

# *Partus sequitur ventrem*: Law, Race, and Reproduction in Colonial Slavery

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Whereas some doubts have arisen whether children got by any Englishman upon a negro woman shall be slave or free, Be it therefore enacted and declared by this present grand assembly, that all children borne in this country shall be held bond or free only according to the condition of the mother—*Partus Sequitur Ventrem*. And that if any Christian shall commit fornication with a negro man or woman, hee or shee soe offending shall pay double the fines imposed by the former act.  
—Laws of Virginia, 1662 Act XII; Latin added by William Henig, *The Statutes at Large*, 1819

1

Atlantic slavery rested upon a notion of heritability. It thus relied on a reproductive logic that was inseparable from the explanatory power of race. As a result, women and their experiences of enslavement shed critical light on what it meant to be enslaved or free in the early modern Atlantic world. Regardless of the rate of reproduction among the enslaved—which remained low in all early American slave societies—the ideological solidity of those slave societies needed reproducing women. Building a system of racial slavery on the notion of heritability did not require the presence of natural population growth among the enslaved, but it did require a clear understanding that enslaved women gave birth to enslaved children. Resituating heritability was key in the practice of an enslavement that systematically alienated the enslaved from their kin and their lineage. Enslaved people had to be understood as dispossessed, outside of the normal networks of family and community, to justify the practice of mass enslavement.

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As this essay will argue, enslaved women's maternal possibilities became a crucial vehicle by which racial meaning was concretized—and it did so long before legislators indexed such possibilities into law. Further, by centering the women whose reproductive lives were at issue, I argue that enslaved people best understood the theory and praxis of racial slavery. The violence done when economic structures supersede kinship, and when enslaveability displaces maternity, is longstanding. There are moments when recognition of that agony of dispossession becomes clear.<sup>1</sup> So rather than an inquiry into legal history, here I argue that in the sixteenth- and seventeenth-century English Atlantic world, women navigated the dawning recognition that their reproductive lives would be the evidence of racialized dispossession. Enslaved mothers were enmeshed in the foundational metalanguages of early modern Atlantic ideas of slavery, freedom, and racial colonialism.<sup>2</sup>

From the first founding of English settlements in the Caribbean to the slow unfolding of racial slavery in Virginia, early modern slaveowners presumed that enslaved women's reproductive labor accompanied their manual labor in tobacco and sugar fields. Mobilizing the language of increase, as I have shown in my earlier work, was part and parcel of how nascent slaveowners shaped their newly racialized present and future.<sup>3</sup> I return here to questions of race and maternity to interrogate the importance of the Virginia slave code in crafting racial inheritance through enslaved women throughout the Atlantic world. The connection between the English Caribbean and the Southern colonies of North America is starkly illustrated in the symmetry of Barbados's and Virginia's seventeenth-century slave codes. Built on the foundations of English legal traditions concerning the regulation of vagabonds and so-called masterless men, the 1661 Barbados slave code was the first comprehensive law passed in the English colonies to regulate the enslaved population, but it did so in the absence of a legal definition of who—what category of person—was enslaved.<sup>4</sup> Virginia was the first colony to regulate maternal descent and did so in a way that, because there is no such discussion in the Barbados codes, appears to have no obvious legal precedent in either English law or colonial slave codes.<sup>5</sup> Laws concerning slavery in the English Atlantic were not transposed from England but were an amalgam of legal borrowing and commonly held assumptions about who would be enslaveable and from whence the legal right to property in persons originated. Legislators in Virginia put into code the assumptions about racial inheritance that prevailed

- 1 We can see this in the etymological roots of the word *freedom*, which, in ancient Sumerian, was *amargi*, a word that sutured freedom from debt to a "return to mother." David Graeber, *Debt: The First Five Thousand Years* (New York: Melville House, 2011), 65.
- 2 Evelyn Brooks Higginbotham, "African-American Women's History and the Metalanguage of Race," *Signs* 17 (Winter 1992): 257.
- 3 See Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004).
- 4 On the rootedness of the slave codes in sixteenth-century English law, see Bradley J. Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," *American Journal of Legal History* 38, no. 1 (1994): 48–50. See also Alan Watson, *Slave Law in the Americas* (Athens: University of Georgia Press, 1989), 64, for a discussion of the role of aspirational local legislation regarding the control of the enslaved.
- 5 See Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge: Cambridge University Press, 2010), chap. 9, esp. 428–75.

throughout the Atlantic, even as those elsewhere simply acted on those assumptions. While the provenance of the *partus* code is important, my interest here is to link that legal history to the quotidian experience of racialized reproduction for enslaved women and, from there, to explore the implication of such experience on how we conceptualize the history of slavery. Well before 1662, both enslaved and free black women grappled immediately with the dangers attendant to racial inheritance.

The Virginia act is both a window onto the reproductive logics of slavery and a crucial fulcrum with which to explore the materiality of the race/reproduction bind for enslaved women.<sup>6</sup> The Virginia colony has long been a productive site for studies of early modern racial formations. Here, the transition to slavery was slow, and free black men and women gained some autonomy and maneuverability over the course of the first fifty years of colonial settlement. An emphasis on the fluidity of early racial thought is crucial to the arsenal for dislodging racist inevitability, and thus it is not surprising to see it play a central role in scholarship in the origins of racial thinking.<sup>7</sup> Indeterminacy and fluidity serve, then, to distinguish Virginia from colonies such as Barbados, where slavery was in full force by the middle of the seventeenth century. There (or elsewhere in the Atlantic world, as slave societies took root from New York to Kingston) the clear articulation of slaveowners' commitment to slaveownership came in the form of slave codes that often failed to regulate or even articulate maternal descent and racial inheritance directly. This leaves scholars to home in on the 1662 codes as simultaneously anomalous and exemplary.

The 1662 Virginia code can be misread as a legal anomaly, a simple and necessary corollary to racial slavery and the logical outgrowth of a labor system rooted in an increasingly inflexible and racialized understanding of heritability. But the question remains, if Atlantic slavery was defined by its heritability, how did women—arguably the vectors of racial inheritance—experience their role as conscripts of enslaveability? Would they see or experience flexibility or indeterminacy in how they inhabited racialized space in the seventeenth century? Centering a gendered history of intimacy clarifies the layered and painful anticipation of racial meaning in Atlantic slavery.<sup>8</sup>

With the passage of the 1662 Act, legislators made the connection between heredity and race explicit.<sup>9</sup> But the ruling did more than simply inscribe notions of heritable descent into law; it actually subverted them. Their legal intervention reassured English slaveowning settlers that, in the matter of enslaved people, status passed down not through the father but through the

6 Alys Weinbaum's framing of the race/reproduction bind is a crucial intervention in the theoretical engagement with the categories of race and reproduction. Alys Eve Weinbaum, *Wayward Reproductions: Genealogies of Race and Nation in Transatlantic Modern Thought* (Durham, NC: Duke University Press, 2004), 5.

7 For most scholars of American slavery, the seventeenth-century Virginia colony has exemplified a preracial period in which "negotiation" and "indeterminacy" prevailed. For example, see Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry*, 1st ed. (Chapel Hill: University of North Carolina Press, 1998), in which Morgan uses both "flexibility" (6) and "fluidity" (10) to characterize seventeenth-century Virginia.

8 Lisa Lowe, *Intimacies of Four Continents* (Durham, NC: Duke University Press, 2015), 6.

9 For a capacious reading of the history of heredity, see Rebecca Anne Goetz's discussion of hereditary heathenism in *The Baptism of Early Virginia: How Christianity Created Race* (Baltimore: Johns Hopkins University Press, 2012), 61–85.

mother: *partus sequitur ventrem*, or, literally, “offspring follows belly.”<sup>10</sup> The nineteenth-century historian William Henig inserted the Latin into the text; the original simply said, in English, that children would be slave or free “according to the condition of the mother.”<sup>11</sup> For Henig, the Latin served to connect English slave law to Roman antecedents and thereby to a legal argument, rooted in eighteenth-century English abolitionist efforts, that it was only through Roman law that English slaveowners claimed the right to children born into slavery “like cattle.”<sup>12</sup> The phrase thus becomes a disavowal for English theorists intent on distancing the nation from the precedent of slaveownership. But the language had more proximal referents. In the case of heritable property, Thomas Aquinas writes, “If a man sows on another’s land, the produce belongs to the owner of the land. Now the woman’s womb in relation to the seed of man is like the land in relation to the sower.”<sup>13</sup> The thirteenth-century Spanish *Siete Partidas* stipulated, “Slaves are considered more as commercial items than as people; hence property rights are acquired in the same way as they are with objects. . . . Thus, he who is born of a slave mother is also a slave, even if his father is free, . . . So the mother’s owner also owns her child, just as the sheep’s owner also owns her lamb.”<sup>14</sup> This is the language that echoes in the 1662 Act, the language that evokes animal husbandry and property rights rooted in maternal descent through the bodies of African women. This is the slippage between the Southern European insistence on connecting slavery to animal husbandry and the discursive rhythms of seventeenth-century English legislators’ commitment to doing the same. Jerome Handler sees causality in the application of this legislative language from animals to humans: “The transference of *partus sequitur ventrem* from domestic animals to humans thus resulted in the characteristic of maternal transmission of slave status.”<sup>15</sup> But this causes me to ask a different question—one organized around the relationship between women’s experience, law, and the unthinking decisions that are the foundations on which hereditary racial slavery rests.

Indeed, the presumption in Southern Europe had long been that Roman law prevailed in regard to the children born of enslaved women and free men.<sup>16</sup> Even so, there were important shifts in this idea that presaged the choice made by the legislators to evoke it in seventeenth-century Virginia. Judicial rulings blocking slaveowners from selling children they’d reputedly fathered with enslaved women in their households began to emerge in the fourteenth century

10 Camilla Cowling, *Conceiving Freedom: Women of Color, Gender, and the Abolition of Slavery in Havana and Rio de Janeiro* (Chapel Hill: University of North Carolina Press, 2013), 53–59.

11 William Henig, *The Statutes at Large: Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the Year 1619*, 13 vols. (Richmond, 1819), 2:170.

12 Jerome S. Handler, “Custom and Law: The Status of Enslaved Africans in Seventeenth-Century Barbados,” *Slavery and Abolition* 37, no. 1 (2016): 8–9. For a discussion of maternal descent and the problematic language of *partus sequitur ventrem*, see Melanie J. Newton, “Returns to a Native Land: Indigeneity and Decolonization in the Anglophone Caribbean,” *Small Axe*, no. 41 (July 2013): 108–22.

13 Thomas Aquinas, *Summa Theologica: Questions on God* (1265–74), www.ccel.org/ccel/aquinas/summa. See also David Brion Davis, *The Problem of Slavery in Western Culture* (New York: Oxford University Press, 1966), 95–97.

14 *Siete Partidas* translated and cited in Cowling, *Conceiving Freedom*, 54n37. See also Ruth Mazo Karras, “Gender and Slavery,” in Seymour Drescher and Stanley L. Engerman, eds., *A Historical Guide to World Slavery* (New York: Oxford University Press, 1998), 216–21.

15 Handler, “Custom and Law: The Status of Enslaved Africans in Seventeenth-Century Barbados,” 8 (emphasis mine).

16 Tomlins, *Freedom Bound*, 455–59, esp. notes 174–76.

alongside other practices designed to assimilate Slavic, Berber, Greek, and Muslim slaves into Europe. In other words, the child did *not* in fact always follow the condition of the mother, particularly, it would seem, if that child was seen as assimilable. In the context of such broader shifts in practices of inheritance and slave labor in Europe, it is even more important to mark the ease with which European settlers turned to property law to bolster racialized barriers to freedom.<sup>17</sup>

The original text evoked a legal precedent rooted in the language of property and livestock rather than in bastardy or other English notions of familial lineage.<sup>18</sup> Bastardy laws would have clarified the status of a child born of a nonmarried couple; but by echoing the language of property, the legislators weighed in on something larger than sexual mores.<sup>19</sup> The bastardy laws would be insufficient as a salve for the Virginia House of Burgesses' concerns: the issue on the table was not simply the matter of heritable kinship but rather the matter of heritable property.

The definitional challenge of hereditary racial slavery was to identify whose child could be enslaved. It was a challenge never fully explained in the English Atlantic; the presumption that the condition of the child followed that of the mother was mostly enacted without rationalization. Melanie Newton has argued that "slaveowners' refusal—or failure—to explain the adoption of matrilineality in determining legal status at birth left unresolved the fundamental conundrum"—the logic of enslaveability.<sup>20</sup> This lack of resolution constitutes a crucial problem-space in the history of gender and slavery.<sup>21</sup> Throughout the Atlantic world, even where labor regimes "militated against dependable demographic increase," slaveowners across national boundaries mobilized the specter of the reproducing slave woman as an important avenue of social and economic control.<sup>22</sup> If a child fathered by a free white man with an enslaved African woman became a slave, that child was transformed from kin to property. Thus, in essence, slaveowners and slaveowning legislators enacted the legal and material substitution of a thing for a child: no white man's *child* could be enslaved, while all black women's *issue* could. This happens as though it were common sense, when, in fact, it was a profound reversal of European notions of heredity in the service of a relatively new notion of difference and bondage.

17 Sally McKee, "Inherited Status and Slavery in Late Medieval Italy and Venetian Crete," *Past and Present*, no. 182 (February 2004): 31–53. See also Debra Blumenthal, *Enemies and Familiars: Slavery and Mastery in Fifteenth-Century Valencia* (Ithaca, NY: Cornell University Press, 2009), 256–65.

18 On precedent, see Warren M. Billings, "The Cases of Fernando and Elizabeth Key: A Note on the Status of Blacks in Seventeenth-Century Virginia," *William and Mary Quarterly* 30, no. 3 (1973): 473; and Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, for the Omohundro Institute of Early American History and Culture, 1996), 128–35.

19 Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill: University of North Carolina Press, 1996), 45; Tomlins, *Freedom Bound*, 458n175.

20 Newton, "Returns to a Native Land," 116.

21 On the idea of the problem-space in histories of slavery, see David Scott, *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* (Durham, NC: Duke University Press, 2004).

22 Joseph C. Dorsey, "Women without History: Slavery and the International Politics of *Partus sequitur ventrem* in the Spanish Caribbean," *Journal of Caribbean History* 28, no. 2 (1994): 167–69.

Why and how race became the key to enslaveability was a question posed and resolved using myriad strategies across the early modern Atlantic as traders and settlers constructed paradigms that enabled the exchange of human commodities and the enslaved constructed paradigms that enabled their response to the New World order. Children born to parents who occupied positions increasingly seen as racially distinct posed political, ideological, and economic problems. Their indeterminacy needed to be fixed. Recall the preamble: “Whereas some doubts have arisen whether children got by any Englishman upon a negro woman shall be slave or free.” The word *doubts* names mixed-race children as excess, as both circulating and unregulated, and ultimately as a source of chaos.<sup>23</sup> The law imposes order as it both configures those children as property and asserts its right to do so. It also points to a very specific legal case involving Elizabeth Keye (to which I will turn below) that compelled the Virginia legislators to make explicit the implicit logic that regulated the slave markets and the probate courts across Atlantic slave societies. In the context of a nascent colonial setting, then, these reproducing women and their chaotic children were grounds on which claims to sovereign authority rested.

## 2

Almost one hundred years before legislators penned the 1662 Act, Sir Francis Drake captured an enslaved woman named Maria and an unnamed man from a Spanish ship off the western coast of Guatemala during his 1577 circumnavigation. Months later, while making their way across the Pacific back to London, Maria, “gotten with child between the captain and his men pirates,” was put ashore along with two black men on the deserted Crab Island in the Indonesian Maluku archipelago.<sup>24</sup> The small group’s sex ratio echoed those dictated by slave trading companies throughout the sixteenth and seventeenth centuries. Firmly located within the moral economy that made the decision to abandon them rational, they were “to found a settlement” and were given “rice, seeds, and fire to populate the place”—a place overrun with crabs and “innumerable bats ‘as big as hens’” and without a source of fresh water.<sup>25</sup>

All three adults had been presumed to be legitimate bounty when they were taken from the Spanish. All three may have been subjected to the sexual depravity of the crew. All three could have been legitimately unloaded in London or any other sixteenth-century English port

23 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen, 1st ed. (Stanford, CA: Stanford University Press, 1998), 18–19.

24 The deposition from which this story comes identified the adult men only as “Negroes”—Maria was both named and modified as a “proper negro wench.” Christian Isobel Johnstone, *Lives and Voyages of Drake, Cavendish, and Dampier* (New York: J. and J. Harper, 1832), 102; and Michael Guasco, *Slaves and Englishmen: Human Bondage in the Early Modern Atlantic World* (Philadelphia: University of Pennsylvania Press, 2014), 97–99.

25 Harry Kelsey, *Sir Francis Drake: The Queen’s Pirate* (New Haven, CT: Yale University Press, 1998), 201. See also Michael Guasco, “‘Free from the Tyrannous Spanyard’: Englishmen and Africans in Spain’s Atlantic World,” *Slavery and Abolition*, no. 29 (March 2008): 10; and Guasco, *Slaves and Englishmen*, 96–109, esp. 102.

city where other black men and women, both slave and free, lived.<sup>26</sup> Had the men on board Drake's ship left Maria untouched, she might have constructed a future in England. But Maria's pregnancy raised a question that would come to always accompany the practice of defining people as commodity: What to do with progeny conceived with property? Like most Europeans transporting enslaved women, Drake had not prohibited sex with Maria.<sup>27</sup> But with London, not Bridgetown, in his sights, when faced with Maria's pregnancy Drake covered her abandonment with the veneer of racial coloniality. By leaving the three "negroes" on Crab Island, he marked the white crewmembers on board the ship as fundamentally in possession of a hereditary freedom that would not be sullied by the birth of a dark-skinned baby, and claimed the island for the Crown. Drake thus used racialized notions of inheritance to support a property claim for the Crown. For Drake, the concept of *terra nullius* operated—consciously or unconsciously—as a cover that obscured the rationale of his abandonment. To leave Maria alone on the island would have been an act of transparent cruelty. To harness her fate to two adult men who may or may not have been enslaved offered a startling affirmation of the reproductive economy at the heart of colonial slavery. Maria's newly impossible status reflected the transformation in English racial thought already well underway by 1577. Drake and his crew moved her swiftly from the category of sexual object to a commodified place-marker on the map of Drake's colonial ambitions.

As Maria stood on the shore watching the ship sail away, her body became the explanatory vector for the violence meted out upon her. Her visible pregnancy, wrenched from any familiar meaning it would have elicited for her a lifetime ago, became the catalyst for a collective abandonment. Drake's pretense that Maria would "populate the place" was stark in its unadulterated violence, but it was also prescient. Her abandonment resulted from what the poet M. NourbeSe Philip names as the "space between the legs"—the productive site of racialized meaning wherein enslaved women's reproductive capacities are rendered as violent conduits of human commodification.<sup>28</sup> Maria's fragmented story suggests the entanglement of race, birth, captivity, and the perverse geography of a racialized public. This uninhabited island—her prison, her home, her gravesite—came into cartographic focus precisely because of her interiority, the contained and private transformation happening inside her body that produced a New World space of racial inheritance and geographical dispossession.<sup>29</sup>

The fact that there are no archival traces concerning the fate of Maria and the two men only compounds the viciousness of their abandonment and fully cements it to the race/reproduction bind of early modern Atlantic economies. Maria's abandonment signaled nothing less

26 On the presence of black people in wealthy English households, see Kim F. Hall, *Things of Darkness: Economies of Race and Gender in Early Modern England* (Ithaca, NY: Cornell University Press, 1995).

27 See Jennifer L. Morgan, "Accounting for the 'Most Excruciating Torment': Gender, Slavery, and Trans-Atlantic Passages," *History of the Present* 6, no. 2 (2016): 184–207.

28 M. NourbeSe Philip, "Dis-Place—The Space Between," in *A Genealogy of Resistance, and Other Essays* (Liverpool: Mercury, 1997), 9–30.

29 Katherine McKittrick, *Demonic Grounds: Black Women and the Cartographies of Struggle* (Minneapolis: University of Minnesota Press, 2006), 47–49.



than a new way of understanding the world—one in which reproduction became commodity-production under the logics of colonial possessions.<sup>30</sup> Decades later, the intimate histories of early Virginia followed suit. Just as Maria's story warranted barely a mention in the annals of Drake's circumnavigation, the earliest records of Virginia communities can conspire to erase the lives of women and the subsequent centrality of black birth in the conceptual development of racial heredity and enslavement in the early English colonies.

African women were part of the Virginia colony from its inception. Among the thousand or so English colonists living in Virginia prior to 1619 were thirty-two “negroes in the service of severall planters”—seventeen women and fifteen men.<sup>31</sup> Others would soon follow. Isabella was among more than 350 captives from West Central Africa loaded onto a Portuguese slaver in Luanda, Angola, bound for Vera Cruz, New Spain, in 1619.<sup>32</sup> They endured a particularly difficult Middle Passage, with mortality rates that decimated the men, women, and children on board. The ship stopped briefly in Jamaica, and there the captain sold twenty-four children. To the adults, the sale of the children must have conveyed a powerful sense of transposed meaning: it signaled that children were a distinct category and were alienable from the adults, unprotected by kinship, and vulnerable to loss. This would prove a powerful lesson for Isabella. Shortly after weighing anchor, the ship was intercepted by two English privateers who took Isabella and between fifty and sixty other captives on board. Some of these captives would be loaded onto the *White Lion* and would comprise the “20 and odd negroes” sold to John Rolfe in Virginia in 1619. Others would be routed to Bermuda, where some would succumb to disease, some would remain, and some—Isabella and about six others—would later board yet another ship, this time bound for the Virginia colony.<sup>33</sup> Here the parameters of their new identity would solidify, and as children born in Virginia took the place of those left behind in Angola or Jamaica, the tenuous reality of kin ties would become commonplace.

Isabella found herself enslaved alongside Anthony, and, sometime between 1623 and 1625, they became parents to William.<sup>34</sup> They had William baptized, an act that reflected both their fluency in Christianity and their recognition that formalizing William's status might work to buffer him. Isabella and Anthony did not give birth to William in isolation, and their efforts to ensure his safety through baptism should be read as a response to the racialized chaos in which they found themselves, an indication that Isabella and Anthony understood the tenuous nature of William's future and sought baptism as a way to forestall the dreadful narrowing of his

30 Sylvia Wynter, “1492: A New World View,” in Vera Lawrence Hyatt and Rex Nettleford, eds., *Race, Discourse, and the Origin of the Americas: A New World View* (Washington, DC: Smithsonian Institution, 1995), 5–57.

31 William Thorndale, “The Virginia Census of 1619,” *Magazine of Virginia Genealogy* 33 (1995): 168.

32 John K. Thornton, “The African Experience of the ‘20. and Odd Negroes’ Arriving in Virginia in 1619,” *William and Mary Quarterly* 55, no. 3 (1998): 431–32. See also Engel Sluiter, “New Light on the ‘20. and Odd Negroes’ Arriving in Virginia, August 1619,” *William and Mary Quarterly* 54, no. 2 (1997): 395–98.

33 This account is drawn from Linda M. Heywood and John K. Thornton, *Central Africans, Atlantic Creoles, and the Foundation of the Americas, 1565–1660* (Cambridge: Cambridge University Press, 2007), 5–9.

34 Helen Catterall, *Judicial Cases Concerning American Slavery and the Negro*, vol. 1, *Cases from the Courts of England, Virginia, West Virginia, and Kentucky* (Washington, DC: Carnegie Institute, 1926), 55.



horizon.<sup>35</sup> Their efforts were steeped in both affect and economy and reflected an encroaching clarity about what stakes were entailed in their newly constituted racialized identities.

In 1641, “a negro woman belonging to Lt. Robert Sheppard” watched her child attain freedom in Virginia. Her existence in the colonial records testifies to the various ways her identity was both fixed and contested. Twenty years before 1662, racialized inheritance was mobilized as commonplace. Paternal freedom, if it came from a father who was black, could not be left unbuttressed. The mother was neither named nor called a “slave”—but her “belonging” clarified her status as property and thus rendered her child property as well. Her relationship to the “negro servant” John Graweere, who was the father of her child, was similarly unimportant to colonial legislators, who left it undefined. Graweere, however, took great pains to clarify his relationship to his child. Graweere understood his status as a free servant to be conditional rather than hereditary; his need to purchase his own child to assure its freedom obviates his understanding that this child’s legal status followed its mother’s. In the terms of his own freedom claims, sometime earlier Graweere negotiated permission from William Evans to raise hogs and keep half the profits from their “increase.” Whether or not he and the child’s mother mobilized the slippery language of increase—with its meaning embedded in the rights of property—in regards to their own reproductive experiences, they were soon forced to grapple with the intersections between intimacy and property.<sup>36</sup> It was in the face of that increase that both Graweere and the child’s mother recognized the slippage between the value of livestock and that of their Negro child. With that recognition came, at the very least, an interruption of freedom’s expansive possibilities. Without the intervention of the colonial assembly, the child would have indeed followed the condition of its mother directly into enslavement. Graweere thus appeared in court to certify that that child “shall be free from William Evans,” the man who held Graweere’s labor contract. Graweere’s stipulation that his child be “made a Christian and be taught and exercised in the Church of England” reflects his presumption, possibly one shared with the child’s mother, that baptism was yet another strategy that might bolster the child’s claim to freedom.<sup>37</sup> In any case, freedom clearly needed to be buttressed; it could not be left to chance in a seventeenth-century community already deeply familiar with the associations between blackness, heredity, and slavery.

As this unnamed woman witnessed her child’s redefinition, her sense of the bounded possibilities of inheritance and intimacy must have been quite clear. Indeed, the woman (or women) enslaved by Sheppard were positioned in such a way as to fully appreciate the constraints placed on them through their progeny: the court that certified the child’s freedom was

35 In the early decades of the Virginia colony, sex ratios were far more balanced among Africans than among English settlers. This led to the probability that black men and women would be among the first to both create American families and strive to keep those families intact. Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA: Belknap, 1998), 40–41; Morgan, *Slave Counterpoint*, 58–101, esp. 79.

36 John C. Coombs, “The Phases of Conversion: A New Chronology for the Rise of Slavery in Early Virginia,” *William and Mary Quarterly* 68, no. 3 (2011): 258n44; Morgan, *Laboring Women*, chap. 3.

37 Berlin, *Many Thousands Gone*, 37; Goetz, *Baptism of Early Virginia*, 100–101.

the same colonial court that had a year before ordered a woman publicly whipped for bearing the child of one Robert Sweat.<sup>38</sup> In that instance, the unnamed “negro woman servant belonging unto Lieutenant Sheppard” who found herself pregnant by Sweat, a white Englishman, was tied to the whipping post—her flayed body, rendered flesh by the lash, announced her degraded status.<sup>39</sup> That the record identifies her as a servant rather than a slave must have come as little comfort to her, for as the blood ran down her back, Sweat performed “public penance” during Church service—his corporeal integrity intact, his shame contained in the warmth of the James City Church on an October Sunday. The records seem to hint that this could be the same woman who, with the scarred reminder on her back now cartographic evidence of her fixed location, watched a year later as her other child’s father purchased him in order to free him—the stark clarity of racial economy marked on her flesh would have echoed for her through her children’s bodies.<sup>40</sup> Even if these were two different women, united as they were in the household of Lieutenant Sheppard, they would certainly comprehend the degree to which colonial Virginia was awash in the consequences and newly formed meanings of the race/reproduction bind. I should note here that the profusion of pronouns in this paragraph and throughout is unavoidable. The inability to name these women is not just a problem of the colonial archive but is rather a problem embedded in our cultural grammar—it is an insurmountable reality that testifies to the ways this was not intended to be a story to pass on.<sup>41</sup>

Grammatically transparent or not, all manner of relationships and affiliations in the early years of the colony were reshaped by the tortured logic of the race/reproduction bind. Clearly, well before the members of the House of Burgesses formally considered the problem of interracial sex, women and men of African descent understood the realities of racialized inheritance. In 1658, Rosa, a woman enslaved by Anne Barnhouse, watched as her maternity was subverted to gain her child’s freedom. Barnhouse gave the formerly enslaved man Mihill Gowen the gift of Rosa and Gowen’s own “sonne William.”<sup>42</sup> Rosa had been baptized, but her Christianity did not alter her status as enslaved. Such limits to Christian conversion were put into law a decade later in the 1667 Act of Assembly that reassured slaveowners that “the conferring of baptimse doeth not alter the condition of the person as to his bondage and freedom.”<sup>43</sup> But even in the 1650s, Rosa had no ability to confer freedom to the son whose status, without some form of intervention, would follow her own. All parties understood that

38 “Virginia Council and General Court Records, 1640–1641,” *Virginia Magazine of History and Biography* 11, no. 3 (1904): 277–84.

39 Hortense J. Spillers, “Mama’s Baby, Papa’s Maybe: An American Grammar Book,” *Diacritics* 17, no. 2 (1987): 62.

40 Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca, NY: Cornell University Press, 2002), 177.

41 On race as an American grammar see Spillers, “Mama’s Baby, Papa’s Maybe.” See also Saidiya Hartman, “Venus in Two Acts,” *Small Axe*, no. 26 (June 2008): 1–14.

42 Brown, *Good Wives*; Goetz, *Baptism of Early Virginia*, 101; Thomas D. Morris, “‘Villeinage . . . as It Existed in England, Reflects but Little Light on Our Subject’: The Problem of the ‘Sources’ of Southern Slave Law,” *American Journal of Legal History* 32, no. 2 (1988): 110.

43 “An Act Declaring That Baptism Does not Bring Freedom,” September 1667, in Warren M. Billings, ed., *The Old Dominion in the Seventeenth Century: A Documentary History of Virginia, 1606–1689* (Chapel Hill: University of North Carolina Press, for the Omohundro Institute for Early American History and Culture, 1975), 172.

it was only the white woman who could both legitimize Mihill's paternity and convey the inheritance of freedom to William through the transfer of this particular species of property. In this complicated act by which a parent's "ownership" of a child was conferred by the woman who owned his mother rather than by his mother or father themselves, William's status—like that of Maria's unborn child or Graweere's unnamed child—was defined by *partus sequitur ventrem*. In other words, neither Rosa's nor William's legal status changed as a result of Mihill's freedom—his patriarchal ability to confer status through his person was already understood to be truncated. Mihill's racial status was permanent; it exceeded his attainment of freedom. When a black woman gave birth to his child, it signaled to Mihill, as it had to Graweere, that his own freedom was deeply contingent. Thus it was through the vehicle of Rosa's body that assumptions about race and status were conferred, formalized, and navigated. The court proceedings marked an interruption of the status quo—an opportunity to signal change for Rosa, Mihill, and William—that amplified the more common situation that defined their daily lives and those of all people of African descent navigating slavery, freedom, birth, and parenting in seventeenth-century Chesapeake. For them, the birth of children signaled, through their racialized bodies, the constricted future of hereditary bondage and the transformation of kin into commodity.

Other free and semifree women of African descent labored in the new settlement and emerge in the colonial archive alongside them. As a child, Elizabeth Keye found herself misidentified on the estate where she was indentured. At some point in the late 1620s, the free white Englishman Thomas Keye impregnated her enslaved mother. What this woman (who was never actually named, appearing in the archive only as "woman slave") hoped or believed about her daughter's future is utterly lost in the documentary record. What is clear is that Thomas Keye's death threw Elizabeth's status into some confusion as testimony from a range of white settlers in Northumberland County described her as indentured first to one white settler family and then to another. During that period, her status as Thomas Keye's daughter was never a secret; it was rather widely known that this young woman's father was a free Englishman. We learn from one witness that, out of ignorance or spite, Thomas Keye's other child, John, called Elizabeth "Black Besse." Mrs. Speke, the overseer's wife, "checked him and said[,] Sirra you must call her Sister for shee is your Sister[,] and the said John Keye did call her Sister."<sup>44</sup> Elizabeth was widely acknowledged to be Thomas Keye's daughter; whether or not Mrs. Speke's intervention was meant to take John Keye down a peg, it was recognition of Elizabeth's lineage. It situated her in a larger white community, many of whose members testified about the circumstances of her birth, indenture, and her own motherhood to two children, both "laid to William Grinsted." But Elizabeth's relative freedom, pinned as it was to a transgressive paternity that increasingly muddied the waters of property rights,

44 "The Case of Elizabeth Key," in Billings, *Old Dominion*, 197. The case is more fully discussed in Billings, "Case of Fernando and Elizabeth Key," 467–74. The last name is variously rendered Key, Keye, and Keyes in the documents; I have unified the spelling here as Keye.

was insufficient. When years later in 1655 she petitioned for her freedom to be formalized and affirmed by the court, we can be confident that she had a precise understanding of the interrelated consequences of race and sex. Her original suit was granted, then overturned, and finally won when Grinsted, an English lawyer, brought her case to the General Assembly. The two ultimately wed, thereby further hoping to shield her children from exposure to the marketplace at an historical moment in which the porous assumptions about enslavability, skin color, and maternity could clearly unsettle a parent's certainty that their freedom would redound to their child.<sup>45</sup>

Elizabeth Keye's comprehension of her embeddedness in racialized structures of meaning and labor in the Atlantic fades from our view. It is left out of the archives—both those we have inherited and those we create—because for most historians, “motherhood” inhabits an entirely different moral and analytic realm than “economy.” But, of course, this was not the case for Elizabeth, nor is it for scholars of race and slavery. The child of an African woman whose freedom and that of her children depended on English men, Elizabeth may not have understood the role that her case would have in propelling the *partus* act. But she did understand that the atmosphere in which she lived was one that put her and her understanding of kinship in jeopardy. The forces that moved Elizabeth and the father of her children in and out of court were precisely those that anticipated both Keye's vulnerability and that of all black women in a nascent slave society. Legally sanctioned claims to lineage were short-lived; the link between the Keye case and the 1662 Act is self-evident. When racial slavery depended on the transformation of lineage into embodied inheritance, black women could not be allowed to produce kinship. The matrix of ideas and practices that situated Elizabeth Keye in a Virginia courthouse arguing that her blackness should not militate against her inherited freedom were, by then, at least two hundred years old.

### 3

In the context of New World slavery, maternity became a vehicle through which racial meaning was concretized. Men have long laid claims to women's wombs in the name of patrilineal descent and the control of family economies. This is the story of patriarchy. The history of state interest in all women's reproductive lives in the West is quite long, with origins in sixteenth- and seventeenth-century formulations of household governance. But people of African descent have long been positioned as both outside of the household and, as a direct result of their role as productive and reproductive commodities, constitutive of it. For black women, maternity wrenched parenting out of the realm of the domestic and into the marketplace. As some women's children became indelibly marked with the inevitability of enslavement, other

<sup>45</sup> This case has been widely discussed. See, for example, Brown, *Good Wives*, 132; and Goetz, *Baptism of Early Virginia*, 101–2n43.

women's children became inevitably free.<sup>46</sup> Freedom from the market—obviously an aspirational freedom for myriad unfree white laborers—would ultimately become a defining mark of the intimate geography of public and private space; but it was only conferred on those deemed to have a legitimate claim. For women of African descent, both enslaved and free, the looming danger of the market would immediately encroach on their pregnancies and the births of their infants. The reach of the market breached their corporeal boundaries in ways neither subtle nor incremental. And thus exposure to the market became as intimate as the feelings of affection and as interior as a quickening pregnancy.

In essence, Rosa and Elizabeth, like the other African women whose reproductive lives are faintly drawn in the archives, found their private lives demarcating very public claims. In mid-seventeenth-century republican theory, the association between women and the domestic both characterized the opposition between public and private life and buttressed the association of the marketplace and the economy with masculinity.<sup>47</sup> This phenomenon is coeval with the refusal, in the travel literature of the day, to cede private life to African people. There, African women's sexual and reproductive behavior was positioned in such a way as to signal the erasure of boundaries, as writers alleged that black women engaged in unregulated sexual congress, gave birth in public places, might easily bury or abandon live children who encumbered them, and, in any event, barely interrupted their work lives to attend to nurslings.<sup>48</sup> At the same time these narratives were circulating in sixteenth- and seventeenth-century English translations, notions about the relationship between property and the idea of public and private life were similarly in flux. Michael McKeon argues that a new understanding of land as a species of property that could be alienated in the marketplace was crucial to the production of the aesthetic experience of interiority.<sup>49</sup> In turn, interiority became a hallmark of civility and status, and it did so in concert with new notions linking that civility and status to skin color. Thus, one must add the routinized alienation of black life to the marketplace as similarly constitutive of the European, and subsequently Euro-American, private sphere.

As a species of property most profoundly associated with the oppositional tension between the private and the market, the echo of the slaveowners' family in the family of the enslaved demanded a clear articulation of the particularities of difference. Conversations about interracial sex and the visibility of racial inheritance in children became an entry point for the articulation of those particularities. This served to situate black women and men's most intimate bodily practices as unprotected by domestic space and already occurring

46 This is an argument made recently by Catherine Hall, "Gendering Property, Racing Capital," *History Workshop Journal* 78, no. 1 (2014): 28–29.

47 Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988); Joan B. Landes, "The Public and the Private Sphere: A Feminist Reconsideration," in Johanna Meehan, ed., *Feminists Read Habermas: Gendering the Subject of Discourse* (New York: Routledge, 1995), 91–116; and Hilda Smith, *All Men Both Sexes: Gender, Politics, and the False Universal in England, 1640–1832* (University Park: Pennsylvania State University Press, 2002).

48 See Jennifer L. Morgan, "'Some Could Suckle over Their Shoulder': Male Travelers, Female Bodies, and the Gendering of Racial Ideology, 1500–1700," *William and Mary Quarterly* 54, no. 1 (1997): 167–92.

49 Michael McKeon, *The Secret History of Domesticity: Public, Private, and the Division of Knowledge* (Baltimore: Johns Hopkins University Press, 2005), 3–48, esp. 30.

in public—the leap from there to the slave market was thus relatively short. By the mid-seventeenth century, legal codes regulating interracial sexuality enshrined familiar practices that rendered black women’s bodies as economic rather than domestic spaces. The children of black women would not be legally included in the bastardy codes but rather would simply enter the legislative realm already conceived as property. As Kathleen Brown has argued, the 1662 legislation was ideologically connected to an earlier act defining black women—slave or free—as taxable, while leaving white women’s labor untaxed.<sup>50</sup> In other words, black women in seventeenth-century Virginia were marked and re-marked as outside the protective cover of domestic life—and their exposure was definitional to both enslaved and free women of African descent.

The increase of enslaved women is the by-product of a commodified maternity that we find at the core of developing Atlantic slave societies. In 1819, while considering the role of enslaved women on plantations, Thomas Jefferson wrote, “It is not their labor, but their increase which is the first consideration.”<sup>51</sup> Jefferson’s words articulated a crucial expression of racial capitalism in a time and place that predate the rise of the antebellum plantation economy on which much of our critical attention to the links between slavery and capitalism attends. His nineteenth-century ruminations, much like the *partus* act, thus reflect a much older set of practices and calculations. The Virginian legislative pronouncement only belatedly codified hereditary racial slavery into English colonial law, responding as it did to the challenges of a labor system firmly cemented in a reproductive reality that depended on black women’s bodies particularly, but that generally marked all black bodies as vectors of colonial intervention into the most intimate of spaces. Once colonial settlers and settlement projects arrived in the Americas, quotidian matters of life demanded innovative public adjustment and adjudication. As the prerogatives of Rosa’s maternity were transposed onto the white woman who owned her son, for example, Rosa’s embodiment in the courthouse procedure functioned as a pronouncement. It clarified to the court and its environs that as a result of her racialized location in Virginia, she could convey nothing but bondage to her progeny; only public dispensation in the form of a judicial intervention could alter the corporeal certainty of her child’s enslavement.

Faced with the significant challenge of conceptualizing the heritable qualities of racial slavery, Euro-American legislators amalgamated property with a reproducible kinlessness.<sup>52</sup> To be enslaveable because you were without lineage was comprehensible, but to convey lineagelessness through the maternal line was another problem entirely. That problem was addressed through a range of ideological maneuvers. By situating women’s reproductive possibilities firmly outside of private life, by rendering childbearing as an activity made manifest in the marketplace, by codifying speculations regarding African women’s failure to feel childbirth into

50 “An Act Taxing Negro Women, March 1642/3,” in Billings, *Old Dominion*, 172; and Brown, *Good Wives*, 107–36.

51 Thomas Jefferson to Joel Yancey, 17 January 1819, “Jefferson Quotes and Family Letters,” [tjrs.monticello.org/letter/2117](http://tjrs.monticello.org/letter/2117).

52 Spillers, “Mama’s Baby, Papa’s Maybe,” 74.

legislative interventions that structurally denied African people the place of family while simultaneously rooting their enslavement in that very place, sixteenth- and seventeenth-century English Atlantic subjects defined hereditary racial slavery through the irony of a kinlessness born in a woman's womb.<sup>53</sup>

For women such as Maria, Elizabeth, and Rosa, the intimacy of racial violence was immediately made manifest as they navigated their enslavement and freedom. The scant archival tracing of their hopes and fears around their children's future autonomy signals, I believe, the roots of a conscious oppositional stance that Cedric Robinson labeled the black radical tradition.<sup>54</sup> For Robinson, the African roots of that radicalism are made manifest in early slave revolts; here I would suggest that African-born women giving birth to children in the Americas similarly responded to their enslavement by recasting the terms of racial hierarchy that attempted to position them as irrational, sovereignless, and insentient laborers. It is not a small intervention to claim a kind of mindful political intelligence on the part of these women; and yet, in the context of an Atlantic historiography that has not yet accorded enslaved women significant attention, doing so is both necessary and productive. In much of the scholarship on slavery we have failed to fully engage with "theorists who are slaves."<sup>55</sup> Much of what we do know about the gendered nature of slavery circulates around the production or thwarting of kin ties. The pain and fortitude of enslaved mothers who are defined by their desperation to protect their children has become increasingly visible to historians even as the raw and emotive nature of that desperation potentially clouds other aspects of the effort to parent while enslaved. Attending to the knowledge production that accompanied the recognition and navigation of racialized danger is an effort to situate these women as crucial to the formation of oppositional theory and praxis in the face of racial slavery.

To place reproduction at the heart of histories of race enacts a philosophy of history, one that writes an origin story that is, in Toni Morrison's words, "not [one] to pass on."<sup>56</sup> Morrison here presents myriad ways to think about the relationships between history, reproduction, and race. This is not a story of passing on, of death that mutes any attempt to narrate the past. It is also not a story that can or should be passed on; the wrenching failure to put a stop to the reverberations of a history rendered through maternal infanticide should not be overlooked. It is not a story that should be handed down or passed on, from mother to child, from generation to generation, because the pain embedded in the contradictory place of maternity under hereditary racial slavery cannot be told without reinscription. And finally, even as we prohibit

53 Melanie Newton's discussion of the *partus* ruling argues that it renders women incapable of producing kinship. Newton, "Returns to a Native Land," 112–16.

54 Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill: University of North Carolina Press, 2000), 73.

55 Neil Roberts, *Freedom as Marronage* (Chicago: University of Chicago Press, 2015), 15.

56 Toni Morrison, *Beloved* (New York: Vintage, 2004), 324. I am mindful of the multiple meanings here—a story not to be told, a story not property of one's heirs, and a story one must not fail to tell.



its retelling, we inscribe it as told. We are faced here with a problem of meaning and history that strikes deeply and powerfully at the heart of what it means to be human.

Women of African descent, those whose experience of the shifting racial climate was most intimate and corporeal, offer key theoretical models and insights into the parameters of hereditary racial slavery. For them, the *partus* act was hardly theoretical. Instead, it made African women read the social landscape, becoming early theorists of power. Enslaved women would be the first to grapple with the ways the alienation of their children placed them at the crux of unprecedented individual and systemic violence, in service of extracting labor through a newly emerging language of race and racial hierarchy. In the face of their efforts to carve out spaces of safety and surety for themselves or their children, we must ask what, in the end, a focus on fluidity means. Centering the crucible of race, sex, and reproduction illustrates that rather than spaces of opportunity, the shifting terrains of colonial racial ideology were experienced as spaces of dread.

The interlocking structures of meaning-making that served to render hereditary racial slavery legible to both enslaver and enslaved are made visible through our engagement with the parameters under which Rosa and Elizabeth labored. We know that in the context of the mid-seventeenth-century Atlantic world, English, African, and Native American women and men encountered one another with a well-developed fear of bondage already firmly in place. Bondage or unfreedom was common throughout their experiences and thus required little in the way of conceptual framing. Hereditary racial slavery, on the other hand, did. Navigating the shifting meaning ascribed to sex and intimacy in a colonial slave society in the contexts of religion, law, love, and violence both challenged and reinforced older notions of human hierarchy and connection. The 1662 code and the contexts from which it emerged speak to the ways seventeenth-century racial slavery evolved as well as to how women enslaved in the early modern Atlantic might have understood the process that was unfolding both around and through them.

The 1662 statute solidified a presumption long acted on by Atlantic settler colonialists, slave traders, and slaveowners, namely, that the physiognomy of subjection was not only heritable but was so indelibly rooted in black women's bodies that it could not be dislodged. As enslaved women were situated as the antithesis to the rights-bearing citizen-subject emerging in this period, they became placed outside of historical processes, except as indexes of suffering. In histories of slavery, women stood for nothing more or less than symbolic cyphers of abuses—corporeal and ahistorical. The move encapsulated by *partus sequitur ventrem* expels these women on terms deeply rooted in the body and thus apparently both natural and deserved. But the consequences of that embodied determinism are not entirely confined to the process by which their expulsion was naturalized; rather, they are the routes through which that exclusion can be reckoned with and the processes through which a new narrative arc might be constructed in the aftermath of enslavement.

By tethering reproduction to enslavement, and thus enslaveability, the *partus* act foreclosed the possibility that kinship might displace capital. As Kathleen Brown has so critically argued, the law transformed lives that had initially “presented the most serious challenge to the integrity of slave property [into] the means by which that property would be sustained and increased.”<sup>57</sup> The law locked enslaved women into a productive relationship whereby everything that a body could do was harnessed to the capital accumulation of another. Further, even as the law mobilized their corporeal presence, it formalized a set of power arrangements that effectively barred all but the most tenacious or outlandish women from the historical record.

Archival lacunae lend to other interpretive errors: in the absence of written records, enslaved women’s experiences get reduced to the sensate, all rape and blood and birth trauma and breasts. What becomes unthinkable is the possibility of critical, intelligent, strategic assessments of, and responses to, the violent structures of value and commerce in which they were embedded.<sup>58</sup> While European expansion and all that it entailed had significantly altered the geographies of trade and affect in which they lived, the ability to read the parameters of that expansion was arguably a tool widely available: to slaveowners and merchants calculating worth, to indentured servants calculating time, to slaveowning families calculating the costs of freedom, to white women and free black men calculating risk, or to the mother of a newborn who saw in the body of her child evidence of the interdependency between her receding horizon and her newly calculated value.

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57 Brown, *Good Wives*, 135.

58 This formulation owes an obvious debt to Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon, 1992).