

**THE VIRGINIA SLAVE CODE OF 1705: BASED IN CLASSISM,
NOT RACISM**

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The English colony of Virginia was founded upon the shoulders of those in bondage. Most whites came to Virginia as indentured servants by way of the headright system, and nearly all blacks came as slaves. However, Virginia in the early to mid-1600s lacked clear racial standards as people of all races enjoyed some degree of upward social mobility. Today colonial Virginia is usually remembered for its heavy reliance on institutionalized racial slavery, but its social dynamic did not always reflect this viewpoint. While blacks were subject to a few discriminatory practices as early as the 1640s, they were not victims of the systematic racism that came to define the colony as early as 1705.¹ Interracial marriage was common and interracial couples who had offspring, though officially viewed as illegitimate children, were not subject to legal punishment.² It makes sense, then, to question how Virginia came to be one of the most efficiently racist slave societies in the Americas. The answer lies in the conflict between the different classes of white people in early Virginia. After these class conflicts came to a head in 1676 with Bacon's Rebellion, the ruling planter class had to devise a way to draw attention away from the inequalities present within the white population of the colony. Its answer was to cement racism in Virginia's laws so that poor whites would no longer want to topple the ruling class but instead focus on maintaining their racially privileged position over blacks. Accordingly, the Virginia Slave Code of 1705 created a race-based social hierarchy as a means of resolving class conflict within the white community.*

Race was not a restrictive force in colonial Virginia for most of the seventeenth century. The story of Anthony Johnson is the most well documented account of a black man who enjoyed equality with whites in Virginia. Johnson, a former slave who earned his freedom, became a respected landowner and slaveholder in Virginia.³ Although Johnson's story is an exceptional one, his success proves that one's race did not

¹ David Brion Davis, *Slavery in the Colonial Chesapeake* (The Colonial Williamsburg Foundation, 1986), 9.

² *Ibid.*, 11.

* Unless otherwise explicitly stated, the term "black" will henceforth refer to black slaves.

³ T.H. Breen and Stephen Innes, *Myne Owne Ground: Race and freedom on Virginia's Eastern Shore, 1640-1676* (New York: Oxford University Press, 1980), 13.

relegate him to a particular social class. In Virginia's Northampton County: "Although all the original blacks apparently arrived as slaves, by 1668 approximately 29 percent of the county's blacks were free... Former slaves like [Francis Payne] became independent planters, sometimes even slaveholders, who drew up wills to insure their hard-earned property."⁴ The fact that a black slave could first earn his freedom and then own land and slaves of his own demonstrates the lack of strict race-based restrictions of liberty at this time. Blacks also enjoyed fair treatment in the colony's legal system, a practice that became incomprehensible post-1705. Just before 1650 Anthony Johnson petitioned his county court for tax relief, and colonial legislators not only granted him relief but also ruled his wife and daughters exempt from public levies.⁵ The fact that a court granted tax-exemption to black women, a luxury otherwise exclusive to white women, proves racism was not yet present in legal proceedings during this era in Virginia's history. In short, the racial boundaries that existed after 1705, such as bans on black land ownership and legal due process, were not definitive of Virginia just decades prior.

In fact, the greatest source of social conflict during this period in Virginia's history was the adversarial relationship between white indentured servants and rich white planters. Rich planters attempted to prolong indentured terms of service to alleviate the pressure from a growing number of freed servants who demanded land of their own. The planters believed keeping these people in a relative state of servitude for as long as possible would reduce competition for land ownership. With extended terms of service, "...[servants] would create profits rather than competition for their masters, who would also be without an indenture in which the terms specified were vulnerable to such a move."⁶ The ruling class also enacted laws that attached serious penalties to runaway indentured servants. On top of the existing law that punished a runaway servant by extending his term of service by twice the length of absence, "In 1669 and 1670 new laws provided rewards to anyone apprehending a runaway, with the provision that the servant not only reimburse the public by serving further time at the rate of four months for every 200 pounds of tobacco expended on the reward for apprehending."⁷ As though these penalties were not enough, the courts also had the power to add time to the

⁴ David Brion Davis, *Slavery in the Colonial Chesapeake*...10.

⁵ Breen and Innes, *Myne Owne Ground*...12.

⁶ Edmund Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: Norton, 1975), 176.

⁷ *Ibid*

servant's term to compensate for the losses the master incurred from the servant's absence.⁸

In a time when land ownership was paramount, rich planters also made it very difficult for freed white servants to obtain workable land of their own. Rich planters did not want freedmen to get land and consequently push tobacco prices even lower with increased production. Facing the dilemma of an ever-growing restless white freedman population, Virginia's ruling class took action to limit the independence of the freedman such that, "During the last thirty or forty years of the seventeenth century, while tobacco was enriching the king and so many others, most of the men who worked in the fields were losers, and they did not much like it."⁹ Ruling planters knew they could not prevent freedmen from wanting to work land of their own, so they also became land speculators. The planters knew that demand for land would only increase as more servants were freed, so they bought land while it was still cheap and plentiful such that a wealthy few owned most of Virginia's fertile land by 1660.¹⁰ Servants who became free after 1660 found it quite difficult to claim their own workable land, especially after speculators' land grab during 1650-1675 in which more than two million acres of land were patented by rich planters.¹¹ This is more than half the total land patented for all of 1635-1699, and most of this land went to planters like Colonel Edmund Scarborough of Accomack County and John Savage of Rappahannock County who held patents to nearly ten thousand acres each.¹²

By mid-century, newly freed servants were in a state of perpetual dependence on their former masters. Many former servants had to rent land from this newfound planter/speculator class. Servants, "...found it increasingly difficult to locate workable land that was not already claimed. In order to set up their own households in this vast and unpeopled country, they frequently had to rent or else move to the frontiers, where they came into conflict with the Indians. Many preferred safety in the settled area even though it meant renting land from the big men who owned it."¹³ Planters certainly enjoyed collecting rent money from their new tenants, but more importantly was the creation of this artificial land scarcity in Virginia. In fact, those who could not afford to rent another man's land

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid, 178.

¹¹ Ibid, 179.

¹² Ibid.

¹³ Ibid.

often had no other choice than to re-enter servitude.¹⁴ Records in Lancaster County indicate that of, "...247 servants who either are known to have become free or were legally entitled to freedom between 1662 and 1678, only 24 show up as householders by 1679,"¹⁵ and in the even poorer Northampton County, "Only 80 of the 329 white non-householders present in the years 1664-67 were still in the county in 1677... Those who lost status, with a few known exceptions, were presumably freemen who had set up on their own and then had to give up and go back to work for someone else."¹⁶ Obviously the wealthy whites of Virginia intended to create a hostile environment for poor white people, the vast majority of whom came to Virginia as an indentured servant.

The tension between poor and wealthy whites greatly influenced Bacon's Rebellion and eventually led to Virginia's implementation of the Slave Code of 1705. In 1676 a settler named Nathaniel Bacon led a militia of poor Virginians in rebellion against Governor William Berkeley. The rebels condemned Berkeley for his toothless policy towards Indians on the frontier and for his unjust land policies within the colony. Berkeley was also known to place disproportionately high taxes on poor planters and to grant all of the best eastern lands to his friends.¹⁷ Poor Virginians also felt Berkeley's decisions had cheated them of the right to self-governance: "The right of all free men to vote was ended in 1670 unless they met definite property qualifications. This was in contrast to the years 1649-1660... At that time there were regular general elections for burgesses and the county courts were popularly elected."¹⁸ In short, Berkeley ensured that poor planters were cheated out of land, overtaxed, and lacked governmental efficacy. These factors, combined with record-low tobacco prices and tension with Indians on the frontier, led to rebellion.¹⁹ But despite popular resentment for Berkeley and the ruling elite, the rebels' own racist sentiments made them first focus their attention on addressing the encroaching Indians. This allowed Berkeley to quell the revolt and retain power for a short time thereafter. Curiously, the last standing rebel fighting force of the rebellion was composed entirely of twenty white servants and eighty black slaves.²⁰ Frightened at the prospect of prolonged

¹⁴ Ibid.

¹⁵ Ibid, 184.

¹⁶ Ibid.

¹⁷ Thomas Jefferson Wertenbaker, *Bacon's Rebellion, 1676* (Williamsburg, VA: Virginia 350th Anniversary Celebration, 1957), 4 & 16.

¹⁸ Charles Willard Hoskins Warner, *Road to Revolution; Virginia's Rebels from Bacon to Jefferson, 1676-1776* (Richmond: Garrett and Massie, 1961), 9.

¹⁹ Ibid.

²⁰ Edmund Morgan, *American Slavery, American Freedom...* 218.

unity among poor Virginians, the ruling elite noted that it must take action to prevent this from ever happening again, prompting the creation of the Slave Code of 1705. If the rebel forces had not been distracted from their crusade against the ruling class by their racist attitudes toward the Indians, they may have been more successful in reforming their colonial government.

Bacon's Rebellion revealed the distracting power of racism, and the leadership of the colony took this cue to pass the Slave Code of 1705. Virginia's ruling class realized that, "Resentment of an alien race might be more powerful than resentment of an upper class."²¹ With the Slave Code of 1705, legislators simply refocused these racist sentiments away from Indians and towards blacks. Although the code presents itself as an attack on the black slave population, it merely uses the guise of racism to protect ruling planters' interests by making concessions to the disgruntled poor white population. Article VII of the Code explicitly forbade the whipping of white servants and granted white servants the right to make complaints in court.²² By protecting whites servants but granting no similar privileges to black slaves, who were also in a state of servitude, this Article conferred superiority to white servants over their black peers. Moreover, the Article improved the lot of white servants because the ruling class knew many white freedmen ended up returning to servitude shortly after earning their freedom. There were also several provisions in the Code that addressed the issue of interracial relationships between lower class whites and black slaves. Specifically, Article XI granted freedom to all Christian white servants of white people who married blacks: "...every Christian white servant of every such person so intermarrying, shall, ipso facto, become free and acquit from any service then due to such master or mistress so intermarrying, as aforesaid."²³ This Article created a greater divide between blacks and whites because it suggested that any white person who chose to marry a black person was unfit to hold a position of power over another white person, even an indentured servant. Finally, Article XVIII ensured that racism would help define the future of Virginia by stating: "And if a free Christian white woman shall have such a bastard child, by a negro, or mulatto, for every such offence, she shall...pay to the churchwardens for the time being...for the use of the said parish fifteen pounds current money of Virginia, or be by them sold for five years to the use

²¹ Ibid.

²² *An Act Concerning Servants and Slaves (1705)*, Transcription from the Original (Virginia Library), Article VII.

²³ Ibid, Article XI.

aforsaid.”²⁴ This Article further drove a wedge between otherwise similar groups of poor/indentured whites and blacks by outlawing interracial relationships.

The Slave Code also racialized punishments for breaking the law. Article XXIII gave rewards of hundreds of pounds of tobacco to white people who captured and returned runaway black slaves.²⁵ This specific provision allowed even the lowliest white man to, “...find comfort in his legal superiority to all blacks and could feel flattered when asked to ride patrol at night in search of wayward slaves.”²⁶ Furthermore, white people who captured runaway slaves enjoyed the liberty to punish them as they saw fit without fear of consequences. Specifically, Article XXXIV declared, “...if any slave resist his master, or owner, or other person, by his or her order, correcting such slave, and shall happen to be killed in such correction, it shall not be accounted felony...every such other person giving so correction, shall be free and acquit of all punishment and accusation for the same, as if such incident had never happened.”²⁷ This Article also forbade any slave from retaliating against a white person’s punishments. By failing to limit the ability to dole out punishment to a particular type of white person, this article gave *any and all* white people the right to punish slaves with impunity, suggesting that all white people regardless of social status were superior to blacks. And to further dissociate these two groups, Article XXXVII made it clear that only a black slave, and not a white servant, who ran away from his master may be dismembered as punishment for fleeing.²⁸ Proscribing different punishments for blacks and whites guilty of identical crimes cemented racism into the fabric of Virginian society. In practice, the Slave Code of 1705 stripped black slaves (and therefore the overwhelming majority of all blacks in Virginia) of liberty and granted more rights to all white people, even those in bondage.

Some may see the Slave Code of 1705 as just another example of purely racist legislation passed by a colonial American government, but the true spirit of this set of laws is more than skin-deep. While many consider Virginia to be the epicenter of slavery in the United States, the commonwealth that soon became the largest slaveholding colony in

²⁴ *An Act Concerning Servants and Slaves (1705)*, Transcription from the Original (Virginia Library), Article XVIII.

²⁵ *Ibid*, Article XXIII.

²⁶ David Brion Davis, *Slavery in the Colonial Chesapeake*, 22.

²⁷ *An Act Concerning Servants and Slaves (1705)*, Transcription from the Original (Virginia Library), Article XXXIV.

²⁸ *Ibid*, Article XXXVII.

English North America did not adopt a system of institutionalized racial slavery until class conflict amongst white colonists made it absolutely necessary for the survival of the colony. Poor white planters, many of whom came to Virginia as indentured servants, were incensed by the large planters' manipulation of land ownership in the colony. If they were fortunate enough to be relieved of their servitude, most of them ended up either renting from wealthy land speculators or being forced back into servitude under their former masters. Either way, their fate did not align with what they had been promised in England before crossing the Atlantic. This increasingly restless group of people became a serious concern for Virginia's ruling elite, especially since English servants were coming to Virginia in record numbers by 1676. In his book *White, Red, and Black: The Seventeenth-Century Virginian* Wesley Frank Craven calculates that almost 47,000 people had arrived in Virginia on headrights during 1650-1675, with 25,872 of those coming between 1663 and 1674.²⁹ Thus the great migration to Virginia started at mid-century, and more than half of the people who migrated in the seventeenth century did so during the third quarter³⁰. The confluence of poor white immigrants being swindled out of opportunities, record-low tobacco prices, and tension with Indians on the frontier created a perfect storm for Nathaniel Bacon to unite poor colonists in arms against the ruling class in 1676.

Bacon's Rebellion was not fruitful in terms of reforming the colonial government. It was, however, the single most important factor in bringing institutionalized racial slavery to Virginia. Thus is the tragic irony of a rebellion that had united blacks and whites against the status quo. The elites of Virginia noticed the strength of this group's racism towards frontier Indians and used the same notion to establish the Slave Code of 1705. They realized that the only solution to the class conflict between white Virginians, "...was racism, to separate dangerous free whites from dangerous black slaves by a screen of racial contempt."³¹ By creating a codified set of laws that extended special privileges to all whites and snatched rights from black slaves, the colonial assembly knew it could gradually transform society's contempt of rich white people into a stronger contempt of all black people. With this set of laws, "Poor whites suddenly had a direct, personal stake in the existence of a race-based system of

²⁹ Wesley Frank Craven, *White, Red, and Black: The Seventeenth-century Virginian* (Williamsburg, VA: Colonial Williamsburg Foundation, 1986), 15 & 16.

³⁰ *Ibid.*

³¹ Edmund Morgan, *American Slavery, American Freedom...* 264.

slavery”³² and “...by lumping Indians, mulattoes, and Negroes in a single parish class, Virginians had paved the way for a similar lumping of small and large planters in a single master class.”³³ Knowing this, one might wonder what legacy Bacon’s Rebellion retains. Most people recognize it as the earliest instance of armed rebellion against tyranny in the American colonies. However, Bacon’s Rebellion was far more important to the long- term trajectory of American history than this reading implies. Bacon’s Rebellion and the Slave Code of 1705 it inspired were the sparks that ignited the system of institutionalized racial slavery in Virginia, a colony that would become one of the strongest Confederate states fighting in support of slavery during the American Civil War. In the end, the Virginia Slave Code of 1705 was never really about race; it was about class.

³² Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010), 22-26.

³³ Edmund Morgan, *American Slavery, American Freedom...* 310.