie shell, a carved horn ring, and two pierced eighteenth-century Spanish coins.

subject to the law of slavery as any other slave owner. The approximately 97 percent of his enslaved laborers who remained in bondage as the property of at least twenty-one new owners after Jefferson's death were living proof that the law of slavery was written on their skins immeasurably more than on Jefferson's, that they lived under the government of men as well as of laws; yet his unwillingness or inability to free those people is partly attributable to the way in which the law of slavery was also written on Jefferson's skin (11). □

Endnotes

1. For conflicting viewpoints concerning Jefferson's choice, see Paul Finkelman, "Jefferson and Slavery: 'Treason Against the Hopes of the World,'" in *Jeffersonian Legacies*, ed. Peter S. Onuf (Charlottesville: The University Press of Virginia, 1993), 181-221, and Orlando Patterson, "The Unholy Trinity: Freedom, Slavery, and the American Constitution," *Social Research* 54 (Autumn 1987): 543-77.
2. For a discussion of the law of slavery, see Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge: Louisiana State University Press, 1988), 6-33, and the many articles in Paul Finkelman, ed., *Slavery, Race and the American Legal System, 1700-1872* (New York: Garland, 1988).
3. The major collections of Jefferson manuscripts are at The Huntington Library, the Library of Congress, the Massachusetts Historical Society, and the Alderman Library, University of Virginia. All these collections are available on microfilm. The most recently published edition of Jefferson's writings covers only through the beginning of the

1790s. Julian P. Boyd *et al.*, eds., *The Papers of Thomas Jefferson* (Princeton, N.J.: Princeton University Press, 1950-). The best recent survey of African-American Monticello is Lucia C. Stanton, "'Those Who Labor for My Happi-

Tracy W. McGregor Library, University of Virginia



Born a slave at Monticello, Isaac Jefferson worked there for many years as a blacksmith, tinsmith, and nailmaker. At the time of this photograph, he was a free man practicing his ironworking trade in Petersburg, Virginia.

- ness': Thomas Jefferson and His Slaves," in *Jeffersonian Legacies*, ed. Peter S. Onuf, 147-80.
4. *Virginia Gazette* (Purdie & Dixon), 14 September 1769, reprinted in Boyd *et al.*, eds., *The Papers of Thomas Jefferson*, I, 33, or transcribed in Lathan Windley, ed., *Runaway Slave*

Advertisements: a Documentary History from the 1730s to 1790 (Westport, Conn.: Greenwood Press, 1983), v. 1. *Virginia and North Carolina*, 73.

5. The most famous pronouncements are in his *Notes on the State of Virginia* (New York: Harper & Row, 1964), 155-156.
6. See, e.g., Douglas R. Egerton, *Gabriel's Rebellion: The Virginia Slave Conspiracies of 1800 and 1802* (Chapel Hill, N.C.: The University of North Carolina Press, 1993).
7. Jefferson to John Holmes, April 22, 1820, Jefferson Papers, Library of Congress, microfilm reel 51—a polygraph copy of the original. All published transcriptions of this letter erroneously misquote "ear" as "ears," a crucial difference for the person holding the wolf.
8. Oxford, 1970. Much of this lecture is incorporated into Davis's *The Problem of Slavery in the Age of Revolution, 1770-1823* (Ithaca, N.Y.: Cornell University Press, 1975).
9. "Extract of a letter from a gentleman . . . to the Editor," Fredericksburg *Virginia Herald*, September 23, 1800.
10. "Extract of a letter from a gentleman . . . to the Editor," Fredericksburg *Virginia Herald*, September 23, 1800.
11. The number of owners who made purchases at the two sales of Jefferson's bondspeople in 1827 and 1829 is an estimate based on sales slips and on "An acct. of sales of negroes of the Est. of Thomas Jefferson 1st Jan. 1829," photocopies of which are in the Research Department, Thomas Jefferson Memorial Foundation (Monticello), Charlottesville, Virginia.

Philip J. Schwarz is Professor of History at Virginia Commonwealth University and author of Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865 (1988).