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### ***“Just Before God and Man”: Legal Traditions and Constitutional Visions in Early Freetown, Sierra Leone and the United States***

James Sidbury, Rice University

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Questions centering on separation and integration structure many of the ways we understand issues central to the history of African descended people in colonial British America and the United States. That is perhaps most obviously true of our attempts to make sense of the long struggle for civil rights—first the right to a recognized civic personality and then, once that was achieved, the ongoing battle for civic equality. But if the focus on questions of separation and integration emerged out of the brute presence of legal segregation in American history—of Jim Crow— one need not look long to find the themes of separation and integration arising elsewhere in interesting variations. They are integral to DuBois’s meditation on the “two-ness” of “the Negro People” embodied in “an American, a Negro; two souls, two thoughts, two unreconciled strivings.” DuBois’s impassioned plea for a society that would allow “a man to be both a Negro and an American without being cursed and spit upon by his fellows, without having the doors of opportunity closed roughly in his face” arose out of a rapidly segregating America, but it has remained central to our understanding of African American history because it speaks in an idiom rooted in

the turn of the twentieth century to issues that reach back into the seventeenth century and push forward to the twenty first.<sup>1</sup>

It offers a powerful lens through which to read the rich literature on the cultures forged by enslaved and free black people during the eighteenth and nineteenth centuries. That may be most obvious and controversial in the opening sentence of the first chapter of Genovese's *Roll, Jordan, Roll*—"Cruel, unjust, exploitative, oppressive, slavery bound two peoples together in bitter antagonism while creating an organic relationship so complex and ambivalent that neither could express the simplest human feelings without reference to the other"<sup>2</sup>—but scholars who reject both *Roll, Jordan, Roll*'s insistence on paternalism and its black nationalist interpretation of slave culture nonetheless engage a similar dialectic of separation and integration. The struggle to make sense of that tension lies at the heart of creolization models used by those who have written in the wake of Sidney Mintz and Richard Price, and it is equally at play in the different interpretations, interpretations that foreground cultural separation, that are offered by those who reject creolization and insist on ways of understanding slave lives and communities that foreground West and West Central African cultures.

Analogous themes run through the histories of periods that followed the era in which DuBois formulated his understanding of double consciousness. Whether we turn to urban residential patterns, occupational segmentation, popular culture, organized labor or political behavior in the twentieth century, issues of racial separation and integration, of inclusion and exclusion, weave through our accounts of African American history in ways that profoundly shape understandings of American society, economy and culture.<sup>3</sup> The complex interplay of patterns of inclusion and exclusion is particularly heightened at this

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<sup>1</sup> W.E.B. DuBois, *The Souls of Black Folk* <https://www.gutenberg.org/files/408/408-h/408-h.htm#chap01> (accessed March 23, 2016).

<sup>2</sup> Eugene David Genovese, *Roll, Jordan, Roll: the World the Slaves Made* (NY, 1972), 3.

<sup>3</sup> Works that illustrate these themes include Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton, 1996); Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York, 2008); Joe William Trotter, Jr., *Black Milwaukee: The Making of an Industrial Proletariat, 1915-*

moment as we begin to look back on eight years during which the son of a black Kenyan and a white American has served as President of the United States. That obviously represents real evidence of inclusion, but as is always the case with these themes, the narrative is far from straightforward. Despite being the first presidential candidate in two decades to win two popular majorities and only the second to do so since 1960, he has experienced unprecedented attacks on his legitimacy. Racial inclusion and exclusion, separation and integration, have moved in complicated and contradictory directions throughout American history.

In constitutional narratives, however, the issues of separation and integration have played out in a less complex and more straightforward way. It is a commonplace both within and outside of the academy that the founding era was characterized by what we now understand to have been the illegitimate exclusion of women and non-whites, and one common way to interpret struggles over the constitution of the nation is as an attempt to reverse the Constitution's exclusions. In this narrative the Thirteenth, Fourteenth, Fifteenth and Nineteenth Amendments and, at least as importantly, the political struggles to give meaning to those Amendments, represent our attempt as a nation to make good on some of the unrealized progressive promises of the Founding Era. In the words of Martin Luther King, Jr., these long civil rights battles represent a struggle to "cash a check" written by "the architects of our Republic."<sup>4</sup>

The struggle to win inclusion has, however, deflected attention away from some of the effects on American constitutional traditions of the well-known and often-discussed exclusions. Black and white abolitionists and the later civil rights activists who succeeded them have fought what sometimes seems to be a never ending battle to win equal seats at the table for those who were originally excluded from "the

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1945; N. D. B. Connolly, *A World More Concrete: Real Estate and the Remaking of Jim Crow South Florida* (Chicago, 2014); Karl Hagstrom Miller, *Segregating Sound: Inventing Folk and Pop Music in an Age of Jim Crow* (Durham, N.C., 2010). For contrasting syntheses of labor history's engagement with race that underscore the centrality of issues of separation and integration, see Herbert Hill, "The Problem of Race in American Labor History," *Reviews in American History* 24 (1996), 189-208 and Eric Arnesen, "Black and White Workers, Race, and the State of Labor History," *Reviews in American History* 26 (1998), 146-174.

<sup>4</sup> Martin Luther King, Jr., "I Have a Dream ...", <https://www.archives.gov/press/exhibits/dream-speech.pdf> (accessed March 23, 2016).

People.” There has been less effort to determine how those exclusions shaped the table itself, how a “People” more representative of those who lived in the thirteen original states might have chosen to constitute themselves as a nation. Doing so is difficult.

This essay seeks to extend the boundaries of American constitutional history beyond the nation-state that the Constitution created in order to see how some of the excluded might have chosen to constitute a nation had they been accorded a seat at the table. To do so, it takes an international turn. It uses an African setting—Freetown, Sierra Leone from about 1792 to 1800—to explore the ways that race, nation, and ideologies, both conservative and revolutionary, became entangled with law, property, and sovereignty to produce unexpected cultural formations and understandings of history. In the process, it seeks to build on the fact that blacks were excluded from early American high politics by shifting attention to the ideas this effectively kept out of American state making. The exact formulations developed by black settlers in Freetown may not have existed in other parts of the Revolutionary Atlantic, but world views that diverged in analogous ways from the ideologies that we have drawn from elite political discourse developed throughout the Atlantic as African and American Indian peoples sought to negotiate the different and often false promises extended to them by empires, nations and local elites.<sup>5</sup> The exclusion of these peoples’ ideas from the making of revolutionary era constitutions has not been redressed by the inclusion of their descendants in modern conceptions of the People. It is telling that their ideas only found their way into the historical record because they migrated away from the United States.

In 1800 a group of “Nova Scotians,” as the early black settlers of the British colony of Sierra Leone called themselves, sought to constitute themselves as a people on the coast of Africa. This is not the only example of African and African-descended people seeking to escape the ideological bounds that racism

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<sup>5</sup> For entangled history, see the *American Historical Review* Forum entitled “Entangled Empires in the Atlantic World,” *AHR* 112 (2007), 710-799, especially Elijah H. Gould, “Entangled Histories, Entangled Worlds: The English-Speaking Atlantic as a Spanish Periphery,” 764-86, and Jorge Cañizares-Esguerra, “Entangled Histories: Borderland Historiographies in New Clothes,” 787-99. Also see their subsequent exchange in *AHR* 112 (2007), 1414-31.

placed on them in the revolutionary Atlantic. Blacks living in the northern United States alternately worked to develop an independent African national ideology and fought to gain inclusion within the circle of United States citizenship.<sup>6</sup> Other African Americans responded to American and French revolutionaries' failures to acknowledge racial equality by casting their lot with monarchical regimes that promised greater respect for the rights of some black individuals.<sup>7</sup> Some living in the French Caribbean forged a republican ideology based on full citizenship rights for black people.<sup>8</sup>

The Nova Scotians took a different approach from most. They had grown up in North America and lived through the American Revolution. In the process, they had come to take for granted many legal and social traditions of British North America. When they, like contemporary blacks in St. Domingue and then Haiti, found themselves in a position to formulate rules to govern themselves as a society, they drew on the political culture they had learned in their youths. Like other Americans, they wanted to live in communities of independent householders who owned the land they worked, and they wanted to live within the protective canopy of the rule of law. But these classically "North American" goals took root in an region whose economy was dominated by the slave trade, whose population was dominated by Temne people who were native to the region, and whose government was dominated by British Sierra Leone

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<sup>6</sup> James Sidbury, *Becoming African in America: Race and Nation in the Early Black Atlantic* (New York, 2007); "Forum: Black Founders in the New Republic," *WMQ* 64 (2007), 83-166.

<sup>7</sup> Cassandra Pybus, *Epic Journeys of Freedom: Runaway Slaves of the American Revolution* (Boston, 2006), esp. chs. 1-4; Jane Landers, *Atlantic Creoles in the Age of Revolutions* (Cambridge, Mass., 2010), esp. chs. 2-5; Alan Taylor, *The Internal Enemy: Slavery and War in Virginia, 1772-1832* (New York, 2013), esp. chs. 4-11; Nathaniel Millett, *The Maroons of Prospect Bluff and Their Quest for Freedom in the Atlantic World* (Gainesville, 2013).

<sup>8</sup> Ada Ferrer, "Haiti, Free Soil, and Antislavery in the Revolutionary Atlantic," *AHR* 117 (2012), 40-66; Laurent Dubois, *Avengers of the New World: The Story of the Haitian Revolution* (Cambridge, Mass., 2004); Dubois, *A Colony of Citizens: Revolution and Slave Emancipation in the French Caribbean, 1787-1804* (Chapel Hill, 2004); John Garrigus, *Before Haiti: Race and Citizenship in French Saint-Domingue* (Basingstroke, 2006), esp. chs. 8, 9; Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (Cambridge, Eng., 2012) ties the radicalism of the Haitian Revolution to legacies of the monarchical old regime; Jeremy D. Popkin, *You Are All Free: The Haitian Revolution and the Abolition of Slavery* (Cambridge, Eng., 2010) sees the turn toward abolition as deeply tied to chance. But see David Geggus' argument that Haitian Revolutionaries "differed from the other Atlantic revolutions, however, in that the central pursuit of freedom came to be construed in the profound but narrow sense of freedom from slavery rather than as political rights," in "The Caribbean in the Age of Revolution," David Armitage and Sanjay Subrahmanyam, eds., *The Age of Revolutions in Global Context, c. 1760-1840* (London, 2110), 83-100 (quotation on pg. 100).

Company officials. The resulting commitment to fundamental law among the Nova Scotians differed from the emerging dominant forms of constitutionalism in the United States, and it differed in ways that cast new light on the racial exclusions of the Founding era by highlighting ideas that went unspoken in Philadelphia in the summer of 1787.<sup>9</sup>

## I

The British colony that became Sierra Leone dates from the spring of 1787 when Granville Sharp led an effort to redeem several hundred of the “Black Poor” from London, most of whom were former slaves from North America who had fought with the British during the American Revolution and then found themselves destitute in London. Hoping to show that blacks were capable of self-government and self-sufficiency as well as to undercut arguments against emancipation by offering freed slaves a home of their own, Sharp created what he hopefully called the Province of Freedom near the mouth of the Sierra Leone River.

Like many initial European colonizing efforts, the first expedition proved disastrous. Settlers died in droves from tropical diseases for which they lacked immunities. Some gave up on their settlement at Granville Town and sought safety and employment by moving to Bance Island, the slaving fort that was upriver. Within two years of the settlers’ arrival in Africa, a local headman named Jimmy responded to an unprovoked Royal Navy attack on his village by giving the residents of Granville Town advanced warning, allowing them to flee, and then sacking the town. The Province of Freedom went up in smoke—literally.<sup>10</sup>

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<sup>9</sup> As I will show in the course of this essay, the Nova Scotians’ constitutional vision implicitly rejected the way that what Christopher L. Tomlins calls the “law paradigm” placed a “harness” on “constitutionalism” by exiling eighteenth century notions of communal well-being that were encompassed in the “police paradigm” from fundamental law. Tomlins, *Law, Labor, and Ideology in the Early American Republic* (Cambridge, Eng., 1993), chapt. 2 (p. 39 for quotation).

<sup>10</sup> The best account of the settling of the Province of Freedom, its triumphs, difficulties, and destruction is Alexander X. Byrd, *Captives and Voyagers: Black Migrants Across the Eighteenth-Century British Atlantic World* (Baton Rouge, 2008), Chapter 10. Also see Christopher Fyfe, *A History of Sierra Leone* (London, 1962), 16-25; Simon Schama, *Rough Crossings: Britain, the Slaves and the American Revolution* (London, 2005), 199-213.

Sharp did not abandon the colony, but he realized that it would require greater financial resources than he could offer. He turned to wealthy and politically connected evangelical friends who organized and won a charter for the Sierra Leone Company (SLC). At just that moment, a group of black Loyalists, most of whom had been transported from New York City to Nova Scotia after the Revolutionary War, sent Thomas Peters, who had escaped slavery in North Carolina, to ask the British government to move them away from Nova Scotia. The SLC took advantage by sending John Clarkson, younger brother of the famous abolitionist Thomas, to Nova Scotia to recruit some of these unhappy former North American slaves to be pioneers in the new colony. Clarkson organized and led more than 1,000 self-styled “Nova Scotians” across the Atlantic. They reached the Sierra Leone River in the spring of 1793 to find only a scattered remnant of Sharp’s colony.<sup>11</sup>

If, however, the Province of Freedom had been destroyed on the ground, it remained in people’s memories. Clarkson knew what had happened to Granville Town and sought to forge a secure relationship with the Temne by blending cordiality and intimidation. He quickly invited Naimbana, the paramount leader in the area to a palaver. Clarkson sent the *Lapwing*, a Company vessel, to bring Naimbana down from his village and arranged multiple-gun salutes as the *Lapwing* arrived at the future site of Freetown. In this way he showed both the respect due a visiting dignitary and the colony’s capacity for self-defense. His report of the resulting encounter—and his is the only account—offers a glimpse at the ways that contested religious and national ideologies had become entangled with contrasting legal regimes to influence locally specific modes of political and cultural authority.<sup>12</sup>

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<sup>11</sup> For the history of the Nova Scotians in Canada and Africa, see Fyfe, *History of Sierra Leone*; James W. St. G. Walker, *The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone, 1783-1870* (New York, 1976); Ellen Gibson Wilson, *The Loyal Blacks* (New York, 1976); Schama, *Rough Crossings*; Pybus, *Epic Journeys of Freedom*; Sidbury, *Becoming African in America*; Maya Jasanoff, *Liberty’s Exiles: American Loyalists in the Revolutionary World* (New York, 2011).

<sup>12</sup> “Governor Clarkson’s Diary,” *Sierra Leone After a Hundred Years*, E.G. Ingham, ed. (London, 1894), 23-6.

Both Naimbana and Clarkson approached their initial diplomatic encounter with care. The Royal Navy Lieutenant wore “a full-dress Windsor uniform, with a brilliant star,” an outfit so conventionally-designed for Clarkson’s role that his diary entry trailed off into “etc., etc.” He approached the anchored *Lapwing*, accompanied by “the greatest parade” of settlers he could muster. He appeared, in short, as the military leader of a unified and armed society happy to welcome Naimbana as a friend, but implicitly prepared to fight should the headman later arrive as an enemy. All of this was second nature to Clarkson, as suggested by his etceteras. Were he to have completed the description of his own outfit, there would no doubt have been symbols of King and country, symbols that he wore as conventional expressions of his deeply felt loyalty to his nation and all that represented.

Naimbana also dressed carefully to make an impression, and he no doubt followed Temne conventions just as carefully as the Englishman followed British ones. Those conventions were foreign to Clarkson, so he described Naimbana’s outfit more fully. The Temne king arrived at the future site of Freetown accompanied by a retinue of dependents— his “queen, and two of their daughters,” headmen from the subordinate villages that dotted the region, and one of “Mr. Granville Sharp’s settlers,” a man named Abraham Elliott Griffith, who had fled to Naimbana after the sacking of Granville Town. Griffith now served as an interpreter. Given what we know about West African political cultures, it is easy to see that Naimbana was displaying his many dependents of various kinds and thus his power and influence. What, however, did he mean to convey by the clothes he wore?

He came elaborately dressed in “a sky-blue silk jacket with silver lace, striped cotton trowsers, ruffled shirt, green morocco slippers, a cocked-hat with gold lace, and a white cotton cap, for which a large old judge’s wig was afterwards substituted.” Not surprisingly, given that elaborate outfit, he did not skimp when accessorizing. “A belt” was draped “round his neck from which hung the figure of a lamb bearing a cross set with rays formed of paste.” The Temne headman gave a quick inadvertent indication of one difference between his notions of authority and those of the English when, upon meeting Clarkson, he



“could scarcely keep from laughing” because the colony had “so young a king.” But he recovered quickly, asked after his “very good friend” King George of England, and observed the parade that had been arranged for his benefit.

Reading Naimbana’s outfit requires informed speculation. He showed off his long-standing engagement with the English and with the textile trade to India which was so integral to the Atlantic slave trade. The emblems of Englishness had, however, been incorporated into a distinctively Temne culture of display.<sup>13</sup> Sierra Leone was an important source of the eighteenth century Atlantic slave trade, and the Temne had been trading with the British at nearby Bance Island and its subsidiary factories since long before Naimbana’s reign.<sup>14</sup> Arriving in western-cut silk clothes that were enhanced with ruffles and lace surely reminded the Governor of the fledgling colony that he was dealing with a wealthy and cosmopolitan king. But what of the lamb bearing the cross? Or the cotton cap replaced by a judge’s wig before the parley?

It’s easy to offer hypotheses. The “emblem” of the lamb was probably a figure from the coat of arms of the Merchant Taylors’ Company, one of the twelve liveried guilds of London.

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<sup>13</sup> For a Temne leader dressing similarly and displaying dependents when meeting a British trader during the previous decade, see John Matthews, *A Voyage to the River Sierra Leone, on the Coast of Africa* (London, 1788), 4-5, 77. For a description of similar hybrid fashion displayed by a contemporary political leader in a different West African slave trading center (Great Popo), see Selena Axelrod Winsnes, ed. and transl., *Letters on West Africa and the Slave Trade: Paul Erdmann Isert’s Journey to Guinea and the Caribbean Islands in Columbia (1788)*, (Accra, 2007), 127-29.

<sup>14</sup> For Bance Island and the sub-factories that fed it, see David Hancock, *Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735-1785* (Cambridge, Eng., 1995), chapter 6; Byrd, *Captives and Voyagers*, 225-28 for the “fragility” (227) of European control of the island. Randy J. Sparks, *Where the Negroes Are Masters: An African Port in the Era of the Slave Trade* (Cambridge, Mass., 2014) for extended analysis of the norms governing interactions among local traders and Europeans in a different West African slaving port.

## MERCHANT TAYLORS'.



Coat of Arms of the Merchant Taylor's Guild (<http://hdl.handle.net/10427/44110>; accessed September 27, 2012). Notice the lamb carrying a cross with a banner flying from it set in a circle of rays at the top of the shield.<sup>15</sup>

If Naimbana knew the emblem represented the great guild, then perhaps he meant to convey his longstanding connections to powerful English merchants. It may have been a visible complement to his asserted friendship with George III. If so, that meaning seems to have escaped Clarkson, perhaps a reflection of the declining importance of the liveried guilds in the eighteenth century.<sup>16</sup> It is also possible that Naimbana knew little about the source of the emblem, and simply sought to show respect for English religion by displaying an emblem of Christ. Given the fact that one of his subordinate headmen had destroyed Granville Town, might the display of the lamb of peace have been an offer of amity? Or conversely, could the judge's wig have been an assertion of his right to adjudicate disputes between local Temne towns and the new settlement, rather than simply an emblem of his familiarity with English ways? Perhaps both. Surely there are other meanings embedded in local traditions that were clear to Naimbana and his followers but lost on Clarkson and that remain unavailable to us. Much about this meeting cannot

<sup>15</sup> I am grateful to Christopher Tomlins for identifying the image described by Clarkson as the Merchant Taylors' emblem.

<sup>16</sup> Roy Porter, *London: A Social History* (London, 1994, 148 ("So strong for three centuries or so, guilds were undergoing precipitous decline" and morphing into "chummy dining-clubs with charitable functions familiar today.") For the role of the liveried guilds in London politics and society in earlier times, see Joyce Youngs, *Sixteenth-Century England* (London, 1984), 84-85.

be recovered, but it reveals the degree to which English and Temne cultures had long been entangled on the slaving coast of Sierra Leone.

There are moments, however, when we can see more, when we are afforded a glance, however brief, at the different interpretations of law and culture that divided the peoples who were to share the coast of Sierra Leone. At dinner on the evening of their first meeting, Clarkson assured his Temne guests that he and the Nova Scotians had come to “live amongst them, in a peaceable way.” At the same time, he denied the claim of one of Naimbana’s subordinates—Clarkson called him a “chief”—that the settlers “had no right” to the land on which they planned to build Freetown. Clarkson sensed both a shakedown and a test, and he rose to the perceived challenge. The land, he insisted, “had been regularly bought and paid for” by the old settlers who had come out under Granville Sharp’s aegis. A Temne leader replied that if the new settlers “meant to go upon a new plan,” they “ought to make a new purchase.” Upon hearing this, Clarkson retrieved the “documents relative to the purchase of the land” and showed the headmen their signatures that acknowledged “the presents received in consideration” for the land. How, Clarkson demanded, could they “call such a fool palaver as to want me to buy the land a second time.” To underscore the absurdity, he asked: “Suppose, king, you buy slave, and rice, and you pay so many bar for slave, . . . and suppose the man you buy slave of . . . come to you next moon and ask you to pay for slave . . . again, what would you call that?” Clarkson reveled in his triumph, saying that the entire party “burst out laughing” and said “Fool palaver.” It’s worth noting, however, that Clarkson later made “them a present nearly equal to their demand for the purchase of land, to show them” that he did not object to paying them “the *money*” but to the “unjust” nature of their demand.<sup>17</sup> In his mind, Clarkson stood up for fair play and honest contract keeping.

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<sup>17</sup> “Governor Clarkson’s Diary,” 27-31. According to Granville Sharp, the “chief” who demanded more money was King Jammy, who had first threatened Granville Town; Prince Hoare, *Memoirs of Granville Sharpe, esq., Composed from His Own Manuscripts* (London, 1820) <http://galenet.galegroup.com.ezproxy.rice.edu/servlet/Sabin?dd=0&locID=txshracd2542&d1=SABCP01512500&srcht=a&c=1&an=SABCP01512500&df=f&s1=frank+pledge&d2=293&docNum=CY3802017951&h2=1&vrsn=1.0&af>

The Temne had sold the land to the British and he insisted on the legitimacy and permanence of that sale. At the same time, gifting played important roles in the slave trade in Africa and in European diplomacy, so he willingly used that tool to win recognition of the purchase.

I don't want to appear cynical about Clarkson's account; if one is to treat John Clarkson as a hypocrite, then almost no one in history will escape censure.<sup>18</sup> But precisely because his account is surely true to his perception, and because his insistence on defending classic bourgeois notions of fair play and the sanctity of contract was sincere rather than opportunistic—for him it really was about the unfairness of the demand rather than the money—this story reveals a fundamental fissure in Temne and English conceptions of property and contract. This fissure prefigured conflicts that would come close to destroying the Sierra Leone Colony, though not in the ways this initial encounter might lead one to expect. Clarkson's analogy, his insistence that he would no more pay twice for the same piece of land than a Temne headman would pay twice for the same slave, contains within it a fundamental transformation that the Sierra Leone Company sought to work on the Temne and other indigenous peoples Africa. That transformation rested on the belief that land was alienable and people were not.

In Temne and many other West African legal regimes, to the contrary, slaves but not land were permanently alienable.<sup>19</sup> Thus, from the perspective of Temne law, Clarkson's analogy was nonsense. It was precisely the case that one would be expected to pay twice for land if one wanted the land for different purposes—one would be paying for the right to use the land rather than for the land itself. In the words of the Temne "chief," if the new settlers "meant to go upon a new plan," they "ought to make a new

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[=RN&d6=293&d3=293&ste=10&stp=Author&d4=0.33&d5=d6&ae=CY102017659](#) (accessed Dec. 21, 2012), p. 267 (image 302).

<sup>18</sup> Schama, *Rough Crossings*, Part Two; Ellen Gibson Wilson, *John Clarkson and the African Adventure* (London, 1980).

<sup>19</sup> John Thornton, *Africa and Africans in the Making of the Atlantic World, 1400-1680* (Cambridge, Eng., 1992), Chapter 3 (esp. pp. 73-86).

purchase.”<sup>20</sup> Slaves, on the other hand, were valuable in West Africa in part because they were owned outright and were bought and sold in what the English would have understood to be fee-simple transactions.<sup>21</sup> Perhaps the Temne thought they were the ones being subjected to a shakedown when Clarkson offered what may have seemed a facile explanation for his refusal to pay to use this land in a new way. Perhaps they had been laughing at him, rather than with him, and meant to signal something other than agreement when they exclaimed “fool palaver.” Slave trading merchants like Richard Oswald had, after all, been accommodating themselves to Temne ideas about land tenure for half a century.<sup>22</sup> Would that suspicion have grown deeper or been allayed when, from their perspective, Clarkson apparently thought better of his refusal and paid them almost what they had asked for the right to use the land with the new settlement? Perhaps he unknowingly and unintentionally established his skill as a bargainer rather than his liberality. He did not, after all, meet the initial asking price. There is no way to know.<sup>23</sup>

But Clarkson’s assumption that elite English understandings of household landownership were self-evident and should prevail in the new colony (and everywhere else) reflected a lack of experience with Africa and with British colonization that he shared with those running the SLC. They sought to transform African societies and economies by weaning them of the barbaric traffic in human beings, but they did not realize their plans would involve a fundamental change in many peoples’ traditions of land tenure. A colony

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<sup>20</sup> Christopher Fyfe, *A History of Sierra Leone* (London, 1962), 8-9 discusses the landlord-stranger relationship that developed between the Temne and slave traders along the Sierra Leone coast; also George E. Brooks, *Landlords and Strangers: Ecology, Society and Trade in Western Africa, 1000-1630* (Boulder, Col., 1993). Matthews, *A Voyage to the River Sierra-Leone*, 5-6, 78-79 for an invocation of landlord-stranger obligations and an example of needing to pay for new uses of land when trading with the Temne. Gareth Austin, *Labour, Land and Capital in Ghana: From Slavery to Free Labour in Asante, 1807-1956* (Rochester, NY, 2005), 100 relates an Akan maxim that nicely encapsulates conceptions of landownership in much of West Africa during the eighteenth century: “the farm is my property, the land is the king’s.”

<sup>21</sup> Africans could also be enslaved in ways that did not involve fee simple sale, including through pawnship. See Paul E. Lovejoy and David Richardson, “Trust, Pawnship, and Atlantic History: The Institutional Foundations of the Old Calabar Slave Trade,” *AHR* 104 (1999), 333-355.

<sup>22</sup> Hancock, *Citizens of the World*, chapter 6; Byrd, *Captives and Voyagers*, 225-26 for the difficulty later British proprietors of Bance Island had explaining the nature of their ownership to Parliament.

<sup>23</sup> Or they may have thought it was standard British negotiating procedure, given the similarity of Matthews’ negotiation (*Voyage to the River Sierra-Leone*, 6). Idiosyncratic combinations among legal regimes, or what Lauren Benton calls legal pluralism, were common as Europe extended its influence throughout the world. See Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge, Eng., 2002).

of free black householders, settlers who lived off and flourished from the produce of their own privately held land, would, they thought, show first the Temne and then other African peoples that the slave trade was holding them back. African peoples would then emulate the successful colonists and start trading raw materials for manufactured goods, becoming productive subjects of Britain's commercial empire.

Looked at one way, the fool palaver between Clarkson and Naimbana represented a fundamental ideological tension separating British and Temne understandings of how to organize society and live on the land that they were about to share. Much as Clarkson hoped to entice, cajole and intimidate Naimbana into cooperating with the colony at Freetown, so the antislavery activists behind the Sierra Leone Company hoped to entice, cajole and ultimately intimidate the Temne into accepting what they understood to be civilized conceptions of property and into playing a new role in the British Atlantic system of commerce. The Company proved unable to impose its notions of law and civilization on Sierra Leone, at least in any simple and quick way, but its efforts created something analogous to a laboratory in which groups of people excluded, either formally or implicitly, from the rights promised by enlightened European political actors, wove together various ideological threads to create their own idiosyncratic and entangled understandings of what constituted them as peoples.

## II

There is something both fitting and ironic in the part that land tenure came to play in the first decade of Company rule in Sierra Leone. It is fitting in that it reflects the complicated mix of admirably egalitarian, ambiguously paternalistic, and openly condescending impulses that characterized early white antislavery. It is ironic in that it was the Company, relying on a legal relic of feudalism, that insisted on something approaching the Temne conception of landholding—not for themselves, but for the Nova Scotians—and in doing so drove a wedge distancing the black settlers it counted on to make the colony

successful.<sup>24</sup> In the process, the Company forced the Nova Scotians to rethink their relationship to Great Britain, to the Temne, to Africa and to the ideas they brought from America. The story of the growing split between the Company and its settlers has been told often and well; what I would like to do is use that story to untangle the different ideological strands that came together in the Nova Scotians' understandings of themselves as a people.<sup>25</sup> Forced by what they saw as the Company's abandonment of its commitment to their freedom, the settlers fought to build their own sacred, legal and, finally, constitutional order.

Latent tensions between the settlers and the Company predated arguments over land tenure and certainly informed them. Thomas Peters, the Nova Scotian who had first traveled to England to ask the Crown to provide him and his followers a more desirable home, had cooperated with Clarkson in recruiting and organizing potential migrants to leave Canada. Clarkson and Peters were both surprised when the Company asked the Englishman to stay on as the colony's first Governor after crossing to Africa, and Peters took exception to a white Briton presiding over a colony of supposedly free and equal black settlers in Africa. Rumors that Peters was fomenting a rebellion were passed to Governor Clarkson. The Governor enjoyed enough support among other settlers to win a confrontation with Peters, but this early discontent with the leadership of an Englishman, even one who had earned the settlers' trust and admiration, reflects the instability of the Company's model of governance.

The Company recalled Clarkson within a year of the Nova Scotians' arrival in Africa, and without his mediating presence the seeds of instability began to germinate. He was recalled, in fact, because of his sympathy for the settlers' demands regarding land. When recruiting in Nova Scotia Clarkson had warned that material conditions would be difficult. All he promised was that in return for the hardships settlers would face, the Company would recognize their legal equality and give them freehold land on which to

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<sup>24</sup> Austin, *Labour, Land and Capital in Ghana*, 103 for a description of land use and rents in early nineteenth century Asante that sounds much like the Company's quitrents.

<sup>25</sup> See Fyfe, *A History of Sierra Leone*; Walker, *The Black Loyalists*; Wilson, *The Loyal Blacks*; Schama, *Rough Crossings*; Pybus, *Epic Journeys*; Sidbury, *Becoming African in America*; Jasanoff, *Liberty's Exiles*.

build farms and achieve personal independence. He was perplexed when he arrived in Africa and learned that the Company expected him to charge settlers with an annual quit rent for their land. He tried to explain to the Company Directors in England that quit rents violated the promises he had made, but his words fell on deaf ears. Soon the Company recalled him, sending a series of successors who were committed to its land policies. The Nova Scotians blocked quit rents for most of the decade, but the Company Directors continued to push, finally insisting that they be paid in 1799.

The Company's insistence on quit-rents, while misguided, was not malicious. The bankers who ran and funded the Sierra Leone Company invested a great deal of capital in the fledgling colony, and they were not so delusional as to expect the colony to turn a quick profit. They were engaged in expensive philanthropy. Charging quit-rents would help recoup a modest financial contribution from the settlers, who were, they believed, the main beneficiaries of the colony. Of course things looked different to the Nova Scotians, who were battling slave traders, the elements and untold invisible pathogens, while the bankers in Clapham met in ease and comfort to plot the colony's future. Surely, those leisured bankers would honor the promises their representative had made in Nova Scotia, and in doing so grant basic rights to those who were working to establish the Company's new colony, often while watching their friends and family members succumb to the tropics. Surely the company directors would not expect virtually destitute black settlers to send back a portion of the meager income they might be able to earn to patrons who were so patently well off, especially given the fact that pushing them into commercial exchange would probably mean encouraging them to sell the produce they grew on their farms to the slave factory at Bance Island.<sup>26</sup>

Just as there was more than one side to the quit-rent issue, there was more than one issue dividing the Nova Scotians and the Company's representatives in Africa. Some of the most explosive divisions arose over religion. The black settlers were divided among three denominations—Baptists, Huntingtonian Methodists and Wesleyan Methodists—but all shared a deeply rooted conviction that they were a gathered

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<sup>26</sup> For more detailed discussions of these disputes, see Sidbury, *Becoming African in America*, Chapter 5.



community and all shared an antinomian theology. The Englishmen who succeeded Clarkson as the Company's representatives in Freetown, especially Zachary Macaulay who served as Governor for several years during the 1790s, were, like the settlers, evangelicals, but they were evangelicals of a much more conventional cast. To borrow a phrase, settlers and Company officials were divided by a common religion, constantly concerned that those who claimed to be acting according to God's plan were unknowingly in thrall to the devil. There were also conflicts between the settlers and the Company over the right to salvage and over the treatment of slave traders who stopped in at Freetown while trading at Bance Island. All of these disputes involved the Nova Scotians' sense of themselves as a people. All ultimately influenced the Nova Scotians' demands for collective self-determination. All contributed to the rocky history of the colony during its first decade, a history that included at least two near uprisings, several open confrontations between Company officers and different settlers, the secession of a group from the colony, and, ultimately, a settler rebellion in 1800.<sup>27</sup>

It would be misleading, then, to suggest that disputes over land tenure were the single source of instability in early Freetown. They were, however, the constant and exacerbating factor that pushed uncertain settlers to believe that the Company was less concerned about their well being than about its own profits. As the famous abolitionist Thomas Clarkson noted when conducting a review of the colony's history in 1815 for the British government, the quit-rent had been a source of "*universal Discontent*" among the Nova Scotians, causing "*constant Contention between them and the Directors*" (emphases in original). He went on to quote Thomas Ludlum, the Governor of the colony at the time of the 1800 uprising identifying the "*Demand of a Quit-Rent for the Lands held of the Company*" as the "*Chief Matter of Complaint*" (emphases in

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<sup>27</sup> Ibid.

Clarkson's letter).<sup>28</sup> Dissatisfaction over the quit rent pushed the Nova Scotians to reject the Company's vision for the colony and to constitute themselves as a separate people.

It is not difficult to understand why quit-rents became a source of discord. From the Company's perspective, the quit-rent was a standard tool of empire. It was commonly used in both proprietorial and Crown colonies in America, and it remained in use in Australia long after it had been forgotten by everyone in Sierra Leone but the Nova Scotians.<sup>29</sup> The settlers believed, on the other hand, that paying a quit-rent meant conceding that their land remained the Company's and thus that they remained dependents. Not surprisingly, they used the word "slaves." This too made sense on both a practical and a legal level. However much work a settler put into a farm, secure tenure would depend on paying an annual fee to the government. Severe weather that took out a harvest might mean more than a lean year; it might mean forfeiting the land to the government. In a colony with staggering mortality, the unexpected death of a young father responsible for working the fields would almost surely mean his wife and children would lose the farm to the Company.<sup>30</sup> It would destroy the basis in land tenure for the community of free Christian households that the Nova Scotians had moved to Sierra Leone to create. And though neither the settlers nor the Company may have known it, the legal basis for quit-rents reached back to earlier forms of servitude in ways that likely would have intensified the settlers' distrust.

Quit rents had arisen in Medieval England, when those on a Lord's land paid an annual fee to be quit of one or more of their feudal service obligations. Quit-rents were rooted in relationships of servility.

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<sup>28</sup> Thomas Clarkson to Bathurst, Bury St. Edmunds, June 22, 1815, CO 267/41, National Archives of the U.K., Kew (hereafter NAUK). Ludlum's original letter is in CO 270/6, Council Records for 1801, Nov. 17, 1801.

<sup>29</sup> Beverley W. Bond, Jr., *The Quit-Rent System in the American Colonies*, with an Introduction by Charles M. Andrews (New Haven, 1919) surveys the imposition and administration of quit-rents throughout British America; William Pember Reeves, *State Experiments in Australia and New Zealand*, 2 vols. (London, 1902), 197-99. Ludlum made the case in his 1801 letter that the quit-rents charged in Sierra Leone were much higher and more damaging to settlers than any charged in America, but the Company Directors probably did not realize that when they set them (CO 260/6, Council Records for 1801, Nov. 17, 1801 Meeting).

<sup>30</sup> See Ludlum's careful explanation of why he was going to give up the land of a settler's orphan for whom he was guardian, because the sum of the annual quit-rents would total more than it would cost to buy comparable land when the child reached maturity if he did then want to farm: CO 260/6, Council Records for 1801, Nov. 17, 1801 Meeting.

They were legal relics of a social and economic system that resembled West African traditions of communal or state ownership and individual use rights. The Company's push to modernize and civilize Africa became entangled with what it failed to see as an echo of the putatively pre-modern systems it hoped to displace. This effort evoked resistance on the part of the settlers, resistance that was similarly entangled in supposedly progressive and traditional ways of understanding the self and the world.

The settlers' objections to Company rule did not appear fully formed; they developed over the 1790s as disagreements involving land became entangled with feelings of disenfranchisement. Thomas Peters originally went to England from Nova Scotia in order to ask the Crown to expedite the overdue distribution of land to those who chose to stay in Canada, and to provide a new home outside of Canada for those who had lost faith that Nova Scotia offered hope for the future. He and his followers sought transportation to a province where their "industrious exertions" would help them "become useful subjects to his Majesty."<sup>31</sup> Land ownership was the foundation on which the Nova Scotians planned to build their colony, but they sought other rights and privileges. Soon after arriving in Africa, Peters sought to wrest political control from Company officials. He died soon afterwards, but two years later, when Governor Zachary Macaulay punished two Nova Scotians without trial, the surviving settlers again became concerned that Company officials were infringing on their rights as free subjects of the Crown. Macaulay exacerbated the settlers' anxiety with an authoritarian response to their objections. He declared that "no one, within the Colony" could "censure the Governor and Council." For a day or two it looked as if a rebellion might ensue.<sup>32</sup> Less than a year later a French warship entered the Sierra Leone River and sacked Freetown. In a dispute over who owned property that the French had taken but settlers had salvaged, Macaulay peremptorily threatened severe repercussions for any settler who failed to "faithfully restore all the

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<sup>31</sup> Charles Bruce Ferguson, ed., *Clarkson's Mission to America, 1791-1792* (Halifax, Nova Scotia, 1971), 32. Available online at: <http://www.blackloyalist.com/canadiandigitalcollection/documents/diaries/mission/31-42.HTM>.

<sup>32</sup> CO 270/2, June 16, 1794-June 30, 1794, National Archives, UK (Kew). For this incident, see Walker, *The Black Loyalists*, 178-81, or accounts in the other works listed in n. 3 above.

Company's property." In response to these threats a group of settlers wrote to John Clarkson. They lamented that they used to call their new home Freetown, but that they had increasing "Reason to call it A town of Slavery."<sup>33</sup> Disputes over land, representation and respect were poisoning relations between Company officials and many of the settlers.

Most Nova Scotians remained in Freetown and sought to defend their rights within the Company structure, but some moved away to take up land beyond Company grounds under the authority of a local Temne headman. Macaulay correctly perceived the breakaway community at Pirate's Bay as a rejection of his leadership, and he took great joy reporting any problems that arose there to his superiors in England. In the process he provided brief snapshots of some Nova Scotians' understandings of themselves as a people and a potential polity. The breakaway settlement began before Clarkson left Freetown, and while it certainly reflected many settlers' frustrations with the Company's delays distributing land—frustrations that Clarkson shared—it does not appear that those who originally took up Temne land rejected the Colony in any fundamental sense. They maintained good relationships with Clarkson and they carried on social and commercial relationships with white and black residents of Freetown. Over the course of the 1790s the settlement gradually became an alternative and a protest to Company rule—in Zachary Macaulay's words, the secessionists "explicitly renounced our government"—allowing the breakaway settlers to develop their own experiment in sacred and secular government.<sup>34</sup>

The two realms of government were closely related, in part because Wesleyan Methodists withdrew more or less as a congregational community to form the settlement. They built a system in which their chief religious leader, Nathaniel Snowball, also served as their Governor. They provided neither trial

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<sup>33</sup> Zachary Macaulay's Journal, Oct. 13, Oct 14, Nov. 26, 1795, Abolition and Emancipation Microfilm Collection, Adam Mathews, Part I, Sources from the Huntington Library, reel 7 (originals in the Huntington Library, San Marino, California). Luke Jordan, John Jordan, Rubin Simmons, Amarica Tolbert, Moses Wilkinson, preacher, Isaac Anderson, Stephen Peters, James Hutcherson, A Great Many More tho paper wont afford to John Clarkson, Sierra Leone, Nov. 19, 1794, Clarkson Papers, vol. 3, British Library, London. As Christopher Tomilins pointed out, the law of salvage gave the Company no legitimate claim to this salvaged property; Macaulay's demand underscores his view of the settlers as subordinates (personal communication September 3, 2012).

<sup>34</sup> Zachary Macaulay's Journal, Saturday, January 5, 1799, Reel 6 for quotation.

by jury nor separation of powers. Disputes were settled at judicial hearings with Snowball serving as judge, a process of dispute resolution that resembled Temne practice.<sup>35</sup> The community's subordinate offices are not clear, but it appears that Class Leaders within the Church played important administrative roles parallel to those they played in the church. The community probably governed itself through consensus, but when consensus broke down, settlers were left as precariously dependent on authority beyond their control as had been the case when living in Freetown. This became clear when Snowball adjudicated a dispute involving an allegation that one of his advisors had stolen buried treasure that had been revealed to another in a dream. Snowball sided with the defendant. The plaintiff alleged favoritism and appealed to King Tom, the Temne headman whose land included Pirate's Bay. King Tom ruled according to Temne understandings of communal legal responsibility: it did not matter who among the villagers had the treasure; the village as a whole owed him 700 Bars.<sup>36</sup> This incident suggests that the settlers at Pirate's Bay sought to govern themselves, as one might expect, through a system that adapted their church governance to secular ends by borrowing language (Governor) and assumptions (individual ownership) from the Anglo-American legal regimes under which most had lived their lives and melding them with judicial procedures that may have been borrowed from the Temne. That may have been a template for the way land tenure and other issues were handled in Pirate's Bay, but other issues did not create conflicts that attracted Macaulay's attention, so they remain obscure in the records.<sup>37</sup>

Disputes over land tenure continued to arise, however, among those settlers who remained in Freetown. They struggled first to reach accommodation with the Company, and then to resist its control.

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<sup>35</sup> Matthews, *A Voyage to the River Sierra-Leone*, 79-80; Thomas Winterbottom, *An Account of the Native Africans in the Neighborhood of Sierra Leone* (London, 1969 [1803]), 124-25.

<sup>36</sup> For the account of this dispute, see Macaulay's Journal, Jan. 5, 1799, reel 6. For the tensions the incident reveals between Temne and Nova Scotian conceptions of law and property, see my "'African' Settlers in the Founding of Freetown," in Paul Lovejoy and Suzanne Schwarz, eds., *Slavery, Abolition and the Transition to Colonialism in Sierra Leone* (Trenton, N.J., 2015), 127-42. For treasure digging elsewhere in West Africa, which, if common in Sierra Leone, might have informed the legal traditions that King Tom invoked, see Winsnes, ed. and trans., *Letters on West Africa and the Slave Trade*, 84-5.

<sup>37</sup> Land tenure was probably governed by landlord-stranger conventions that prevailed throughout much of West Africa (Brooks, *Landlords and Strangers*, esp. chaps. 2 and 9).

That the vast majority of Nova Scotians remained within the Colony is explained in part by the uncertainty of living under Temne authority, and in part by the fact that the Company, for all of its flaws, afforded respect to a broader array of rights for black people than did any other contemporary white-dominated polity. Notwithstanding disputes over whether specific circumstances required jury trials, the Company created a judicial system in which black settlers held the offices of sheriff and constable and dominated the colony's juries. The small group of whites sent out by the Company—probably never as many as a hundred people at a time—held the highest offices, but the Nova Scotians, most of whom had grown up in American slavery, enjoyed more public authority in Freetown than they could have dreamed possible in the United States.

For example, the colony inherited Granville Sharp's legislative structure, which he had based on the Old Testament and his understanding on England's Ancient Constitution, creating what amounted to a bicameral legislative body of Tythingmen and Hundredors to be elected by all settlers.<sup>38</sup> It was inaugurated in Freetown by Clarkson but originally lacked clearly defined legislative powers. Macaulay moved to regularize the colony's government by creating a constitution that specified the powers of the legislature. The settlers tested his commitment to democratic government by electing a body of Tythingmen and Hundredors who were hostile to the Governor just as he was about to unveil the plan. Macaulay withheld the new constitution, only putting it into effect after the following election when a legislature friendlier to the Company was chosen. The struggle surrounding the new constitution and the settler uprising that resulted from that struggle pushed some Nova Scotians to develop a clearer vision of themselves as a corporate body distinct from the Company, and to explain to one another how they should govern

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<sup>38</sup> For Sharp on household-based government and liberty and the Frank-pledge (including Tythingmen and Hundredors), see *Memoirs of Granville Sharpe, Esq.*, <http://galenet.galegroup.com.ezproxy.rice.edu/servlet/Sabin?dd=0&locID=txshracd2542&d1=SABCP01512500&srcht=a&c=1&an=SABCP01512500&df=f&s1=frank+pledge&d2=293&docNum=CY3802017951&h2=1&vrsn=1.0&af=RN&d6=293&d3=293&ste=10&stp=Author&d4=0.33&d5=d6&ae=CY102017659> (accessed Dec. 21, 2012), pp. 266-67 (images 292-93), 373 (image 399), 519-21 (images 541-43).

themselves. In the process some asserted their status as a people, defined in part by their shared history in Nova Scotia and in part by racial exclusion, and the Nova Scotians as a whole debated one another and Company officials about how to understand themselves as Britons, as Africans, and as Christians. As is true of many of the political formulations of racially subordinate groups in the Atlantic world, the entangled nature of these debates means that they simultaneously mirrored and critically revised the better-known elite discussions that have traditionally dominated our understandings of the Age of Revolution.

How did struggles over self-determination emerge from disputes about quit rents? The Company's periodic efforts to collect quit rents created a base of discontent among the settlers. When the Company made practical moves to implement the quit rents, the party of disaffected settlers would gain the upper hand in the annual elections for Tythingmen and Hundredors. In those cases allies of the secessionist Wesleyan Methodists would take office and, beginning in December of 1796, they started to use the popularity they gained by fighting for settlers' land rights to push for more fundamental changes in the colony's governing structure. With elections on the horizon, two Nova Scotians—Ishmael York and Stephen Peters—began quietly approaching other settlers and arguing not just that they should choose black representatives, but that they should “prevent whites from voting.” Macaulay confronted York and Peters and dared them to offer such a law to the legislature, finding the notion that “a white face” might entail a “civil disqualification” to be so ludicrous that it “provoked one to laughter.”<sup>39</sup> No doubt it seemed less funny to the Nova Scotians, who had all lived in polities that denied them the vote because of the color of their faces. Despite Macaulay's insistence on the “advantages that would accrue . . . by the election of some of the whites,” the voters returned an all black legislative body. It was composed, Macaulay thought, of “the most ignorant, hardheaded and perverse” among the settlers. When the results were announced and it became known that no whites had been elected, the settlers “got together and gave three cheers.”<sup>40</sup>

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<sup>39</sup> Macaulay's Journal, Dec. 10, 1796, microfilm reel 7.

<sup>40</sup> Macaulay's Journal, Dec. 15, 1796, microfilm reel 7.

Quit rents were implicated in these disputes—Macaulay reported that settlers had the “foolish notion . . . that a vote of their representatives would ease them of the quit rent to the Company.”<sup>41</sup> This “foolish notion” reflects the settlers’ constitutional uncertainty about the extent to which the Company was willing to extend democratic control over the colony to the representative institutions it recognized, but the move to institute racially restrictive voting laws, or, short of that, to use the advantage of their numbers to exclude whites from the legislative body, represents a turning point. From the election of 1796 until the uprising in 1800 those settlers most disaffected with Company officials and government would increasingly turn away from protests focused on the quit rent and toward efforts to use general dissatisfaction about the quit rent to transform the way the colony was governed. Nova Scotians unhappy with the SLC began to articulate a vision of Sierra Leone in which the Company and the colony were separate though related entities; in their eyes the colony rightfully belonged to those who settled it, and the Company’s authority extended only to commercial questions.

This vision did not appear immediately, nor was the movement toward it steady and consistent. Macaulay came to believe that “a few” settlers had, “since the foundation of the Colony,” hoped to throw “off the jurisdiction of the Company’s servants” and place one of their own as “a kind of Dictator,” who would “rule them after the manner of the natives.”<sup>42</sup> But the leaders of the emerging separatist faction, however upset they were with Macaulay and the Company, continued to use western political forms and techniques to mobilize followers. Leaders petitioned the Company after asking followers to sign papers pledging allegiance to the petitioners; they sought votes with classic Anglo-American electoral techniques like plying the voters “with drams”; and they sent delegations to Macaulay to discuss and seek to influence

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<sup>41</sup> Macaulay’s Journal, Dec. 15, 1796, microfilm reel 7.

<sup>42</sup> Macaulay’s Journal, September 30, 1797, microfilm reel 7.



the new constitution.<sup>43</sup> They faced fluctuating opposition from other Nova Scotian settlers along the way, especially from settlers who worshipped in Baptist churches and proved much less willing to endorse the separatist vision than were members of Wesleyan and Huntingtonian Methodist congregations. In short, though at least some of the separatists would make the claim that Africa should be the province of “Africans,” the political techniques they used, and the political structure they sought to defend—including a racially exclusive form of settler home rule—mirrored in obvious ways some of what had happened in North America during the American Revolution.

If, however, these parallels are real—and they are—there is a particularly important area of divergence that has significance for our understandings of the relationship between social and political constitutional rights in the Age of Revolution, a divergence that can speak to current arguments about the range of plausible American constitutional understandings. The Nova Scotians’ struggles for autonomy began at the level of process. The separatists’ desire to exclude white voters from legislative elections led to more expansive moves toward autonomy. The Tythingmen and Hundredors elected in December 1796 moved to consolidate their support among the settlers, convincing two-thirds to “subscribe papers authoriz’g their Tythingmen to act generally and without limitation in behalf of their rights.” With this expression of confidence, the Tythingmen demanded that all settlers give up Company land grants until the quit rent was withdrawn, and they created a “Court in the country, ” to enforce the Tythingmen’s ruling. Macaulay perceived an uprising in the making, so he armed and fortified the Company’s headquarters and ordered the settlers’ court disbanded.<sup>44</sup> Whether due to Macaulay’s intimidation or the belief of many settlers that the separatists had gone too far, the elections in December 1797 brought in a group of

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<sup>43</sup> Macaulay’s Journal, Sept. 30, 1797 (petitioning), Dec. 22, 1796 (drams), Dec. 19, 1796 (delegation to Macaulay), all microfilm reel 7. There are other examples of petitioning, electioneering (though not with alcohol) and sending delegations throughout the records of Sierra Leone in the 1790s.

<sup>44</sup> Macaulay’s Journal, Sept. 30, 1796, Oct. 2, 1797, microfilm reel 7.

Tythingmen and Hundredors who were much friendlier to Macaulay and the Company than their predecessors. The separatists had to regroup.<sup>45</sup>

Macaulay was recalled and Thomas Ludlum arrived in Freetown to serve as Governor of the colony. He had instructions to continue his predecessor's efforts to collect the quit rent, so it is no surprise that he inherited the contention that had arisen under Macaulay. By the Fall of 1800 the goals of the separatists had expanded beyond developing a system controlled by blacks to adjudicate disputes involving the Nova Scotians. They decided to create a parallel governmental system with laws for the Nova Scotians that would remain distinct from the laws that governed Europeans in the Colony. On September 3, 1800, the "Hundredors and Tythingmen" posted the following list of laws:

If any one shall deny the Settlers of any thing that is to be exposed of in the Colony, and after that shall be found carrying it out of the Colony to sell to any one else, shall be fined £20 or else leave the Colony, and for Palm Oil 1/. Quart, whose ever is found selling for more than 1/ Quart is fined 20/ Salt Beef 6d/lb any one selling for more shall pay the fine of 40/ and Salt pork 9p/lb shall pay the fine of 40/ and for rice 50 Wt. to a Dollar 5/ and whosoever is found selling for less than for a Dollar shall pay the fine of £10 and Rum is to be 5/ Gallon at the wholesale and any one that sells for more than 5/ shall pay the fine of £3 and the Retailers is not to sell for more than 6/3 by the Gallon and to sell as low as a Gill at 6/3 Gallon as low a single glass as 3 cents and if any one should sell for more than that shall pay the fine of £3 Soap at 15 p/lb and whosoever shall sell for more than 15 p shall pay the fine of 20/. Salt Butter 15 p/ lb and if any more than 15p/lb shall pay the fine of 20/ and if any one found keeping a bad house is fined 20/ or for abuse £1 for trespass 10/ for stealing shall pay for time the value for stealing, a blow £5 for removing his neighbour's landmark shall pay £5 for cutting timber or wattles on any persons land without their leave shall pay 5 for drawing a weapon or any edge tool shall pay £5 and for threatening, shall pay £2..10 and for

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<sup>45</sup> Macaulay's Journal, Dec. 20, 1799, January 1798, microfilm reel 7; Macaulay's Journal, Jan 22, 1798, Jan. 29, 1798, April 23, 1798, microfilm reel 6.

lying or scandalizing, without a proof shall pay £2..10 for Sabbath breaking shall pay the fine of 10/ Cheese to be sold 1/ lb. and if more than 1/ shall pay the fine of 20/ Sugar 15p/lb and whosoever is found selling for more than 15 p/lb is fined of 20. And if any person shall kill a Goat, Hogs or Sheep any shall serve a summons or warrant or execution without orders from the hundredors and Tythingmen must pay the fine of £20. And if any person shall kill a goat, hog, or sheep or cause her to slink her young shall pay the fine of £5 or shall kill Cow or Horse shall pay the fine of £5. and if a man's fence is not lawful he cannot recover any damage, and if a man that has a wife shall leave her and go to another woman, shall pay the fine of £10 and if a woman leave her husband and take up with another man he shall pay £10, and if Children shall misbehave they shall pay a fine of 10/ or otherwise be severely corrected by their parents.

And this is to give notice by the Hundredors and Tythingmen that the laws they have made that if the Settlers shall owe a debt to the Company they shall come to the Hundredors and Tythingmen and prove their account, and swear to it and swear to every article agreeable to the proclamation that they shall take the produce for their goods and not for their good pay any percent on it, and all that come from Nova Scotia, shall be under this law or quit the place.

The Governor and Council shall not have anything to do with the Colony no farther than the Company's affairs, and if any man shall side with the Governor, etc. against this law shall pay £20

This is to give notice that the law is signed by the Hundredors and Tythingmen and Chairman they approved it to be just before God and Man.<sup>46</sup>

There are several things of interest in these laws. First, the legislators were clearly committed to a notion of moral economy and believed that Nova Scotians were being cheated by people overcharging or refusing to sell goods at a just price. Second, the Tythingmen and Hundredors drew no fundamental

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<sup>46</sup> "No. 2 Copy—Paper of Laws stuck up at Abram Smith's house by the Hundredors and Tythingmen," Appendix to the Minutes for the Year 1800, CO 270/5 (Council Sessions in Sierra Leone, Jan. 1, 1800-April 1801), NA, UK.

distinctions in their laws between acts that violated the community's sense of moral economy, and those that would, in other legal systems, be seen as matters of criminal or moral law (robbery, "bad houses," livestock rustling). Third, the document interposes the settlers' legislature between the Company and the settlers, insisting on an intermediary role in adjudicating debt cases. With these laws the Tythingmen and Hundredors laid out a vision of a just commercial society, and insisted on their collective right to shape it through courts. Fourth, that vision of a just commercial society is incorporated into the community's fundamental law, not only as a deeply engrained tradition in local governance, but as an integral part of the Nova Scotians' founding document.<sup>47</sup> To make sense of this document, then, requires untangling the social and constitutional visions that it embodies.

Variations in the sanctions for violating different laws reveal the different value the settlers placed on different laws. Violations of all laws were punished with fines. Settlers who broke the commercial laws faced fines ranging from the modest—five shillings—to the more substantial (a couple of pounds). Infringing on another settler's person or property—whether by assault, by infringing on another's land rights, or by killing livestock—constituted a more serious offense against the social order that was to be punished with a £5 fine. Men offending against the family household order, either by abandoning their wives for other women, or by beginning relationships with women married to other men, faced even stiffer fines of £10, fines that would likely have bankrupted those who incurred them. By far the largest fines, £20 fines that were surely designed to ruin offenders, were reserved for those who undercut the new constitutional order, either by serving court papers without the sanction of the Hundredors or Tythingmen, or by siding with "the Governor, etc. against this law."

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<sup>47</sup> For the way these beliefs were excluded from elite constitutional visions, see Tomlins, *Law, Labor, and Ideology*, esp. chapt. 2. For the struggles of non-elite Americans who continued to see communitarian substantive rights as central to constituting society, at least on local levels, see the discussion below and the sources cited in notes 47 and 48      bv0o.

These founders envisioned a market economy and sought to establish moderate sanctions to regulate commercial exchange in accord with community values. They had traveled to Sierra Leone in families and in search of family farms, and their laws placed a high priority on protecting men's rights to land, livestock and women, rights that they clearly saw as central to the household structures that lay at the theoretical and social foundation of their society. Over the 1790s as they had battled the Company for their rights, they had come to see themselves as a people, and the highest fines, as well as banishment from the community, were reserved for those who sided with the Company, who committed treason against the community. But the declarations of the Nova Scotians' status as a people were part of the same document that outlawed assault and regulated the price of rum.

Notwithstanding their rebellion against Company officials, the settlers' laws mesh nicely with the goals that had inspired Granville Sharp and the Sierra Leone Company. The laws envision, or more likely reflect, a community built on households holding one another to account for the common good. This was the essence of Sharp's idealized Frankpledge system.<sup>48</sup> In many ways the moral economy provisions are in keeping with longstanding European plebeian traditions, but there are important variations. The settlers' laws focus not on bread and subsistence crops, but on the sale of meat to outsiders. Who would these outsiders have been for the settlers of Freetown? Almost surely the biggest market for salted beef and pork, for palm oil, and for rice consisted either of slave ships or the slaving fort at Bance Island. Other regulated commodities—rum, butter, cheese, soap—may have found buyers in Temne villages, but it seems probable that Bance Island offered the readiest market for those goods as well. The settlers' laws instituted a regime of moral economy that empowered the community of householders, through their representatives (the Tythingmen and Hundredors), to foster a commercial economy while preventing its producers from falling prey to the tempting profits that could be found by selling to the highest bidders. Those bidders would, after all, have been slavers.

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<sup>48</sup> See note 35 above.

These regulatory laws are followed virtually seamlessly by a kind of law that elite constitutionalism has long treated as different in kind, and it is the relationship between these two kinds of law within the document that is most revealing of the Nova Scotians' constitutional vision. The document explicitly moved from what elite Anglo-American systems would have seen as statutory law into what those systems would have seen as fundamental, when it insisted that "all that come from Nova Scotia, shall be under this law or quit the place." It goes on to make the Governor and Council responsible for "the Company's affairs," while making clear that the Tythingmen and Hundredors intend to govern the "Colony." The document closes by claiming legitimacy through natural and divine law by asserting that the laws are "just before God and Man."

It is the combination of these different elements that casts interesting light on constitutionalism in the United States. These people who had suffered slavery, the hardship of war, destitution in Canada, and a history of struggle in Sierra Leone constituted themselves before God and Man in this document. They did so not with statements about the different powers of courts, legislatures or executives, despite having often struggled over procedural issues with the Company over the course of the Colony's history. Instead, they constituted themselves around a vision of a fair and moral society, one which would be controlled by its members, but one that, beyond that, rested on a communal vision of substantive (as opposed to procedural) rights and obligations. It was not in their racial exclusivity that they distinguished their political vision from European and European-American polities. The Nova Scotians only reversed the terms of racial exclusion, much as Haitians would in 1804.<sup>49</sup> It was not in their vision of a moral economy that they distinguished their social vision. Many European and European American polities continued to prohibit forestalling. They distinguished themselves in their belief that their communal commitment to economic and substantive justice constituted them as a people. Those unwilling to sign onto that vision forfeited their membership in

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<sup>49</sup> See Robin Blackburn's discussion of Haiti in *The American Crucible: Slavery, Emancipation and Human Rights* (London, 2011).

the community despite meeting the racial and historical qualifications for membership—they would have to “quit the place.”

### III

Different strands of Temne political and jurisprudential thought surely become entangled in the Nova Scotians’ vision of themselves. At different times settlers experimented with aspects of Temne government, and following the 1800 rebellion, a number of Nova Scotians left the colony to live and work with Naimbana. But the strands of their constitutional thought that found their way into the 1800 “Settlers’ Laws” suggest that the idiosyncrasies of their ultimately aborted acts of nation-building were forged in North America, and then that they took different shape in response to the experiences of the Nova Scotians in Canada and then in Sierra Leone. In this sense their ideas underscore the degree to which black political thought was Atlantic as far back as the eighteenth century.<sup>50</sup>

In that regard, their example suggests that scholars may have overlooked part of what is at stake in the racially restricted meaning of “We the People” in the preamble of the U. S. Constitution. If we assume that enslaved Americans would have had visions of a just constitution closer to those of the Nova Scotians—who had, after all, been enslaved Americans—than to those of James Madison; if we notice that Native

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<sup>50</sup> Much of the work internationalizing our understanding of black culture and political thought has focused on the twentieth century, including groundbreaking scholarship done by the other members of this panel. See, for example, David Levering Lewis, *W.E.B. DuBois: Biography of a Race, 1868-1819* (New York, 1993) and *W.E.B. DuBois: The Fight for Equality and the American Century, 1919-1969* (New York, 2000); Robin D. G. Kelley, *Africa Speaks, America Answers: Modern Jazz in Revolutionary Times* (Cambridge, Mass., 2012) and *Freedom Dreams: The Black Radical Imagination* (Boston, 2002); Carol Anderson, *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944-1955* (Cambridge, Eng., 2003). Also see Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (1993); Kevin K. Gaines, *American Africans in Ghana: Black Expatriates and the Civil Rights Era* (Chapel Hill, 2006); and Frank Andre Guridy, *Forging Diaspora: Afro-Cubans and African Americans in a World of Empire and Jim Crow* (Chapel Hill, 2010). For work looking at earlier transnational political thought among African Americans, see Julius Sherrard Scott III, “‘A Common Wind’: Currents of Afro-American Communications in the Age of the Haitian Revolution,” (PhD diss., Duke University, 1986); Wilson Jeremiah Moses, *Afrotopia: The Roots of African American Popular History* (Cambridge, Eng., 1998); Floyd J. Miller, *The Search for a Black Nationality: Black Emigration and Colonization, 1787-1863* (Urbana, 1975); and my *Becoming African in America*. Sterling Stuckey’s pioneering *Slave Culture: Nationalist Theory and the Foundations of Black America* (New York, 1987) sought to bridge the eighteenth, nineteenth and twentieth centuries, as does James T. Campbell, *Songs of Zion: The African Methodist Episcopal Church in the United States and South Africa* (New York, 1995) and *Middle Passages: African American Journeys to Africa, 1787-2005* (New York, 2006), which pushes into the twenty-first.

Americans like Tecumseh and Pontiac articulated their senses of what made Indians a people through visions that included distributive as well as procedural justice, visions that insisted on collective control of native land and efforts to recreate communal abundance; if we remember the attempts by non-elite whites to imbue the Revolutionary movement with a greater commitment to substantive justice as represented in Shays' Rebellion and the Whiskey Rebellion;<sup>51</sup> if we look south to St. Domingue and notice that the constitution that emerged in 1801 out of a slave revolution mixed explicit guarantees of labor rights with a commitment to the autonomy of the household and general limits on commerce that could undercut the island's economy;<sup>52</sup> if we recall these dispersed constitutional fragments, then it becomes probable that the constitutional thought of most people in the United States, and of most people in the Atlantic more broadly, would have encompassed a different mix of substantive and procedural justice than existed in most of the dominant ideologies of the age.

These visions do not match twenty-first century progressive politics. The Nova Scotians, like Tecumseh, were racially exclusive. Nova Scotians' notion of justice rested on what present-day progressives are likely to see as outmoded ideas about just prices, rather than on redistribution. The point is not that these subaltern groups embodied some idealize-able version of politics in today's world. They did not live in today's world, and it makes little sense to expect them to provide answers to questions they

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<sup>51</sup> Leonard L. Richards, *Shays' Rebellion: The American Revolution's Final Battle* (Philadelphia, 2003); Robert A. Gross, ed., *In Debt to Shays: The Bicentennial of an Agrarian Rebellion* (Charlottesville, 1993); Thomas P. Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (New York, 1988). Even Jefferson's 1776 draft of a proposal for a constitution for Virginia included a guarantee that every adult male citizen would receive fifty acres of land; see [http://avalon.law.yale.edu/18th\\_century/jeffcons.asp](http://avalon.law.yale.edu/18th_century/jeffcons.asp) (accessed December 30, 2012).

<sup>52</sup> An English translation of the Constitution of 1801 is available at <http://www.marxists.org/history/haiti/1801/constitution.htm> (accessed October 14, 2012). I'm grateful to Franklin Knight and Philip Morgan for pointing this out. See Franklin W. Knight, "The Haitian Revolution and the Notion of Human Rights," *The Journal of the Historical Society* 3 (2005), 391-416 (esp. pp. 410-12) for a discussion of the ambiguities of human rights in the Constitution of 1801; and Laurent Dubois, *Haiti: The Aftershocks of History* (New York, 2012), 33-5 and 42-3. Ironically, the 1801 constitution written primarily by white planters sympathetic to Toussaint and the Revolution made stronger promises of substantive justice than that promulgated by Jean-Jacques Dessalines in 1805. It is also suggestive that enslaved people in antebellum America thought the law (which is of course different from the constitution) should focus less on protecting individual rights than communal peace and well being (Laura F. Edwards, "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *AHR* 112 (2007), 365-93).



could not have conceived.<sup>53</sup> The point instead is that if we broaden our lens to encompass something closer to the majority of the residents of the Atlantic world when unpacking the political ideologies of the Age of Revolution, then we develop a richer and more complicated picture of the ways people understood history, revolution and themselves.

Recapturing those visions out of the occasional and partial appearances they make in records from places like Sierra Leone or Prophetstown, places which were on the periphery of the European imperial and American independence struggles, opens a new window on the meanings of the exclusions that have long been seen as central to the politics of the Age of Revolution. As many have pointed out, writing Indians and slaves out of the “we” who were “the people” excluded those groups from claims to citizenship; by doing so, the Constitution inaugurated struggles for procedural inclusion that have shaped much of American politics for more than two centuries. But writing blacks and Indians out of “the people” did more. It also excluded voices that would have offered different ways of understanding how people could and should come together to form a self-governing nation.

The Nova Scotians’ history in Sierra Leone demonstrates that at least some black Americans—and most had been southern slaves, not free blacks in the North—had developed ideas about how to become a people that included written fundamental law, trial by jury, and appeals to an implicit concept of popular sovereignty. In this sense, they shared much with those who denied them membership in the nation created by the Constitution of 1787. But they also believed that a shared understanding of what made a system of exchange substantively fair—what led later analysts to add the descriptor “moral” to such visions of the economy—helped constitute a people. The exclusion of their beliefs that a just society should be constituted on the basis of a commitment to substantive social justice and that the commitment should receive equal billing in fundamental law meant that the centuries long battle to include their descendants in the promises of American citizenship have privileged procedural inclusion over substantive justice.

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<sup>53</sup> The absurdity of such an expectation does not stop people from doing that with the Founding Fathers.

One cannot of course jump from the substantive justice displayed in a brief moment in Freetown, Sierra Leone, to a claim that the United States Constitution would have included such a commitment had “the People” of the nation been more broadly inclusive. But this odd and largely forgotten incident should remind us that when some were excluded from “the People,” their ideas were excluded as well. The exclusion of those ideas is not a flaw in the document that the nation has remedied by passing the Thirteenth, Fourteenth, Fifteenth and Nineteenth Amendments. To stretch Dr. King’s banking metaphor to the breaking point, their ideas were never deposited in a constitutional account. Later amendments could and sometimes have provided constitutional remedies to the problems of the procedural exclusion. Too rigid a devotion to the constitution that was produced by a People we all recognize as unrepresentative has the effect, however, of enshrining the *ideological* exclusions. It helps ensure that the nation’s fundamental law remains imprisoned within boundaries shaped by the founders’ conception of “the People,” a conception everyone now thinks indefensible.