MAROONS, THE LAW AND DEGROWTH: A SUSTAINABLE PEOPLE IN A SUSTAINABLE ENVIRONMENT

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ABSTRACT

Maroon settlements in North America’s Mid-Atlantic colonies have recently received extensive attention from scholars and researchers. While anthropological and archaeological research and explorations have unearthed significant material liminal artifacts to indicate the presence of maroon communities in the Great Dismal Swamp (GDS) located between Virginia and North Carolina, few human remains from the interior have been reported and unearthed. Colonial records, slave laws, deeds, and newspaper advertisements of the early colonial period (1600s–1800s), provide written documentary evidence of maroon presence in the GDS. However, scant attention has been paid to the correlation between the profit motives of the colonial settlers, increasingly repressive slave laws, and court judgments and escapes into North American (GDS) marronage. Nor have scholars utilized alternative methods of viewing the existence of maroon communities while analyzing the de-growth sustainability of the maroons in the Great Dismal Swamp.

This article examines the correlations between colonial profit motives, slave laws, marronage, and environmental de-growth within the maroon communities. As the profits from production increased, Mid-
Atlantic colonists increasingly turned to unfree labor, and implemented draconian slave laws and judgments to maintain perpetual racialized slavery. As a direct result, enslaved Africans increased their journeys to marronage and sustainable communities within the Great Dismal Swamp. I do not direct my focus to Indigenous peoples, but the violent removal, extinction, and extraction of Native American communities and kinships is worthy of study although outside of the scope of this article.

I. INTRODUCTION

The first maroon settlement in British North America, as well as one of the earliest African-Indigenous alliances, occurred in 1556 in South Carolina. A failed attempt to establish a settlement by the Spanish resulted in a revolt and an early maroon presence on this continent. After the revolt, the enslaved Africans and the Indigenous people rebelled and escaped into the woods in an area today known as “the Pee Dee.”

A Spanish colonizer, Lucas Vasquez de Allyon founded in the summer of 1526, a community whose probable location was at or near the mouth of the Pedee River in what is now South Carolina. The settlement consisted of about five hundred Spaniards and one hundred Negro slaves. Trouble soon beset it. Illness caused numerous deaths, carrying off, in October Allyon himself. Internal dissension arose, and the Indians grew increasingly suspicious and hostile. Finally, probably in November several of the slaves rebelled, and fled to the Indians. The next month what was left of the adventurers, some one hundred and fifty souls, returned to Haiti, leaving the rebel Negroes with their Indian friends— as the first permanent inhabitants, other than the Indians, in what was to be the United States.”

1. Maroon is a Eurocentric word that is possibly derived from the Taino indigenous people and Spanish. See HUGO PROSPER LEAMING, HIDDEN AMERICANS: MAROONS OF VIRGINIA AND THE CAROLINAS xiii (Graham Hodges ed. 1995). (“Maroons were fugitives from slavery who established independent communities in swamps, deep woods, mountains, isolated islands and other wilderness sanctuaries. They defended their territory from the slaveholders, built villages, raised crops and children, created social institutions, and from time to time raided into slavery country to free persons still held in bondage.”) There are three types of maroons: petit, gran and borderland maroons.
3. Id.
4. Id.
5. Id. (quoting Herbert Aptheker, Maroons within the Present Limits of the United States,
Maroon Africans, enslaved and free people, who resisted slavery through rebellions, covert resistance, and marronage, are the “stuff” of myth and legend. Shrouded in mystery, their existence has only recently been extensively researched and studied in the United States. Scholars have long debated their presence in North America, and routinely dismissed their footprint in comparison to maroon colonies in South America, the Caribbean, and throughout Latin America.

In woods and forests, swamplands, bogs and bayous, by stealth and design, men and women sought freedom in wilderness environs away from the extant slavocracy. Rumored to possess the (sometimes magical) ability to walk on water and hide in plain sight, maroon presence posed a discernible threat of rebellion and revolt to the...
English (Mid-Atlantic) American colonists who would by law, custom, and usage make the newly and later arrived Africans unfree.10

Archaeologists and anthropology scientists have unearthed significant material artifacts which indicate the presence of a large maroon colony located in the Great Dismal Swamp (GDS) between Virginia and North Carolina.11 Yet no dig has unearthed a significant level of bones or human remains from what is reputed to be one of the largest permanent maroon settlements in the continental United States.12 This lack of found human remains adds to the mystery and lore of maroon life because the early colonists kept detailed records concerning their existence and threat to the early colonies.13

10. LEAMING, supra note 1, at 248, 251.

“[T]here were three large insurrectionary attempts in the United States during this period, in 1792 to 1793, in 1800, and in 1801 to 1802. Their effects were felt in various parts of the country but these revolts centered on two regions both in Virginia, the Piedmont or foothill country around the State capital Richmond, and the southern coastal region of the State near the Dismal Swamp.”; “In North Carolina the insurrectionary organization was noted in three of the five Dismal Swamp counties, Camden, Currituck and Pasquotank, as well as the borderline County of Bertie.”; “[I]n 1796, the Chowtan Grand Jury had declared the County to be in ‘great peril and danger’ from numerous escaped slaves, widespread arson, and the news of insurrections in the West Indies.”

See also A. Leon Higginbotham, Jr., In the Matter Of Color, Race & the American Legal Process: The Colonial Period 8 (1978).

The issue of safety and the natural fear of slave revolts was intertwined in the chain of legal judgments … [s]ince the plantations (in Virginia) were often in isolated settings and there was always an ever threatening possibility that the slaves might rise up and slay their oppressors, any judge whose decision criticized racial injustice might be accused of wearing the master slave system.


11. LEAMING, supra note 1; see also SAYERS, supra note 6, (discussing the social history of labor and political economy of the Great Dismal Swamp. Sayers conducted one of the first extensive archaeological examinations of the Great Dismal Swamp, which unearthed and provided a framework for the analysis of the geo-spatial location in the Great Dismal Swamp (GDS) along with archaeological finds of shreds of arrowheads, postholes, earthenware, beads and re-worked tools and postholes, semi-permanent structural outlines).

12. See SAYERS, supra note 6 (Sayers, reputed to be the most renowned archaeologist to explore and excavate sites in the Great Dismal Swamp, has unearthed thousands of artifacts. He has chronicled his findings in his seminal report: A Desolate Place For A Defiant People. His report does not indicate the presence of large findings of human remains in even the most remote areas of the GDS, yet the footprint of habitation, farming and foraging has been found); see also BODEK & KELLY, supra note 6, at xiii (listing archaeologists who have conducted extensive studies on the existence of maroon communities within the limits of the present-day United States: Daniel O. Sayers, Rosalyn Howard, Terrence Weik, Uzi Baram, and Elaine Nichols). Also, Nichols was one of the first African American anthropologists to study there and is noted in Sayers’s work.

13. LEAMING, supra note 1. See also SAYERS, supra note 6; DIOUF, supra note 6, at 13.
Documenting maroon settlements is difficult because the self-freed left no known written records. Spoken records were only unearthed after the Civil War, when many left the GDS to join their families and resume lives outside the swamps. However, the colonial planters in Virginia and North Carolina left voluminous records, newspaper advertisements, laws, militia funding, deeds, and records of patrols acknowledging the maroon presence.

I argue that the increased maroon settlements are directly related to the restrictive slave codes enacted by the two state legislatures, Virginia and North Carolina which adjoin the GDS. As the need for labor to provide for production profits increased in the two colonies, the colonists implemented more restrictive slave laws to ensure a continuous supply of slave (free) labor.

One need only view the increasingly punitive legislation (slave laws) and court judgments from the late 1600s onward to begin making the spatial connections between enslaved movements, the colonists' financial interests, and more restrictive laws. As the laws became increasingly restrictive and oppressive, the enslaved sought more freedom from harsh conditions by moving into the Great Dismal Swamp. Fueled by fear of revolts and loss of capital (from runaways), the colonists enacted even more restrictive legislation in an attempt to control the movements and alliances of the self-freed. Thus, the ideal conditions for maroon settlements in the GDS were created by the intersection of an unfree labor supply; profit-driven production in the extant colonial economy; harsh and racialized slave laws; and an inaccessible contiguous environment.

I propose to support this proposition by: 1) identifying the environment and geo-spatial ecology of the Great Dismal Swamp; 2) describing the known presence of maroon settlements by using the current archaeological and anthropological research on the site; 3) reviewing the 1600s–1800s slave laws of Virginia and North Carolina; 4) illustrating the financial benefits of slavery to the Virginia and North

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14. See SAYERS, supra note 6 (reviewing an extensive amount of evidence but no written records from self-freed people).
15. See DIOUF, supra note 6, at 99 (recounting reports from after the Civil War).
16. See PRICE, supra note 2, at 152 (quoting Herbert Aptheker, Maroons within the Present Limits of the United States, 24 JOURNAL OF NEGRO HISTORY 149, 149 (1939)). The most noted of such communities was that located in the Dismal Swamp between Virginia and North Carolina. It seems likely that about two thousand Negroes, fugitives, or descendants of fugitives, lived in this area. They carried on a regular, if illegal, trade with white people living on the borders of the swamp. Such settlements may have been more numerous than available evidence would indicate, frontier occupants aroused less excitement and less resentment than guerilla outlaws.
Carolina colonists; 5) underscoring the possible mystical propensities of the Swamp to its inhabitants; and 6) finally proposing an alternative method of viewing the maroon communities which augur for the proposition that they lived in a space of de-growth\textsuperscript{17} with their environment.

Archaeological explorations and historical anthropological articles, books and studies have addressed the presence of the maroon settlements in the Great Dismal Swamps.\textsuperscript{18} Beginning with Indigenous people\textsuperscript{19} who were the original inhabitants of the area, the Scratch Hall folk\textsuperscript{20}, indentured whites\textsuperscript{21} and Africans, a new world cacophony of different cultures and tribal and clan groupings populated areas known

\textsuperscript{17} De-growth has been defined as the ability of humans to co-habit with their environment, sustainably reducing the need for greater material production, while limiting the adverse impact on the ecology and surrounding areas where the humans survive. See e.g., Giacomo D’Alisa et. al., DEGROWTH: A VOCABULARY FOR A NEW ERA (2015).

\textsuperscript{18} See LEAMING, supra note 1, at 221.

Inside the Great Dismal Swamp of Virginia and North Carolina there were settlements of escaped slaves, not merely guerilla bands but true communities in that they were permanent, and included women and children. Over a span of more than two generations before the Civil War this was alleged by many American and foreign visitors to the region around the swamp and by other authors. Characteristically these statements were to the effect that some two thousand escaped slaves and their children lived within the Dismal Swamp.

See also SAYERS, supra note 6; PRICE, supra note 2; NEVIUS, supra note 6; DIOUF, supra note 6.

\textsuperscript{19} LEAMING, supra note 1, at 223.

Those who escaped the destruction of their nations, or later escaped from slavery, fled for refuge into swamps and other wild or isolated country. But north of the Dismal Swamp such places of refuge were not as large or secure in their impenetrability. And so, before the Tuscaroras, members of the Susquchanna and other Nations fled into the Dismal Swamp from as far north as Maryland and Pennsylvania. Larger numbers came from closer by, from the burned-out towns of the Powhatan Confederacy and from other small forgotten nations snuffed out in Virginia.

See also NEVIUS, supra note 6 (“Before the end of the Tuscarora War in 1713, Algonquian-speaking Powhatan traders crossed the Dismal to exchange goods with Siouan-speaking Occaneecchees to the west of the Piedmont riverine fall line. Powhatan traders also engaged with Iroquian-speaking Nottoways, Meherrins, and Tuscaroras, all of whom lived along the swamp’s southern fringe.”).

\textsuperscript{20} LEAMING, supra note 1, at 228.

The next social group of the Swamp predominant in activity (again, not in rule over others) was the Scratch Hall folk. These were a tawny or tan skinned people who lived along the southern edge of the Swamp on the North Carolina side of the Border. Scratch Hall was a region of mixed swamp land and pine barrens thick with underbrush, where a stranger was nearly as likely to become lost as in the deeper Swamp … This tawny, English-speaking people, as isolated from outsiders as any other maroons, were seen as neither white nor black, and can therefore be taken as mainly the amalgamation of the Tuscaroras and the Roanoke settlers, together with other fugitives of indentured servant and Native American descent.

\textsuperscript{21} LEAMING, supra note 1, at 223 (“Also before the coming of the Tuscaroras and Roanoke settlers, escaped indentured servants had entered the Dismal Swamp during the seventeenth century.”).
as the Great Dismal Swamp from the fifteenth century through colonial North America. 22 Scant attention, however, has been paid to the correlation between the increasingly draconian slave codes, the financial benefits to the colonists, and environmentally sustainable marronage.

In Part One I of this paper, I describe the known research on the maroon settlements in the dismal swamps and address the environment of the Dismal Swamp. In Part Two, I intend to explore the slavery laws of Virginia and North Carolina and address the financial profit of capitalism and slavery for the Virginia colonists and the New World.

Finally, in Part Three I conclude that the possible mystical propensities of the Swamp and its environs and the Maroons’ application of sustainable living could account for the ability of the enslaved to thrive for nearly two hundred fifty years.

II. PART ONE

A. Maroon Settlements in the Great Dismal Swamp

One of the most historically significant (yet underreported) maroon communities 23 in the United States existed in The Great Dismal Swamp (GDS). 24 This GDS maroon cultural landscape began as early as the early 1600s. Straddling both Virginia and North Carolina, the Great Dismal Swamp was home to at least three distinct geographical ecological economies. 25

22. SAYERS, supra note 6, at 1 ("The Dismal Swamp landscape increasingly came to be defined and used by people of many social, cultural, and political-economic backgrounds throughout the period between 1607 and 1860.").
23. DIOUF, supra note 6; see also BODEK & KELLY, supra note 6, at 5. ("Between the early seventeenth century and 1865, thousands of maroons and enslaved swamp-company timber workers settled in the swamp and formed permanent communities that varied significantly over time and swamp location. Altogether, these communities were central to a historical significant social and economic world deep within the swamp that endured for more than two centuries yet, at the same time, went under-recorded in the documentary record.").
24. NEVIUS, supra note 6 ("For millennia before the 1860s, the Great Dismal Swamp was a vast natural wetland that covered nearly 2,000 square miles along the border of Virginia and North Carolina, a land area comparable to the modern state of Delaware.").
25. See BODEK & KELLY, supra note 6, at 9 (There were three different types of marronage developed in the Great Dismal Swamp, groups, termed as Fringe, Liminal and Deep Swamp maroons, and each group corresponds to a different geographical ecological economy).
The first area included those in close proximity to the Land Company, where slaves, freemen, indentured laborers and maroons felled trees, cut brush, dug trenches, worked on the canal building enterprise started in the Swamp, and sold shingles procured from maroons within the interior swamp (Fringe maroons).26 This group was semi-independent with access to the outside and interior of the Great Dismal Swamp.27

There were at least three sub-groups identified in the Fringe group of maroons. All three of the groups strategically arranged themselves to provide easy access to regions inside the Dismal swamps and regions outside. One group included transient maroons who used the protection and wildness to secure their safety before moving on to another location.28 This group may also have included the petit marronage, those who were only temporarily absent from the colonial plantation’s farms but returned rather than remaining free in the wild.29 A second group utilized the swamp’s edge as a place for working in close proximity to the Canal Land companies.30 The third group utilized the fringes as a base of operations for guerrilla raids on outside settlements.31

Sylvia A. Diouf, a historian and researcher on maroons in North America noted that the “[m]aroon communities, during the reign of chattel slavery, were those settlements established by runaway enslaved Africans, who sought to escape their condition as fungible, accumulated property.”32 These communities were populated by freed Blacks, indigenous peoples, and whites settling away from colonial society. Freedom was the defining identity of the people who fled to the maroon spaces. Maroon identity, as noted historian Richard Price tells us, is predicated on a “single minded opposition to tyrannical rule

27. See id. (highlighting the differences between maroons living on the periphery and in the interior of the Great Dismal Swamp).
28. See DIOUF, supra note 6, at 213 (giving an example of a maroon who used the Great Dismal Swamp as a stopping point before moving to Canada).
29. See id. at 212 (giving the example of Moses Grandy who enjoyed working in the swamp but did not escape).
30. Id. at 213–14.
31. See id. at 247, 284 (discussing evidence of a “bullet proof vest”; some of Nat Turner’s compatriots may have escaped there). However, there does not seem to have been much raiding from the swamps.
32. See DIOUF, supra note 6.
in its most horrid form—slavery.”

I would argue that marronage also includes another attribute of human individual autonomy: the desire for self-direction in a communal environment which supports the existence of the individual, as a member of a community, within a sustainable environment.

The scholars Bodek & Kelly assert that there were three overlapping, yet distinct, geographical, cultural maroon meta-existences: a) borderlands in closer proximity to the outside world (fringe); b) hinterlands, where maroons resided in probity and traded with the fringe community, living geographically further inside the Dismal Swamp; and c) those living deep within the hinterlands of the Dismal Swamp, where the inhabitants were ensconced within a deeply guarded and secure environment. These groups interacted economically and with political economies to maintain their modes of survival within their spheres of existence.

B. The Environment and Geo-Spatial Ecology of the Great Dismal Swamp

Located approximately 30 miles from the Atlantic Ocean in the Embayed Section of the Coastal Plain region of Southeastern Virginia and Northeastern North Carolina, the GDS remains an impenetrable ecosystem, although greatly reduced in size. Professor Bartlett A. Bickel, in his thesis, titled, “Documenting Historic Landscape Change in the Great Dismal Swamp Using Maps, Images and Written Accounts,” reports that the “Great Dismal Swamp has been represented on maps of the Tidewater of North Carolina and Virginia in some form since the 17th century.” He estimates that the current size of the GDS is 173.75 square miles (11,203 acres). Once covering more than a million miles, the Dismal Swamp is sourced by Lake Drummond, reportedly named after William Drummond, the first

33. PRICE, supra note 2, at 165 (quoting Herbert Aptheker, Maroons within the Present Limits of the United States, 24 J. OF NEGRO HIST. 149, 149 (1939))
34. BODEK & KELLY, supra note 6, at 10–13.
35. Id.
36. SAYERS, supra note 6.
38. Id. at 1.
governor of North Carolina. Lake Drummond has been a point of reference for maps and cartographers since the 17th century.

Evidence of human settlement in the GDS as far back as 12,000 years prior to the formation of the swamp has been documented by archaeologists. The landscape includes a system of canals, ditches, irrigation works, causeways, watergates, locks, spoil-bank roads, and earthworks designed and maintained to shape the “hydrology” of the swamp. Indigenous people (the Chesapeakes, Weapemeocs, Chowanocs, Tuscaroras and Powhatans) used the Great Dismal Swamp as part of their environment.

A sense of what the Dismal Swamp landscape was like along the western boundary of the GDS during the 17th century can be gleaned from a report by an intrepid traveler, one of the initial surveyors hired to survey the swamp:

Our way to Carolina grew worse, being much of it plashy, and pretty much full of great bogs and swamps, so we were commonly wet to the knees. And it was perilous traveling, for Indians were not yet subdued, but did mischief and murdered several. They haunted much in the’ Wilderness between Virginia and Carolina, so scarce any durst travel that way unarmed.

John Speed’s *A Map of Maryland and Virginia*, published in 1676, shows the Dismal Swamp vicinity.

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39. *Id.* at 2.
40. *See id.* at 34 (“John Speed’s ‘A Map of Maryland and Virginia’ published in 1676. . .includes an unnamed lake that feeds a small river flowing south into Albemarle Sound. The lake (possibly Lake Drummond) is located within a region generalized with a collection of small lakes labeled as black waters.”)
41. *Id.* at 6.
42. *Id.* at 7.
44. *Id.* at 33 (quoting ROY T. SAWYER, AMERICA’S WETLAND – AN ENVIRONMENTAL AND CULTURAL HISTORY OF TIDEWATER VIRGINIA AND NORTH CAROLINA, CHARLOTTESVILLE, VA & LONDON: UNIVERSITY OF VIRGINIA PRESS (2010)).
45. *See Figure 1.*
William Byrd II, one of the first colonial surveyors of the swamp, assisted in conducting a survey of the swamp in 1782 to define the line between North Carolina and Virginia. Byrd (credited with naming the Swamp Dismal) noted that:

“many slaves shelter themselves in this obscure part of the world, nor’ Will any other righteous Neighbors discover [i.e. betray] them. On the contrary, they find their Account Settling such Fugitives on some out of The way corner of their Land, to raise Stocks for a means and Inconsiderable Share, well-knowing their Condition makes it necessary For them to submit to any Terms).”

Bickel expands further, “[e]ven in the 18th century, the dismal Swamp housed fugitives from slavery. Members of this community also had economic connections to other people living in the vicinity of the

46. Bickel, supra note 37.
47. Id. at 38 (quoting Jack Temple Kirby, Poquosin: A Study of Rural Landscape & Society, CHAPEL HILL: UNIV. OF N.C. PRESS 19–22 (1995)).
dismal Swamp.

Currently, the Great Dismal Swamp comprises approximately “14,500 acres maintained as the Dismal Swamp State Park.” The interior features a “damp floor of vegetation covered in leaf litter and fallen branches and leaves high above, muddy underfoot and covered with layers of peat in other places, and with shallow dark-amber-colored standing water in still some places.”

I contend that the Dismal Swamp, with its mixture of Native Americans (indigenous folks), African Americans, maroons (both petit and major), free African Americans, and whites, was a spatial and physical dissonance to the concept of race in geography and white domains. A review of the laws enacted to quell resistance, to eliminate the safe harbors for resistant enslaved people, to recapture by patrols, and to criminally execute those caught “marauding” or engaging in guerrilla warfare supports this assertion.

48. Id.
49. NEVIUS, supra note 6, at 3.
50. Id.
51. Bickel, supra note 37.
C. Anthropological Findings on Maroons

Diasporas “are created when people either leave their original homelands voluntarily, or are forced out by circumstances they do not control.” The concept of exile has been articulated as an individual phenomenon and as part of complex “systemic forces which remove people from their homeland, places of nativity and spaces of familiarity, comfort and kinship; for example, slavery, land usurpation, imprisonment, and the like.” African Americans, enslaved and residing in the North American continent, were simultaneously exiles and members of a diasporic political economy: marronage.

Initially, African enslaved people were exploited as property for their labor, but in reality, they were exploited as an attribute of real estate. Their enslavement fueled an agri-business commercial market, with raised profits for owners that created intergenerational real estate transfers. As a direct result of slaves and slavery in North America, the British colonies and later North America enjoyed tremendous economic growth. The colonists, originally British settlers in the New...
World, were introduced to British North America to extract resources and wealth from the North American mainland. Seeing increased profits from their agri-business and the production of highly prized products, they sought to maintain these profits by reducing the need for paid labor and increasing the use of unfree labor (indentureds and slaves).

Enslaved Africans resisted slavery in various ways: rebellions, daily resistance, and self-liberation by leaving the geographical site of their enslavement. Africans who ran away from slavery were defined as “maroons,” outliers, or runaways. The English word maroon, like the French term marron, derives from the Spanish term ‘Cimarron.’ As used in the new world, ‘Cimarron’ originally referred to domestic cattle that had taken to the hills in Hispaniola and soon after to Indian slaves as well. Subsequently, during the seventeenth century, the English began describing enslaved Africans who sought liberty and freedom as runaways as “maroons.”

Volumes have been written about Africans in America who were enslaved, ran away, or otherwise resisted bondage. As early as
the 1730s, documentation abounds concerning: enslaved peoples’ insurrections in the Bahamas (1734) and Antigua (1735), Jamaica (1732), Saint John (1733), Guadelope (1737), Charles Towne, a colony in South Carolina (1730), and escapes to Florida, to St Augustine, and to Gracia Real de Santa Teresa de Mose (later known as Fort Mose).63 “Between 1732 and 1739, The South Carolina Gazette reported that 253 slaves had escaped slavery.”64

Historians have articulated that the most prevalent form of outward resistance was the slave run-away. Advertisements for runaways indicate the prevalence of this form of resistance.65 In fact, the legislative enactments are themselves testaments to the prevalence of the runaway as a form of rebellion.66 In North Carolina, South Carolina, and Virginia, legislative enactments created the bulwark of a systemic regime designed to countermand rebellion and resistance.67 Specifically, colonial legislation (from the 1600s–1800s) was designed to prevent slave resistance and rebellions,68 and to appropriate

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65. See FREDDIE L. PARKER, RUNNING FOR FREEDOM: SLAVE RUNAWAYS IN NORTH CAROLINA 1775–1840 65 (1993) (“[t]his chapter analyzes more than 2,200 newspaper advertisements for 2,771 runaway slaves for the years 1775 to 1840.’”).
66. Id. at 212.
67. Id. at 212.
resources necessary to protect both the colonists and their economic system that was designed to exploit the labor of enslaved people to support the colonies. A review of the enacted legislation assists in identifying the extent of the resistance, the locations of the resistance, and the response of the slavers to these acts of resistance.69

Flight towards marronage, the creation of organized communities of self-emancipated enslaved people, has received less historical scholarship70 than flight alone, rebellions, slave insurrections, or runaways and outliers.71 This is partly because much of the information on maroons and maroon villages has been reported in what one scholar describes as “parochial tradition of ethnocentric national history.”72 Recently, historians, archaeologists, and cultural anthropologists have begun studying this extant community in the British North American colonies that existed from 1616–1865.73

In marronage, individual fugitives, family groups, and allies remained in one cohesive unit to create independent communities.

“[A]mong the most fundamental social problems affecting the organization of a society are those which concern its constitution and homogeneity. The presence in the social structure of different portions of the population, with different interest, different functions, and developing along different lines, is a fact of primary significance where it exists. The reactions of one such population group toward another, or of the larger body toward an included group, give rise to phenomena of great importance.”

69. DIOUF, supra note 6, at 13.

“[F]or the seventeenth century, most of them [primary sources on maroons] consist of legal documents such as Acts passed by the legislatures and court minutes. Although they do not address the maroon experience, they provide, in filigree, valuable evidence about the profile of the maroons, where they established themselves and what activities they engaged in.”

70. See id. at 3.

“[T]he first serious historian to tackle the issue was Herbert Aptheker who published the classic article, “Maroons within the Present Limits of the United States” in 1939 and “Additional Data on American Maroons” which relates to one case in 1947. Apthekers’ research was groundbreaking because he established the existence of maroons, but it did not describe or analyze their experience.”

71. See RICHARD PRICE, MAROONS AND THEIR COMMUNITIES 28 (1973).

“[D]uring the past several decades, historical scholarship has done much to dispel the myth of the ‘docile’ slave. The extent of violent resistance to enslavement has been documented rather fully-from the revolts in the slave factories of West African and mutinies during the Middle Passage to the organized rebellions that began to sweep most colonies within a decade after the arrival of the first slave ship.”; “[F]light or marronage, however, has received much less attention, at least from North American scholars-in part no doubt because so much of the relevant data are in languages other than English.” Id.

72. Edward A. Pearson, The Stono Rebellion and Slave Rebelliousnes, in THE SLAVERY READER, VOL. 1 569, 608 (Gad J. Heuman & James Walvin eds. 2003); see also DIOUF, supra note 6, at 3. (“[A]t the other end of the spectrum, some post Aptheker historians have denied the reality of marronage in the United States.”).

73. See, e.g., DIOUF, supra, note 6; SAYERS, supra note 6.
This presented military and economic threats to the survival of the colonial communities. Maroon communities were outnumbered and outgunned, possessing few usable firearms. They also had to cope with an inhospitable environment, in which they created sustainable settlements. Despite these challenges, they remained a significant source of danger to the colonists because they included highly mobile warriors with intelligence networks and extraordinary skills in guerilla tactics. Such a community type—marronage—is well worth studying in light of the interplay of warfare, economic survival amidst resource shortages, environmental hazards, legal restraints, and dominant colonial community oppression. When these communities are viewed within a cultural milieu of the creation of a surviving community resulting from diasporic upheaval from various cultures within the African continent in the midst of enslavement, the concept of “true marronage” is illuminating and startling for today’s legal scholars.

Maroons sought an environment of exile from the Euro-centric communities of enslavement in North America, where freedom and self-determination could be had. The first established community to be documented in the United States was identified in 1714 in the Great Dismal Swamp of Virginia and North Carolina. Yet the history of maroons spans a wide geographical swath as well as a histological epoch, from as early as 1614 through the 1860s. Maroon presence can be traced from Virginia, the Carolinas, Georgia and Louisiana, with some presence in other colonies and states.

D. The Archaeological Environment of the Great Dismal Swamp:

i. Archaeological Findings:

Daniel O. Sayers is one of the most preeminent archaeologists

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75. Id. at 612.
76. Diouf, supra note 6, at 3 (“[M]any studies focus on the maroons of South and Central America and the Caribbean, none focus on the Thirteen Colonies and the United States”).
78. Id. at 11.
79. Id.
and scholars reporting on the Great Dismal Swamp.\footnote{See Steve Moyer, \textit{Impertinent Questions: Anthropologist Daniel Sayers on the Great Dismal Swamp}, HUMANITIES, Mar./Apr. 2015, Vol. 36, Number 2, https://www.neh.gov/humanities/2015/marchapril/iq/anthropologist-daniel-sayers-maroons-who-found-freedom-in-the-great-di (interviewing Sayers about his NEH funded film on the Great Dismal Swamp).} Having unearthed eight archaeological sites, several walkovers, surveys, and joint excavations with the Great Dismal Swamp National Wildlife and Refuge Survey, Sayers’ work by his own account is “less than one per cent of the acreage in the Great Dismal Swamp.”\footnote{Sayers et al., supra note 52, at 61.} Yet his work represents the most extensive and comprehensive survey and excavation projects to date. He describes the GDS as “haunting wetlands landscape dominated by water rich in tannic acid and decayed organics from the underlying peat soils.”\footnote{Id.}

Sayers, in conjunction with the United States Geological Survey Team and the use of topological maps, found in his archaeological surveys, excavations, and photogrammetric images that there are “landforms” within the swamp which amount to “hundreds” of higher ground islands throughout the GDS.\footnote{SAYERS, supra note 6, at 22.} These landforms have been observed to “range in size from approximately one acre to thirty-nine acres.”\footnote{Id. at 23.} These landform islands abound in clusters where the distances between them are usually between 50 feet to 1,500 feet of the swamp separating the landforms.\footnote{Id.} One of the most interesting observations of Sayers concerning the islands and the potential for habitation, farming and sustainable communities, is found in the following observation:

The islands near the Nansemond Scarp [(perimeter area)] have been observed to have elevations not too high above the Surrounding swamp level-2-3-feet at the most. Meanwhile Islands located in the interior areas of the refuge have much higher elevations; while island perimeters fall in the 1-3 feet above swamp level range, their interior areas stand as much as 10 feet above swamp levels. Such interior islands exhibit substantial topographic variation within their perimeters, while comparisons between islands also indicate varied topographic characteristics.\footnote{Id.; see also id. at 118–19.}

"Archaeological data from the nameless site suggest that it was a locus of intensive settlement and population during the 1600 to 1860 period. Across the site, cultural features (such as molds and pits) and materials were recovered in Stratum I contests."
Although Sayers has excavated at least eight sites, he focuses his archaeological findings on two: the Cross-Canal site and the Nameless site (so named because he wished to not attribute naming to a maroon home site). For purposes of this article, the Nameless Site will be discussed, although a significant amount of artifacts were uncovered at the Cross-Canal site also.

At the Nameless site, which is divided into sectors (Grotto, Crest and North Plateau), the majority of the artifacts recovered were made of “stone, clay or sand.” Through 2011, Sayers found more than a thousand lithic artifacts which included tertiary flakes, microdebitage, only a few tools, several re-worked projectile prongs, and pieces of fire cracked rocks. He also found a few hundred hand-thrown shards.

At the Nameless Site, he found several architectural footprints of structures intended as permanent dwellings, including put in ground types, post in ground structures, holes for large posts, laying in of shallow trenches, and gathering of plants and clay for wattle and daub walls. Sayers suggests these signs indicate efforts “associated with home construction with an intent to stay indefinitely or permanently at the nameless site.”

With the large volume of data at our disposal generated from fieldwork and to a lesser extent documentary records, we can come to a reasonably rich understanding of how Diasporeans [(Africans, Natives, and other people)] ushered in a new age for themselves by forming communities of a particular kind, by socializing their labor, and by extricating themselves from or most of the alienating conditions of the CEMP beyond the swamp….These were not communities that lasted a decade or so but rather communities and metacommunities that persisted across several generations, even if they did change during that long period.

Through shovel test excavation and TRM surveying the initial season, for example each of the different plateau areas as well as other parts of the site all yielded historical (Stratum I) cultural evidence. Intensive excavations have occurred [which indicate] in addition to initial survey work, and that work demonstrates beyond any reasonable doubt that a substantial number of people inhabited the site circa 1600–1860.; “In addition to these features, Excavation Block 1 (6 square meters total) in the Grotto contained eighty-three small (5–10 centimeters wide) post molds that were associated with lead shot and lithic items.”

87. Id. at 147.
88. Id.
89. Sayers, supra note 6, at 147.
90. Id. at 120.
91. Id.
92. Id. at 114.
He also recounts a report by Frederick Olmsted, who in 1784 wrote:

“Small spots are to be found here and there which are always dry, and these have often been used as places of safety by runaway slaves, who have lived for many years in the swamp, despite all the snares set for them by their masters. . . these negro fugitives lived in security and plenty, building themselves cabins, planting corn, raising hogs and fowls which they stole from their neighbors, and naturally the hunting was free where they were."93

Sayers’ archaeological finds, coupled with Bickel’s and other scientist’s, argued well for supporting the acknowledgment of human presence as maroons in the Great Dismal Swamp. Coupled with anthropological studies and histories of the Virginia and North Carolina regions, it is more than reasonable to assert that maroon colonies existed in the Great Dismal Swamp during the 1600s to 1800s.

III. PART TWO: SLAVE LAWS & THE HISTORY OF COLONIALISM

In Part Two, I review the increasingly restrictive slave laws that existed in colonial Virginia and in North Carolina (1600–1680). I argue that the rise in population in the Great Dismal Swamp, i.e., the extent of marronage activity in the United States (specifically Virginia), was inversely related to the increasingly restrictive slave laws in Virginia (and to a lesser extent North Carolina).

As the need for labor increased in the colonies, the enslaved sought more freedom from oppressive conditions by moving to the GDS. The settler colonists then enacted more restricted legislation/laws in an attempt to control the movements and alliances of the self-freed folk, to thwart runaways and resistance to slavery.

93. Sayers et al., supra note 52, at 73.
A. Virginia

Virginia became the ringleader of slavery law with its early adoption of slave codes (1679–1684).94 Virginia passed laws regulating the mobility, the progeny, and the congregations of the enslaved, and the ability of the enslaved to own a gun, bury their dead, and defend themselves against injury.95 These laws accelerated in restrictiveness as the African American population grew.96

During the 1500s and early 1600s, England’s population grew at an expansive rate. It far outstripped the English economy, which was hobbled by feudalism, leading to dwindling opportunities for the masses of people.97 As part of an effort to siphon off the itinerant masses and reduce the tinder for a possible attendant revolution, England entered an era of New World Colonization.98 Designed to decrease the “dangerous classes” and push for the discovery of precious metals and commodities formerly exported into England from foreign countries, England’s colonialism of the New World was seen as a precipitous advantage for the English.99

In the late sixteenth century, with the rise of the British naval power and the expansion of English mercantile commerce, English trade began to rule the international markets, outpacing Spain’s commercial Empire.100 Factually, this rise in world dominance began much earlier in the beginning of the sixteenth century, when the English commercial classes achieved control over their commerce,

95. Id.
96. Id.
98. Id.
99. Id.; see also Ibram X. Kendi, Stamped From the Beginning: The Definitive History of Racist Ideas in America 33 (2016) (In 1589, Richard Hakluyt published “The Principal Navigations Voyages, and Discoveries of the English Nation:” “In issuing this monumental collection of nearly all the available documents describing British overseas adventures, Hakluyt urged explorers, traders, and missionaries to fulfill their superior destiny, to civilize, Christianize, capitalize, and command the world.”).
100. Herbert S. Klein, Slavery in the Americas: A Comparative Study of Virginia and Cuba 23 (1967) (“It was the late sixteenth century that not only saw the rise of the famed British naval power, but also the great expansion of English commerce, which was soon to rule the world’s markets, even penetrating behind the barriers of the Spanish empire.”).
wresting it from outside foreign markets.101

Under a mercantilist theory of commerce, England created regulated companies. The first, chartered in 1555, was the Muscovy Company. This introduced England’s corporate structures and commercial ventures to all major areas of the world.102 As a result of the activities of these joint stock commercial companies, England was able to organize navies and a merchant fleet and obtain surplus capital, thus furthering England’s colonization and brutal expansion.103 “The economic theories that rose with the mercantile classes of England held that colonization and expansion was necessary for commercial survival.”104

The initial attempts at English colonization of the new Atlantic world were dismal failures.105 Gilbert and Walter Raleigh attempted to establish colonies on the Carolina coast.106 Both of these attempts were unsuccessful.107 The North American coasts had no appreciable precious metals, nor did the colonists have the monetary support of the British monarchy in the form of capital.108 The crown ultimately had to
cede its control over the colony to British merchants.\textsuperscript{109} In the swaps of ownership beginning in 1609, all immediate control over the colony was given to the proprietor, whether an individual or corporation, which became the link between the colonists and the metropolis. As a result, “[e]ven the form of Virginia colonization, like the control over government was determined by the will of the colonials.”\textsuperscript{110}

During the early years of the 1620s tobacco boom in the Virginia colony, English indentured servants satisfied the demand for labor.\textsuperscript{111} The indentured contracts lasted from five to seven years; due to disease, such servants had only a fifty–fifty chance of surviving their indebtedness and collecting “freedom dues” -- a small cash payment or a piece of land.\textsuperscript{112} In addition to the indentures, a small number of Black peoples, petty criminals, deported Irish prisoners, and rebellious Scots more than met the labor needs of the new Virginian colony.\textsuperscript{113}

By the 1640s, labor in the Virginia colony became scarce while the demand for labor accelerated. This was a result of the rising wages in England, the need for rebuilding London after the London fire of 1666, and the outward migration of Virginian indentured workers to more favorable colonies in Pennsylvania, New York, and South Carolina.\textsuperscript{114} Tobacco had become a profitable commercial venture for the new colonists. Tobacco farming needed “hands” and labor to convert the fungible commodity of tobacco into cash for the colonists.\textsuperscript{115}

It was the need for labor—to maximize the new mercantile quest for capital and profits—that created the crucible for the racialization of labor by the colonists. African slavery became the tool which the colonists used to build wealth for themselves and future generations. The Virginia colonists had a need to produce commodities (tobacco) and the need for labor.\textsuperscript{116}

\begin{itemize}
  \item \textsuperscript{109} Id. at 26.
  \item \textsuperscript{110} Id. at 27–28.
  \item \textsuperscript{111} DAVIS, supra note 97, at 132.
  \item \textsuperscript{112} Id.
  \item \textsuperscript{113} Id.
  \item \textsuperscript{114} Id.
  \item \textsuperscript{115} RONALD TAKAKI, A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA 51 (2008) (“In 1613 . . . the colony sent its first shipment of tobacco to London, a small but significant four barrels. The exports grew dramatically from 2,300 pounds in 1616 to 19,000 the following year, and to 60,000 by 1620. Virginia’s rapidly rising tobacco economy generated an insatiable demand for labor.”).
  \item \textsuperscript{116} See KARL MARX, DAS CAPITAL (1887) (“Ch. 7, The Labour Process and the Process of Producing Surplus Value: Sec 1. The Labour-Process or the Production of Use-Values: ‘The capitalist buys labour-power in order to use it; and labour power in use is labour itself. The purchaser of labour-power consumes it by setting the seller of it to work. By working, the latter
Initially, the relationship between the colonists’ indentured servants (generally white Englishmen and women)\textsuperscript{117} and indentured and enslaved Africans was marked by a mixture of co-extensive alliances.\textsuperscript{118} These alliances were seen by the ruling class planter elites as an impediment to the recoupment of profits from the colonial ventures, particularly after Bacon’s Rebellion.\textsuperscript{119} Bacon’s Rebellion involved a war in which frontier colonial planters, enslaved Africans, and indentured whites sided against the Indigenous Susquehannock.\textsuperscript{120} The profitability of the tobacco production had introduced a land grab frenzy by the planter colonists. They passed laws that extended the time of indenture for whites and increased the time for runaway whites.\textsuperscript{121} The planter class dominated the Virginia assembly and enacted legislation that favored their class interests.\textsuperscript{122}

Nathanial Bacon was a disaffected member of the planter class in opposition to the planters in power. Bacon led a rebellion to remove the Natives from their homeland\textsuperscript{123} and raised a militia of disaffected whites and enslaved Africans to revolt against the colony and its ruling becomes actually, what before he only was potentially, labour-power in action, a labourer. In order that his labour may re-appear in a commodity, he must, before all things, expend it on something useful, on something capable of satisfying a want of some sort. Hence, what the capitalist sets the labourer to produce, is a particular use-value, a specified article.

\begin{itemize}
\item \textsuperscript{117} Price, supra note 2
\item \textsuperscript{118} Russell Olwell, New Views of Slavery: Using Recent Historical Work to Promote Critical Thinking about the “Peculiar Institution,” 34 The History Teacher 459, 459 (2001) (“In both South Carolina and Virginia, the introduction of slavery began at a time of frontier development, when blacks and whites might work clearing land side-by-side with little difference in daily work patterns between African slaves and white indentured servants or even masters. [Philip] Morgan gives as examples slaves and whites each working one end of a saw when clearing land, an image that clearly shows that there was rough equality in work, if not in social life. Particularly in seventeenth century Virginia, slaves formed alliances of friendship and romantic attachment with white servants, and free African-Americans existed on the same social level as their white counterparts. This frontier equality broke down when Virginia’s plantation economy became more developed and indentured servitude ceased to be economically important in the colony.”).
\item \textsuperscript{119} Takaki, supra note 115, at 60. “After Bacon’s Rebellion, the planters made their choice: they turned to Africa as their primary source of labor and to slavery as their main system of labor. The growing African population can be measured decade by decade from the tax list of Surrey County [Virginia], Slaves constituted 20 per cent of households in 1674, 33 percent in 1686 and 48 percent in 1694.”
\item \textsuperscript{120} Roxanne Dunbar-Ortiz, An Indigenous Peoples’ History of the United States 61 (2014) (“The rebellion occurred when Anglo settler-farmers along with landless indentured servants—both Anglo and African—took into their own hands the slaughter of Indigenous farmers with the aim of taking their land.”).
\item \textsuperscript{121} Takaki, supra note 115, at 58.
\item \textsuperscript{122} Id. at 58–60.
\item \textsuperscript{123} Id. at 59.
\end{itemize}
planter elites. Bacon shared guns with the enslaved Africans, and together the rebels forced the Governor of Virginia, William Berkeley, to escape by ship.\footnote{124}{Id. at 59–60.} With 500 men, Bacon’s rebels burned Jamestown to the ground.\footnote{125}{Id.; See generally, Morgan, American Slavery, pp. 250–59; T.J. Wertenberger, TORCHBEARER AT THE REVOLUTION (1940); and Wilcomb Washburn, THE GOVERNOR AND REBEL (1957).}

Berkeley returned to stop the rebels, hang their leaders, and restore the colonists’ stronghold over Virginia.\footnote{126}{Bacon’s Rebellion, NAT’L PARK SERV. (Feb. 16, 2015), https://www.nps.gov/jame/learn/historyculture/bacons-rebellion.htm; Dictionary of Virginia Biography: William Drummond, LIBR. OF VA. (2016), https://www.lva.virginia.gov/public/dvb/bio.php?b=Drummond_William (Bacon mysteriously died after the burning of Jamestown. Governor Berkeley hung the rebels, including William Drummond, who had returned from a Governorship appointment in North Carolina.).} When Virginia was originally colonized under the Crown authorities, the law of slavery had not been codified in England and there was no uniform law of slavery in the British colonies. After Bacon’s Rebellion, the law of slavery emerged in the colonies.

The first British charter to the newly organized colony of Virginia was granted in 1606 to a group of London merchants named the London Company.\footnote{127}{Herbert S. Klein, SLAVERY IN THE AMERICAS: A COMPARATIVE STUDY OF VIRGINIA AND CUBA 23 (1967).} The London Company appointed a resident colonial council, but the political and administrative control was retained by the Royal Council, appointees of the Crown.\footnote{128}{Id.} Ultimately, the Crown was forced to relinquish all direct administrative and political control to the London Company.\footnote{129}{Id. at 27.} By 1609, the Royal Council was eliminated and the Crown relinquished all control over Virginia to the London Company.\footnote{130}{Id. at 27.}

The London Company itself encountered financial difficulties and was forced to give grants and charters to the proprietors instead of \ldots[direct payments]. In the years following 1609, the London Company “was reduced to offering patents or charters to groups of adventurers for the setting up of private plantations or colonies, usually known as hundreds, within the territory covered by the company charter.”\footnote{131}{Herbert S. Klein, SLAVERY IN THE AMERICAS: A COMPARATIVE STUDY OF VIRGINIA AND CUBA 27 (1967).}

With these grants, the colonists received and exercised extensive
control of their plantations. By 1609, the planters in Virginia and the adventurer merchants in London established economic parity.\textsuperscript{132} The emigrating colonists were given co-equal shares, which retired by 1616.\textsuperscript{133} By 1621, an extraordinary reorganization occurred where the London Company gave extensive powers to the Virginia colonists. No orders could bind the Virginia colonists unless ratified by the Virginia General Assembly.\textsuperscript{134} The stage was set for Virginia to begin economic expansion on terms favorable to Virginia.

In 1619, enslaved African peoples arrived in the colony of Virginia.\textsuperscript{135} The Spanish ship San Juan Baptist left Angola in 1619 with 350 enslaved Africans aboard, not originally headed for the English colonies.\textsuperscript{136} Two pirate ships attacked the San Juan, taking 60 enslaved Africans with them.\textsuperscript{137} In August of 1619, the pirates sold twenty of their captives to the governor of Jamestown, Virginia, Governor Yeardley, who owned 1,000 acres.\textsuperscript{138} This action would change the future labor pattern of English/British colonialism. Virginia became the first of Britain’s colonies to enact a system of slave laws based on the colonists’ need for labor, which re-ordered racial stratification and hierarchies in North America.\textsuperscript{139}

In the English colonies, specifically Virginia, the colonists made laws for the colonies’ benefits.\textsuperscript{140} There was not an antecedent law for slavery derived from England. Thus, slavery as a social institution was “accepted in the English colonies without legal authorization.”\textsuperscript{141} The local legislatures designed the slave laws for local conditions.\textsuperscript{142}

Between the years of 1619 and 1775, the new colonies engaged in a bloody transformation. Slavery became the economic engine of colonial growth.\textsuperscript{143} Only the legislature had authority to make law in

\begin{itemize}
  \item \textsuperscript{132} \textit{Id}.
  \item \textsuperscript{133} \textit{Id}.
  \item \textsuperscript{134} \textit{Id.} at 28.
  \item \textsuperscript{135} Ibram X. Kendi, \textit{Stamped from the Beginning: The Definitive History of Racist Ideas in America} 38 (2016)
  \item \textsuperscript{136} \textit{Id}.
  \item \textsuperscript{137} \textit{Id}.
  \item \textsuperscript{138} \textit{Id}.
  \item \textsuperscript{139} See Klein, supra note 106, at 40. (“This power [to establish the rights and obligations of Africans and Indians] of the colonial governments was in fact granted by default. . .”).
  \item \textsuperscript{140} Alan Watson, \textit{Slave Law in the Americas} 64–65 (1989).
  \item \textsuperscript{141} \textit{Id.} at 64.
  \item \textsuperscript{142} \textit{Id}.
  \item \textsuperscript{143} Edward E. Baptist, \textit{The Half Has Never Been Told: Slavery and the Making of American Capitalism} 3 (2014) (“The number of Africans brought to Maryland and Virginia before the late 1660s was a trickle—a few dozen per year. But along with white
the colony. In general, the law of slavery in Virginia was statutory
law. Slavery in the new world was indeed a peculiar institution.
Virginia slave law was firm when it developed, but it was still a social
institution new to the legal system and not yet regulated by English
law.

While the Virginia colonial courts attempted to translate the
desires of the white planter class elites, the courts’ decisions were
erratic and often disjointed concerning the status of the Africans and
African Americans.

B. Early Colonial Black Code Laws

The first legislative enactment which sought to distinguish the
rights and privileges of Africans from their fellow Virginians was
passed in 1639 and stated that “all persons except Negroes are to be
provided with arms and ammunition or be fined at the pleasure of the
governor and council.” This Act did not forbid African people from
possessing arms and ammunition, but it did not provide them with a
subsidy from the state.

In addition, paternity suits from white female indentured servants
and African slaves were common complaints against plantation
owners. Elizabeth Key’s case in 1655, where she won freedom for
herself and her child, proved to be a critical blow for freedom suits in
United States history. This case ushered in legal standing for freedom
suits, but the Virginia legislators resolved to close the loophole
allowing freedom for the enslaved person and their children. As a
result, the Colonists enacted a hereditary slave law in Virginia:

144. ALAN WATSON, SLAVE LAW IN THE AMERICAS 65 (1989).
145. Id. at 64–65.
146. Id. at 40–41.
Enactment of Hereditary Slavery Law Virginia 1662-ACT XII
WHEREAS some doubts have arisen whether children got by an
Englishman Upon a negro woman should be slave or free, Be it
therefore enacted and Declared by this present grand assembly, that
all children borne in this Country shall be held bond or free only
according to the condition of the Mother, And that if any Christian
shall commit fornication with a negro Man or woman, he or she so
offending shall pay double the fines imposed By the former act.152

Elizabeth Key was the daughter of a white Englishman and an
enslaved African woman.153 She was sold as a child into indentured
servitude.154 Her father’s death after her term of indenture was a
precipitating factor in having her sold under an additional indenture.155
In 1655, she petitioned the courts for her freedom—and that of her
unborn child.156 She became the first woman of African descent to
bring what would later be called a “freedom suit” in the American
colonies.157 She had been held for ten years longer than her term of
indenture, which should have ended in 1636.158 Her relief was originally
granted, but was later overturned.159 She finally won her freedom when
her common law husband and the father of her child, a white
indentured man named William Grimstead, petitioned the General
Assembly.160 Upon receipt of her freedom on July 31, 1656, she and
William Grimstead posted banns to publicly announce their intention
to marry.161 Within six years, the Virginia legislature had enacted the
Hereditary Slave Law of 1622, ushering in an era of racialized

152. 2 WILLIAM WALLER HENING, 1662 Act XII: NEGRO WOMENS CHILDREN TO SERVE
ACCORDING TO THE CONDITION OF THE MOTHER (1662), in THE STATUTES AT LARGE: BEING
A COLLECTION OF ALL THE LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEGISLATURE
IN THE YEAR 1619 170 (vol. II 1823).

153. Jennifer Morgan, 1659–1664: Elizabeth Keye, in FOUR HUNDRED SOULS: A
COMMUNITY HISTORY OF AFRICAN AMERICA, 1619–2019 39, 39 (Ibram X. Kendi & Keisha N.
Blain eds., 2021).

154. Id. at 40.
155. Id.
156. Id.

157. Id.; see Taunya Lovell Banks, Dangerous Woman: Elizabeth Key’s Freedom Suit –
Subjection and Racialized Identity in Seventeenth Century Colonial Virginia 41 AKRON L. REV.

158. Id.
159. Id.
160. Id. at 40–41.
161. 2 HENING, supra note 161, at 170; see also, Warren M. Billings, The Cases of Fernando
and Elizabeth Key: A Note on the Status of Blacks in Seventeenth-Century Virginia, 30 WILLIAM
AND MARY Q. 467, 469 (1973).
slavery.162

C. Partus Sequitur Ventrem

To stave off freedom suits by slave women, the slave owners promoted a new legal principle to govern the inheritable status of slavery. In 1662, a statute instituted the legal doctrine of *Partus Sequitur Ventrem*.163 It freed slave owners from having to acknowledge paternity and therefore from providing for a child.

Under English Common Law, a father is required to support and provide his child with the opportunity to learn a skill.164 The new Virginian Law circumvented that legal responsibility.165 The statute allowed a slave master to exploit his progeny and female slaves. It also restricted children born to enslaved women to perpetual slavery. This law made slavery a perpetual status for African Americans by deviating from English common law and not forcing a father to claim paternity for a bastard, granting no legal recognition to a bastard, and not allowing a child to obtain any other prospect other than slavery. Slavery officially became a racial caste in the English Colonies, a trait that would continue into the United States.166

In 1691, “a new law prohibited the ‘abominable mixture and spurious issue’ of interracial unions and provided punishment of white women who violated the anti-miscegenation law: a white mother of a racially mixed child would be subject to banishment and the child would be enslaved.”167

The propensity of Africans (whether enslaved or servants) and indentured white servants to form alliances to escape created problems for the planter colonists. The colonists attempted to solve these problems with judicial review and increasingly restrictive legislation.168

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164. *Id.* at 2–5.
165. *Id.*
168. HIGGINBOTHAM JR., *supra* note 10, at 26–28 (“Three cases from this period deal with the response of the courts to that threat, twice as it directly manifested itself in runaway cases and once as it indirectly played a part in the successful attempt of one individual to avoid punishment for a crime by plying on the society’s greater interest in maintaining a distinction between the lowest white servants and blacks.”).
In 1642, the Virginia legislature passed legislation dealing with servant to employer obligations. Servants brought to the colony without indenture had to serve four years if they were older than twenty, five years if they were between the ages of twelve and twenty, and seven years if they were under twelve. The laws passed by the assembly were designed to aid the colonists by ensuring that the maximum profit could be garnered for the indentured servant-employer relationship.

In 1642, Act LX “sentenced those who traded with a servant without the master’s consent to one month in prison, in addition, to a fine of four times the value of the article traded.” In 1657, Act CXIII was passed:

Whereas hue and cry after Runaway servants has been much neglected to the great loss of the inhabitants, it is enacted that all such hue and cry shall be signed either by the governor or some of the council and the same shall be conveyed from house to house with convenient speed. Runaways, if found, shall be sent from constable to constable until delivered to their master or mistress.

In 1643, the General Assembly passed the following taxation measure, which levied a tax paid to the church on African women but not white women, making African women taxable as men. The ostensible justification was that taxing Black women was part of the financial support structure of the Church of England:

Be it also enacted and confirmed that there be four pounds of tobacco....and a bushel of corn...paid to the Ministers within the several Parishes of the colony for all titheable persons, that is to say as well for all youths of sixteen years of age as [upwards] and also for all negro women at the age of sixteen year.

In 1658, Act CXIII “required that all masters, upon

169. *Id.* at 32.
170. *Id.*
171. *Id.* at 33.
174. *Id.*
apprehending their runaways, ‘cut the hair of all such runaways close above the ears, whereby they may be with more ease discovered and apprehended’”. In 1659, Act XVI was passed, providing that:

[N]ations are allowed free trade if they give bond and pay import of ten shillings per hogshead laid upon all tobacco exported to any foreign dominions; always provided that if Dutch or other foreigners shall import any negro slaves they, the said Dutch or other foreigners, shall for the tobacco really produced by the said Negroes, pay only the impost of two shillings per hogshead, the like being paid by our own nation.

Act XVI provided a financial boon to the Dutch and others who actively participated in the slave trade. Yet more importantly, this statute reflected the Virginia legislature’s recognition of the financial importance of the slave trade.

Increasingly, the Virginia slave codes became more punitive and harsher. Attempting to alienate white indentures from enslaved Africans or Natives, Act XXII in 1660 underscores the methods used:

Bee it enacted That in case any English Servant shall run away in company with any negroes who are incapable of making satisfaction by addition of time, Bee it enacted that the English so running away in company with them shall serve for the time of the said negroes absence as they are to do for their owne by a former act.

According to Professor and Judge Higginbotham, this statute was a legal recognition of the growing problem of the disincentives facing black enslaved laborers to remain on the plantation. Presumably, this was also an implicit acknowledgment that the enslaved Africans faced a lifetime of servitude. The reference to “Negroes who are incapable of making satisfaction by addition of time” refers to the condition that Negroes couldn’t make satisfaction to the employers/masters by the

175. HIGGINBOTHAM JR., supra note 10, at 33.
177. HIGGINBOTHAM JR., supra note 10, at 34.
179. HIGGINBOTHAM JR., supra note 10, at 35.
addition of time because they already had lifetime service. Further, the Act provides punitive measures for others running with the enslaved Africans:

[i]n case any English servant shall run away in company of any negroes who are incapable of making satisfaction by addition of a time:...the English soe running away in the company with them shall at the time of service to their owne masters expired, serve the masters of the said negroes for their absence soe long as they should have done by this Act if they had not been slaves, every christian in company serving his proportion; and if the negroes be lost or dye in such time of their being run away, the christian servants in company with them shall by proportion among them, either pay fewer thousand five hundred pounds of tobacco and caske or fewer yeares service for every negroe so lost or dead.181

In 1667, the Virginia legislature decreed that even baptized slaves would not escape slavery. By 1670, the Virginia legislature added the following restriction:

“noe negroe or Indian though baptized and enjoyned freedom would be allowed to buy Christians, though they could purchase ‘any of their owne Nation.’” 183

180. Id.
181. Id. at 27–28, 35 (In 1640, the Virginia Court decided the Emmanuel case. This involved a case where an African along with six white indentured servants who “stole 'the skiff of Pierce and corn, powder and shot guns, which said persons sailed down to Elizabeth river.' The group was captured, convicted and sentenced.” The leader was a Dutchman, who was required to wear shackles for a year. One was required to serve the colony for an extra seven years; a third was branded, whipped and required to serve the colony for three years; another man was required to extend his service for two years. The African, Emmanuel was branded with “R” on his cheek and required to wear shackles for a year. Every one of the others were given additions to their times of original service. In re John Punch was decided by the Virginia Court in the same month as the Emmanuel case; the court imposed different sentences for the same crime of running away: “[O]ne called Victor, a dutchman, the other a Scotchman called James Gregory, shall first serve out their times with their master according to their Indentures, and one whole year apiece after the time of their service is Expired...and after that service...to serve the colony for three whole years apiece, and that the third being a negro named John Punch shall serve his said master or his assigns for the time of his natural Life here or elsewhere.”).
182. 2 William Waller Hening, An Act Declaring that Baptism of Slaves Doth Not Exempt Them From Bondage (1667), in The Statutes at Large: Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619, at 260 (1823).
183. 2 William Waller Hening, Noe Negroes nor Indians to buy Christian Servants (1670), in The Statutes at Large: Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619, at 281 (vol. II, 1823).
Because perpetual slavery was extant throughout Virginia, colonists could restrict slaves from running away by causing them to fear retribution and by depriving them of their freedom under contract. Without the promise of freedom or fear of a loss of liberty from running away, the colonists would instill fear through cruelty, whippings and beatings in efforts to gain more work from the slaves (see Figure 3 below). More whippings and beatings increased the likelihood of injury; injuries increased the likelihood of death from being killed by the master/employer.

Figure 3

In 1669 the Virginia legislature had an answer for the casual killing of a slave by the employer – decriminalize the killing of an enslaved African:

Whereas the only law in force for the punishment of refractory servants resisting their master, mistress or overseer, cannot be inflicted on negroes [because the punishment was an extension of time]. Nor the obstinacy of many of them by other than violent

184. HIGGINBOTHAM JR., supra note 10, at 35–36.
185. Id.
186. Id.
187. Bickel, supra note 37.
meanes supprest. Be it enacted and declared by this grand assembly, if any slave resist his master...and by the extremity of the correction should chance to die, that his death shall not be acqompted Felony, but the master (or that other person appointed by the master to punish him) be acquit from molestation, since it cannot be presumed that propensed malice (which alone makes murther Felony) should induce any man to destroy his own estate.\textsuperscript{188}

This provision provided perhaps one of the most critical points of leverage from the slave codes in Virginia. Citing both the removal of criminal punishment from the “master” for the killing of an enslaved African under law, coupled with the acknowledgement of the English maxim that a man is not presumed to destroy his own estate, raised the cruel proposition that the African could be killed as the property of the “master” if he or she resisted.\textsuperscript{189}

The Virginia legislature also addressed the concept of Christian conversion and concluded that baptism would not affect the bondage of Africans or Natives.

1667. Act III. Whereas some doubts have arisen whether children that are slaves by birth, and by the charity and pity of their owners made partakers of the blessed sacrament of baptism, should by virtue of their baptism be made free, it is enacted that baptism does not alter the condition of the person as to his bondage of freedom; masters freed from this doubt may more carefully propagate Christianity by permitting slaves to be admitted to that sacrament.\textsuperscript{190}

The Virginia legislature passed legislation enabling the colonial militia to track down runaways.\textsuperscript{191} This law effectively pushed the state into the business of recapturing enslaved persons who were then legally held as property by private citizens. First the judiciary, then the legislature, and finally the executive branch (Governors) were all involved in maintaining the contractual status of Africans as property.

The slave codes of 1680–1682 created the first comprehensive legislative enactments addressing slavery and personhood.\textsuperscript{192} These codes “synthesized all the piecemeal legislative deprivations of the

\textsuperscript{188} Id. at 36; 2 William Waller 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. II, 1823).

\textsuperscript{189} Higginbotham Jr., supra note 10, at 36.

\textsuperscript{190} Id. at 36–37.

\textsuperscript{191} Id.

\textsuperscript{192} Id. at 38.
previous twenty years,” incorporated some of the harshest penalties for addressing indentured servants, and denied the enslaved any rights or privileges in parity with white indentured servants.193

By 1679 nearly forty percent of the early colonial slave population lived in Virginia.194 Virginia’s slave population expanded from two thousand in 1680 to three thousand by 1700.195 Virginia’s fear of slave revolts and the need for economic profitability from the products of enslaved labor fueled a concomitant need for legislative control.196 As scholars De La Fuente and Gross have asserted:

In Virginia both an influx of new African slaves and the experience of Bacon’s Rebellion, in which slaves and servants revolted against masters, led legislators to take steps against conspiracies and rebellions. In 1680, a new “Act for Preventing Negroes[‘] Insurrections” established limits on slaves’ mobility, their right to carry weapons, and their social gatherings, which were perceived as breeding grounds for insurrectionary plots.197

The increasing harshness of the slavery laws in Virginia underscored the intention of the Virginia colonists to control and manage the enslaved for profit.198

D. North Carolina

The vast majority of white North Carolinians in the early history of the colony moved from villeinage and servitude to freedom, but the slavery culture of the North Carolina colony meant harsher and more restrictive laws for Africans.199 North Carolina designed its slave laws based on Virginia’s slave laws. However, being sparsely populated, North Carolina’s slave laws developed more slowly.200 In the 1650s,

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193. Id.
194. JACKSON, supra note 94, at 55.
195. Id.
196. See, ALEJANDRO DE LA FUENTE & ARIELA J. GROSS, BECOMING FREE, BECOMING BLACK: RACE, FREEDOM AND LAW IN CUBA, VIRGINIA AND LOUISIANA.
197. Id. at 36 n.56. “Convicted blacks suffered harsher punishments than whites, including torture, whipping, dismemberment, burning, beheading, and hanging.” (Citing 2 WILLIAM WALLER HENING, AN ACT FOR PREVENTING NEGRO INSURRECTIONS (1680), in THE STATUTES AT LARGE: BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEGISLATURE IN THE YEAR 1619, at 481–82 (1823)).
198. Id.
Virginians moved from the Chesapeake region toward the Albemarle region of North Carolina seeking arable soil for tobacco crops.\textsuperscript{201} Troubled by the Tuscarora wars, unrest, and slowly developing economies,\textsuperscript{202} free and enslaved populations grew slowly in North Carolina. By 1720, the Black population numbered around two thousand and the white population numbered between four to five thousand.\textsuperscript{203}

Because North Carolina was a lightly populated colony,\textsuperscript{204} the enslaved were more likely to live with small white family groups as opposed to on large plantations.\textsuperscript{205} The colony had no developed ocean port or staple crop such as tobacco.\textsuperscript{206} The lack of highly developed town population centers and the small number of enslaved Africans meant that North Carolina did not initially experience a need to develop slave control laws.\textsuperscript{207}

The first slave laws were passed as early as 1699, when colonial plantation settlers and their enslaved began migrating into North Carolina. However, the first North Carolina comprehensive slave code was not developed until 1715.\textsuperscript{208} The terrain of North Carolina lent itself to becoming a safe harbor for runaways from Virginia. The Virginia attorney general reported in 1690 that “servants and slaves are daily fleeing” to North Carolina to reach freedom.\textsuperscript{209} Virginia’s governor noted in 1711 that North Carolina was “the common sanctuary of all our runaway servants and of all that fly from the due execution of the Laws in this and her Majesty’s other plantations.”\textsuperscript{210}

In 1699, North Carolina encouraged all white men to capture enslaved runaways and convey them either to the marshals or their

\begin{itemize}
\item[201.] Id.
\item[202.] See HUGH LEFLER & ALBERT NEWSOME, NORTH CAROLINA: THE HISTORY OF A SOUTHERN STATE 56–60 (1954).
\item[203.] Id.
\item[204.] READY, supra note 199, at 53 (“Slavery did not become significant in North Carolina until the 1720s when the Lower Cape Fear began to develop almost as a province of South Carolina.”).
\item[205.] U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES COLONIAL TIMES TO 1970 1168 (Bicentennial ed. 1975).
\item[206.] READY, supra note 200, at 54.
\item[207.] Id.
\item[208.] Id.
\item[209.] Letter from Barth, Fowler, Attorney General of Virginia, to Deputy Governor of North Carolina (Aug. 27, 1699), in 1 WILLIAM L. SAUNDERS, THE COLONIAL RECORDS OF NORTH CAROLINA 513 (1886).
\item[210.] Letter from Lieutenant Governor Spotswood to the Earl of Rochester (July 30, 1711), in 1 WILLIAM L. SAUNDERS, THE COLONIAL RECORDS OF NORTH CAROLINA 798 (1886).
\end{itemize}
“owner” and claim a reward. Virginia had a comparable law, but North Carolina’s imposed no punitive fine on those who did not obey. These laws were followed by the 1690s law where the legislatures made it a crime to harbor runaways and gave rewards to slave catchers. The North Carolina counties of New Hanover and Chowan were the first to appoint slave patrols. These searchers or patrollers were exempt from militia duty, provincial jury duty, and county and parish taxes.

The 1715 North Carolina slave code required all the enslaved to carry a pass when leaving the colonist’s plantations naming their “owner”, origin of travel, and destination. In 1729, North Carolina law required the enslaved to stay on the main thoroughfare when traveling. If the enslaved were found off the road, it was legal for the owner of the land whereon any such slave was found to give them a severe whipping, not exceeding forty lashes. Any “loose, disorderly, or suspected person,” Black or white, found in the company of an enslaved at night, could be held, taken before a justice of the peace, and given a lashing.

The 1740 North Carolina slave law and subsequent laws identified “taking up” or “capturing” a runaway, terms used in the laws of Virginia and neighboring colonies. The language of “taking up” is reminiscent of colonists’ language about stray cattle or horses.

The North Carolina laws passed in 1715 remained in effect until 1740, when the legislature re-codified the slavery laws of control following the Stono Rebellion in South Carolina. The Stono Rebellion caused the legislature to enact laws designed to restrict the movement and runaway ability of the enslaved. Fifty-eight provisions reinforced and defined the enslaved as chattel property and

212. Id.
213. Id. at 36.
214. Id. at 34.
215. Id. at 35.
217. Id.
218. Id. at 34.
219. Id.
220. See Marvin L. Michael Kay & Lorin Lee Cary, SLAVERY IN NORTH CAROLINA, 1748-1775, 63–64 (2000) (noting that the Stono Rebellion near Charleston, S.C., was the impetus for North Carolina creating its most comprehensive code aimed at restrictions and slave runaways, known as the 1741 Act Concerning Servants and Slaves).
Twenty-two provisions mandated harsh restrictions for runaways.\textsuperscript{222}

The 1741 Act maintained previous fines on interracial marriages and declared them to be an “abominable mixture; whose offspring was a ‘spurious mixture.’”\textsuperscript{223} The legislature created a system where seven shillings six pence were offered for capturing a runaway within ten miles of the plantation owner’s home, and three pence per mile for captures farther away.\textsuperscript{224}

Amended in 1753, 1758 and 1764, the 1741 Act “remained the basic legal system that governed slavery in North Carolina.”\textsuperscript{225}

Almost from its beginnings slavery institutionalized fear and terror. While indentured servants and slaves might be whipped and have their ‘time on the cross’ extended for running away in 1715, by 1741 punishments meted out to Africans and Creoles went beyond believable judicial bounds. In a century that did not have prisons but only jails (or goals) for short internments, hangings and public whippings occurred on a regular basis. While whites and blacks alike could expect to be hung in a town or county seat as part of a public spectacle, only rarely did whites have their heads cut off and displayed on pikes and poles. For slaves, abuse torture, sadism, and infrequently decapitation unofficially became incorporated into their sentences.\textsuperscript{226}

Under North Carolina law, a slave named Will “was chained alive in a gallows like structure called a gibbet, was thrashed publicly and took a month to die.”\textsuperscript{227} Between 1741 and 1764, prior to the law being repealed, “at least twenty slaves in North Carolina underwent castration as a punishment.”\textsuperscript{228} These procedures were done by jailers, who earned twenty shillings for the act.\textsuperscript{229} Prior to the Revolution, eight to ten slaves were publicly burned alive. At least thirty were hanged and ten decapitated with their heads placed on pikes.\textsuperscript{230}

As Professor Milton Ready asserts in his topical book, \textit{The Tar Heel State: A New History of North Carolina}: “…the Great Dismal
Swamp had perhaps become the largest sanctuary for runaway and fugitive enslaved in the South.\textsuperscript{231} He notes that “thousands hid in relative safety and seclusion, living there for generations and establishing entire villages of maroons and mestizos, mixed groups of Free Africans, Indigenous people and whites.”\textsuperscript{232} Although not implemented as early as the slave laws of Virginia, the harsh laws of North Carolina became another reason for flight to marronage by enslaved Africans to the Great Dismal Swamp.

The courts in both North Carolina and Virginia were foreclosed to the enslaved Africans. The colonists enacted laws designed to strip the African people of humanity and freedom in perpetuity. The avenue of revolt was fraught with capture, torture and the overwhelming force of guns, militia, and the surrounding settlements. The remaining outlet for freedom was theft of oneself, to a place of safe refuge: the Great Dismal Swamp.

\textit{E. Capitalism and Slavery

Capitalism did not create slavery. Slavery existed in antiquity. There are prehistoric graves in lower Egypt which support the theory that people enslaved others as early as 8000 B.C.\textsuperscript{233} Enforced slave labor was used to “build the innovations of the world’s first agricultural revolution,”\textsuperscript{234} from the hydraulic systems in China to the pyramids of Egypt.\textsuperscript{235} Greece and Rome used enslaved peoples, with Rome establishing the status of a slave by law, distinguishing a slave (servus) from a serf (colunus).\textsuperscript{236} Rome collapsed, along with its institutions, but the laws of the successor states incorporated much of the Roman practice adapted to the new age. “Out of nearly five hundred laws of the Visgoth which survive, almost half refer to some aspect of slavery.”\textsuperscript{237}

The Middle-Ages saw no shortage of slaves and slave labor.

\textsuperscript{231.} MILTION READY, THE TARHEEL STATE: SLAVERY AND SERVITUDE IN EARLY NORTH CAROLINA, 1663–1861 64 (2020).
\textsuperscript{232.} Id.
\textsuperscript{233.} Id.
\textsuperscript{235.} Id.
\textsuperscript{236.} Id. at 29.
\textsuperscript{237.} Id. at 34.
Slaves were a highly prized section of the population of Europe, which included Northern Europe. During the Carolingian renaissance, slave markets thrived on the sale of Saxon, Wend, and Avar peoples, who were bought and sold at fairs where “slavs” were prime commodities.  

The Portuguese were the first Europeans to embark on journeys opening up new trade areas. By 1425, Portugal was involved in seizing Moroccan slave ships, and in 1444 Portugal formed a company (Lancarote de Freitas’ company) for trade to Africa at Lagos.

The African slave trade followed with a rapidity, aided in part by war by local African Kings to conquer and sell captives to the Europeans and explorations for colonialism by Portugal, Spain, Italy, the Danes, Scandinavia, the Dutch, France, the Catholic Church and, ultimately, England. 1650 to 1675 saw an increase in exported enslaved Africans of 370,000. Over 600,000 people were exported from Africa between 1675 and 1680, fueling an international economy of trade in Africans, gold, and ivory, and the continued quest for monarchies to explore and exploit new lands.

Enter mercantilism. The mercantilist theory held that a nation must export more than it imports in order to prosper. This idea assumed that the real wealth of a nation was determined by its reserves of precious metals such as gold and silver. These reserves could, the mercantilists believed, be expanded if the nation retained a favorable balance of trade; that is, an excess of exports over imports. If foreign purchasers were required to pay for exports in gold or silver, the nation with a favorable trade balance would be able to increase its gold and silver reserves. Mercantilists, therefore, believed that the best interests of a nation were served by pursuing policies which strictly limited imports (such as high tariffs and low import quotas), while undertaking other policies which encouraged domestic producers to export as much

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238. Id.
240. Id.
241. See id. at 219–31. In truth there were attempts to thwart the European slavers by some African communities, but those efforts were outpaced by the technology and resources of the Europeans. Author’s note.
242. Id. at 226.
243. Id.
as possible (such as artificially keeping domestic prices low).  

Mercantilism emerged in a period of social and political transition. After the Reformation and the end of the Thirty Years War (1618–1648) in Europe, isolated feudal estates were increasingly overrun or replaced by centralizing nation-states. As one account put it: war more than anything propelled the consolidation of the nation-state. 

In its most basic form, mercantilism posits that economic activities are subordinate to the goal of state-building, state security, and military power. One of the key assumptions made by mercantilists is that the amount of wealth in the world is constant, so that a nation’s share can only increase at the expense of others. Because economic resources are necessary for national power, there is no separation between politics and economics. This explains why mercantilists believe that “every conflict is at once both economic and political.” During the period of adventure and exploration, kings who understood the relationship between wealth accumulation and political power richly rewarded those who could help them raise an army or pay for one.

After the discovery of the Americas, the state granted charters of incorporation and Letters of Marquee, promoted adventurism and plunder abroad, and protected domestic producers through tariffs. European monarchs competed with one another by sending out adventurers like Magellan and Sir Francis Drake, who promised to bring back riches and glory for the state. Then it finally dawned on mercantilists and others that trading for certain goods was much cheaper than paying for the soldiers who helped sack and loot neighboring states. It was at this time that trade treaties were taken up in earnest. The state’s focus on trade rather than pillage and plunder

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247. Id. at 119.
248. See generally id. at 115–19 (explaining how Medieval organized violence led to the rise of mercantilism).
249. Id.
250. Id.
252. Id.
253. Id.
created an environment for the first serious debates on capitalism.254

Until that happened, however, there was a mad rush for silver and gold led by Spain. There were also English efforts to control commercial prospects and the steady creation of charter companies (predecessors of modern corporations). Under these conditions, the state became the linchpin for wealth creation and wealth accumulation.255

Capitalism is defined as “the system of organization of a monetary economy with division of labor characterized by private ownership of the means of production.”256 Capitalism entails private ownership of and free trade in not only consumption goods, but also producers’ goods (capital goods) and ownership titles (stocks).257 The private ownership of the means of production under capitalism allows the ability to support “freedom of enterprise,” i.e., the freedom to acquire productive resources and use them as one sees fit.258 Private ownership of the means of production, in conjunction with the freedom of consumers to spend their incomes in accordance with their own preferences, ensures that with certain exceptions (e.g. monopolies), consumer sovereignty prevails. A third prerequisite of capitalism is competition among production enterprises. In order to avoid losses and make profits, capitalism imposes on enterprises the necessity of offering consumers goods or services at least as attractive as other firms are offering.259

In his seminal work Capitalism and Slavery, Eric Williams states that “slave labor is given reluctantly, it is unskillful, it lacks versatility.”260 Williams goes further:

‘The reasons for slavery,’ wrote Gibbon Wakefield, ‘are not moral, but economical circumstances; they relate not to vice and virtue but to production.’ With the limited population of Europe in the sixteenth century, the free laborers necessary to cultivate the staple crops like sugar, cotton and tobacco, where the cost of production is appreciably reduced on larger units, the slaveowner with his large-

254. Id.
255. Id.
256. Id.
258. Id.
259. SAYERS, supra note 6, at “Marxist Chapter”.
260. Eric Williams was one of the first scholars to analyze and argue that slavery in the Americas fueled capitalism. See generally ERIC WILLIAMS, CAPITALISM AND SLAVERY 6 (2021).
scale production and his organized slave gang, can make more profitable use of the land than the small farmer or peasant proprietor. For such staple crops, the vast profits can well stand the greater expense of inefficient slave labor.\(^\text{261}\)

Eighteenth century capitalism created and developed the wealth of Europe by means of slavery and monopoly. This state then helped to create the capitalism of the nineteenth century which in turn destroyed the power of commercial capitalism: slavery.\(^\text{262}\)

As Bhu Srinivasan stated in “Americana: A 400 Year History of American Capitalism,” “[i]t is hard to overstate tobacco’s role in eighteenth century America. In 1700 the total value of the American colonial exports to ports in England was 395,000 pounds; tobacco from Maryland and Virginia accounted for nearly 89 percent of this total. Fur, the next largest export item, accounted for around 5 percent.”\(^\text{263}\)

By the 1700s, earlier generations of white Virginians had acquired large landholdings for themselves and their families.\(^\text{264}\) The largest tobacco farmers achieved lower costs of production than the average small farmer, but they used the profits to acquire more slaves.\(^\text{265}\) The largest farm holds assisted and created entire slave communities to develop and reproduce. Coupled with the restrictive laws and the doctrine *Parquas Sequs Ventrum*, each new human born in enslavement increased the monetary coffers of the slaveholders.\(^\text{266}\)

Thomas Jefferson owned 600 slaves.\(^\text{267}\) “In the midst of the American Revolution, Jefferson was dependent upon prices set in London markets for the tobacco that enslaved people would cultivate on his Virginia plantation.”\(^\text{268}\) The Revolution signaled an end to the

\(^{261}\) Id. at 6.

\(^{262}\) Id.

\(^{263}\) Bhu Srinivasan, Americana: Four Hundred Years of American Capitalism 26 (2017).

\(^{264}\) Id.

\(^{265}\) Id.

\(^{266}\) Id.

\(^{267}\) See Thomas Piketty, Capital in the Twenty-First Century, New World and Old World and the Importance of Slavery 196 (2013) (“Thomas Jefferson owned more than just land. He also owned more than six hundred slaves, mostly inherited from his father and his father-in-law, and his political attitude toward the slavery question was always extremely ambiguous. His ideal republic of small landowners enjoying equal rights did not include people of color, on whose forced labor the economy of his native Virginia largely depended.”).

\(^{268}\) Sell, supra note 56, at 29 (“This general relationship was strengthened through tariff reduction polices established to enable greater economic integration between Britain and the United States. Economic integration caused inter-imperial political strife between Britain and the United States to subside.”).
British mercantilist trade system and started a new era of exchange between Britain and the United States.\textsuperscript{269} White settlers were defined by their capacity to own, which was directly related to the removal and extinction of Indigenous people through the transformation of enslaved people and land into real estate.\textsuperscript{270}

This new system fueled by slavery allowed the continued expansion of the new nation in territorial growth and pushed the continual expansion of slavery.\textsuperscript{271} “Plantation production was dominated by the process of realizing capital through real estate in the form of enslaved people and land.”\textsuperscript{272} In short, profits from slavery fueled the development and growth of capitalism in the United States after the end of mercantilism.

The following figure, utilized by Thomas Piketty in his \textit{Capital and the Twenty-First Century}, is based on probate records (1770–1865) from Alice Hanson Jones, tax and census data by Raymond Goldsmith, and slave market transactions by Robert Fogel.\textsuperscript{273} Piketty found that the total market value of slaves represented a year and half of the U.S. national income in the late eighteenth and first half of the nineteenth century.\textsuperscript{274}

It becomes clear after looking at Piketty’s figure that the enslaved were part of the capital which created profit for the colonial landowners. Profit motives created the incentives to legislate against the loss of the enslaved by engaging in state funded mandates to recapture any enslaved person who ran away.

The first reference to fugitives appeared in the legislative records in 1642.\textsuperscript{275} The English procedure of “hue and cry” was thought to be sufficient to recapture the enslaved.\textsuperscript{276} A 1659 law provided the Dutch with a payment reward guaranteed by the colony if the owners failed to pay them.\textsuperscript{277}

Virginia demonstrated that re-capturing runaways was important

\begin{itemize}
\item \textsuperscript{269} \textit{Id.}
\item \textsuperscript{270} \textit{Id.}
\item \textsuperscript{271} \textit{Id.}
\item \textsuperscript{272} \textit{Id.}
\item \textsuperscript{273} \textit{Piketty, supra} note 267, at 197–98.
\item \textsuperscript{274} \textit{Id.}
\item \textsuperscript{275} \textit{2 William Waller Hening, An Act for Surveyors (1666) in The Statutes at Large: Being a Collection of All the Laws of Virginia from the First Session of the Legislature, 1619, at 235–53 (1823); id. at 401 (An Act for opening Courts of Judicature (1676)); id. at 483 (An Act prohibiting unlawful disturbances of divine service (1690)).}
\item \textsuperscript{276} \textit{Id.}
\item \textsuperscript{277} \textit{Id. at 539.}
\end{itemize}
by passing legislation which allowed individual counties the right to “make such laws” to prevent and capture runaways. The legislators acknowledged that the old English “hue and cry” system was ineffective by passing legislation which made the “pursuit of runaways” a county cost, with such pursuit to be borne at the expense of the county.

In perusing the statutes, one can identify that this pursuit and capture of runaways was worth its weight in gold: black gold. “Whosoever apprehends any runaways whither servant by indenture, custome or covenant not having a legal passe, shall have a thousand pounds of tobacco.” This compensation system was reduced to two hundred pounds in 1670 “if the runaway be found above ten miles from his masters’ house.” In 1680, the Virginia House of Burgess decreed that the enslaved traveling away from the slaveholder’s house must carry a pass.

Giving credence to the presence of maroons in Virginia, Lieutenant Governor Gooch said: “a number of negroes, about fifteen,” decided to “fix themselves in the fastnesses of the neighboring Mountains.” Virginia, by a series of statutes, allowed counties the option of paying for their own runaway patrollers, gave financial incentives to the Dutch patrollers, and offered compensation from their coffers if they served to catch runaways.

Slaves meant capital. Capital meant profit (for the landowners). Capitalism did not create slavery. Slavery in the colonies created capitalism. The use of enslaved Africans for free labor was fueled by the profit from the colonists’ land use, tobacco, and other agrarian ventures. Labor and capital fueled the new system. Labor was transformed into the value that the colonists needed to produce

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278. *Id.*

279. *Id.*


products for export for profit. Tobacco alone, as seen above, was enough of a profit driven motive to continue to exploit the use of unfree labor. The following equations represent a shorthand method of assessing a slaveholder’s interest in acquiring more enslaved people:

1. When an entity/slaveowner wants to minimize costs (i.e. make a profit):
   \[ \text{Profits} = \text{Total Revenue} - \text{Cost} \]

2. The marginal benefit of one more unit of labor (enslaved) is the amount the entity/slaveowner adds (by increasing output) to the total revenue:
   \[ \text{Marginal Revenue Product} = \text{Increase in Total Revenue Due to One More Unit of Input (here being one more unfree/enslaved added)} \]

3. The Marginal cost of one more unit of labor is the amount it adds to the total cost:
   \[ \text{Marginal Factor Cost} = \text{Increase in Total Cost Due to One More Unit of Output (here, the added cost of using/buying/keeping another worker-including wages(0) and costs to keep the enslaved alive.)} \]

4. As long as each additional worker/enslaved adds more to revenue than to cost, profits will go up. So the firm will continue to purchase as long as:
   \[ \text{MRP} > \text{MFC} \]

5. The entity/slaveowner will maximize its profits and hire enough workers so that:
   \[ \text{MRP} > \text{MFC} \]

Note: Inputs and factors are the labor, capital, materials, and land that a firm employs to produce output. The measures above are a way of using marginal analysis, when the slaveowner decides to increase his ownership of the enslaved. i.e. to increase slavery on his land. The value of all input, labor, land and capital (in slavery, the enslaved became the capital) is derived from how much they add to the value of the final product. Marginal analysis is found from using the aggregate supply and demand of macroeconomic theory. It is one method of viewing, decisions to purchase inputs (land, capital, labor) by a profit maximizing entity-slaveholder, factory or firm.285

It was from this landscape of ever restrictive laws, profit-maximizing slaveholders, oppressive conditions, harsh punitive measures to extract increasing labor from the bodies of the enslaved,

servitude for life, and lack of control over their young that the enslaved fled. They fled to the safest, most secure place away from the whites to the Dismal Swamp.

IV. PART 3: MAGICAL AND MAGICAL REALISM IN THE GREAT DISMAL SWAMP

The Great Dismal Swamp, with its topography and ecological distinctiveness, gave rise to descriptions of inhospitableness for humans. However, the very obstacles which prevented easy access by whites by keeping them outside the swamp and frustrating their attempts to subdue it provided a safe harbor for the maroon communities. The GDS includes hummocks, dry small islands in the landscape, rising to a height of only ten feet above the water. Animals ran in abundance in the swamp, including black bears, bobcats, squirrels, otters, and beavers. Mosquitoes, yellow flies, skunks, and venomous snakes populated the hummocks.

Yet anthropological findings indicate evidence of human habitation, farming, and tool re-working. The Great Dismal Swamp provided a place of habitation—away from slavery’s reach.

Magical realism has been described as “what happens when a highly detailed, realistic setting is invaded by something too strange to believe.” As we approach an analysis or study of the probability of

286. BODEK & KELLY, supra note 6, at 5 (“One of the earliest descriptions of the swamp was by the man who would eventually be hired to survey it, William Byrd II. He imagined that ‘towards the heart of this humble desart [sic], no beast or bird approaches, not so much as an insect or reptile…Nor indeed do any birds care to fly over it…for fear of the noisome exhalations that rise from this vast body of dirt or nastiness.’”) (citing William Byrd, Descriptions of the Dismal Swamp, reprinted in COLUMBIAN MAGAZINE, April 1789).

287. See, e.g., id. at 5–6.

288. Id.

289. Id.; NEVIUS, supra note 6 at 3.

290. BODEK & KELLY, supra note 6, at 5.

291. NEVIUS, supra note 6. (“The Dismal’s primary historical archaeologist, Daniel O. Sayers, has led teams that have uncovered thousands of material artifacts on these hummocks and other locations. The artifacts include stone tools and lithic sherds that suggest such tools were re-worked, low fired ceramics, green shards of bottle glass, nineteenth century cut nails, fire pits and post in ground footprints.”)

292. KEVIN J. FANDL & FERNANDO PARDO, Magical Realism: Foreign Investment in Colombian Real Property, 48 REAL EST. L.J. 6. Colombia’s production promotion agency, Pro Columbia, adopted this phrase to describe the country to outsiders in a 2013 campaign to make the country attractive to outsiders.
maroon settlements in the Great Dismal Swamp, with its strangeness and inhospitable environment, recall there is a suspension of logic and belief that some scholars indicate occurs on a daily basis as we view legal epistemology.  

While at first blush, it may seem that science fiction authors are intellectual poles apart from law professors, in reality they may have much in common, for better or worse. To Derrick Bell, perhaps all law and commentaries on law have an inescapable science fictional component. Law is, after all is said and done, the crystallization of a society's power relations, however rigid or fluid members of that society may choose to allow such crystallization to occur. When Professor Bell chooses to cast a question about Space Traders from another planet making an offer to whites in the U.S. to take away all of the blacks in a Faustian bargain, isn’t he making a point about the multiple Faustian bargains that have been made in the past and that we are making in the present?

Aren’t all contracts really a type of “force-field,” composed of the fantastic materials of assent, promise and consideration? Aren’t legal concepts like “property,” mass consensual illusions wherein inanimate materials of the world acquire incredulous powers that stretch like time machines and repulser fields, across space and time? Isn’t a concept like a “legal right” a kind of force-field generator that can be wielded like a light saber, offensively or defensively? And aren’t our normative arguments really arguments premised on deep pictures of our social life that may have strong and perhaps disturbing elements of utopian aspirations or dystopian fears? Whether written in an apologetic, triumphal, extrapolative, critical or paranoid vein--science fiction may be about metaphors, and many of our metaphors may embody science fiction as well.

Then why are we not able to view the maroons within the same framework as we view our legal systems within the “rule of law”? The Great Dismal Swamp, portrayed beginning in the late seventeenth century, was surveyed, described, and mapped with existing technologies, beginning with George Washington.

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294. Id.
295. In the 1760s, George Washington was one of a group of men who invested in a venture that would become the Dismal Swamp Company (DSC). George Washington had his own history with runaways and the DSC established a slave labor camp named Dismal Plantation, employing more than fifty enslaved men and women under the oversight of George Washington’s brother, John Augustine Washington. There were reports of “disrepair and an enslave population
Swamp, with its three overlapping layers of political economy, appears to evoke an alternate reality. The extant colonial world contiguous and outside of GDS was peopled by colonists intent on enslaving and recapturing the escaped enslaved based on a property ownership aspect. The GDS populated by whites, Blacks, Native people, mulattoes, Africans, and African Americans – free and unfree – provided a refuge from the slaveowners.

Indeed, as the laws became increasingly restrictive and genocidal, the runaways increased their trajectory to the GDS. The history of Virginia and its colonists included extinction of native Indigenous people and increasing enslavement and brutality for the Africans transported through the international transatlantic slave trade.

The folkloric myths of “people flying” or “spiriting away” or marooned in the swamp before the American Revolution. Nevius, supra note 6, at 12–13.

296. Davis, supra note 97, at 3. “In addition to the racist element, most slaves in the New World became chained to a mercantilist or capitalist system that intensified labor in order to maximize profits for distant, international markets.”; see also id. at 77. “[Y]et there is now broad consensus that plantation slavery, far from being archaic, was not only highly productive but anticipated much of the efficiency, organization and global interconnectedness of industrial capitalism.”; Takaki, supra note 115, at 58. [After Bacon’s Rebellion]: “The planters had come to a crossroads. They could open economic opportunities to white workers and extend political privileges to them, but this would erode their own economic advantage and potentially undermine their political hegemony. Or they could try to reorganize society on the basis of class and race. By importing and buying more slaves, they could reduce their dependency on armed white labor force and exploit workers from Africa, who could be denied their right to bear arms because of their race.”

297. See Diouf, supra note 6; Nevius, supra note 6.

298. See Freddie L. Parker, Running for Freedom; Slave Runaways in North Carolina, 1775-1840 (1993) (Citing Wilmington Gazette, June 26, 1800 and New Bern Herald, May 13, 1809; October 15, 1811). Parker scoured hundreds of newspaper articles and court records, specifically newspaper advertisements for the 1770-1840; he calculated the frequencies of runaways during this era, runaways by sex, age, complexion, those passing for white, frequency distribution by month, by season of the year, and by reward offered. He also tabulated white and black populations from 1770 to 1840 by drawing on U.S. Census data. He also cited the Dismal Swamp as a refuge for Maroons: “slaves who deserted their masters often found refuge in the swamps of eastern North Carolina. Some hid out in the woods for months and even years…. By far the largest hideout, temporary quarters and home for thousands of runaway slaves was the Great Dismal Swamp. Once a slave reached the Swamp...unless he was betrayed, it would be a matter of impossibility to catch. Slaveowners lost several hundred thousand dollars in slave property yearly to the Dismal Swamp.

299. Dunbar-Ortiz, supra note 120, at 1. “US policies and actions related to Indigenous peoples, though often termed ‘racist’ or ‘discriminatory’, are rarely depicted as what they are: classic cases of imperialism and a particular form of colonialism-settler colonialism.”

300. Id.; see also Davis, supra note 97.

301. Dunbar-Ortiz, supra note 120 at 1; Davis, supra note 97, at 101–25 (recounting figures for the Transatlantic Slave Trade).

“walking on water” evoke either a futuristic view of an alternate reality or imaginary longings for broadened human agency. Whether these allusions relate to magical properties of the maroons or to survival, the ultimate conclusion based on anthropological evidence is that people survived and probably thrived in the swamp environment. An environment that was hostile to the colonists, but adaptable to the maroons, holds an ineluctable surprise for futuristic musings.

A. Magical Realism and Afro-Futurism

Afro-futuristic literature has long imagined alternative universes. Dr. Chanda Prescod-Weinstein, physicist and author, uses the Standard Model of particle physics to discuss the latest theories of dark matter. This model involves looking at the universe, melanin, and the history of society from a different vantage point. She argues for a different scientific method for understanding melanin (the melanocytes which give skin its hue) and its properties. Perhaps it is not a far-fetched idea to attempt to understand an alternative world view of the Great Dismal Swamp. This vantage point could help explain the sustainability of the maroon settlements for an extended period.

The Dismal Swamp was spoken of in Native Indigenous lore as a

beliefs, customs, and stories of a community, passed through the generations by word of mouth; a body of popular myth and beliefs relating to a particular place, activity, or group of people.”

304. Id.
305. See N.K. Jemisin, The City Born Great and Cloud, Dragon, Skies, in How Long Til Black Future Month? 1, 14 (2018). Jemisin imagines sentient cities, with black and brown protagonists in a struggle for liberation in The City Born Great. She imagined flying to other worlds as a female scientist in Cloud, Dragon, Skies; Nnedi Okorafor, Binti: The Complete Trilogy (2017) (creating interspecies bonding and travel to new worlds of education for a Black girl with sable skin); Marlon James, Black Leopard Red Wolf (2019) (using African history and mythology to re-invent a tale of search and discovery for truth); Wayetu Moore, She Would Be King (2018) (flowing between telling the story of Norman Aragon, the child of a British colonizer and a maroon enslaved to the Virginia plantation where a girl child hides her strength).

306. Chanda Prescod-Weinstein, The Disordered Cosmos: A Journey into Dark Matter, Spacetime (2021). Prescod-Weinstein posits that there are inherent conductivity properties in melanin that change dramatically “when water is brought in contact with the molecule” using a superconducting model; “the addition of water enhances the number of charged particles that are freely moving around, i.e. conduction. A bio-organic ‘is an unusual conductor of electricity.’”

307. Id.
place of natural wonder and awe. Through generations of settlement around and within the Dismal Swamp, it was spoken of as a place of more than natural wonders, especially by night. As Leaming asserts, that folklore associated with Swamp talk may have limited the activity of slave catchers and militia. The natural habitat of the Great Dismal Swamp was home to unique strangeness in the forms of a great forest of reeds, the Green Sea, the black water, fresh water though the salt sea, and lack of staleness of the water. “To the planter [though] the supernatural reputation of the Dismal Swamp was Satanic, since the place offered refuge to the slaves.”

Yet the Dismal Swamp had been a sacred place to Indigenous people prior to European settlement. Considering the Swamp was accessed by Africans and regional people and viewed as benign by these later inhabitants, it is unlikely that Africans, Natives, and others found it hellish or heathenish. This is not to say that the environment was not harsh and often hostile to the unwary.

In the maroon community, African religion would have survived and merged with the interactions of Native Americans, and a vibrant cultural exchange between white, Black and Indigenous peoples’ beliefs would have emerged. Using literal stories or figurative analogies, the enslaved would have woven tales of freedom while exercising agency over their environment.

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308. LEAMING, supra note 1, at 340–41.
309. Id. at 340 (“Eerie sounds neither of man nor beast were said to be heard from the depths of the Swamp. Most residents around the outer edge and along the Canal swore that bizarre lights of unknown origin were to be seen there of nights.”).
310. Id.
311. Id. at 338. (“Any Black person of the Region if familiar with the Bible, would have found this view ironic. Because Dismal would have a been associated with Dysmas ‘that the Lord said ‘this day you will be in heaven with me.’ And Dsymas like the maroons, was an outlaw.”).
312. Id. The Native American people deemed the Dismal Swamp an uncanny place. The swamp appeared in French maps as the Marais Maudit, the accursed swamp. Native Americans likely considered it a “holy ground for one Native American Nation and damed [sic] by an enemy Nation for the war spells worked on it, a canard passed on to European explorers.”
313. Id.
314. Id. at 343.
B. Magical Realism and the Great Dismal Swamp

In the 1940 Georgia Writers’ Project, Work Projects Administration, the writers recorded information from the former enslaved African-Americans about slavery, legends, burial rites, healing, music, dance, routine work, and legends. This compendium of folklore, oral histories, and recollections contained twenty-seven different accounts of ‘The Flying Africans’ stories.316

Wendy Walters relates the story from Prince Sneed, from Ogeecheetown, a formerly enslaved man in Drums and Shadows:

Muh gran say ole man Waldburg down on St Catherine own some slabs wut wuzn climatize an he wek um hald an one dey dey Wuz hoein in duh fiel an duh dribuh come out an two ub um wuz unuh a tree in duh shade, an duh hoes wuz wukin by demsef. Duh dribuh say “Wut dis?” an dey say, “Kum buba yali Kum buba tambe, Kum kunka yali kum kunka tambe, quick like den dey rise off duh groun an fly away. Nobody ebuh see um no mo. Some say dey fly back tuh Africa. Muh gran see dat wit his own eye. 317

My gran say old man Waldburg down of St. Catherine own some slaves what wasn’t acclimated and he was working them hard. And one day, they was hoeing in the field and the driver come and two of them was under a tree in the shade, and the hoes was working by themselves. The driver say “What’s this?” and they say, “Kum buba yali kum buba tambe, Kum kunka yali kum kunka tambe, quick like. They rise off the ground and fly away. Nobody ever see them no more. Some say they fly back to Africa my grand see that with his own eye. 318

Walters also cites another folklore collection, American Negro Folklore,319 where the collector recites the same folktale of Flying


317. Id. at 10.

318. Translation into Standard English by the author.

319. Walters, supra note 316, at 11 (citing Mason J. Brewer, American Negro Folklore [1968]) (“Without knowing anything about the folklore collector, it is hard to say why this informant shows so much sympathy for the overseer. Perhaps what is operating in this example is a purposeful masking of the legend’s counter discursive power. Here the secret magic words remain secret. Rather than divulge them to a stranger, the storyteller covers them up as ‘nonsense’ words like ‘gabble gabble’ and ‘quack quack’. The storyteller all the while pretends to give the collector just what she asks for.”).
Africans and “words:”

Gabble, gabble, gabble, an nobody couldn’t unduhstan’ them and they didn know how to talk right...Dey’s foolish actin. He got tuh whip um, Mr. Blue; he ain hav no choice. Anyways, he whip um good and dey gits tuhgedder an stick duh hoe in duh fiel’ and dey say quack, quack, quack, an dey riz in duh sky an tundesef intuh buzzards an fly right back tuh Africa.”320

The Igbo Landing account on St. Simons Island, Georgia, depicts a group of Africans who mutinied against their captors and ran aground on a shoal in Dunbar Creek, off of St. Simons Island, Georgia.321 They were enslaved, forced on the transatlantic voyage, and auctioned in Savannah, Georgia.322 They were shackled together, boarded on another slave ship, the York, and sailed to St. Simons Island, off the coast of Georgia.323 Purchased for $100 per person and transported by Thomas Spaulding and John Couper, both white, owners of enslaved people, and owners of plantations.324 The enslaved mutinied and escaped, killing the captors on board.325 On their escape from the island, they ran ashore. Here the story diverges. Some say they held hands, shackled together and walked into the water, while others say they held hands and flew or simply disappeared.326 One scholar claims they committed collective suicide rather than endure

320. Versions of Africans flying home can be found in regions throughout the world where the Atlantic slave trade existed. WALTERS, supra note 316, at 12. Walters notes that PETRONELLA BREINBURG, LEGENDS OF SURINAME (1971), has a chapter on Sjaki and the Flying Slaves. Walters also notes that MONICA SCHULER, ALAS, ALAS, KONGO: A SOCIAL HISTORY OF INDENTURED AFRICAN IMMIGRATION INTO JAMAICA, 1841-1865 (1980) tells stories of Africans who flew home told by residents of Jamaica, St. Thomas in 1971.


322. MOMODU, supra note 321.
323. SCHNEIDER, supra note 321, at 202.
324. Id.
325. Id. at 203.
326. Id.
slavery.327

Schnieder opines, “So in terms of the variant endings to the tale, perhaps both can be true-drowning and flying. Who is to say what happened? Who is to say that folk in the littoral zones among life and death do not fly?”328 She poses an alternative to the current belief systems of viewing acts of resistance. She avers, “perhaps either way and simultaneously—rising into the air to fly away and/or walking into the water to drown—the Igbo at Dunbar Creek refused the plot that the island plantations held in store.”329

Igbo Landing still exists on St. Simons Island. Perhaps not in the exact location narrated in the incident, as marked by the historical marker, but Dunbar Creek, Igbo Landing exists.

Perhaps there is a third alternative. Water rises and recedes on the islands, shoals, and sand patches off the coast of South Carolina and Georgia.330 The tide comes in and the tide recedes.

Possibly an alternative way of looking at this incident exists, without hegemonic and patriarchal insistence on a reality version. Suppose the Africans were able to wade ashore, clasped hand to each other, some swimming. Or is it strange that they could mutiny, kill their captors, and remain shackled—all 75 of them together. Further, if the ship ran aground on a shoal, this meant that the vessel was not in deep water, or at least not in water deep enough to drown all seventy-five Africans.

These modes of thought require the listener to think of the humans aboard, in conjunction with Dunbar Creek, to think outside the narrative of the liberal subject or human and to take seriously the shifting particularity of the shoal in Dunbar Creek itself. Not land, not not land, not sea, not not sea, the assemblage of ocean, island, and ship at the moment of Igbo shoaling is, in another scholar’s words, “human and more than human,”331 i.e., parahuman. The parahuman is interstitial, comprised of human and more than human.332

327. MOMODU, supra note 321.
328. SCHNEIDER, supra note 321, at 203.
329. Id.
330. The author lived in South Carolina for thirty years and was a frequent visitor to the islands off the coast of South Carolina and an infrequent visitor to the Georgia coastal islands.
331. SCHNEIDER, supra note 321, at 208.
332. Id. (quoting Monique Allewaert’s term of “para-human”). Schneider references Allewaert’s admonition to look at the double negative of “man not not man” as an aesthetic of possibility that in its very oscillation is infinite and not limited to simple betweeness but always leaning toward the surplus, the what else-ness, of performance. "Parahuman is simultaneously human and more than human, refusing to congeal into Man remaking human registers among
Although there have been scant human remains unearthed in the archaeological digs in the Great Dismal Swamp, their presence is irrefutable. What are we to make of a people, rumored to have stayed in the distant reaches of the Dismal Swamp for at least 250 years? Perhaps they are human, not not human. Not supernatural, but rather humans who lived in an environment which they did not destroy, poison, or change and transmute into their own image. Perhaps we are to make of this that humans, not humans, fleeing oppression by law, brutality by law, enslavement by law, torture, loss of their children, bestiality, and cruelty—escaped.

V. De-Growth and Sustainability of the Maroon Communities in the Great Dismal Swamp

De-growth has been defined as a “planned reduction of energy and resource use designed to bring the economy back into balance with the living world in a way that reduces inequality and improves human well-being.” Yet, this definition has a limiting expression: the words “the economy.” Which economy? The economy of the indigenous people? The economies of cultures in the North or South? The economies of former colonies and people where extractive appropriation of people and resources by colonial powers occurred in the last two centuries?

In studying the twenty-first century era of the Anthropocene, the geological epoch on which humans have in a brief time become the main geophysical force on earth, debates concerning the sustainability of the planet have shifted from “green” to de-growth or post-growth strategies. De-growth is an ecological, environmental strategy for reducing the pace of material throughput which reduces energy demand, addresses climate change, and removes pressures on planetary boundaries.

Dr. Hickel, an economics anthropologist from the University of London with academic ties to the United States, attempts to distinguish the term “de-growth” from “recession.” He makes six ontological points worth referencing, not in relation to recession:

334. Id.
1. Degrowth is a planned, coherent policy to reduce ecological impact, reduce inequality, and improve well-being.

2. Degrowth is a discriminating approach to economic activity. It seeks to scale down ecologically destructive and socially less necessary production.

3. Degrowth introduces policies to prevent unemployment while expanding socially important sectors like healthcare, education, care and conviviality, shortening the workweek, introducing job guarantee with a living wage, instituting retraining.

4. Degrowth seeks to reduce inequality and share national and global income more fairly, progressive taxation and living wage policies.

5. Degrowth seeks to expand universal public goods (health, education, transportation, water and housing) in order to decommodify foundational goods that people need to live flourishing lives.

6. Degrowth is part of a plan to achieve rapid transition to renewable energy, restore soils and biodiversity, and reverse ecological breakdown.335

The concept of de-growth raises interesting points concerning the interactions of the Great Dismal Swamp maroons and the environment which they inhabited from the 1600s to 1860s. According to documentary accounts, their population growth fluctuated, waned and grew in their environment.336 Their footprint, including permanent settlement(s), was always mutable. Their intentions as a community centered on reducing a discernible footprint in order to survive. Designed to improve their status as free versus unfree, they refused participation in the outlying colonialisit regimes. They scaled down their material consumption but did not refrain from the economic activity which was necessary for survival. As a trader, hunter-gatherer society, assuming their situation approximates others in this group of humans, everyone likely had a role within their community. They sought the elimination of slavery and bondage from their personhood.

Willing to forego meager comforts in order to gain freedom,


336. Supra note 4.
however places the maroons in a decidedly different situation from humankind in the Western world today. Or were they? They understood the concept of de-growth, if not the particulars (as outlined above), as a survival strategy. They, their fluctuating numbers notwithstanding, escaped a non-tenable, hostile environment for a difficult re-working of a community.

The current “limiting” definition of de-growth requires the participants and stakeholders of earth to revise our understanding of what “economic growth” means and what sustainability will impart to our progeny. The maroons chose their environment and remade their community to align with the ecological strata in order to survive. Para-humans. Perhaps we can learn from them.

VI. Conclusion

Maroons in the Great Dismal Swamp remain shrouded in mystery. The geographic, geo-spatial, archaeological evidence demonstrates that maroons existed and survived for nearly two-hundred fifty years in intergenerational communities. The colonial societies from which they fled enacted ever increasing racialized laws to establish perpetual slavery, to transform their persons into bonded labor, to own their progeny from birth, to prevent their alliances with other bonded laborers, to criminalize familial unions with other non-white humans, to criminalize their flight from slavery, to pay for their recapture and eliminate means of escape, to legalize their murder and torture, and to prevent their revolts and rebellions.

The anthropological evidence indicates that the maroons formed societies which consisted of three types of communities: fringe, interior, and hinterland. This provided them with the ability to barter, exchange for goods, and provide for a safe and secure homestead while having children and maintaining families.

The laws of the colonies represented increasingly harsh legal codes designed to support the racialized system of slavery. The economics of slavery and its profits are encoded in deeds, transfers of real estate, and sales of the enslaved African.

Mercantilism and capitalism with profit motive incentives undergirded (and supported) the legal system which allowed for both perpetual slavery and the ultimate property rights in the enslaved to exist. The legal system in turn supported a colonial mercantile system, and ultimately capitalism, with its profit motives derived from the use
of capital, land, and labor (the enslaved Africans).

Marronage and studies concerning the maroons should be viewed from the perspective of alternate concerns and not merely the colonialisat and hegemonic view of Eurocentric analysis. This perspective should include an analysis of how humans survive in environments without destroying the ecosystems, and yet manage to provide for security, food, comfort, and community.

A new perspective on human habitation in the midst of current issues of scarcity of resources, environmental change, and inequalities should occur; with attention to the lessons learned from the mutable and changing footprints of the free in the Great Dismal Swamp.