FROM NATURAL LAW TO NATURAL INFERIORITY: THE CONSTRUCTION OF RACIST JURISPRUDENCE IN EARLY VIRGINIA

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Introduction

Science informed American jurisprudence during the age of the Revolution. Colonials used science and naturalism to navigate the wilderness, define themselves against the British, and forge a new national identity and constitutional order. American legal historians have long noted the influence of science upon the Founding generation, and historians of American slavery have casually noted the influence of science upon early American racism as organized and standardized in slave codes. This article seeks to synthesize the work of American legal historians and historians of American slavery by showing how natural law jurisprudence, anchored in scientific discourse and vocabulary, brought about biological racism that enabled laws regulating the black body. In so doing, this article offers sustained treatment of law and science and their mutual influence upon slave codes, especially miscegenation statutes. Historians of slavery have acknowledged but never fully explained this mutual influence. Focusing principally on Virginia during the age of Jefferson (1743–1826), this article argues that early Virginians of the planter class constructed the black body as biologically inferior to justify and facilitate laws that treated blacks as inferior. This process allowed planter class Virginians to initiate lower–class whites into communities of white racial solidarity while maintaining the ideology of paternalism, which held that white domination of blacks was necessary for blacks to enjoy a decent quality of life.

Science, Law, and the Black Body

Many American founders validated their political cause and secession from Britain by resorting to natural law theories and paradigms.[1] Thomas Jefferson memorialized these theories and paradigms in the Declaration of Independence. While studying nature and the physical world, Jefferson extended natural law jurisprudence while revising it to fit the needs and settings of the New World. Rather than looking to divine or

moral prescription to ground his natural law theories, Jefferson looked to nature. He borrowed from Newtonian ideas about the laws of the universe and applied them to the laws of man. A human law was, by this logic, akin to the law of gravity.

The American insistence on natural law was a reaction to the analytical positivism gaining credence in Britain.[2] This school of jurisprudence found its fullest expression in the utilitarianism of Jeremy Bentham and John Austin. These men treated laws as linguistic constructs: commands that attained the status of law because people followed them, not because they reflected *a priori* or transcendent rules of the cosmos. American founders such as Jefferson saw natural law as a way to distinguish themselves from their British counterparts and to define what it meant to be American. William Blackstone, a British jurist still clinging to natural law principles, enjoyed vast success from American purchases of *Commentaries on the Laws of England*. The popularity of this treatise in America had to do with Blackstone's support for ideals that, from the colonials' perspective, affirmed Revolutionary rhetoric and philosophical principles. Blackstone died in 1780. His death ushered in an age of positive law jurisprudence in England.

In America, however, natural law picked up momentum in the wake of the Revolution and American independence. That ideas of natural law flourished during the Enlightenment, especially in America where institutions were supposed to reflect or embody Enlightenment principles, is curious because the Enlightenment glorified reason and humanism: progressive concepts seemingly incompatible with a moral theory derived from ancient church teachings and philosophical orthodoxies. This disjuncture reveals the extent to which colonials sought to divorce their culture and communities from the British. *Á la* Blackstone, colonials would go great lengths to 'prove' their natural law theories through application of the scientific method and appeals to reason. Natural law jurisprudence did, in fact, fit within a scientific and rational framework in many important respects. For instance, natural law, like laws of the natural world putatively discoverable by reason, logic, and experiment, were by definition universal. Just as truths about the external world allegedly were deduced through sustained study of specimens and species, so truths about the human condition were, natural theorists argued, deduced through sustained study of human behavior and the history of the races.[3] In this sense, colonial jurists viewed natural law not as retrograde, superstitious, or religious, but as cutting–edge and scientific.

Americans were not alone in their attention to the scientific elements of law. In Western and Central Europe during the mid–to–late eighteenth century, rulers and leaders 'sought to rationalize their legal systems, to make law scientific, to extend it in a vernacular language evenly over their territories, and to put an end to the earlier jumble of customs, privileges, and local rights' (Wood 403). Save for Blackstone's efforts, however, this scientific trend did not gain traction in England as it did elsewhere.

Early Americans, particularly northerners but also Virginians such as Jefferson and George Mason, celebrated the ideals of natural law and natural rights appearing in the Declaration, but they found those ideals difficult to implement in everyday practice. Although staunchly committed to the principles of natural law, the colonials, at least those with representation or voice in the political sphere, discovered that abstract philosophy did not readily translate into workaday rules and regulations (Wood 405–8). 'It was one thing', submits David Brion Davis, 'to state abstract propositions, and quite another to decide how the law applied to a particular case' (Davis, *Age of Revolution* 470). Above all, the 'peculiar institution' of American slavery called into question the Enlightenment values upon which American natural law jurisprudence depended. Cries of freedom and liberty rang hollow once Americans were no longer up against an oppressive British Empire. These cries began to sound hypocritical—if they did not seem so already—as the institution of slavery became a mainstay of the economy of the fledgling nation.[4] How could colonists extol freedom, liberty, and equality yet enslave masses of people? This American philosophical inconsistency 'pinched harder when slaves began to speak the language of natural rights' (Davis, *Age of Revolution* 276). As Samuel Johnson, the eminent British Tory and man of letters, quipped, 'How is it that we hear the loudest yelps for liberty among the drivers of negroes?' (Boswell 132).

Following the Enlightenment, it was not enough for colonials to justify slavery by history or biblical teaching. 'What the slaveholders had to do', James Oakes asserts, 'was demonstrate that slavery was compatible with freedom and that *black* people were inherently suited for the state of tyranny, rendered unfit for the freedom of society by the immutable laws of nature, and as such justifiably reduced to the status of human property' (73). In a society that prized nature and natural history over institutionalized philosophy, what better way than science and the putative laws of nature was there for slaveholders to validate their rendering of blacks as naturally inferior and their slave codes as consistent with natural law? Moreover, in a society with so many propertyless or near–propertyless whites, what appeal other than racial

supremacy was there for propertied, politically enfranchised whites to articulate jurisprudence and social policies to propertyless, disenfranchised whites? Proslavery advocates appealed to white non–slaveholders in their 'ideological proposition that black–skinned Africans and their descendants constituted a distinct 'race' that was inherently inferior to the 'race' of white–skinned Anglo–Saxons and their descendants' (Oakes 130). One reason upper class whites appealed to lower class whites on the grounds of race is that 'the planter wished to develop an attitude of race superiority on the part of the poor white and the Negro groups through a fear that at some future time the poor white might lead the mulatto and the Negro in revolt against the established order' (Johnston 186). Anthony S. Parent Jr. suggests that the planter class 'had to drive a wedge between laboring whites and blacks' by implementing slave codes (107). For this and other reasons, the white planter classes in the mid–eighteenth century began ushering in 'a common core of belief and mythology concerning the Negro which belonged…to white American culture as a whole' (Jordan 149–50), and this common core of belief and mythology was predicated on the 'assertion that inferiority and superiority were grounded in biology rather than culture or class' (Oakes 130). Science, then, catalyzed white American mythmaking, and white American mythmaking catalyzed laws regulating slavery.

Especially instructive on the topic of eighteenth–century scientific and race discourse are laws forbidding miscegenation. These laws developed while 'there was much indiscriminate mingling of the races' (Johnston 168), and these laws sought to counteract 'race mixture' as a 'result of the union of the Negro man and the white woman' (Johnston 172). Due in part to the organizing and inspirational force of Revolutionary rhetoric and Enlightenment presuppositions about universalism—both of which were underwritten by appeals to equality—jurists, legislators, and lawyers could not easily attack the prevalence of interracial sex and interracial children on philosophical grounds alone. If, according to fashionable philosophical principles of the day, laws of nature and the universe applied equally to all humans, then blacks had to be conceptually remade as a lesser degree of human to validate any measure forbidding black–and–white sexual activity. Philosophy and law had to be rewritten to account for scientific revelations about racial distinctions. What is more, philosophy and law had to be rewritten so that equality was something (like the forces of nature or God's will) that each human *was subject to* but not that each human *possessed*. According to this reading, some humans were better endowed, physically or intellectually, than others.

Science did not necessarily precede racial ideology; the two participated with each other such that they were often indistinguishable. Both science and racial ideology were unsettled by definitional precision about 'blackness' and 'slave'. One problem for early white Americans (and for those who write retrospectively about early white and black Americans) is that 'black' and 'white' failed as meaningful categories of law or discourse because what constituted 'black' or 'white' was a troubling question without a clear, scientific answer. Were Indians white or black, for instance? What about mulattoes? In light of the sheer number of free blacks in the Chesapeake region during the Jeffersonian era, the word 'black' could not be conflated with 'slave', although the tendency to conflate those terms was both strategic and understandable in a culture of widespread racism. At any rate, it is particularly alarming that racist significations of blackness found their expression in law, and in understandings about 'slave' and 'blackness'—themselves codified in law—as white anxieties caused politically enfranchised Virginians to disenfranchise blacks who had attained freedom. In 1790, over 12,000 persons of colour enjoyed legal freedom (Morris 25), however relative that freedom might have been, but by 1854, many years after the time period I am chiefly interested in here, the black body semantic became so hardened as a negative iconography and so prevalent as part of racist discourse that George Fitzhugh of Virginia, one of the most renowned plantation owners in the South, declared, 'A free negro! Why, the very term seems an absurdity. It is our daily boast, and experience verifies it, that the Anglo–Saxons of America are the only people in the world fitted for freedom' (Fitzhugh 264).

As I have suggested, the Revolutionary generation struggled to reconcile what seemed like an irresolvable contradiction between freedom and equality on the one hand and large–scale human bondage on the other. This struggle had to do with law's function as 'a principal vehicle for the hegemony of the ruling class' (Genovese 26). Laura F. Edwards, focusing principally on lawmakers, lawyers, and jurists in the Carolinas, explains that the people who produced local legal records were 'members of the states' elite, many of whom were professionally trained lawyers, whose writings on law and government now shape the historiography' (30). This observation holds true in Virginia as well as in the Carolinas. Although these several individuals did not make up a monolithic structure called 'class', they worked together and circulated many ideas similar enough to constitute something we could—and herein will—strategically essentialize as 'class–based'. Edwards suggests that these several individuals were united by 'an intellectual stance, bounded by basic assumptions about law and the legal system',

for they all ‘tended to see law in *scientific* terms as an internally consistent set of universally applicable principles, even if they often disagreed bitterly on the specifics of those principles’ (30). These scientifically inclined and politically enfranchised individuals, who laid the foundations for miscegenation statutes and other legal mechanisms, moulded and shaped rhetoric about the black body and couched that rhetoric in scientific lexica that privileged whites as normal and blacks as ‘other’.

Class distinctions and their relation to race in America have been an illuminating and important subject of scholarly conversation, but this relation has yet to find satisfactory expression in the context of law or science, or in the context of natural law *and* naturalism taken together. Nevertheless, class distinctions were, as James Hugo Johnston noted in passing years ago, ‘responsible for the colonial legislative policy designed to prevent the evil [of miscegenation]’, at least inasmuch as the ‘planter class had no desire to be thought personally responsible for race mixture’ (183). Johnston remarks that the ‘relations between the poor whites and Negros remained an interesting problem throughout the period of slavery’ because of the mostly economic ‘antagonisms between them’, despite of which blacks and whites continued to have sexual relations with each other (190). Planter classes resorted to law to regulate and carry out the racial segregation and partition called for by supposedly reliable knowledge claims arrived at through the collection and systematic arrangement of data from the natural world.

Eugene Genovese suggests that all revolutionary movements cloak their rhetoric in terms of natural law and natural rights, but that ‘whenever revolutionaries settle down to rebuild the world they have shattered, any other course [besides positive law] would be doomed to failure’ (26). Genovese adds that all modern ruling classes share a particular ‘attitude about law, for each [ruling class] must confront the problem of coercion in such a way as to minimize the necessity for its use, and each must disguise the extent to which state power does not so much rest on force as represent its actuality’ (26). Law is bound up with coercion insofar as it legitimizes the power of a person or group of persons to coerce another person or group of persons. According to Genovese, ‘the law cannot be viewed as something passive and reflective, but must be viewed as an active, partially autonomous force, which mediated among the several classes and compelled the rulers to bend to the demands of the ruled’ (26). The question, then, is whether, as Genovese suggests, ‘natural law and ‘higher law’ doctrines’ are merely ‘tactical devices in the extralegal struggle’ (26). If Genovese is right, as I believe he is to some extent, then the American revolutionaries, like the

revolutionary bourgeoisie during its rise to power in Europe, 'counterposed natural–law doctrines to feudal theory but once in power rushed to embrace a positive theory of law, even while assimilating natural–law doctrines to a new defense of property' (26). This positive theory of law sought to separate the races based on purportedly natural science. It sought to pass as natural law anchored in biology and physiognomy, but its underlying concepts were caught up in semiotic social systems and not in reality itself. Basic cultural understandings were prior to racist science, and they shaped the way that scientists and natural philosophers framed images and ideas about the black body. In turn, the legal community, made up of mostly middle and upper class whites and members of the planter class, used particular language to create and maintain the construction of the black body as inferior. Not derived in or reflecting absolute reality, the resultant law could not have been natural law at all. It was positive law, as all human law is positive law.

In the years following the Revolution, politically enfranchised white Virginians had to embrace positive law while calling it by another name or else incorporating natural law theory and rhetoric into the positive law schema. This class of Virginians had no better option if it wanted to validate slavery and satisfy poor, propertyless whites with the current political order. Science lent credibility to the new defense of property—particularly property in slaves—in the post–Revolutionary era, and it allowed many white Virginians to maintain their commitment to natural law principles while maintaining widespread human bondage and forging an anti–British identity. Insofar as the planter classes rarely married blacks, science, with its putative confirmation of the negatives of interracial mixture, serviced upper class interests in separating the races and thereby preserved powers of the ruling elite. The American Revolution was in this respect 'a major turning point in the development of scientific racism' because it facilitated urgent experimentation and prediction about human behaviour in general and racial behaviour in particular (Oakes 74).

Before the Revolution, American colonists could, as Jefferson did in his indictment of King George in the Declaration, cast slavery as 'one of the unhappy legacies of British oppression' (Davis, *Age of Revolution* 273). But after the Revolution it became increasingly clear that few Americans were invested in the idea of slave emancipation. Indeed, most Americans, motivated by a variety of factors—including slave escapes and insurrections during the Revolution, when slaves frequently joined British military ranks[5]—frantically sought to preserve slavery. As states began to promulgate new slave codes to ensure total domination of

masters over slaves, justifications for slavery as an institution began to draw from the lexicon and logic of natural law. Jefferson himself, 'as a suspicion only', fashioned the idea that blacks were *naturally* inferior to whites as if to authorize any laws reflecting the unequal treatment of blacks and whites (Jefferson 151).[6] Likewise, slaveholders 'elaborated the logic of subordination, generally finding the sources of their own domination in some rule of nature or law of God' (Berlin 9). Jefferson's 'suspicion' about black difference and inferiority led him to insist that black men might 'declare a preference' for white women 'as uniformly as is the preference of the Oranootan for the black women over those of his own species' (Jefferson 145). For Jefferson, then, interracial sexual desire was a scientific fact and as 'natural' as black inferiority, and both of these supposedly 'natural' phenomena affirmed miscegenation laws, also known as anti–miscegenation laws, which were products of white anxiety over the black body. Reacting to the 'mixture of the races' that 'began to take place almost as soon as the first Negroes and white men came into contact in America', the methods and curricula of science became tools for justifying legislative bans on miscegenation as the black race was elaborately constructed as biologically inferior to whites (Johnston 165). Law and especially natural law jurisprudence contemplated the latest scientific developments, which 'othered' blacks as inferior and backwards by nature and which therefore validated the ideology of paternalism holding that whites had a duty or responsibility to care for and supervise blacks.

According to Winthrop Jordan, Jefferson 'may be taken as accurately reflecting common presuppositions and sensitivities' of early America, 'even though many Americans disagreed with some of his conclusions' (429). Oakes suggests that 'Jefferson reveals the depth of racism in the American South, not because he was an extremist but, on the contrary, because he was so moderate' (29). Jefferson's Newtonian natural law jurisprudence suggests one approach that upper and planter class whites took towards erecting and assembling governmental or legal institutions and structures. The image and idea of Jefferson signified the planter class itself, and Jefferson's constructions of the black body signal commonly accepted, and possibly Jefferson–inspired, views about race in early America. As Paul Finkelman, a harsh critic of Jefferson, explains, 'A scientist and naturalist, he [Jefferson] nevertheless accepted and repeated absurdly unscientific and illogical arguments about the racial characteristics of blacks' (134). Finkelman's remark attests to at least two major points in my argument: that science was an element of racial classifications that found their way into law, and that scientific

discourse was cited and recited over time until the repetition of black body semantics allowed for the creation of a white cultural syntax.

Jefferson remarks in Query XIV of *Notes* that blacks cannot be incorporated into white society because of '[d]eep rooted prejudices entertained by the whites; ten thousand recollections, by the blacks, of the injuries they have sustained; new provocations; the *real distinctions which nature has made*; and many other circumstances, will divide us into parties, and produce convulsions which will probably never end but in the extermination of the one or the other race' (145, italics added). This comment and comments like it animate Virginia slave laws, which 'increasingly gave masters the widest possible power over slaves and also, through prohibition of interracial marriage and the general restriction of slave status to nonwhites, codified and simultaneously preached white supremacy' (Genovese 31). As I have suggested, Jefferson was part of the planter class that built a system of life in the agricultural colonies, and his treatments of interracial interaction in *Notes* exemplify the 'planter policy with regard to the intermixture of the races, as it concerns the Negro'—namely, 'to prohibit the marriage of the Negro and the white race but to tolerate illicit union of the Negro woman and the white man, provided always that the mulatto offspring should follow the condition of the mother' (Johnston 183). This claim seems especially resonant and profoundly true in light of Jefferson's sexual congresses with his slave Sally Hemmings.[7] White property and wealth played decisive roles in policing interracial sex because miscegenation statutes were designed partially to restrict white wealth transference to blacks. That unfortunate reality should come as a reminder that most racial laws and legal issues in early America and Virginia implicated class conflicts and anxieties.

Miscegenation Laws

One essay cannot possibly attend to the miscegenation laws of all the states because neither miscegenation laws nor the logic underpinning them was the same from time to time or place to place. For instance, the French *Code Noir*, promulgated as early as 1685 and adopted by Louisiana in 1724, forbade interracial marriage but differed from Virginia's laws in its declaration of limited rights for free people of African descent (Berlin 78–79). In part because of Virginia's unique position of prominence among colonists and early Americans, and in part because of her history as the earliest settlement for British subjects, Virginia established trends and protocols about slavery—and laws of slavery—that other states followed. Virginia's unusual concentration of

wealth and influence, coupled with her standing as home to notable Founding Fathers, made her a representative case for what was occurring throughout the southern colonies or states, although her politics and constituency differed considerably from those in other southern regions. As Barbara K. Kopytoff and A. Leon Higginbotham explain, 'There is probably no better place than Virginia to examine the origins of the American doctrine of racial purity and the related prohibitions on interracial sex and interracial marriage' because Virginia was 'one of the first colonies to formulate a legal definition of race and to enact prohibitions against interracial marriage and interracial sex' (1967). By the same token, Finkelman suggests that 'Virginia led the way in creating slavery in what became the United States', just as she led the way 'in stigmatizing and criminalizing love, and sometimes sex, between the races' (Finkelman, 'Crimes of Love' 124).

Although stigmatized by communities and prohibited by law in Virginia, miscegenation was more common—one might say more 'natural'—in Virginia during the mid–seventeenth–century, before racial ideology spread throughout the colonies (Berlin 44).[8] Indeed, *all* interracial interactions, not just sexual interactions, were more common during the mid–seventeenth–century in the Chesapeake than they were just forty years later (Berlin 44).[9] Reiterating the importance of class to race and race to class, Johnston indicates that in early Virginia 'little distinction was made between the white indentured servant and the Negro slaves, and what is regarded as race prejudice was, in these days, very closely akin to English class prejudice' (184). Because of this prevailing class consciousness, the tasks of white industrial servants differed little from the tasks of black slaves, and white women servants frequently married black slaves (Johnston 184). Gradually, though, whites began to view the black body as a subject of curiosity, a sign of deviance, and a symbol for lawlessness—or at least for innate inferiority—and therefore interracial mixture became taboo. As Johnston explains, racial 'distinctions soon began to be made by the master class', and this 'sentiment of the lawmakers is shown in the wording of the laws', which repeatedly mentioned 'abominable mixture', 'spurious issue', 'disgrace of the nation', and 'abusing himself of the dishonor of God' (184). Johnston's observation here demonstrates how yoked together the ideas of race, biology, sexuality, citizenship, and God or nature really were. Each of these concepts obtained to the *polis* by the mechanisms of law. The black body took on a special political meaning as it was interpellated by and within a discourse of law and science, which were themselves backed with Enlightenment confidence in reason and experiment as sources for absolute truth and authority. Scientific

rhetoric circulated the idea that the 'inferior' black body was prior to culture and proven by the deduction of fixed rules from available data. It established the semiotic relationship between the black body and the narrative or myth of white national unity. Colonial leaders enabled this narrative or myth by 'building on English class prejudice' and developing 'the doctrine of racial integrity' (Johnston 185). Put another way, the narrative or myth was class–based, and race and class were inextricably tied. If the 'English…were predisposed to view Africans as inferior to themselves', the colonists, most of them of English origin, were no exception, and they 'used racial differences to justify slavery in their possessions', thereby ensuring that slavery 'reinforced racist perceptions' (Morris 10). Law institutionalized racism and transmitted racist significations of the black body. If racism intensified as the institution of slavery progressed from the seventeenth century into the antebellum years of the nineteenth century, it was in part because of racist rhetoric and sign play.

Anne Grant, a common citizen of Albany, New York, reveals how ordinary it was for colonials to treat the black body as naturally separate from, and inferior to, the white body, and therefore to treat interracial sex as unnatural. She declared that people from Albany 'were from infancy in habits of familiarity with these humble friends', by which she meant blacks, 'yet being early taught that *nature* had placed between them a barrier, which it was in a high degree criminal and disgraceful to pass, they considered a mixture of such distinct races with abhorrence, as a *violation of her laws*' (qtd. in Jordan 144). Henry Hughes, a Mississippian whose views probably comport with those of most white Virginians at this time, crowns Grant's point with the following outburst: 'Hybridism is heinous. Impurity of races is *against the law of nature*. Mulattoes are monsters. *The law of nature is the law of God*. The same law which forbids consanguineous amalgamation forbids ethnical amalgamation. Both are incestuous. Amalgamation is incest' (qtd. in Genovese 418). These comments indicate the degree to which science, nature, and race were linked in the discourse of early white America.

As if to clarify these declarations by early Americans, Oakes submits that 'once the slave's condition had been defined as unnatural, it was perhaps inevitable that some men would declare that slaves were made "by nature" for their status' (25). The problem with rhetoric of unnaturalness is that it invariably leads to the paradox 'that slaves were naturally suited for a condition that was essentially unnatural' (Oakes 25). Colonials tried to evade this paradox, which had circulated ever since the writings of Aristotle, by resorting to physiognomy and the natural sciences to relegate blacks outside the *polis* (Oakes 25). They

applied their selective reading of slave bodies to the wider syntax of American culture, and the vocabulary of science informed their suppositions and statements about citizenship. Douglas R. Egerton explains that '[l]ong observation of enslaved workers, together with the science of physiognomy (in which physical characteristics reflected moral inclinations), suggested that African Americans were poor candidates for citizenship' (223–24). Oakes frames this issue of science and citizenship as follows: 'What was true of Aristotle was true for the authors of Mississippi's antebellum constitution: the slave was by nature unfit for citizenship. The distinction between the natural and the unnatural was only one of the recurring polarities of proslavery thought from antiquity onward' (26). It would seem from these statements that science, natural law, and race were complementary subjects that could be used to relegate blacks outside of the *polis* or to render slaves ineligible for citizenship.

The idea of biological inferiority shaped white speculations about black morality. The black body, constructed as inferior, was considered, by extension, less moral. Colonists came to understand the physical features of the body as signifying the capacity to know good from bad or right from wrong. The semiotics of the black body, both male and female, grew increasingly important to the syntax of white American unity. Syntax generally refers to sentence construction, but I am interested in cultural syntax, the ways in which various agents produce meaning and social understanding by creating semantics—symbols and signs that are easily recognizable in a given culture—and then reifying and codifying those semantics so that they (the semantics) maintain a linear relationship to the narratives that both precede and follow. These narratives are made up of syntaxes: lines of cultural understanding that generate complete or near–complete narratives. The constituent elements of cultural syntax are the signs and symbols that lead to common values, attitudes, traits, and ideologies. By way of analogy, a semantic consists of the prominent and most consequential words (usually nouns but often verbs and adjectives) that give meaning to the overall sentence or syntax. Accordingly, a cultural semantic is a social icon that gives meaning to cultural structure and arrangement. Just as words in a sentence participate with one another to form a coherent and understandable grammatical unit, so signs and symbols in a culture participate with one another to form a coherent and understandable social unit. Even though constructions of the black body by white American upper and planter classes did not represent the summation of white ideas about blacks, these constructions became codified in the law 'because the law tends to reflect the will of the most politically coherent and determined fraction',

and because 'the sum total of the individual interests and judgments of the members of the ruling class generally, rather than occasionally, pulls against the collective needs of a class that must appeal to other classes for support at critical junctures' (Genovese 47). Just as importantly—perhaps more importantly—these constructions became codified in cultural images, sciences, and associations, which preceded and enabled the codification of those images, sciences, and associations in law, and which maintained the idea that blacks were biologically inferior. Many white leaders, those who made up the politically enfranchised classes anyway, inscribed the black body semantic and gave meaning to a white American syntax. Together, these semantics and syntaxes determined the direction of American nationalist narrative and myth and recalled the Aristotelian maxim that some people were 'natural slaves' unfit for political representation or official membership within the *polis*.

Myth is a particular type of narrative. If social semantics make up any given cultural syntax, then an ossified and determinable cultural syntax is necessary to have a comprehensible cultural narrative. That cultural narrative can be myth if it possesses certain qualities and assumptions that animate social semantics and cultural syntaxes. Brook Thomas has made much of the role of civic myths in the prescribing of law and the policing of citizenship. I will not belabour Thomas's points by restating them here. What I will do is borrow from Thomas's understanding of myth as storytelling about national or community origin and destiny. The storytelling of early Americans and especially of early Virginians (whose views trickled outward to the rest of the nation) seeks to explain why certain individuals (politically enfranchised whites) deserved to rule society while other individuals (blacks or slaves and the lower–class whites with whom blacks and slaves fraternized) were either ineligible for official membership in society (blacks or slaves) or unfit to rule (lower class whites). All of this rhetoric about the fitness for citizenship and ruling depends upon the construction of blacks as, in Thomas R.R. Cobb's words, people 'utterly incapable' of any 'higher effort of reason and judgment' (Cobb ccii). For Cobb and others who would have their opinions cast as scientific fact, the lack of black prosperity and wellbeing, to say nothing of blacks' status as slaves, had to do with problems 'in the nature and constitution of the negro race' (Cobb ccii). It also had to do with something supposedly inherent and genetic among blacks and not something simply accidental or contingent upon birth in a certain time and place. The understanding of the black body as naturally inferior allowed upper class whites to define themselves to themselves and others. Moreover, this understanding of

the black body persuaded lower class whites in the upper classes' self–definition of whiteness.

White American narratives and myths were predicated on the associative relationships of signs with other signs—most notably, signs like blackness that stand in contradistinction to whiteness. To the extent that words are defined by what they are not, or that meaning is created against dialectical interpretations at variance with one another, the meaning of 'white' cannot signify without an understanding of 'black'. When the cultural meaning of whiteness is associated with control, law, citizenship, or inclusion, as it was in early America and Virginia, then the cultural meaning of blackness, the visual opposite of whiteness, is more readily associated with 'subservience', 'lawlessness', 'otherness', or 'exclusion'. These categories are general and fluid, not fixed or definite; they are, for present purposes, explanatory more than referential. Nevertheless, they are also revealing of the sheer propensity of early American rhetoric about the black body. By turning the black body into a scientific object and a semantic of deviancy or inferiority, white Americans with political influence such as Jefferson projected as self–evident truth the purely notional syntax holding that whites were fit for rule while blacks were not. In short, the black body semantic led to a discriminatory syntax—couched in the vocabulary of science and natural law—maintaining that whites not only deserved to dominate blacks but had a duty to do so. Here lies the crux of paternalism, which best signifies the overall narrative of white American unity.

To justify their domination of another race in terms of natural law, white lawmakers had to insist either that blacks were naturally inferior or that mixing the races was unnatural. Both claims are bound up with white supremacy, and both animate the myth of national unification. The theory of racial inferiority and the ban of interracial sex were yoked together and packaged in natural law rhetoric. 'For New World slaveholders', Oakes elaborates, 'racism was a logical expression of the intrinsic *nature* of the master–slave relationship' (130, italics added). He hastens to add that '[i]f slaves everywhere were outsiders, racism made them *naturally* so', and also that racism 'declared that blacks were biologically unsuited to a demanding life of freedom' (130). Natural law logic therefore underscored the following condition: If the laws of nature forbade miscegenation, and if the laws of man, to be valid, had to reflect the laws of nature, then legislators needed to promulgate statutes banning interracial sex. To realize this logic and thereby cede rights to a centralized authority—the State—Southern planters had to vest the State with certain regulatory and coercive powers. Genovese explains that because 'the slaveholders' property in man had to be respected, the

state's rights over the slaveholders as well as the slaves had to be circumscribed' (Genovese 46). This circumscription resulted in 'a system in which the state, representing above all the collective will of the slaveholding class, could lay down rules for the individual slaveholders, who would, however, have full power over their chattels' (Genovese 46).

Politically enfranchised white classes in Southern America and the Chesapeake, already influenced by naturalism, natural history, natural philosophy, and natural law, regarded the black body—in particular the black *male* body—as a site and symbol of sexual deviance as permutated, for instance, by way of the black male phallus. By the end of the eighteenth–century, the idea of the black male phallus as, in Oliver Goldsmith's words, 'longer and much wider', had become a scientific commonplace (Morris 17). Thomas D. Morris explains that '[o]bsession among whites with the size of the penis has figured prominently in often testy racial relationships, but it is only one element in a larger scientific predisposition to categorize groups of people in terms of physical characteristics', a predisposition evident in Jefferson's passages in Query XIV of *Notes* that categorize and rank whites, blacks, and natives (Morris 17). This tendency to rank individuals or things into hierarchies was, Morris adds, 'linked in Western thought with the notion of a "Great Chain of Being"', which is the idea that life 'was part of a chain that ascended from the lowest to the highest order' (17).

A major difficulty for American whites, at least for those attuned to paradox and irony, was that the purported unnaturalness of racial blending and the purported natural inferiority of blacks forced slaveholders to give up their power and thus to enable state power by erecting a legal structure that 'discredited the essential philosophical idea on which slavery rested and, simultaneously, bore witness to the slaves' ability to register the claims of their humanity' (Genovese 47). Accordingly, the legitimacy of natural law was called into question by the reasoning and shoddy science used to justify slavery in general and miscegenation laws in particular. As American jurisprudence transformed the concept of natural law to inspire nationhood and cultural solidarity, natural law theories began to undermine themselves as well as the new white American identity. The idea of America as a progressive and enlightened space was threatened by colonials' perpetuation of an ancient and increasingly dubious perspective on law. Southern lawmakers, lawyers, and judges had to invert liberalism to cast slaves outside of society and civic participation without resort to archaic law, but the only way to do so was by retarding and reformulating the same libertarian rhetoric that allowed Americans to agitate for their freedom and independence.[10]

Conclusion

In Virginia as elsewhere in early America, judges, jurists, and legislators described the black body in scientific terms to validate slave codes, which restricted interracial sex and marriage. These legal commentators treated natural law and science as interactive concepts to suggest that laws regulating the black body were in keeping with 'laws of nature'. By representing blacks as biologically inferior and sexually promiscuous by nature, legal commentators were able to police the black body and justify that policing on the grounds that they were aligning law with realities of the natural world. This tactic created, revised, and perpetuated the black body semantic and a white cultural syntax. It allowed the legal community to maintain the ideology of paternalism holding that slave owners had a duty to protect and care for slaves, who allegedly could not care for themselves, as well as to forge an anti–British identity while British jurists were turning to positive law theory and rejecting natural law theory. To the extent that the legal community in Virginia reflected the interests and desires of the planters, there was a class element to the rhetoric of science and natural law. Wealthier, politically enfranchised whites exploited race to appeal to lower class whites and to build white racial consensus. This exploitation has had longstanding and far–reaching consequences for America in general and Virginia in particular. Sustained study of this exploitation, and more importantly of the rhetorical tactics and strategies driving this exploitation, may not prevent similar exploitation in the future, but could go some length toward making sense of that exploitation so that future prevention is possible.

NOTES

[1] 'The American Revolution, as it ran its course from 1764 to 1776—from the first beginnings of resistance down to the Declaration of Independence and the creation of new colonial constitutions—was inspired by the doctrines of Natural Law' (Baker xlvi). See generally Whiting 109–118 and Manion.

[2] See generally Lieberman 159–62. See also Davis, *Age of Revolution* 343–85. Davis explains this English phenomenon as follows: 'In England there was no "fundamental shift in values" that mobilized the society into revolution. There was no counterpart to the American need for self–justification. No new hopes or obligations arose from an attempt to build a virtuous republic. Such phrases as "created equal", "inalienable rights", and "the pursuit of happiness"—all of which

appeared in classic liberal texts—were qualified by a reverent constitutionalism that looked to Saxon precedent to legitimize ideals of freedom. The notion of man's inherent rights, when assimilated to the historical concept of British "liberty", implied little challenge to traditional laws and authorities. And by the 1790s the very idea of inherent rights was giving way to radical and conservative forms Utilitarianism' (343).

[3] Thomas R.R. Cobb, a jurist from Georgia and an expert on slave laws, took pains to show how science validated the idea of slaves as naturally inferior and in need of white supervision. Consider this quote by Cobb: 'The history of the negro race then confirms the conclusion to which an inquiry into the negro character had brought us: that a state of bondage, so far from doing violence to the law of his nature, develops and perfects it; and that, in that state, he enjoys the greatest amount of happiness, and arrives at the greatest degree of perfection of which his nature is capable. And, consequently, that negro slavery, as it exists in the United States, is not contrary to the law of nature' (51).

[4] See generally Davis, *Western Culture* 3–28. For a synthesis of the historical scholarship on this point, see Kolchin 63–92.

[5] See generally Frey and Egerton. There were countless factors precipitating the American hysteria over preserving slavery. I mention just this one because of its relation to American efforts to forge a new, anti–British identity.

[6] 'I advance it therefore as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstance, are inferior to whites in the endowments both of body and mind. It is not against experience to suppose, that different species of the same genus, or varieties of the same species, may possess different qualifications' (Jefferson 151).

[7] See generally Reed, *Thomas Jefferson* and *Hemingses of Monticello*.

[8] 'Marriage bans indicate that some whites and blacks ignored the strictures against what Chesapeake lawmakers later termed "shameful" and "unnatural" acts and instead joined together as man and wife without regard to colour. On the eastern shore of Virginia, at least one man from every leading free black family—the Johnsons, Paynes, and Drigguses—married a white woman. There seems to have been little stigma attached to such unions' (Berlin 44).

[9] 'In some measure, the tiny black population scattered across the landscape created a social demography that compelled interracial mixing. In many places, there were simply too few people of African descent to create a community with its own distinctive aspirations, ideals, and institutions. But the absence of such a community was more

than just an artifact of the Chesapeake's population dynamics. Many blacks and whites appeared to enjoy one another's company, perhaps because they shared so much. Behind closed doors, far from the eyes of suspicious slaveholders, black and white joined together to drink, gamble, frolic, and fight.… Inevitably, conviviality led to other intimacies' (Berlin 44). For more on the commonness and complexity of miscegenation in the colonies in general and in Virginia in particular, see Jordan 136–78.

[10] 'This is how southern law put the slave outside of society. Without rights, the slave could form none of the basic economic, political, or personal relationships that together bring society into existence. Slaves could not hire out their labor; they could not enter into economic contracts; they could not own property; they could not participate in politics; they could not exercise the rights of marriage. The slave everywhere was the perpetual outsider; in the liberal South the slave was made an outsider through the specification of rights denied. Where the patriarchal ethos held that even the lowliest persons were part of an organically unified social hierarchy, the denial of rights placed the slave outside society altogether. Thus the inversion of liberalism was very different from a reversion to patriarchalism' (Oakes 70).

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