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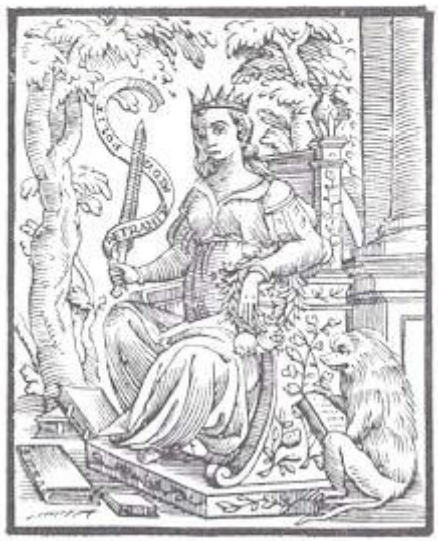

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"This Melancholy Labyrinth": Magistrates and Order in the Early Nineteenth-Century British Empire

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Historians have been tempted to regard the proliferation of rights talk in the late-eighteenth and early-nineteenth century Atlantic world as symptomatic of a profound shift in political thought and culture. Attention has focused in particular on the supposed effects of a surge in humanitarian sentiment connected with anti-slavery and abolition movements. In this view, humanitarianism cultivated acceptance of the idea of subjective rights, or universally held individual rights, in several ways. By urging "compassion for distant strangers," anti-slavery movements nurtured the recognition of shared human qualities and of fundamental rights to life and liberty.[1] Abolitionism worked, too, some historians suggest, to convert such ideas into international law doctrine by generating a legal regime premised on the prerogative to punish violators of universally held rights.[2] And natural rights discourse traveled across polities and regions and classes in ways that cultivated revolutionary and republican sentiment and helped to spark anti-authoritarian revolts.[3]

This perspective contrasts with approaches to anti-slavery and abolition movements that emphasize their consistency with understandings of rights as politically assigned properties.[4] In this account, Atlantic revolutions were revolutionary because they proposed full inclusion of various subordinate groups in a single "citizenship space."[5] Anti-slavery movements insisted on the importance of extending the state's purview over various practices, including slavery, that

[1] See, for example, Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Ithaca,New York: Cornell University Press, 2011), 60. Barnett notes that the conection between "imperial humnitarianism" and "liberal humanitarianism" was not direct, yet he also represents the anti-slavery movement as marking an "age of rights" characterized by "an unprecedented willingness to see all humans as capable of reason and thus born with some natural rights," 57. Anti-slavery activists achieved this change by highlighting the suffering of slaves.
[2] Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (Oxford and New York: Oxford University Press, 2012) Compare Lauren Benton, "Abolition and Imperial Law, 1780–1820," *Journal of Commonwealth and Imperial History* 39, no. 3 (2011): 355–374.
[3] For example, one strand of historiography on the Haitian revolution emphasizes the circulation of rights language among the enslaved. On this point and its critique, see David Geggus, "The Caribbean in the Age of Revolution," in David Armitage and Sanjay Subrahmanyam, eds. *The Age of Revolutions in Global Context, c. 1760-1840* (New York: Palgrave MacMillan, 2010), 83-100, 97-98.
[4] On the origins of this thinking, see Annabel Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Cambridge: Cambridge University Press, 2003), 5, 12.
[5] Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2012), 26.

had relied on the autonomy of private jurisdictions and had developed outside direct state oversight.[6] Atlantic revolutions generated authoritarian responses, while their global significance lay in part in their affirmation of the capacity of political communities to break away from imperial authority and establish, through positive law, new sovereignties.[7] These tendencies rather than the diffusion of ideas about universal rights marked the era as a pivot towards an interstate order founded on positive law.

Historians have produced such discordant accounts in part through selective reading. It is possible to locate many references to the natural rights of slaves and to choose to emphasize them over equally frequent references to rights as civic properties; the reverse is also of course possible. Either approach tends to obscure the fact that multiple strands of rights talk coexisted and were available to be creatively combined. Abolitionism, too, operated within a thick political field in which interventions operated on many levels. To call attention to the suffering of slaves was to mark their humanity as well as to signal their inclusion in an expansive, if layered, political community. To highlight the petty despotism of planters and their usurpation of public authority for private ends was to focus attention on jurisdictional hierarchy in a way that recognized its importance to other imperial projects.

Such interventions operated within a framework of law. Although abolition is often depicted as a humanitarian movement which then used law and acted on legal institutions, the movement was infused with the language of law from the start.[8] Recent studies have gone

[6] Christopher Brown, *Moral Capital: Foundations of British Abolitionism.* (Chapel Hill, NC: University of North Carolina Press, 2006), 242.
[7] David Armitage, *The Declaration of Independence: A Global History.* (Cambridge, MA: Harvard University Press, 2008). The global significance of Atlantic revolutions extended, too, to the circulation of news and ideas that shaped the diffuse origins of liberalism. See C.A. Bayly, Chapter 2 in *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge: Cambridge University Press, 2012), ch. 2.
[8] On abolition as a catalyst of global legal change see, for example, see Ethan Nadelman, "Global Prohibition Regimes: The Evolution of Norms in International Society," *International Organization* 44, no. 4 (Autumn, 1990): 479–526. Of course it can be productive to trace the influence of abolitionists on the functioning of legal

beyond analysis of the handful of cases, many elevated by abolitionists themselves to the status of landmarks in the movement's history, to uncover local and regional regulatory regimes in which "freedom" and "slavery" were not binaries but reference points in broad-ranging struggles over practices of subordination.[9] It is important to supplement such accounts by probing the ways in which contributions to debates about slavery were crafted as interventions in the imperial legal order. The language of law dominated drafts of new imperial policies while also molding the very terms in which debates about slavery cast moral and humanitarian objectives.[10]

At the heart of the legal analysis of slavery stood an understanding of slavery as defined by the nature of slave owners' legal rights as authorized by the imperial state.[11] As with the writ of *habeas corpus,* which some contemporaries and also some historians assume functioned as a writ of liberty but which asserted public authority over the jailer's right to imprison subjects, slave law and debates about it focused attention on the legal relation between masters and the state.[12] If the law defined slavery as a concession by the sovereign of rights to slave owners, efforts to expand regulation of slavery necessarily involved the assertion of greater oversight of slave owners' prerogatives to punish.[13] The regulation of masters' prerogatives depended on the

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institutions. Abolitionists altered the performance of the Sierra Leone mixed commission charged with adjudicating slave captures in the middle decades of the nineteenth century (see most recently Martinez, *The Slave Trade and the Origins of International Human Rights Law,* chapter 4). Yet such influence was also not straightforward. See Padraic Scanlon, "MacCarthy's Skull: The Abolition of the Slave Trade in Sierra Leone, 1790-1823," Doctoral dissertation, Princeton University, forthcoming.

[9] For example, Rebecca J. Scott, "Paper Thin: Freedom and Re-enslavement in the Diaspora of the Haitian Revolution," *Law, Slavery, and Justice*, Special Issue, *Law and History Review* 29, no. 4 (2011): 1061–1087; Linda M. Rupert, *Creolization and Contraband: Curaçao in the Early Modern Atlantic World* (Athens, Ga., 2012).

[10] On the links between understandings between the imperial constitution and moral sentiments, see Brown, *Moral Capital: Foundations of British Abolitionism,* chapter 4.

[11] Malick Ghachem develops this point nicely and quotes Montesquieu, who defined slavery as "the establishment of a right which makes one man so much the owner of another man that he is the absolute master of his life and his goods." (*The Old Regime and the Haitian Revolution,* Cambridge University Press, 2012, 64).

[12] Paul Halliday, *Habeas Corpus: From England to Empire* (Cambridge, Mass., 2010).

[13] As Diane Paton has put it, "part of the legal meaning of slavery is that slaveholders have the right to inflict physical violence on their slaves, [and therefore] part of the legal meaning of slavery's abolition is that this right is withdrawn from slaveholders." Diana Paton, *No Bond but the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780-1870* (Durham and London: Duke University Press, 2004), 4. See also, *Moral Capital;* and

functioning of another kind of delegated legal authority, that of local magistrates. In the context of intensifying debates about slavery and the slave trade in the early decades of the nineteenth century, calls for the reform of the magistracy in colonies with unfree labor assumed new and greater urgency.

Because anti-slavery legal debates did not occur in isolation, struggles over the regulation of slave owners' prerogatives represented only the most public and persistent example of a recurring set of conflicts over middling authorities that stood between sovereign and subjects. Global warfare had multiplied the contexts in which such struggles were playing out. The Atlantic revolutions had hardened the resolve of colonial planners to guard against rebellions. Challenges of administering newly acquired colonies and crown colonies were prompting comprehensive administrative and legal reforms featuring hybrid military and civil rule as well as projects to restructure plural legal systems.[14] In this context, a culture of legal experimentation flourished. Proponents of colonial legal experiments defended them as keys to the greater good of devising a coherent legal order for the empire, one envisioned as comprising hierarchically arranged jurisdictions and encompassing a variegated rights regime within a single moral community.

This chapter analyzes the reform of the colonial magistracy in the first decades of the nineteenth century as a sprawling and incomplete imperial project driven by both local legal politics and metropolitan visions of rights, order, and constitutionalism. The first part probes the writings of James Stephen to investigate how abolitionists and their opponents deployed

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Thomas Bender and John Ashworth, eds. *The Antislavery Debate: Capitalism and Abolitionism As a Problem in Historical Interpretation* (Berkeley: University of California Press, 1992).

[14] On military law in this context, see Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010), ch. 4. And on legal pluralism, see Lauren Benton and Richard J. Ross, "Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World," in Benton and Ross, *Legal Pluralism and Empires, 1500–1800* (New York, forthcoming 2013).

references to the common good and its variants, including colonial order and the general welfare, to bundle disparate representations of rights. In utilizing references to rights to bolster claims about which policies would best work to construct and maintain order, proponents on one or another side of debates about unfree labor began to shape a notion of imperial civil society. The middle section of the paper follows two cases from the Leeward Islands to trace how specific conflicts activated conversations about magisterial failure, anxieties about planters' abuse of power, and debates about the nature and reach of imperial authority. The third section analyzes variants of this pattern of imperial reform in other colonial settings in the second decade of the nineteenth century. The reform of the magistracy became a widespread cause before 1815, in ways that stimulated metropolitan scrutiny of colonial law, advanced a narrative about the distinctively legal foundations of global empires, and merged claims about expansive imperial authority with tolerance for an uneven and ad hoc imperial rights regime.

Rights and order

The abolition movement drew from writings on natural law and moral philosophy that presented subtly different views of the relation between rights and order.[15] The unity of these views – the "school-book stuff" of natural law teaching in the eighteenth century – consisted in the purposeful conflation of duties and rights, as well as in the understanding that the performance of duties would promote the common good.[16] The precise relation of rights and the common good was less consistently described. For Francis Hutcheson, the concept of the common good was foundational to a theory of rights, with the result a capacious concept of

[15] James Livesey, *Civil Society and Empire: Ireland and Scotland in the Eighteenth-Century Atlantic World.* (New Haven, CT: Yale University Press, 2009), 155.
[16] Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment.* (Cambridge, UK: Cambridge University Press, 1996), 312, 332.

rights in which every person had "a natural right to perform every action" that would "best maximize the common good."[17] Differences in sets of rights might reflect only the degree to which they would promote the common good in particular contexts.[18] This primary emphasis on the common good was less explicit in the work of other Enlightenment theorists, but the relation of the common good to rights remained a recurring construct of natural law and moral philosophy at the end of the eighteenth century, with differing implications for understandings of the role of governance. As an aid to the analysis of political expression, recognizing the diversity of such views is more important than cataloguing the internal characteristics of their various approaches.

Most references to this body of thought were imprecise – or, as Haakonssen has put it with regard to discourses about rights, "few people understood exactly what they were talking about."[19] If in most cases political actors did not mirror precise analytical perspectives, they also did not perceive an advantage in doing so. By putting the language of rights to use in support of particular political causes, advocates exercised the ability to combine and, in the process, subtly alter understandings of rights in relation to duties, governance, and the common good; there was no fixed set of concepts in place to which they could conform either well or poorly.[20]

Further, thinking about natural law represented only one of many influences on their positions regarding rights and slavery. At least from the time of the Somerset case in 1772, a

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[17] Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*, 80.
[18] This is the distinction, often blurred, between perfect and imperfect rights, the latter being rights that are positively defined and award some good.
[19] Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*, 340.
[20] The discourse of the common good also functioned as a reference point for elite proponents of early colonial ventures who wanted to represent their own self-interested projects, including the exploitation of conquered subjects, as legitimate efforts to enhance the common good. The difference is that the strategy was designed to elicit crown support by representing colonial elites and investors as agents in helpful support of the crown's responsibilities to further the common good. On English rhetoric about the common good, see Aaron Slater, "The Ideological Origins of the Imperial State: Republicanism, Rights, and the Colonization of Virginia, 1607-1660." Doctoral dissertation, New York University, 2011. On the common good in New Spain, see Brian Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford University Press, 2008), ch. 3.

robust constitutionalism focused on English legal liberties framed arguments about slave law. Lord Mansfield's opinion in Somerset reflected the variegated nature of the intra-imperial legal order. The ruling did not outlaw slavery in England; it declared that English law did not recognize the specific prerogatives of slave owners that were protected by law in the West Indies.[21] In a manner that looked back to the politics defining the reach of Crown authority more than it foreshadowed liberal representations of slavery as an abrogation of rights, the Somerset case highlighted the preoccupation with defining Parliament's role as the regulator of colonial privileges. Defending Parliament's right to order the distribution of prerogatives did not require any claim that legislation or subjects' rights would be uniform across the empire.

It is instructive to analyze the writings of a prominent abolitionist, James Stephen, as a particularly influential example of the way a multi-stranded rights discourse fit within advocacy of both abolition of the slave trade and imperial legal reform. Stephen was one of a prominent group of law-trained Scots active in the London abolition movement.[22] Beginning in 1802 and continuing through 1830, Stephen wrote a series of pamphlets on colonial politics and the slave trade. As a member of the House of Commons and of Wilberforce's inner circle, he was the key author of the 1807 act to abolish the slave trade in the empire, and he became a passionate advocate of a proposal for parliamentary legislation to institute a registry of slaves throughout the West Indies as a means of combating the contraband trade in slaves and expanding imperial regulation of slavery. Particularly after his son James Stephen was appointed in 1813 as legal advisor to the Colonial Office, the elder Stephen focused increasingly on analyzing the implications of slavery in the West Indies for the constitutional integrity of the empire.

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[21] Daniel Hulsebosch, "Somerset's Case at the Bar: Securing the 'Pure Air' of English Jurisdiction within the British Empire," 13 *Texas Wesleyan Law Review* 699 (2007), 74. See also James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill, NC: University of North Carolina Press, 2004), ch. 17.

[22] Iain Whyte, *Scotland and the Abolition of Black Slavery, 1756-1838* (Edinburgh University Press, 2006).

When Trinidad changed hands and became a British colony in 1802, Stephen energetically (but unsuccessfully) pushed to prevent slavery from being continued under British authority on the island. Though he failed in his bid to have Parliament create slave registries for all of the British colonies in the West Indies, he managed to get a bill passed to create such a registry on Trinidad. Debates about the regime for the island crystallized arguments on both sides about the constitutional meaning of extending protections for slavery as an institution on Trinidad. Since the debates took place in the midst of the revolution on St. Domingue, they also functioned as an opportunity for British commentators to consider comparisons between the French and English regimes and to contemplate the conditions required for maintaining order in the British West Indies.

Stephen's pamphlet *The Crisis of the Sugar Colonies* was published in 1802 and gathered four letters to Henry Addington, the Chancellor of the Exchequer.[23] The first letter was written as news arrived in London that the French were massing troops to send to St. Domingue to re-take the island after the rebellion there, an expedition Stephen believes was intended "to restore the old system of negro slavery."[24] In order to understand the stakes of the French expedition and the proper English reaction, Stephen stated, it was essential to correct misunderstandings about "the true nature of West India slavery."[25] Stephen explained that the central features of West Indian slavery were the total discretion of the master over the slave and his labors, and "the compulsion by the physical impulse or present terror of the whip."[26] He noted that before the

[23] James Stephen, *The Crisis of the Sugar Colonies; an Inquiry into the Objects and Probable Effects of the French Expedition to the West Indies; and their Connection with the Colonial Interests of the British Empire* (London: J. Hatchard, 1802).
[24] Stephen, *The Crisis of the Sugar Colonies,* 7.
[25] Stephen, *The Crisis of the Sugar Colonies,* 7.
[26] Stephen, *The Crisis of the Sugar Colonies,* 13.

revolution in St. Domingue, the *code noir* had been intended "partly to restrain the abuse of this power and that of punishment" but had been "almost wholly neglected in practice." [27]

This framing establishes Stephen's emphasis on the state's regulation of the master's power. When he turns his attention to the changes reported to have taken place since the revolt broke out, Stephen describes the proclamation of July 1794, reproduced in an appendix, not as an act that abolished slavery but rather as one that altered the civic status of "negroes" by investing them "with all the rights of French citizens." [28] The result, according to Stephen, was "their zealous attachment to the government" and their willingness to fight with French forces on St. Vincent's and Grenada. In the insurrections and fighting that followed, Stephen observes, the "severe measures" taken by French commanders constituted "acts of *public,* not of *private,* authority, and were substitutes for the power of the master, and the coercion of the driver's lash."[29]

The point that Stephen underlines is that the essence of both the revolutionary and reforming impulses lay in the establishment of public authority over the private relation at the core of slavery. Stephen acknowledges that the "new system" in the French colonies in which laborers continued to toil under the coercion of the state was being maintained by a regime that was "wholly military."[30]And he qualifies his optimism about the novel arrangement by noting the lack of good information coming out of the French islands. But his main goal is to herald an experiment in which public rather than private authority was operating to maintain productivity

[27] Stephen, *The Crisis of the Sugar Colonies,* 13.
[28] Stephen, *The Crisis of the Sugar Colonies,* 18.
[29] Stephen, *The Crisis of the Sugar Colonies*, 20-21.
[30] Stephen, *The Crisis of the Sugar Colonies*, 24.

in plantation economies, where "the sanctions of municipal law aided by a military police" rather than "the application of the lash" would regulate industry."[31]

In calling attention to the difference between regimes of private and public authority, Stephen chooses language that clearly implies recognition of slaves as bearers of natural rights. The stakes for ex-slaves in opposing the reinstatement of slavery at the hands of Napoleon's forces were high:

> What energies are not likely to be called forth, what desperate struggles to be made, in defending not only private property, but the very capacity of possessing it; in defending a man's title to his own muscles and sinews; in maintaining the common privileges not merely of social, but of rational nature!!"[32]

Here Stephen positions liberated slaves as fierce defenders of natural rights deriving from their existence as rational creatures. But he does not dwell on this point and returns instead to the subject of the likely explosive resistance to the reimposition of slavery, and the predictable need for a return to a regime of "terror" to maintain order if a French force reimposed slavery.[33] This direction leads back to his initial insight that the prerogatives of the master constitute the heart of slavery: in St. Domingue, "that which supports the master's authority, and ensures his safety, is a strong and indefinite terror."[34] This "spell" cannot be easily conjured again once it is removed.[35] Successful or not, Stephen argues, the French expedition would threaten all British West Indies possessions, either by letting loose an army of former slaves or by turning the French islands into

[31] Stephen, *The Crisis of the Sugar Colonies,* 25. Stephen rather presciently calls attention to the long odds for Napoleon's forces in seeking to reestablish slavery in St. Domingue, Guadaloupe, and Cayenne. Cite (Stephen, *The Crisis of the Sugar Colonies,* 42).
[32] Stephen, *The Crisis of the Sugar Colonies*, 47
[33] Stephen, *The Crisis of the Sugar Colonies*, 72.
[34] Stephen, *The Crisis of the Sugar Colonies*, 73.
[35] Stephen, *The Crisis of the Sugar Colonies,* 75.

garrisons heavily armed against the threat of further insurrections and ready to attack British colonies when called upon to do so.

Stephen explores the options facing Britain to respond to these threats: a costly and logistically challenging mobilization of British troops to the region, the recognition of a new state hostile to France and run by former slaves, efforts to foment continued civil war in the French colonies, and the erection of "a military order out of the abject cast" in defense of British colonies.[36] After duly considering these alternatives, he arrives at what he describes as the measure that would go "to the root of every evil at once," the option of "strengthening our colonies in the most effectual way, by interior reformation."[37] Only by improving the conditions of slavery will the dominions of the empire be saved; only by regulating slavery through law, not terror, would peaceful industry be protected.

Turning to the efforts of West Indies assemblies to impose their own reforms, Stephen pursues a line of argument that he would develop further over the next two decades. Local efforts amounted to no more than a "miserable mockery of laws whose injunctions no one will enforce" and whose violations are left to the detection of the perpetrators.[38] In the fourth letter dedicated to solutions, Stephen returns to the subject of the first essay: the fundamental character of slavery as lying with the protected prerogatives of masters. He now makes two amendments, both of great significance with regard to an implicit theory of rights and order. The first is that the disciplinary regime of slavery renders slaves unfit "to be governed by municipal laws, or treated like rational agents."[39] While intended as an attack on slavery, this claim shifts attention from his earlier comments about slaves as bearers of natural rights; slavery, however regulated,

[36] Stephen, *The Crisis of the Sugar Colonies*, 120.
[37] Stephen, *The Crisis of the Sugar Colonies*, 121.
[38] Stephen, *The Crisis of the Sugar Colonies*, 126.
[39] Stephen, *The Crisis of the Sugar Colonies*, 127.

alters the capacity to enjoy rights. Stephen here cites the slavery proponent Bryan Edwards' assertion that the "absolute coercive necessity" at the heart of slavery nullifies other qualities and "supersedes all questions of right."[40] Stephen's second point is that the "emergency" of the situation enhances the claim for a right that Stephen thinks exists in any case: the right of Parliament to legislate for the colonies. Rejecting the notion that the planters have valid claims analogous to those of the North American colonists and seeking to separate the issue of taxation from internal legislation, Stephen finally rests his argument on the fundamental character of the master-slave relationship. That is, though his argument about metropolitan legislation for the colonies references a constitutional framework, it is one centered on the governance of masters rather than deriving from general principles or questions of slaves' subjective rights. The right to regulate slavery cannot constitutionally be left to slave masters, who are the main subjects of such legislation, nor can meaningful reform be imagined as involving solely a change in slaves' status given that "privilege to the slaves must necessarily in the same degree be restraint upon the master."[41]

This point brings Stephen to the crux of his argument. Having rejected the notion that slaves already possess the character of subjects in possession of full rights (though they may possess fundamental or natural rights), Stephen notes that they are already in a civic relation to the state through the existing public authority over masters. Stephen argues that the separate "civil character" of the slave derives precisely from his subjection to the master; it is a civil character that creates a slave's right "to the protection of laws against the master."[42] Stephen describes this right as equal to "claims on the legislative power of the State." If the only question is which body is entitled to make such legislation, then constitutionally the answer is Parliament

[40] Stephen, *The Crisis of the Sugar Colonies*, 127.
[41] Stephen, *The Crisis of the Sugar Colonies*, 134.
[42] Stephen, *The Crisis of the Sugar Colonies*, 134.

because even West Indian planters concede that Parliament retains full and unlimited constitutional powers in the West Indies in order to maintain order.[43] What circumstances might trigger "such an interposition?" Here Stephen again cites Bryan Edwards: necessary reforms are those required for "the preservation of the whole common interest."[44]

For Stephen, the "common interest" consists in the ties that bind Britain and the colonies. One can easily imagine Stephen's lawyerly delight in bringing the subject of "the common interest" squarely back to the need to oppose the dangers created by the situation in the French colonies. The right of Parliament to promote the common good trumps the private right of planters to pose a danger to the integrity of the empire through their coercive power over their slaves.[45] This logic, Stephen affirms, was already supporting parliamentary legislation on trade and navigation, "which the parent state for the common benefit thinks necessary to maintain." [46]

Returning to the subject of Trinidad, Stephen pleads for the government to refrain from extending "our cart-whip empire."[47] And he promotes a vision of a great "experiment" on Trinidad of the creation of a commercial and agrarian society based on the labor of freed captives in a condition of servitude whose limits "must be clearly and anxiously fixed by positive law."[48] Stephen adds two key points about the nature of the legal order that would be required on the island to make possible "the happy formation of a new system."[49] One condition is that "magistrates of great respectability, independent of the community in which they live, and

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[43] In this regard, Stephen's argument aligns with that of others who relied on arguments about the emergency power of the state as a rationale for acts of repression. See Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2005); Benton, *A Search for Sovereignty,* ch. 6.
[44] Stephen, *The Crisis of the Sugar Colonies*, 137.
[45] Stephen, *The Crisis of the Sugar Colonies*, 140.
[46] Stephen, *The Crisis of the Sugar Colonies*, 145.
[47] Stephen, *The Crisis of the Sugar Colonies*, 161.
[48] Stephen, *The Crisis of the Sugar Colonies*, 188. On the vision of Scottish agrarianism and its application on Trinidad, see especially James Epstein, *Scandal of Colonial Rule: Power and Subversion in the British Atlantic during the Age of Revolution* (Cambridge University Press, 2012), chapter 3.
[49] Stephen, *The Crisis of the Sugar Colonies*, 188.

precluded from holding landed property in the Island, ought to be appointed, and armed with extraordinary powers." Examinations of official misconduct should be the business of "British Tribunals only," and magistrates should record the evidence supporting their judgments so that they might be reviewed in appeals, which would be allowed "in all important cases." [50] The final key to the grand experiment would be the absence of a local legislative assembly; all laws for the island's internal government should spring from Parliament. Trinidad should not suffer the same fate of other islands: the creation of "a pigmy model of the British Constitution."[51]

Stephen's tract is hardly singular in combining various strands of rights talk and in utilizing the language of the common good or the general welfare as an overarching rationale for policies of imperial intervention.[52] A similar logic occurred both in pro-slavery responses to abolitionist writings in England and in French tracts on the upheaval in St. Domingue. In reproducing the National Convention's declaration abolishing slavery in the colonies, Stephen shows his awareness of the French emphasis on abolition as an act bringing slaves into the state of citizenship, a change explicitly described not as one aimed at restoring their natural rights but as one that entailed awarding them "all the rights confirmed by the Constitution" by bringing them "under the protection of the law of all Citizens."[53] Clearly implying a distinction between some fundamental rights guaranteed by citizenship and the possibility of continued inequality in the rights regime of the empire, the proclamation advises citizens that they "are not to become equal but to enjoy happiness." [54] Stephen includes in the appendix Toussaint L'Ouverture's instructions to civil and military officers on St. Domingue, which advises that "in order to secure our liberties, which are indispensable to our happiness, every individual must be usefully

[50] Stephen, *The Crisis of the Sugar Colonies*, 189.
[51] Stephen, *The Crisis of the Sugar Colonies*, 190.
[52] See note 20 above.
[53] Stephen, *The Crisis of the Sugar Colonies*, 204-205.
[54] Stephen, *The Crisis of the Sugar Colonies*, 206.

employed, so as to contribute to the public good, and the general tranquility."[55] This logic reflects and supports Stephen's argument that the right to regulate slavery derived from the right to regulate civic participation more generally. The performance of civic duties makes the enjoyment of rights possible, and both rights and duties depend on actions in support of the "public good."

An expressed commitment to the general welfare had also tended to subsume discourses of individual human rights in St. Domingue, where, at the same time, it contained no necessary relation to normative outcomes.[56] Defenders of slavery and revolutionaries accessed variants of the same approach. Like Stephen, participants in this discourse relied on an understanding of slavery as centered fundamentally on the sovereign's authorization of a particular set of prerogatives that slave owners held in relation to slaves. By enshrining this regulatory relation in the law of the empire, the *code noir* managed to serve both as an instrument of harsh repression under the plantation order of the *ancien régime* and, later, as a framework for radical reforms in the first phases of the revolution. Humanitarian concerns in some measure linked the plight of slaves as rights-bearing subjects to the project of the "general welfare," but equally important was the rhetorical point that planters' self-interest should ultimately require their endorsement of good government, and that good government was impossible without the regulation of slavery.[57]

We can view this logic at work over a decade later in continued contributions by Stephen and his critics. By 1815, abolitionists could count as successes the Abolition Act of 1807 and Parliament's approval in 1812 of a registry of slaves for the island of Trinidad, a partial victory for Stephen as he continued to champion the idea of a registry for all the West Indies colonies.

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[55] Stephen, *The Crisis of the Sugar Colonies*, 208.
[56] Malick W. Ghachem, *The Old Regime and The Haitian Revolution* (Cambridge: Cambridge University Press, 2012), 8.
[57] Ghachem, *The Old Regime and The Haitian Revolution*, 129.

In his 1815 tract about the registry published by the African Institution, Stephen refines his earlier pronouncements about the path to ending slavery. He now openly identifies emancipation as a goal flowing from "justice and mercy," even as he states that a sudden change in the status of slaves must be avoided so as to prevent "calamitous consequences, not only to their masters but [to] themselves."[58] Stephen also now observes that even laws passed by Parliament would be ineffective in restraining the "private discretionary powers" that sustain slavery. Instead, he writes, extinction of slavery can be effected only by gradual changes that occur as masters realize that ending slavery will serve both the interests of the empire and their own interests.

Stephen's opponents crafted arguments of a strikingly similar structure linking self-interest to the common good. In a pamphlet responding to a speech by Stephen at the annual meeting of the African Institution in 1817, Joseph Marryat complained that Stephen and other abolitionists were responsible for raising slaves' expectations of emancipation and encouraging rebellions like the one that had broken out in Barbados the year before. Marryat rails against the abolitionists' indiscreet statements about Stephen's Registry Bill for inciting Barbados slaves to revolt and encouraging "free people of colour" to attack "civil society" for its protection of inequality. Here the self-interest of slave owners is also clearly aligned with the general welfare. The difference is that Marryat defines the "civil society" of the islands as one predicated on the superiority of whites.[59] The public good flowing from white control includes saving slaves from the unhappiness associated with "delusive expectations" of a state of freedom that is inconsistent with the laws of nature because it imagines "enjoyment without labour."[60]Further, sustaining white civil society will protect slaves from the despotism of black revolutionaries or French

[58]Joseph Marryat, *More Thoughts Still on the State of the West India Colonies, and the Proceedings of the African Institution, with Observations on the Speech of James Stephen, Esq. At the Annual Meeting of that Society, held on the 26th of March, 1817* (London: Hughes & Baynes, 1818), 4.
[59] Marryat, *More Thoughts Still on the State of the West India Colonies*, 15.
[60] Marryat, *More Thoughts Still on the State of the West India Colonies*, 23.

counter-revolutionaries. Marryat's principal critique of Stephen and his allies is that they pretend to do good while sowing disorder: ""Openly they profess benevolence, amelioration, and happiness; but covertly they promote insurrections, massacres and desolation."[61] Order is the gold standard of imperial policy; rights not exercised in the service of order (standing in for the general welfare or the common good) may persist in theory without deserving guarantees under positive law.

If references to order tended to organize rights talk, variations in the discourse might seem to mirror a shift from a view of actions promoting the common good as the origins of rights to a Humean perspective emphasizing the role of opinion in shaping constructions of the common good. But it would be a mistake to seek to map political expression closely onto shifts in political thought. In addition to attributing greater precision in the correlation than political advocates intended, such an exercise would obscure continuities in strategies to invoke the common good and its variants as a means of reconciling and combining diverse approaches to rights. While rhetorical moves took different forms, the place of rights within these arguments was relatively consistent. Slaves' natural rights or their perfect rights were not denied, nor were slaves represented as entirely outside the political community. Even coercive and punishing slave laws brought slaves under the authority, and therefore in some remote sense, the protection of the law. Yet everything else about their standing, and therefore the particular mix of rights attached to their status, flowed through their relation to masters so that, as Stephen had noticed, the expansion of slaves' effective rights depended on the diminution of masters' prerogatives. This vision underlay both revolutionary and reformist positions, and it also extended to opponents of abolition, who linked masters' rights with the general welfare through the preservation of order. The crux of debate became not the rights of slaves but the location, extent,

[61] Marryat, *More Thoughts Still on the State of the West India Colonies*, 42.

and nature of authority over the rights of masters—constitutional questions about the balance and relation of imperial and colonial power and about who would exercise authority locally. Turning this lens on cases involving planters' mistreatment of slaves reveals some new dimensions of a familiar set of controversies.

The cruelty of masters

On January 23, 1810, Edward Huggins and his sons ordered two drivers to flog 32 enslaved men and women in the public market-place in the main town of Charleston, on the island of Nevis. The punishment of so many slaves drew a small crowd. A local man named John Burke would testify later that he began to record the number of lashes, "being under the impression that the country would take up the business." Burke later testified that nine men were given between 47 strokes and a heart-stopping 242 lashes, and nine women had each received between 49 and 291 lashes. No one, including Burke, sought to stop the floggings or protested their severity.[62]

In the view of Huggins and his family, the slaves were responsible for what happened. On the witness stand in his father's trial for excessive cruelty to his slaves, Peter Huggins would recite a litany of acts that he claimed had taken the slaves from "from opposition. . . to actual disobedience; from disobedience. . . to riot; and from riot to rebellion."[63] No doubt knowing that the jurors would be especially attuned to the dangers of revolt in the aftermath of the Haitian revolution, Peter Huggins explained that flogging the slaves had been necessary "to deter other

[62] "No. 4, in Letter from Governor Elliot to the Earl of Liverpool, 25 November, 1810," House of Commons, "Papers Relating to the West Indies: viz. correspondence relating to punishments inflicted on certain Negro slaves, in the island of Nevis; and to prosecutions in consequence," May, 1811 (hereafter "Papers relating to the West Indies: Nevis"), 23.
[63] House of Commons, "Papers Relating to the West Indies: Nevis," 29.

slaves from similar conduct" on other estates.[64] He recounted a series of events that doubled as a catalog of planter fears. Petit marronage on the newly acquired estate was rampant. "Hunters" dispatched to bring back runaways routinely returned empty-handed and if punished, they also ran away. Dozens of slaves descended at once on the sick house. Slaves beat another enslaved man who had taken private orders from Huggins, prompting a work gang to show up hours late. On one occasion, a "whole gang…advanced" on Huggins, and he had to threaten to shoot to get them to stand down. Peter Huggins testified that he soon found that "he could get nothing done when he was out of the field." He ordered slaves "to carry dung out of the pens for an hour every night" as punishment for refusing to work. That command sparked a week of stand-offs in which many men and women continued to refuse the order and some would not work at all. [65]

Even given Huggins's incentive to exaggerate captives' rebelliousness, his testimony suggests that enslaved Africans' actions were part of the legal story.[66] It seems reasonable to assume that the slaves were aware that the practice of carrying dung out at night had been banned in the Amelioration Act of 1798.[67] Passed by the General Assembly and Council of the Leeward Islands in a rare meeting at St. Christopher's, the Leeward Islands Slave Amelioration Act offered very few protections to slaves and mainly enumerated the punishments for slaves if they were found engaging in a wide range of prohibited acts, from traveling locally without permission to trading from small craft. Abolitionists, including Stephen, would later mock the

[64] "No. 7, Letter from Governor Elliot to the Earl of Liverpool, 25 November, 1810," House of Commons, "Papers relating to the West Indies: Nevis," 31.
[65] "No. 7, Letter from Governor Elliot to the Earl of Liverpool, 25 November, 1810," House of Commons, "Papers relating to the West Indies: Nevis," 29-31.
[66] Natalie Davis reminds us that the plural legal order of slavery extended to the legal practices of slaves ("Judges, Masters, Diviners: Slaves' Experience of Criminal Justice in Colonial Suriname," *Law and History Review* 29:4 (2011): 925-984; see also Benton, *Law and Colonial Cultures,* 59-66.
[67] "An Act more effectually to provide for the Support, and to extend certain Regulations for the Protection of Slaves, to promote and encourage their Increase, and generally to meliorate their Condition," *The laws of the island of Antigua: consisting of the acts of the Leeward Islands, commencing 8th November 1690, ending 21st April 1798; and the acts of Antigua, commencing 10th April 1668, Ending 7th May 1804,* Vol I. (London: Samuel Bagster, 1805), No. 36, 20-43. It was often referred to as the Melioration Act. Similar legislation had passed in Jamaica, the empire's premiere sugar producing colony, nearly a decade before.

claim that the legislation had secured for slaves "the certain, immediate, and active protection of the law."[68] Yet like the *code noir*, the Amelioration Act asserted public authority over slave owners' private prerogatives to punish. [69] One of the few protections in the act might have given the enslaved men and women on Edward Huggins's estate encouragement to resist illegal commands. That the struggle heated up precisely when the slaves were ordered to carry dung at night suggests that they were seeking to claim some protection under the law. The senior Huggins, too, believed that the slaves were acting to assert limits on his authority over them. In a statement he wished to have transmitted to officials in London, Edward Huggins recited what he regarded as the basic principle that made the public flogging unquestionably legitimate: the law "entrusted to the master the power of correcting his slave."[70]

Between Edward Huggins's indictment in March and the trial in May, Huggins's allies had found a way to stack the petit jury with allies, and the planter was acquitted.[71] The finding of innocence by a biased jury drew a rain of criticism in London.[72] It also encouraged further talk about what other options existed for asserting greater control over planter behavior. Witnesses to the flogging had reported the names of seven magistrates present at the scene who had failed to stop the beating. The grand jury had originally discussed indicting both Huggins and the magistrates but prepared an indictment only for Huggins—apparently after determining that the magistrates could be accused of abetting a crime only if Huggins was first found guilty

[68] Stephen, xxx
[69] David Barry Gaspar, "Ameliorating Slavery: The Leeward Island Slave Act of 1798," in Robert L. Paquette, *The Lesser Antilles in the Age of European Expansion* (Gainesville: University Press of Florida, 1996), 241-58, 242. It is interesting to note that the act followed a wave of legislation in the Leeward Islands focused on controlling slaves and protecting masters' prerogatives. That legislation had included provisions for the trial by magistrates of slaves accused of serious crimes. Elsa Goveia, *Slave Society in the British Leeward Islands at the End of the Eighteenth Century* (New Haven and London: Yale University Press, 1965), 176.
[70] "No. 10, Letter from Governor Elliot to the Earl of Liverpool, 25 November, 1810," House of Commons, "Papers relating to the West Indies: Nevis," 36.
[71] "Letter from J.W. Tobin to Governor Elliot, Nevis, September 7, 1810," TNA, CO 152/96, No. 7.
[72] On colonial scandals, and another case involving punishment in the West Indies, see James Epstein, "Politics of Colonial Sensation: The Trial of Thomas Picton and the Cause of Louisa Calderon," *American Historical Review* 112:3 (2007): 712–741.

of one. Attempts to bring the magistrates to account did not end here.[73] The Earl of Liverpool instructed the Leeward Islands' new Governor, Hugh Elliot, to gather and send all documents from the case and "to bring to justice any of the parties" implicated in the flogging, including "any magistrates or other officers who may have been so criminally negligent of their public duties as to have witnessed, or forborne to interfere . . . in so disgraceful a scene."[74] Nearly a year after Huggins was acquitted, London continued to badger Elliot about removing the magistrates from office.[75]

Behind the issue of authority over planters' prerogatives to judge and punish slaves lay still broader questions about the proper structure of legal administration in the empire. Commentary on the case focused in part on the dearth of trained legal personnel in the colonies. One critic from Nevis subjected himself to a libel charge by writing a letter to the *St. Christopher Gazette* calling the Chief Justice "an habitual drunkard, often intoxicated on the Bench" and insinuating that other slaves had died on the Huggins estate without any investigation.[76] Governor Elliot composed his own version of such attacks. White society in the West Indies, he wrote, was composed of "managers, overseers, self-created lawyers, self-educated physicians, and adventurous merchants," a motley group given to corruption and without the education or training to staff responsibly the government and courts. Self-interest in this context tended to "weigh down the scale of justice" so that "acts of arbitrary and unjustifiable power" would

[73] "No. 6, in Letter from Governor Elliot to the Earl of Liverpool, 25 November, 1810," House of Commons, "Papers Relating to the West Indies: Nevis," 25.
[74] "Letter from the Earl of Liverpool, to Governor Elliot; 20 September 1810," House of Commons, "Papers Relating to the West Indies: Nevis,"1.
[75] "Letter from the Earl of Liverpool, to Governor Elliot, 12 April, 1811," House of Commons, "Papers Relating to the West Indies: Nevis," 2.
[76] "Letter from J.W. Tobin to Governor Elliot, 7 September, 1810," CO 152/96. Tobin also complained that two of the people on the jury had conducted the flawed inquest in the case, including "one of the Magistrates who, with unconcern beheld the flogging in the market place" and that most of the lawyers appearing in the trial were "men overwhelmed by debt." An extract of the letter was printed in the *London Chronicle,* prompting complaints to Elliot by the Chief Justices of St. Christopher and Nevis, and one of the lawyers present at the trial who defended his advanced training in law. House of Commons, "Papers Relating to the West Indies, viz. Letters to Governor Elliot from Mr. Garrett, Mrs. Weekes and Mr. Peterson, January, 1812."

become "cloaked under the semblance, and dignified with the name, of constitutional acts."[77] The attitude seemed not newly acquired but part of Elliot's governor's kit brought from home and transported to his new posting.

Elliot was still dealing with the fallout of the failed Huggins prosecution when he received a delegation from Tortola on March 23, 1811, bearing news of a complaint against Arthur Hodge for the torture and murder of slaves.[78] The delegation carried two sworn depositions, one of Pereen Georges, a freed slave who had lived and worked on the Hodge plantation, and the other of Stephen McKeough, a former overseer on the Hodge estate. A man described later as Hodge's enemy, William Cox Robertson, had organized the gathering of the depositions. The witnesses' accounts of Hodge's treatment of his slaves were hair raising. Hodge was accused of causing the death of two household slaves, Margaret and Else, by having boiling water poured down their throats. He had been seen supervising the vicious flogging of an enslaved man who returned empty-handed from a mission to retrieve runaway slaves.[79] And the slave Prosper, reportedly punished for stealing a mango, was said to have lingered for days after a flogging so severe that he never walked again; his body was swept into a shallow grave at the door of his hut. Several children, including a daughter of Hodge by one of his slaves, suffered torture, too. Elliot wrote to his wife that the well-connected Hodge had committed acts "more dreadful than any I ever heard of within the limits of the British Empire."[80] At a hearing on

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[77] "Letter from Governor Elliot, to the Earl of Liverpool, 21 November 1810," House of Commons, "Papers relating to the West Indies: Nevis," 13. An account of the trial was published in London and in Middletown, Connecticut: A. M. Belisario, A *Report of the Trial of Arthur Hodge, Esquire (Late One of the Members of his Majesty's Council for the Virgin-Islands) at the island of Tortola, on the 25th April, 1811, and adjourned to the 29th of the same month; for the murder of his negro man slave named Prosper 94–157* (Middletown, Tertius Dunning 1812).
[78] Letter from Governor Elliot to the Earl of Liverpool (April 1, 1811), in *Papers Relating to the West Indies: Hodge*, See *Papers Relating to the West Indies: Viz. Correspondence Between the Earl of Liverpool and Governor Elliot;---In Reference to the Trial and Execution of Arthur Hodge For the Murder of a Negro Slave, Ordered by the House of Commons, to Be Printed, 26 June 1811* [hereinafter "Papers Relating to the West Indies: Hodge"].
[79] Belisario, *Report of the Trial of Arthur Hodge*, 17-19.
[80] The National Library of Scotland (hereafter NLS), MS 12960, 190-193.

March 15, Hodge's close associate William Musgrave disparaged the proceedings and used language that would later fuel attacks on Hodge in Tortola and London. Musgrave was reported to have said that "it was no greater offence in law for his owner to kill [a negro] than it would be to kill his dog."[81]

To Elliot, this claim of planter immunity, coupled with charges even more serious than those lodged against Huggins, spelled an opportunity to champion imperial authority and to advance his reputation among well-placed abolitionist patrons at home so that he might and secure a better posting. The Hodge case – "this melancholy labyrinth," as the lawyer for the crown at Hodge's trial would call it – represented to Elliot and his London sponsors a chance to discipline the jumble of colonial jurisdictions.[82] The structure of administration in the West Indies did not give governors much authority. The island general assemblies made legislation and the only formal role for governors, rarely executed, was to object to legislation that went against British government interests. The assemblies also passed laws limiting the powers held by governors, already reduced by their lack of resources. Officials such as attorneys general, solicitors general, and advocates general in the vice-admiralty courts served under governors but were appointed in London by letters patent.[83] Some inferior officials were also appointed in England, and some were absentee patentees, who selected deputees in the islands to execute their

[81] Belisario, *Report of the Trial of Arthur Hodge*, 77. It is not possible to know whether Musgrave in fact uttered this line. The prosecutor quoted his statement at the bail hearing at the trial. It was then repeated in various summaries of the case circulating in Britain. See, e.g., "Publications on West Indian Slavery," 19 *Edinburgh Review*, Nov. 1811–Feb. 1812, at 129, 144; "West Indian Slavery: Abstract of the Affidavits on the Table of the House of Commons, Relating the Circumstances which Led to Mr. Hodge's Trial," 10 *Pol. Rev. & Monthly Mirror of the Times*, Aug. 1811–Jan. 1812, at 367, 371. The quote remained a central focus of commentary on the case five years later. See West-*Indian Sketches, Drawn From Authentic Sources: The Nature of West-Indian Slavery Further Illustrated by Certain Occurrences on the Island of Tortola* 39 (London, Ellerton & Henderson 1816); "Antidote to 'West Indian Sketches,' Drawn from Authentic Sources," 3 *Colonial J.*, March 1818, at 47, 52; Bryan Edwards, *The History, Civil and Commercial of the British Colonies in the West Indies***,** (Cambridge Univ. Press, photo. reprint 2010 [1819]), 458-460.

[82] Belisario, *Report of the Trial of Arthur Hodge*, 168.

[83] D.J. Murray, *The West Indies and the Development of Colonial Government: 1801-1834*, (Oxford: Clarendon Press, 1965), 20.

duties, sometimes awarding posts to the highest bidders for leases. Governors had only an indirect authority over most local officials, consisting in the power to suspend them. Taken together, their capacities to annul legislation, suspend officials, and declare martial law composed a set of emergency powers, rather than a portfolio of direct oversight of civil and legal administration.

Elliot nevertheless found an opening to move against Hodge. The accusations against him came in just as the Tortola court was about to go into summer recess. Elliot used one of his limited powers to appoint a special commission of oyer and terminer, and he sent a stand-in for his sick solicitor general to Tortola to move immediately to trial.[84] On the heels of his late and some thought ineffective handling of the Huggins case, the governor was ready to take an active role in a part of the Leewards already known as a sea road for slave trading and a place of intricate legal conflicts.[85] When the jury brought back a guilty verdict in the case brought against Hodge for the murder of Prosper, Elliot rejected the court's recommendation for mercy, and Arthur Hodge became the first British slave owner in the West Indies to be hanged for the murder of a slave.

This account explains only the immediate events surrounding the trial of Arthur Hodge. Some puzzles remain. The interest of abolitionists in drawing attention to cruelty toward slaves meant that the trial became closely associated with debates about slavery and the slave trade. James Stephen was instrumental in getting the House of Commons to publish the correspondence

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[84] Letter from Governor Elliot to the Earl of Liverpool (April 1, 1811), "Papers Relating To The West Indies: Hodge," 1–2.

[85] George Suckling had been appointed by the crown to be the first Chief Justice of the Virgin Islands in 1777, and he wrote about his unsuccessful sojourn in the islands, which he described as being in a "tumultuous and lawless state" and under the control of a corrupt majority of the Assembly that was blocking the passage of a bill to establish courts while "arrogating to themselves an unconstitutional authority over the rights of their fellow-subjects." George Suckling, *An historical account of the Virgin Islands, in The West Indies: from their being settled by the English near a century past, to their obtaining a legislature of their own in the year 1773; and the lawless state in which His Majesty's subjects in those islands have remained since that time, to the present* (London, Printed for Benjamin White, 1780), 49, 65, 34.

between Hugh Elliot and Lord Liverpool about both the Huggins and Hodge cases. But abolitionist pressures only partly explain why Hodge was tried. He certainly seemed an unlikely target for prosecution. Born in Tortola and educated at Oxford, he had made a good third marriage after surviving two wives and had returned to Tortola in 1803 to take over direct supervision of a large plantation with well over a hundred slaves.[86] The crime for which he was convicted in 1811—ordering the lethal flogging of the slave Prosper—and the other horrific violence against slaves for which the court was also prepared to charge him had occurred three or more years before the indictment in spring 1811, making it unlikely that officials were responding to fresh rumors about specific acts of cruelty.[87] The prosecution of planters for excessive cruelty to slaves was rare, and serious consequences rarer still, as the Huggins trial had shown.[88]

It is tempting to speculate that the willingness to try Hodge had something to do with Tortola's Quaker past. The island had been home to a small, determined Quaker community in the mid-eighteenth century with ties to Quakers in Philadelphia and London.[89] Tortola was also

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[86] *See generally* John Andrew, *The Hanging of Arthur Hodge: A Caribbean Anti-Slavery Milestone*. (Bloomington, Indiana: Xlibris, 2000).

[87] Belisario, *Report of the Trial of Arthur Hodge*, 42.

[88] Such actions were certainly rare throughout the British Atlantic. The small number of cases in the North American colonies included the 1713–1714 charges brought against Frances Wilson in Virginia for "whipping one of her Husbands Slaves to death." Thomas D. Morris, *Southern Slavery and the Law 1619–1860,* (Chapel Hill and London: University of North Carolina Press, 1996), 165. Morris speculates that the charges against Wilson were pursued "in order to assert the authority of the Crown and the common law over the planters of Virginia" (167). In general, such cases appear "very infrequently" in southern court records (185). In the West Indies in the years leading up to the Hodge case, several slave owners in St. Kitts were brought to trial, found guilty, and punished for excessive cruelty to slaves in the 1780s; two of the cases involved masters who had cut off the ears of slaves, an act of mutilation that was specifically outlawed by the St. Kitts legislature in 1783 (though the defendants were tried under the common law, probably to avoid the harsher penalties proscribed in the 1783 Act). Goveia, *Slave Society in the British Leeward Islands at the End of the Eighteenth Century*, 186. The London audience of abolitionists was prepared to take colonial criminal trials of whites for violence against subordinates and turn them into the stuff of scandal, as had occurred only five years before the Hodge case with the 1806 London trial of General Thomas Picton, the first Governor of Trinidad, for the torture of the free "mulatta" Louisa Calderon. Calderon was a free person and not a slave, but the case evolved in the context of growing cultural anxieties about the brutality inherent in the slave system. And, like the Hodge case, the Picton trial prompted broader debates about whether the colonies rested within the framework of the British constitution. *See* Epstein, *Scandal of Colonial Rule,* 272–75.

[89] Vernon Pickering, *Early History of the British Virgin Islands: From Columbus to Emancipation* (New York:

celebrated as the site of a Quaker experiment in large-scale manumission, Samuel Nottingham's 1776 act of freeing twenty-five slaves and giving them access to land on the island.[90] But by 1811, the Virgin Islands no longer had an active Quaker meeting. Fewer than 1,000 whites controlled the labor of roughly 7,000 slaves on hilly plantations across the islands of Tortola, Jost Van Dykes, and Virgin Gorda.[91] As in Jamaica, the largest British West Indies colony, most of the wealthiest landholders were absentee planters, and the Council of the Virgin Islands was led by men who had a direct interest in the defense of slavery. If Hodge's cruelty had been notorious on the island, as some would later claim, the rumors had prompted no complaints or actions against him during his years in Tortola, where he served alongside other planters on the council and assembly.

The trial report hints at a personal feud behind the charges against Hodge. The widow Frances Robertson testified for the prosecution that she held no grudge against Hodge despite his "cruel" words about her.[92] She did admit that she had at one time prayed that he would "have his deserts . . . even with hemp."[93] The widow's son, William Cox Robertson, had sworn the complaint against Hodge for the murder of his slaves, and later reports suggested a duel, or perhaps just a challenge, had taken place.[94] The Solicitor General exhorted jurors not to credit

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Falcon Publications International, 1983), ch. 3; see generally Charles F. Jenkins, *Tortola: A Quaker Experiment of Long Ago in the Tropics* (England: Friends Historical Society, 1923).

[90] Jenkins, *Tortola: A Quaker Experiment of Long Ago in the Tropics*, 53.

[91] A report in 1812 lists the number of whites on the islands as 405, "Free Colour'd Inhabitants" as 695, and the total number of slaves as 7,151. *Report from the Committee for the Honorable His Majesty's Board Of Council and the Commons House of Assembly of the Virgin Islands* (Oct. 17, 1812), TNA, CO 152/100.

[92] Belisario, *Report of the Trial of Arthur Hodge*, 151–52.

[93] Belisario, *Report of the Trial of Arthur Hodge*, 152.

[94] Belisario, *Report of the Trial of Arthur Hodge*, 33. Edwards labeled Hodge "a notorious duelist" who had challenged "a magistrate who had till now been his friend." This was presumably William Cox Robertson, who Edwards surmised had concluded it was "a safer proceeding to hang his enemy than to fight him." Edwards, *The History, Civil and Commercial of the British Colonies in the West Indies***,** 459, 459–60.

the "indirect defense" that "enemies to Mr. Hodge . . . have conspired together to do him an injury."[95]

If Hodge and Robertson were locked in a personal struggle, the stakes might have had more to do with sinecures than honor. When Hodge's ally William Musgrave wrote to Governor Ellior about "a foul conspiracy" against Hodge, he was penning the accusations from jail.[96] In the days after Hodge's hearing Musgrave himself had been tried and convicted twice on Tortola, first on charges of breach of peace for issuing a challenge to another Tortola man, George Martin, who was a close associate of Robertson, then for libeling Martin by calling him a coward when Martin refused the challenge. "Mr. Martin," Musgrave wrote, "appears to be bent on my destruction."[97] We can imagine how the stuff of small disagreements might bake into a poisonous mix on a small, hot island. But it still pays us to ask why Martin and Robertson would bring all their destructive force to attack Musgrave and seek to ruin Hodge.

Control of an important court appeared to lie in the balance. William Musgrave had arrived in Tortola from Montserrat in 1808, and his legal training led Chief Justice James Robertson—the same judge who would preside over Hodge's trial—to appoint Musgrave as King's Counsel. In this post, Musgrave was responsible for representing captors of ships before the Tortola vice-admiralty court. There he would have appeared before Maurice Lisle, the designee standing in as judge for Robertson. Having Lisle as judge of the vice-admiralty court must have appeared to many to be a case of the fox watching the chicken coop. Lisle was an

[95] Edwards, *The History, Civil and Commercial of the British Colonies in the West Indies***,** 165.
[96] Letter from Governor Elliot to the Earl of Liverpool (April 16, 1811), "Papers Relating to the West Indies: Hodge," 10, 11. The letter was written by Musgrave on April 2; Elliot received it April 16.
[97] Letter from William Musgrave to Governor Elliot (April 2, 1811), in Papers Relating to the West Indies: Hodge, 11.

American from New England and had been making his living representing American owners and masters of ships whose captures were being adjudicated in the vice-admiralty court.[98]

Vice-admiralty courts had traditionally operated in the British empire at the intersection of local and imperial interests. On the one hand, in adjudicating prize cases and prosecuting crimes aboard ships, the courts represented a thread of consistency across the varied legal landscape of the empire. On the other hand, the courts responded closely to local interests and created valuable fees and commissions as well as opportunities for trade and graft. In the global warfare of the turn of the nineteenth century, prize courts had assumed a newly prominent role. Across empires, the courts recognized a set of shared conventions. Captures at sea were supposed to be taken before a court under the jurisdiction of the captor. Cargos and ships could be condemned there and awarded to captors, and claimants or their representatives would be heard. Prize judges referred to the customary law of nations and treaty regimes, and they examined what was often a mass of contradictory evidence about the nationality of ships and their owners, the origins of cargo, and ships' destinations. Judges faced the very creative strategies of ship owners and captains, who often provided vessels with multiple flags, commissions from several sovereigns, and paper trails designed to color ships as neutral or loyal carriers.[99]

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[98] Alexander Mackenrot, a former magistrate of Tortola on a campaign to expose corruption on the island, called the appointment of Lisle a "great scandal and disgrase [to] the whole Bar." A. Mackenrot, *Secret Memoirs of the Honourable Andrew Cochrane Johnstone: Of the Honourable Vice-admiral Sir Alex. Forrester Cochrane, K.B., and of Sir Thomas John Cochrane, a Captain in the Royal Navy, with an Account of the Circumstances which Led to the Discovery of the Conspiracy of Lord Cochrane and Others to Defraud the Stock Exchange* (London: C. Chapple, 1814), 28. Parts of the pamphlet were reprinted and some appeared in *Niles' Weekly Register* September 16, 1815, 45-55.

[99] An excellent introduction to prize law in British courts of the period is Henry J. Bourguignon, Sir *William Scott Lord Stowell: Judge of the High Court of Admiralty, 1798-1828.* (Cambridge: Cambridge Press, 2004), 172-241; James Stephen, *War in Disguise; or, the Frauds of Neutral Flags* (London: C. Whittingham, 1806), 56-60, 71, 187; *See also* Lauren Benton, "Abolition and Imperial Law, 1780-1820," *Journal of Commonwealth and Imperial History*, Vol. 39:3 (2011): 355-374.

The Tortola vice-admiralty court was operating in an atmosphere thick with corruption in the years leading up to the Hodge trial. Admiral Alexander Cochrane, commander of the Tortola station, in 1807 installed his brother, Andrew Cochrane-Johnstone, as an agent at the Tortola court. Cochrane-Johnstone had been decommissioned as a naval officer after a court-martial for slave running in the West Indies. Like Lisle, he was now in a position to plunder under cover of law. When the Danish islands were captured by English forces in 1807, Cochrane-Johnstone managed to convince Tortola court officials—it is easy to imagine how he convinced them—to condemn the assets guaranteeing royal Danish and Dutch loans to him as agent for the captors rather than to the crown. Cochrane-Johnstone pocketed substantial sums paid by planters on the Danish islands "in liquidation of the interest due" and fled to London.[100] According to a whistle-blowing former Tortola prize agent, Alexander Mackenrot, the naval commander Alexander Cochrane had also made a small fortune taking advantage of the court's authority over contraband and captives. He had seized 200 slaves from ships captured and condemned as legal prize in the Tortola vice-admiralty court in 1807 and 1808. Instead of being freed, the slaves were transported "to be unlawfully forced to work as field negroes, on [his] sugar plantation" in Trinidad.[101] The behavior fit Judge James Robertson's pattern of "vending justice."[102] Rounding out the Cochrane family's reputation for corruption, Alexander Cochrane's son, Captain John Thomas Cochrane, was accused of operating a vast smuggling scheme "with the culpable connivance of the Custom-house officers, Judge, King's Proctor, and King's Agent in the Island of Tortola."[103] Captain Cochrane regularly took condemned ships and sold them and their cargo

[100] Mackenrot, *Secret Memoirs of the Honorable Andrew Cochrane Johnstone*, 30. The judgment was reversed on appeal and gained public attention only after Cochrane-Johnstone was implicated, with his more famous nephew Lord Cochrane, in the stock exchange scandal of 1814. (33–34).
[101] *Niles' Weekly Register* September 16, 1815, 45, 48. The slaves were reported to be from the brig *Amadea* and the schooner *Nancy*.
[102] Mackenrot, *Secret Memoirs of the Honorable Andrew Cochrane Johnstone*, 27.
[103] Mackenrot, *Secret Memoirs of the Honorable Andrew Cochrane Johnstone*, 109–10.

back to claimants, then used naval vessels to escort them to enemy ports where he presumably participated in the profits.[104]

If such episodes seemed to reflect a broader pattern of inter-island trafficking under the gaze of customs officials and the vice-admiralty court, the 1807 Abolition Act outlawing slave trading by British subjects created a new source of profits from intercepting slave ships. As a result of the Act, once slave ships were condemned at Tortola, the captors received a bounty for each slave "freed"; captives were not then released but instead men and women could be awarded to labor in fourteen-year apprenticeships, and men might be impressed to serve as mariners on British naval vessels.[105] Such assignments were supposed to be made by the vice admiralty court. A commission of inquiry in 1823 sent to account for the fate of prize slaves captured in the waters around Tortola found that most intercepted captives had disappeared without a trace.[106]

Some slaves on board ships that were seized and brought to court were probably pressed into service on captor ships; many were sold. Puerto Rico was a nearby market, and the Danish prohibition on slave trading did not stop agents based in St. Thomas and St. John from securing slaves for resale. An American ship, the *Africa*, was seized near Tortola in 1808; commissioners investigating the Tortola court noted that the 236 slaves on board "were not taken under the

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[104] Mackenrot, *Secret Memoirs of the Honorable Andrew Cochrane Johnstone*, 108–10. See also Alan Karras, *Smuggling: Contraband and Corruption in World History* (2010), especially chapter 3.

[105] Mandy Banton, The "Taint of Slavery": The Colonial Office and the Regulation of Free Labour," in Keith Hamilston and Patrick Salmon, eds., *Slavery, Diplomacy and Empire: Britain and the Suppression of the Slave Trade, 1807–1975* (Sussex Academic Press, 2009), 144; Letter from Commissioner Moody to Secretary of State, August 17, 1823, TNA, CO 318/82, f. 4.

[106] When an English naval vessel captured the English schooner *Edward*, for example, on a voyage from Martinique to New Orleans, it found the slaves Charles, John Charles, Henry Valton, and George Valton aboard. The vice-admiralty court in Tortola condemned the *Edward* and its cargo, but there was no record of what happened to the slaves. When the brig *Miriam* was condemned in November 1811, the eleven slaves on board the vessel disappeared, so that when the judgment was reversed on appeal, in 1813, there was no record of their whereabouts. TNA, CO 318/82, f. 1-4.

protection of His Majesty, but were . . . sold as Slaves in the neighbouring foreign Colonies."[107] Four Africans between the ages of eight and thirteen were aboard another vessel, the *Mouche*, when it sailed from St. Thomas to Jost Van Dykes, where the captives were sold and transferred onto another vessel and then onto a small sloop.[108] The practice was familiar according to an investigator, who noted that slaves on board captured vessels were typically "brought to such retired Small Islands as Jos Van Dykes [sic], and the Sound at Spanish Town, to which the Merchants from the Danish Island of St. Thomas resorted, and bought the Slaves which were afterwards sold in the foreign islands." The system, the report continued, "was practiced quite openly, as there was neither military nor naval force in the Government of the Virgin Islands to prevent them."[109]

Corruption in the Tortola court is difficult to trace—it was not the sort of practice that participants memorialized. It is possible to speculate that Musgrave, who arrived after the worst abuses of the Cochranes were alleged to have taken place, was a less agreeable ally in the smuggling operation. It is also possible that he was a full participant whose share was simply coveted by others. We do know that Hodge's execution and Musgrave's exile led to the advance of their enemies to positions of control over the vice-admiralty court, and to personal profit. The career of Abraham Mendes Belisario, the author of the Hodge trial report published in London and Connecticut, is instructive. A Sephardic Jewish trader, Belisario had lost a fortune as a sugar trader in Jamaica before returning to London.[110] There, like many men who had no means but knew something of the West Indies, he secured a position to oversee a sugar property in Tortola.

[107] TNA, CO 318/82, f. 5v.
[108] TNA, CO 318/82, f. 6.
[109] TNA, CO 318/82, f. 6.
[110] Tim Barringer, Gillian Forrester, and Barbara Martinez-Ruiz, eds, *Art and Emancipation in Jamaica: Isaac Mendes Belisario and His Worlds* (New Haven and London: Yale University Press, 2007), 401.

He was attempting to resurrect his fortune as the Hodge case unfolded.[111] Along with the trial report, he sent commentary to officials in London on the problems of rule in the islands, suggesting that he be appointed to a position as a government observer in the West Indies.[112] But his fortune was remade in a different way after the trial; he became marshal to the Tortola vice-admiralty Court. Returns from August 1814 show that Belisario assigned 214 slaves taken from the Spanish ship the *Manuela* as mariners or apprentices, including twenty-four males assigned in "service" to him.[113] Belisario's fortune was probably small compared to the profits reaped by others, including Hodge's principal foes, George Martin and William Cox Robinson, who were found by a later commission of inquiry to have been among the most notable beneficiaries of a Tortola system for assigning prize slaves that allowed "the *principal planters of the island*" to take their pick of the healthiest liberated Africans.[114]

How should we assess the significance of this local background to the charges against Hodge? Criminal and prize courts operated in separate jurisdictions – indeed, that separation would later vex abolitionists when mixed commissions adjudicating slave ship captures were created without the ability to try slave traders for crimes.[115] We are not looking at a connection in black letter law. Instead, the local legal politics of the Hodge case shows that the preoccupation with the appointment, authority, and loyalties of magistrates and judges seeped across jurisdictions. The factional feuding over appointments to the vice-admiralty court

[111] Belisario might have been keeping quiet about being a Jew. On Jamaica, Jews were still not permitted on juries, but Belisario served on the grand jury that indicted Hodge. See Holly Snyder, "Customs of an Unruly Race: The Political Context of Jamaican Jewry, 1670–1831," in Barringer, *Art and Emancipation in Jamaica*, 151, 151–62.
[112] Letter from A.M. Belisario to Earl of Liverpool, 3 November 1811, TNA, CO 152.100.
[113] *Captured Negroes in the West Indian Islands, Apprenticed, Etc., 1811–1819, in 64* British Parliamentary Papers: Slave Trade 92–96 (1969). Belisario prospered enough in this role to send his son, Isaac Belisario, to study to be a painter in London; Isaac returned to the West Indies and painted a series of portraits of freed blacks in Jamaica. Barringer, *Art and Emancipation in Jamaica*, 396.
[114] *Captured Negroes at Tortola, No. 4,* in *26 Papers Relating to the Slave Trade, Session 29 JANUARY–28 JULY 1828* 125, 129 (1828).
[115] Benton, "Abolition and Imperial Law, 1780–1820."

intensified as such roles became more lucrative, drawing in many of the same planters, fortune-seekers, and sojourning lawyers whose fortunes could be mightily affected by the operation of other local courts.[116] More broadly, contemporaries clearly understood that jockeying over middling legal appointments of various kinds related to debates about regulating slavery and ending the slave trade. For abolitionists, imperial officials, and some reforming colonial elites, the goal of creating an effective ban on the slave trade and the project of reining in slave owners' prerogatives depended for their success on the same condition: enhanced imperial control. Anyone could perform this analogy: slave owners (including traders) held property rights that implied judicial authority and were therefore akin to magistrates; like those officials, masters operated in an imperial regulatory field and could be instructed about and exposed to the dangers of overreaching and exercising arbitrary authority over seemingly insular jurisdictions.

We glimpse the centrality of the common cause of reforming the colonial magistracy in reports by both Elliot and Belisario about the Huggins and Hodge cases. Elliot cited the replacement of the magistrates in the Huggins case as one of the signal accomplishments of his governorship. Webs of influence had always guided judicial appointments in the colonies, he noted, but it was time to create a new system for appointing magistrates that would amount to a reorganization of colonial governance.[117] Belisario's report on the Hodge trial echoed the view that corrupt magistrates were at the heart of the problem of order in the West Indies.[118] In his opening remarks in the trial, the solicitor general had placed the issue of magistrates' power at the center of the case, opposing the idea of a colonial order with a strong magistracy to a state of anarchy in which powerful men would define their own legal prerogatives:

[116] Well before Hodge's trial, planters on the island had feared the consequences of developing robust courts that could be controlled by rivals or accessed by creditors. See Suckling, *An historical account of the Virgin Islands,* 17.
[117] Letter from Governor Elliot to the Secretary of State, 15 May, 1811, TNA, CO 152/97.
[118] Belisario, *Report of the Trial of Arthur Hodge*, 88.

> It is to be hoped [the magistrates] will meet every aid and encouragement in the righteous discharge of their duty, and that their sentences will be respected, and carried into proper effect; otherwise we need hold no Courts, but becoming in a state of insubordination, leave every man to assert his own rights, and maintain what he may call, his own privileges in the best way he can.[119]

Here the language of "right" appears in the service of an image of chaos in which "every man" is left "to assert his own rights, and . . . his own privileges." Hodge's crimes stood for more than barbarous cruelty; they represented an abuse of duties and rights whose measured exercise was required for good order and good governance.

The goal of asserting imperial authority over the judicial powers of the planter connected easily to constitutional issues. Elliot summarized the wider significance of the Hodge case in describing its relevance to imperial order: "The day perhaps will come when a British Legislature may think it expedient to define with precision, and with Christian benevolence *the extent of the rights which one human being can exercise over his fellow creature.*"[120] For Elliot, as well as for abolitionists in London, greater regulation of slave owners was consistent with efforts to extend the protections of English law to subordinate colonial subjects, and both designs figured as benefits of legislated order in the service of the common good.[121]

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[119] Belisario, *Report of the Trial of Arthur Hodge*, 36.

[120] Letter from Governor Elliot to the Earl of Liverpool, 18 May, 1811, NLS MS 13055, 122–122v (emphasis added).

[121] Elliot devoted more attention to the legal position of freed blacks—in particular the question of their service on West Indian militias—than he did to the specific legal capacities of slaves. Elliot wrote that "the Free Colored People . . . should be relieved from a state of disability and privation entirely contrary to the spirit of the British Constitution." NLS MS 13058, 206.

Experiments of law

Prominent abolitionists certainly saw this connection clearly. James Stephen had been a lawyer in the vice admiralty court at St. Christopher's before moving to London, where he continued to make his living working on admiralty cases. Stephen's 1806 tract, *War in Disguise*, complained about the epidemic of "neutral disguise" that was allowing ships to avoid capture by sailing under the flags of neutral nations.[122] Stephen noted that the long war with France had allowed merchants to "become perfectly well acquainted with the nature of this ordeal of the prize courts," so that they knew to coach witnesses about the nationality of ships, their cargo, and destinations.[123] Prize courts encouraged "a tribe of subsidiary impostures,"[124] a climate in which "every neutralizer . . . is become almost as expert in the rules of our Admiralty, in regard to evidence, as a proctor at Doctors' Commons."[125] Stephen barely mentioned the slave trade in the long tract, but he certainly understood that tighter regulation of neutral shipping would benefit the abolitionist cause.[126] He noted that vessels sailing under neutral flags were actively serving slave markets in Cuba and the French sugar islands, and that there was little scope for stopping even traders who, like the Americans, were "violating the law of their own country, as the law of war."[127]

At the time when news reached London of the Huggins and Hodge cases, Stephen was leading a push to require slave registries across the West Indies. The key purpose of the registries, according to Stephen, was to prevent the illegal trade of slaves by allowing officials to take note of any unusual increase in plantation slave populations. The impulse to control

[122] Stephen, *War in Disguise; or, the Frauds of Neutral Flags*, 67.
[123] Stephen, *War in Disguise; or, the Frauds of Neutral Flags*, 182.
[124] Stephen, *War in Disguise; or, the Frauds of Neutral Flags*, 99.
[125] Stephen, *War in Disguise; or, the Frauds of Neutral Flags*, 107.
[126] Historians of the period have often taken note of the tract without drawing direct connections to abolition. An exception is Roger Anstey, *The Atlantic Slave Trade and British Abolition, 1760–1810*, (Atlantic Highlands, N.J.: Humanities Press, 1975), 350-356.
[127] Stephen, *War in Disguise; or, the Frauds of Neutral Flags*, 75.

contraband trade in slaves was an opening, Stephen further argued, to assert Parliament's oversight of the "strange and unprecedented relation between master and slave" that had until now depended "on a kind of . . . custom" in the colonies rather than English common law.[128] Colonial legislation like the Leeward Islands Ameliorating Act amounted to "mock laws" and did not interfere with the prerogatives of slave owners to punish slaves.[129] Registries would form a wedge opening to greater oversight over the private jurisdiction of slave holders at the same time that it would establish a subordinate relation of local colonial governments to Parliament.[130] The objective ultimately was to challenge the constitutional order of independent legislatures in the colonies desirous of fending off parliamentary control.

As we have seen in the commentary on the Huggins and Hodge cases being written in the West Indies, such arguments were also emerging from direct colonial sources. Both Hugh Elliot and the favor- and fortune-seeking Abraham Belisario recommended greater uniformity in West Indies legislation regarding the treatment of slaves. Both mentioned adopting the limit of thirty-nine lashes proscribed in Jamaican legislation, a standard that Elliot later championed with success in Antigua. Calls for uniformity focused attention on the lack of imperial authority over local assemblies as well as the ineffectiveness of local officials. Belisario suggested that by having a slave registry in Tortola, officials would have uncovered Hodge's reign of terror sooner by noticing the precipitous decline of slaves on the estate—reported at trial to have gone from more than 130 to fewer than 40 in the space of eight years.[131]

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[128] James Stephen, *The Crisis of the Sugar Colonies; or, An Enquiry into the Objects of Probable Effects of the French Expedition to the West Indies; and Their Connection With the Colonial Interests Of The British Empire* 137 n.† (London: J. Hatchard, 1802).
[129] James Stephen, *Reasons for Establishing a Registry of Slaves in the British Colonies: Being a Report of a Committee of the African Institution* (London, Ellerton & Henderson 1815), 36–38.
[130] Stephen, *Reasons for Establishing a Registry of Slaves in the British Colonies,* 6.
[131] Letter from Governor Elliot to the Secretary of State, 15 May, 1811, TNA, CO 152/97.

The push for institutional and legal reforms extended to the wider West Indies as well as to other, very different colonial sites in the same period. Though Stephen's legislation to establish slave registries across the West Indies failed, reformers got a chance to try a novel institutional arrangement in Trinidad.[132] A year after the Hodge trial, an Order in Council in March 1812, created a slave registry in Trinidad. Oversight of the master–slave relation by magistrates formed a centerpiece of a system in which English practices were grafted onto Spanish institutions. A new magisterial office, the Protector of Slaves, refashioned an office that had existed in Spanish Trinidad but removed its association by analogy with ecclesiastical jurisdictions charged with protecting classes of legally disadvantaged persons.[133] The institutional innovation put an official imprimatur on the principle of remaking colonial law by creating special powers for a new class of imperial legal agents.

Trinidad was openly labeled as an "experiment." This language would be replicated in other reform programs in the same period. It was a characterization that in part reflected the vision of an engineered Scottish agrarianism that was pervading imperial policy making.[134] Historians have noted the widespread influence of this vision without analyzing closely the way resulting schemes might have carried the imprint of not just Scottish moral philosophy but also Scottish law.[135] Like that of other projects given the same label, the experimental dimension of

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[132] One Trinidad as a site of legal experimentation under British rule, see Epstein, *Scandal of Colonial Rule*, ch. 3.
[133] Mary Turner, "The British Caribbean, 1823-1838: the Transition from Slave to Free Legal Status," in Douglas hay and Paul Craven eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1652-1955* (Chapel Hill and London: UNC, 2004), 306. For an overview of the Spanish legal basis for the office and the 1824 Code, see Claudius Fergus, "The 'Siete Partidas': A Framework for Philanthropy and Coercion during the Amelioration Experiment in Trinidad, 1823-34," *Caribbean Studies* 36.1 (2008): 85-90; Lauren Benton and Lisa Ford, "Magistrates in Empire: Convicts, Slaves, and the Remaking of the Plural Legal Order in the British Empire," in Lauren Benton and Richard Roberts, eds., *Legal Pluralism and Empires* (NYU Press, forthcoming).
[134] For an analysis of the connections between Scottish agrarian concerns and British imperial policy through the profile of a William Fullarton, who spent time in India and the West Indies, see Epstein, *Scandal,* ch. 2.
[135] Some have suggested that law was the only field of imperial endeavor that escaped Scottish influence; John M. MacKenzie and T. M. Devine, "Introduction," in MacKenzie and Devine, eds., *Scotland and the British Empire* (Oxford University Press, 2011), 21. A great deal, in contrast, has been written on Scottish influence on imperial policy. See Martha McLaren, *British India and British Scotland, 1780–1830: Career-Building, Empire-Building,*

the Trinidad regime was explicitly legal. Trinidad was one of a handful of newly acquired colonies in which British officials were self-consciously designing colonial legal systems that would layer British authority and selected practices on pre-existing civil law structures. Such hybrid systems were common variants of the jurisdictional pluralism and complexity that had routinely characterized imperial law. But the conjuncture was distinctive, too. Britain had acquired a handful of prominent colonial territories with more nearly hierarchical court structures and various classes of special magistrates at a time when reformers and officials (including law-trained Scots and French imitators) were advancing visions of a bureaucratically more structured and less locally managed colonial order.

Moving beyond the West Indies, we can glimpse the outline of structurally similar "experiments" in settings with a very different relation to issues of labor, race, trade, and crime. The legal capacities of middling officials were central to such reform projects, and they were developing in the same years, when war continued to dominate domestic politics and European diplomacy. In Malta, British policy left most Maltese law and forums in place. In taking on roles reserved for the Knights of St. John and the Grand Master, the British Civil Commissioner assumed sweeping executive powers, including supreme judicial authority. British intervention in local courts and cases was uneven and tended to affect cases connected with criminal courts and jurisdictions such as prize courts busied by the war. While formally favoring the independence of local judges, British officials showed restraint but also a willingness to dictate the outcomes of some criminal proceedings and punishments, as when anti-semitic violence

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and a Scottish School of Thought on Indian Governance (Akron, OH: University of Akron Press, 2001). On Scots and West Indies imperial politics, see Douglas J. Hamilton, *Scotland, the Caribbean and the Atlantic World, 1750–1820* (Manchester: Manchester University Press, 2005), ch. 7. And on Scotland and abolition, see Iain Whyte, *Scotland and the Abolition of Black Slavery, 1756-1838* (Edinburgh University Press, 2006).

threatened local order in 1805 and the Civil Commissioner swooped in to impose sentencing.[136] The 1812 Commission of Inquiry pushed back against Maltese arguments for maintaining legislative autonomy and led to Malta's becoming a crown colony in 1815. The commission recommended a combination of existing civil law procedures of the island with a layering of British influences and controls. The "hybrid," or plural legal order that resulted featured strong British legal influences in criminal and maritime law—two very different jurisdictions paired here again—combined with "the existing *bricolage*. . . of continental traditions."[137]

In a case that would seem to stand at some distance from the legal challenges of either the slave societies of the West Indies or the militarized geopolitics of the Mediterranean, the experiment in reforms to the revenue system in territories coming under the control of the East India Company belong to this family of imperial consolidation through legal change. The key figure in the reform movement of this period, Thomas Munro, had served as a military officer and had become immersed in the details of revenue collection during his years as Principal Collector in the Ceded Districts after the fall of Tipu Sultan.[138] Munro insisted that the conditions of the Ceded Districts demanded a system of administration very different from the one that the British had devised and implemented, at great human cost, in Bengal. The resulting ryotwari system has been described by historians mainly as an alternative revenue system. Yet it is worth noting that both debates about its structure in London and the resulting *Fifth Report*,

[136] Barry Hough and Howard Davis, *Coleridge's Laws: A Study of Coleridge in Malta* (Cambridge, UK: OpenBook Publishers, 2010), 210-218.
[137] Seán Patrick Donlan ET AL, "'A Happy Union'? Malta's Legal Hybridity," *Tulane European & Civil Law Form* 27, 2012, 181.
[138] Timothy Holmes Beaglehole, *Thomas Munro and the Development of Administrative Policy in Madras, 1792–1818* (Cambridge: Cambridge University Press, 2010), 55; Burton Stein, *Thomas Munro: The Origins of the Colonial State and His Vision of Empire* (Oxford: Oxford University Press, 1990), 176.

issued in July 1812, described revenue changes in terms of a plan for legal administration.[139] Madras, like Trinidad, was first and foremost a site of legal experiment.

The proposed new system encompassed two controversial reforms which, for Munro and his allies, were closely related. First, by merging judicial and police powers with revenue collection and concentrating these powers in the hands of collectors, the new order reflected the perceived need for stronger executive oversight. Second, the system was predicated on the expanding role of Indians in legal administration and devolving jurisdiction over a wide range of disputes into the hands of village courts. Munro and others pointed out that the system put in place by Cornwallis in Bengal had resulted in a huge backlog of cases in the *zillah* courts; the ryotwari system would "throw as much as possible of the administration of justice into the hands of intelligent natives instead of confining it to European Judges who can seldom be qualified to discharge the duty."[140] Such language would seem to be at odds with the strategy of strengthening the magistracy, but the reverse was true. At the heart of the reform was the fortification of revenue collection by the addition of magistracy powers, a differently designed but familiar move to reposition local authorities as direct representatives of imperial executive power.

We should not exaggerate the similarities of legal politics in newly acquired territories under East India Company rule, planter colonies with legislative assemblies, and crown colonies without local legislative bodies. But bringing the parallels into plain sight helps us to grasp the significance of replicating legal reform projects. To the experiments of Trinidad, Malta, and Madras, one can add others, including those of the Cape Colony, New South Wales, and

[139] Stein, *Thomas Munro*, 87–88; House of Commons, *The Fifth Report from the Select Committee on the Affairs of the East India Company,* Vol. 1 (London: J. Higginbotham, 1866 [1812]).
[140] Quoted in Beaglehole, *Thomas Munro*, 99.

Mauritius in the same period.[141] Reforms across these sites focused on the altered responsibilities of middling officials, including the magistracy, while a diverse set of observers sharpened this focus by complaining about magistrates who could award harsh punishments without worrying about reversals on appeal. Broadly circulating anxieties about petty despotism affected local legal politics in varied ways. In Madras, such concerns pervaded both British complaints about the Mughal office of the *kazi*, or local judge, and Indian warnings about the dangers of the construction of a British system of arbitrary rule. In this context, Indian "civil rights" were defined not in the abstract but in terms of participation in key judicial roles, in particular the ability to serve on juries.[142] Legal reforms undergirded the push for a stronger imperial executive – as reflected in the 1813 India charter and the efforts by the Board of Control to assert permanent control over the Company's Board of Directors – while also imagining forms of political inclusion in which capacities and rights would remain unevenly distributed. The three dimensions of legal politics of the Madras experiment—concern about the uneven extension of constitutional protections, efforts to fortify middling legal offices, and movements to recast the relationship of colonial to imperial power—emerged in different constellations across other sites of colonial legal reform.

The Madras case also reminds us to see that ties across these imperial arenas were frequently less abstract. After Munro was appointed Special Judicial Commissioner in 1814 to implement the new system in Madras, he learned that he would travel to India with the newly appointed Governor of Madras, Hugh Elliot. Just as he had hoped, Elliot had been recalled from the governorship of the Leeward Islands the year before to be installed in a more prestigious

[141] On the Cape Colony, see Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*, ch. 5; on the magistracy in New South Wales, see Lauren Benton and Lisa Ford, "Magistrates in Empire: Convicts, Slaves, and the Remaking of Legal Pluralism in the British Empire." Benton and Ross, *Legal Pluralism and Empire*; on Mauritius, Benton, "Abolition and Imperial Law."
[142] Bayly, *Recovering Liberties,* ch. 2.

post.[143] We cannot know to what extent Eliot built his support for Munro's reforms on the basis of an analogy to legal politics in the West Indies, or his specific experience in the Hodge case. We know that in 1816 in Madras he performed in the style of his West Indian days in finding opportunities to assert imperial authority, this time by enacting regulations against the wishes of his council and in the face of opposition from the High Court of Madras.[144] Every colonial legal tangle was unique, but the knots were being untied by some of the same hands, and with insistent tugging on the same strings.

The good of the empire

Visions of legal reform tilted against the specter of disorder. In the West Indies and London, groups advocating limits on the punishment of slaves were promoting a reformed imperial legal order with clear sovereign oversight of the petty jurisdiction of slaveholders. The control of the private jurisdiction of slaveholders could not be achieved without recognizing their authority as essentially similar to that of magistrates and, then, seeking to redefine magistrates as wielding power over planters-as-magistrates. Abolitionists recognized that the terms and conditions of subordination would be altered by adjusting the legal prerogatives of those with the power to judge and punish. One strategy was to articulate the jurisdiction and duties of magistrates more clearly, and to hold those officials accountable when they failed to keep metropolitan notions of the king's peace. Another, articulated by Stephen in his attack on prize courts and his advocacy of measures to control contraband, combined efforts to assert imperial authority over adjacent jurisdictions and advocacy of measures to redefine local offices as arms of metropolitan control.

[143] Elliot was well-connected; he was the younger brother of Lord Minto, then Governor General of India.
[144] Stein, *Thomas Munro*, 182–83.

A third strategy responded to the legal variety of colonies that accrued to Britain after half a century of global conflict, in particular those colonies that came into the empire as a result of war or conquest garnered special attention. Here the focus on the magistracy resulted in part from the pattern of legal layering of British law on pre-existing jurisdictions. The prominence of magistrates as imperial agents mirrored the status of crown-appointed legal offices, as in the designation of "special magistrates" in Trinidad mimicking the Spanish office of the Protector of the Slaves. This move met with recognition from law-trained reformers in Britain who were familiar with movements to reshape the magistracy at home.[145] It was also deeply influenced by civil law, imprinted both through the form and content of state theories and by Scottish officials building on their own sensibilities about civil-common law legal hybridity.[146]

The experiments featured, too, the jurisdictionally uneven contours of British imperial law. Officials limited in their ability to control or even guide local law found openings to push for specific interventions and outcomes through the criminal law, as occurred in the Leeward Islands with the Hodge case and in Malta with interventions to criminalize attacks on Jews.[147] Wartime made it possible to regard prize law as a robust site of imperial influence, even as local conditions and incentives for corruption added vice-admiralty courts to the list of forums in need of metropolitan investigation and reform. James Stephen, writing from the imperial center, sought to use such jurisdictional complexities in empire to political advantage. Stephen drew

[145] J.M. Beattie, *Policing and Punishment in London*, *1660-1750: Urban Crime and the Limits of Terror* (Oxford: Oxford University Press, 2001); Norma Landau, *The Justices of the Peace*: *1679-1760* (Berkeley; University of California Press, 1984) Bayly noted, too, the "law reform movement's common origins with other contemporary causes such as the abolition of the slave trade and foreign missions." Bayly, *Imperial Meridian,* 118.

[146] See especially Daniel Lee, "Hobbes and the Civil Law: The Use of Roman Law in Hobbes's Civil Science," in David Dyzenhaus and Thomas Poole, eds., *Hobbes and the Law* (Cambridge, UK; Cambridge Press, 2012); and John Finlay, *The Community of the College of Justice: Edinburgh and the Court of Session, 1687-1808* (Edinburgh, UK: Edinburgh University Press, Forthcoming)

[147] Officials also sought to entwine criminal law with imperial interests in responding to the perceived need to discipline unruly British subjects in empire. See, eg, Elizabeth Kolsky, *Colonial justice in British India* (Cambridge, UK: Cambridge University Press, 2010).

wavy but bright lines connecting prize law to the criminalization of cruelty to slaves, even if he was only vaguely aware of the sorts of direct links through factional politics merging the interests of colonial elites across these jurisdictions in individual colonies like Tortola.

One benefit of observing the confluence of discourses about rights and order, struggles over the authority of magistrates, and a language and practice of legal experiment in the early decades of the nineteenth century is to revise the chronology of imperial and global political change. In recent years, a useful historiographic trend has been the erosion of an artificial divide between studies of "state building" and histories of reconstituting empires.[148] But a tendency persists of separating British history into periods of the rise and formation of the "fiscal-military state" and of the bureaucratization of state authority beginning in the 1830s – or, alternatively, with the end of war in 1815. [149] Such dividing lines denote "an *English* story," one in which problems and experiences of governance in the empire appear as muffled background to British (and European) debates about the state, even as changes in state theory are re-framed as responsive to practices of governance.[150] Imperial legal histories complete and complicate this narrative. Messy experiments in legal reform did not wait for the end of the global crisis but

[148] A helpful short-hand aid is offered by Burbank and Cooper, who suggest the label of "empire-states" for the dominant polities of the period. Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton, NJ: Princeton University Press, 2010), 8, 179, 235, 245

[149] Bayly noted decades ago the "significant growth of the power and aims of the British imperial state" in the first decades of the nineteenth century, but the phenomenon, and especially its legal dimensions, has still received insufficient attention. (C.A. Bayly, *Imperial Meridian: The British Empire and the World, 1780-1830.* (London: Longman Group United Kingdom, 1989, 115). Standard periodization has also been slow to change. Note the end date in the title of J. Brewer's *The Sinews of Power: War, Money, and the English State, 1688-1783* (Cambridge: Harvard University Press, 1990). Even Bayly, who resists this tendency to isolate the effects of war from changes in governance, characterizes the period from 1780 to 1820 as one of "world crisis" in *Imperial Meridian*, and elsewhere reverts to 1815 as a dividing line between crisis and a chaotic period of state dislocation and institutional change (see C.A. Bayly, *The Birth of the Modern World: 1780-1914*, Wiley-Blackwell, 2003). The period between 1783 and the 1830s gets short shift in Janet McLean's *Searching for the State in British Legal Thought: Competing Conceptions of the Public Sphere* (Cambridge: Cambridge University Press, 2012), even though McLean aims specifically to debunk the idea of a sharp change in understandings of the British state from Blackstonian representation of the crown as embodied sovereign authority to a Benthamite view of the state defined purely by and through the exercise of power (19).

[150] McLean, *Searching for the State in British Legal Thought*, 21. In the same paragraph, McLean observes that "colonial experiments informed the English debate" about the state, but she does not focus on their influence.

began in the context of global war. Historians have already noted this timing with regard to reforms in Britain, including attempts to recast the magistracy in Ireland and England in the long eighteenth century. Anxieties about colonial patronage, prize adjudication, the formation of militias, the role of military and martial law, the punishment of rebels and prisoners – these and other salient themes of wartime colonial administration crystallized around publically charged struggles over the petty despotism of masters, the role of magistrates in the protection (though not the equal protection) of imperial subjects, the scope of direct imperial oversight of colonial society, and effective competition with more hierarchically organized rival empires.

A second benefit of recovering contemporaries' specifically *legal* lens in viewing such conflicts is to reveal that the results of reform extended beyond institutional change, and even beyond imperial constitutional objectives, to assert the existence of a capacious civil community spanning the empire and encompassing even the most legally disadvantaged subjects. The imperial constitution has served historians (and historical actors) well as a way of noting the wider implications of controversial colonial cases.[151] Recognition of the fluidity of constitutional discourse, meanwhile, has cautioned against attempting to define imperial legal controversies too narrowly – that is, by searching for their doctrinal logic rather than understanding them as dimensions of a wide-ranging legal politics.[152] It is useful to observe, too, that insistently law-focused discourse about colonial order did not contradict or merely reflect moral and humanitarian global projects. Law framed the imagination of an imperial civil society

[151] For example, Epstein, *Scandal of Colonial Rule*, 272-75; Daniel J. Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664–1830* (Chapel Hill, N.C., 2005), 194-202.
[152] On "legal politics" see Lauren Benton, "Introduction: Forum on Law and Empire in Global Perspective," *The American Historical Review* 117:4 (2012): 1092-1100. And on the fluidity of imperial constitutional discourse, Hulsebosch, *Constituting Empires.*

in which references to natural law or natural rights signaled inclusiveness at the same time that positive law commanded a layered rights regime.[153]

This perspective prevents us from viewing moral positions about governance as formed outside the law and then acting on legal institutions of state and empire. Threats to order were not perceived as arising outside the law; even bandits, pirates, and rebellious slaves lived inside.[154] Opportunities for the exercise of arbitrary power also emerged from within the law and produced dangers that were again defined in legal terms. Reforms moved haltingly in part because they involved strengthening middling judicial offices through opportunistic adjustments in a jurisdictionally complex colonial order. In this context, claims about natural rights and debates about rights-as-prerogatives developed side by side, and by design. Political actors artfully and insistently avoided choosing between liberal and authoritarian rights regimes in this formative period of the empire of law. Historians should also escape this false choice.

[153] This formula could be said to reflect a Hobbesian understanding of the relation between natural law and civil peace. See Martin Loughlin, "The Political Jurisprudence of Thomas Hobbes," in Dyzenhaus and Poole, eds., *Hobbes and the Law*, 16-19.
[154] See Benton, *A Search for Sovereignty,* ch. 3, 6.