

Jefferson's Secret Plan to Whiten Virginia



Early in 1776, Thomas Paine fired the imaginations of patriot leaders when he wrote that “We have it in our power to begin the world over again.” One young patriot who would soon emerge as the revolution’s foremost philosopher, the thirty-three-year-old Thomas Jefferson, seized the moment to remake the world. But his most sweeping attempt to do so has gone unrecognized, overshadowed by his more famous role in penning the first draft of the Declaration of Independence and serving as the new nation’s third president. Jefferson’s audacious plan to redesign America from its foundation has been overlooked because it evenly rested upon the seemingly opposite pillars of antislavery and white supremacy.

It took Jefferson some time when the revolution began to find the clay he wished to mold. According to John Adams, he had to be persuaded to author the Declaration of Independence. Adams, the only Yankee on the committee, cajoled him into doing so by [telling](#) him “You are a Virginian, and Virginia ought to appear at the head of this business.” While Jefferson dutifully took notes and followed closely the contentious debates that hammered out the outline of the Articles of Confederation, the nation’s first constitution, later that summer, he chose to leave Congress at the first opportunity, taking up a seat in the Virginia legislature that he had last warmed seven years before.

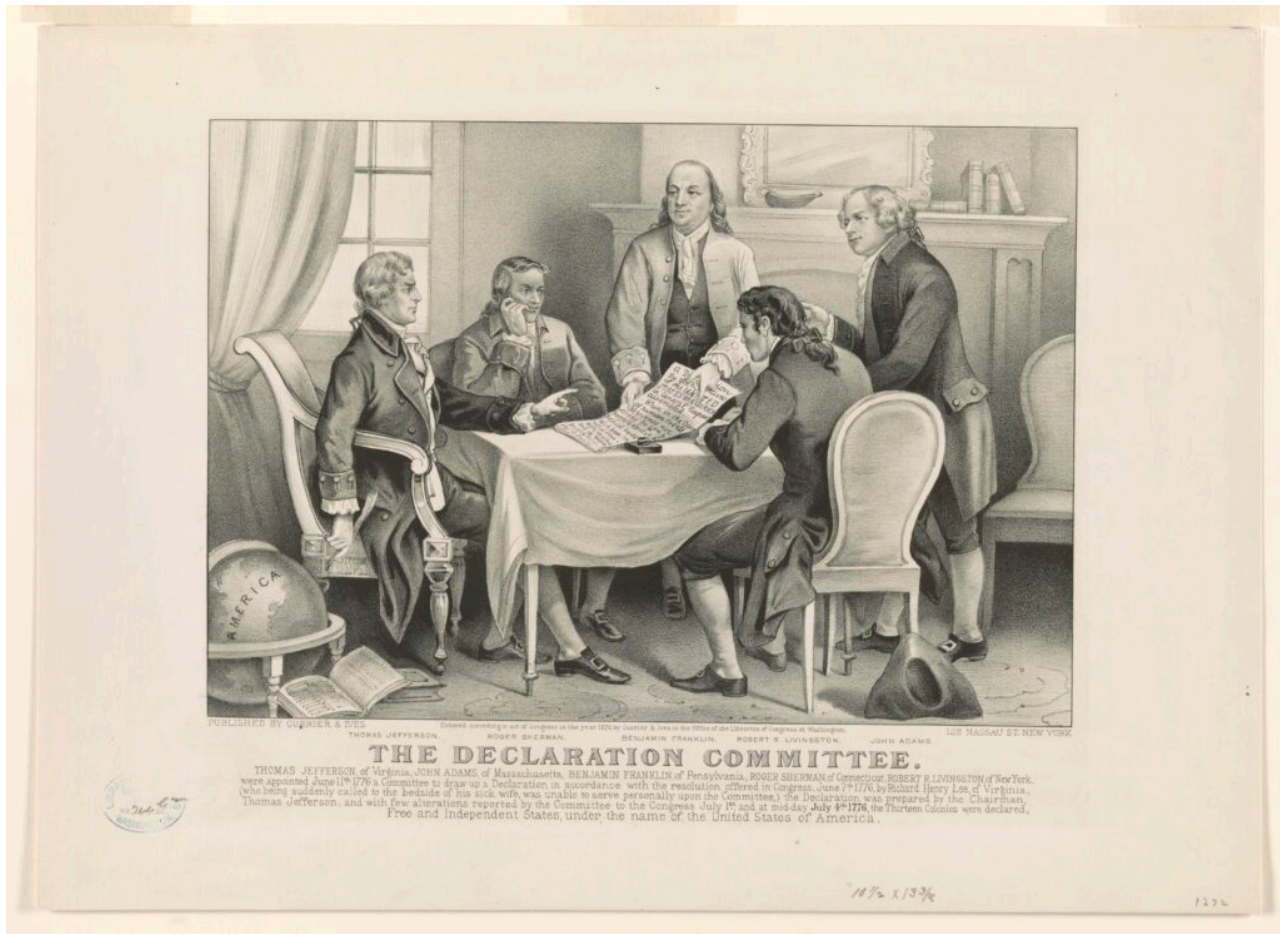


Figure 1: *The Declaration Committee*, 1876. Currier & Ives., Public domain, via [Wikimedia Commons](#).

It is rare for a young, ambitious politician to step back from a national office to take a seat representing a county in a state legislature. In his *Autobiography*, Jefferson plainly stated that though his place in Congress had been renewed for the coming year, he [thought](#) he could do more important work back home: “I knew that our legislation under the regal government had many very vicious points which urgently required reformation, and I thought I could be of more use in forwarding that work.” What legislative issues were so urgent that they drew Jefferson away from the largest city in America, back to sleepy Williamsburg, and kept him there even when offered the ambassadorship to France?

Less than a month into Virginia’s legislative session of 1776, Jefferson revealed the true scope of his ambition, the project that he perceived as giving him the largest scope of action, the greatest possibility of doing what every philosopher dreamed, reforming not just one law or policy, but them all: “When I left Congress, in 76. it was in the persuasion that our whole code must be reviewed, adapted to our republican form of government, and, now that we had no negatives of Councils, Governors & Kings to restrain us from doing right, that it should be corrected, in all it’s parts, with a single eye to reason, & the good of those for whose government it was framed.”

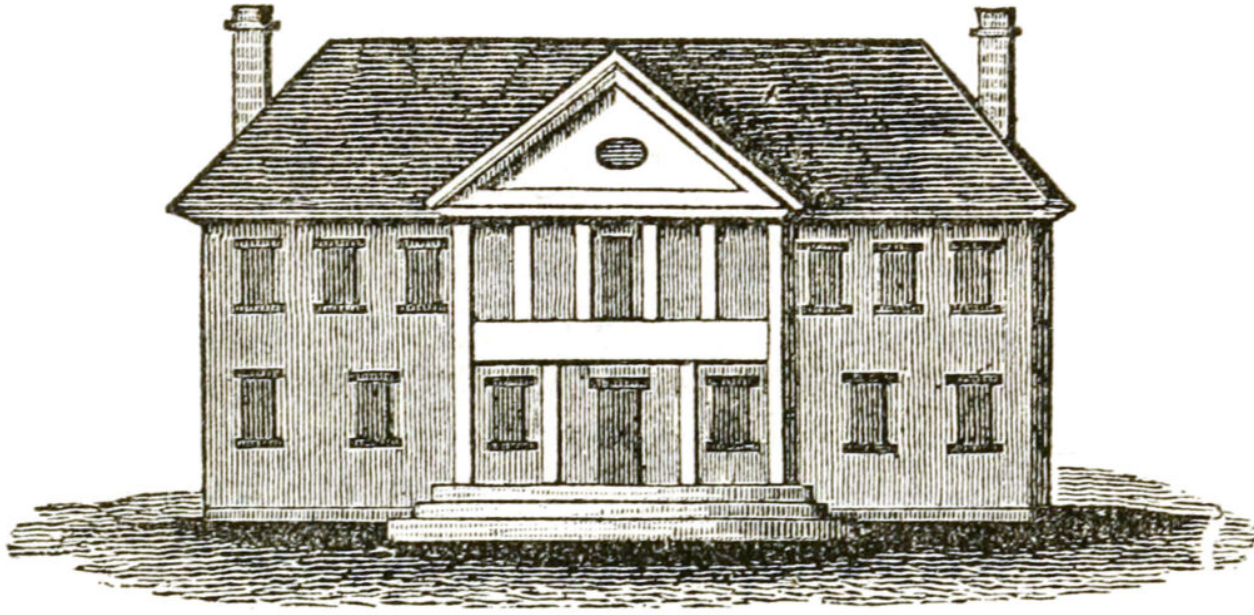


Figure 2: Second Capitol at Williamsburg. Henry Howe (1816-1893) (author); after drawing by unknown artist, Public domain, via [Wikimedia Commons](#).

Historians have tended to overlook how eager Jefferson was to be the architect of a new comprehensive legal code. Jefferson is described as simply “being appointed” to the Committee of Revisors charged with this task. In fact, Jefferson introduced the legislation to create the committee, ensuring that when it passed he would sit upon it. Knowing that his fellow lawmakers would balk at empowering him to redesign 169 years of the basic laws of Virginia from scratch, Jefferson obscured what he planned and claimed that the committee’s charge was just to reorganize the existing laws from their present haphazard chronological arrangement into an organized “digest” of the law.

As chief “revisor,” Jefferson was able to draft more legislative bills in his three-year term than any other member of the General Assembly, but he often hid his authorship by having colleagues introduce bills, or inserting them within other pieces of pending legislation when they were in committee. In this way, Jefferson concealed the way in which he was designing a complete structure of some 128 new laws and not just smoothing out the rougher corners of the legal code. Because Jefferson and his collaborators never submitted the full revision as a single piece of legislation, his accomplishment was not appreciated until a few scholars in the mid-twentieth century dedicated most of their careers to collecting everything Jefferson ever wrote or read. The editor of Jefferson’s voluminous papers at one point realized the true scale of Jefferson’s work on Virginia’s laws: “In the variety of subjects touched upon, in the quantity of bills drafted, and in the unity of purpose behind all this legislative activity, his accomplishment in this period was astounding. He was in himself a veritable legislative drafting bureau.”



Figure 3: Thomas Jefferson, a Philosopher, a Patriote, and a Friend, between 1800-1816. Popular Graphic Arts, Public domain, via [Wikimedia Commons](#).

A decade after Jefferson had begun remaking the world of Virginia, many laws he had authored years before still knocked around the Virginia Assembly. Jefferson still camouflaged his work as mere legal housekeeping, writing to a curious Dutchman who asked about his legal project, "It contains not more than three or four laws which could strike the attention of a foreigner The only merit of this work is that it may remove from our book shelves about twenty folio volumes of statutes, retaining all the parts of them which either their own merit or the established system of laws required."

Jefferson contributed to ongoing misunderstanding of his project by highlighting a few notable pieces of the whole in his *Notes on the State of Virginia* rather than revealing the way in which many of the laws worked together to refashion society. Historians rightly point to his Act for Establishing Religious Freedom, or his bills reforming the system of education or eliminating aristocratic systems of inheritance and land rents as landmarks in the establishment of republican institutions. Some fragments of the language Jefferson used in his early legal revisions circuitously made their way into other charters, such as the Constitution's Bill of Rights, an unsurprising traverse given that George Mason was probably Jefferson's closest co-worker on the revisor's committee.

Besides purging Virginia's laws of monarchical remnants, the way the revised legal code constituted a set of gears working together to engineer a new social order is most clearly seen in Jefferson's attempt to phase out what he saw as the towering evils of his nation: slavery and the black presence in America.



Figure 4: James Akin, *A Philosophic Cock* (Newburyport, MA: s.n., 1804).
Courtesy, American Antiquarian Society.

Looking backward from the present day, through the prisms of modern sensibilities, most people assume that those who fought against slavery did so as they would, out of moral revulsion at the institution and empathy for people denied the most basic human rights. Similarly, our present values lead us to understand slavery and racism as being closely connected, thus prejudging that those who opposed slavery did so out of concern for those shackled, whipped, and trafficked. But the reality of the eighteenth century was that the outlooks of those opposed to slavery and those defending it overlapped where they both agreed that the numbers of Africans and the descendants of Africans had grown

too large and needed to be dramatically reduced. Eighteenth-century abolitionists hoped that ending slavery itself would accomplish this. Eighteenth-century enslavers looked in the short term to ending the international slave trade and in the long run to encouraging the mass immigration of whites which they expected would drive slavery gradually into its natural grave. In the meantime, both poles of this political spectrum agreed that black people, enslaved or free, needed to be more completely policed and disciplined.

Connecting the dots in the bills Jefferson and the other revisors wrote, a master plan for both ending slavery and whitening Virginia emerges from the haze of legalisms. Decades later in his *Autobiography*, Jefferson insincerely claimed that the laws dealing with slavery that he authored in the course of Virginia's revision did not constitute a system: "The bill on the subject of slaves was a mere digest of the existing laws respecting them, without any intimation of a plan for a future & general emancipation." But when all the pieces of Jefferson's legal revisions are gathered together, they can be seen to form an interlocking whole that followed a consistent and novel strategy. Laws dealing with the slave trade, migration of free people of color into the state, punishments for petty crimes, and procedures for manumission, all worked seamlessly together to achieve a common purpose—weakening slavery and diminishing the black population.

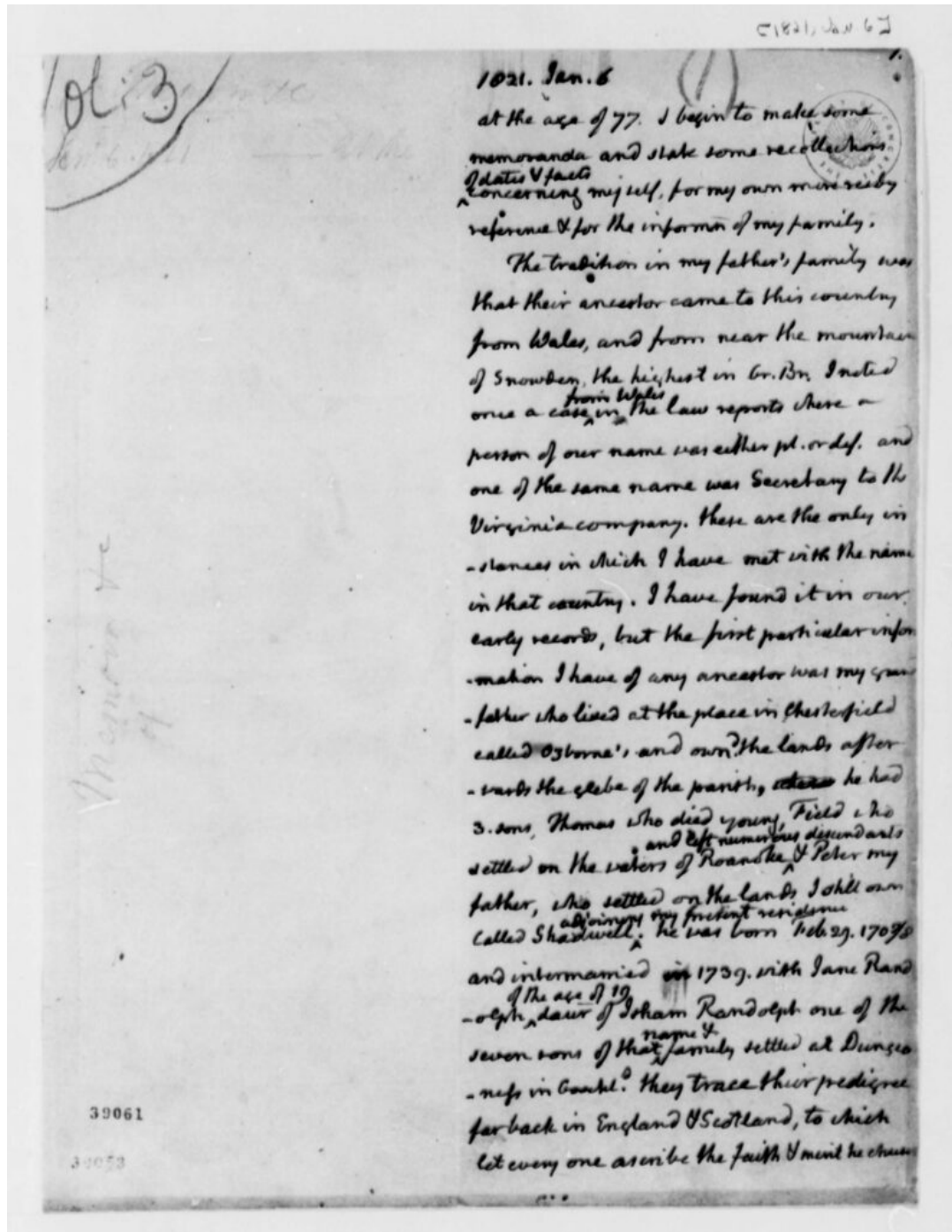


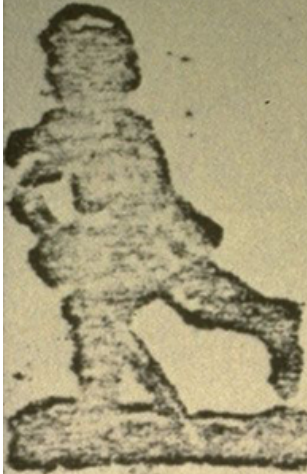
Figure 5: Thomas Jefferson, Autobiography Draft Fragment, January 6 through July 27. -07-27, 1821. Manuscript/Mixed Material. [Library of Congress](#).

Jefferson's system depended on shoring up the bulwarks of race and basing the law on a theory of government that withdrew the protection of government from unfavored groups. But its aim was not simply to construct a segregationist state, one in which the descendants of Africans and enslaved people would exist as a permanent subordinate caste, but rather to use these powers and distinctions to purge people of color entirely from society. Jefferson's preferred tool for accomplishing this was the ancient legal device of banishment and he set about incorporating it throughout the legal code of Virginia, adding it to laws banning the importation of slaves, laws governing

the migration of free people of color, laws of interracial bastardy, criminal statutes, manumission, and ultimately, slavery itself.

The Sage of Monticello's preoccupation with banishment was not without precedent. Virginia had once before in its past attempted to curtail its rising black population by ordering freed people to leave the colony. As early as 1691, legislators grew alarmed at the rising numbers of free people of color, proclaiming that "great inconveniences may happen to this country by the setting of negroes and mulattoes service free, by their either entertaining negro slaves from their masters service, or receiveing stolen goods, or being grown old bringing a charge upon the country." Lawmakers then limited manumissions by requiring that masters transport manumitted persons out of the colony within six months or pay a fine of ten pounds. The requirement that manumitted women and men be banished from the colony was rescinded in 1748 and replaced by a ban on all manumissions unless permission was granted by the governor and council and, then, only upon [grounds](#) of "some meritorious services."

Early in the eighteenth century banishment was also set as the penalty for any white man or woman [intermarrying](#) with a "negroe, mulatto, or Indian man or woman bond or free." However, in such cases, it was the white person who was exiled, not the person of color. A revision of this law in 1753 eliminated the punishment of exile and substituted jailing for six months and a fine of ten pounds for the white offender. But by the time Jefferson himself sat in the House of Burgesses in 1769, such policies were a receding memory and no laws expelled free or enslaved black people from the colony.



RUN away from the subscriber
in *Albemarle*, a Mulatto slave called *Sandy*,
about 35 years of age, his stature is rather low,
inclining to corpulence, and his complexion light;
he is a shoemaker by trade, in which he uses his
left hand principally, can do coarse carpenters
work, and is something of a horse jockey; he is
greatly addicted to drink, and when drunk is info-
rmed and disorderly, in his conversation he swears
much, and in his behaviour is artful and knavish. He took with
him a white horse, much scarred with traces, of which it is ex-
pected he will endeavour to dispose; he also carried his shoe-
makers tools, and will probably endeavour to get employment that
way. Whoever conveys the said slave to me, in *Albemarle*, shall
have 40 s. reward, if taken up within the county, 4 l. if elsewhere
within the colony, and 20 l. if in any other colony, from
THOMAS JEFFERSON.

Figure 6: Newspaper advertisement placed in 1769 by Thomas Jefferson in the *Virginia Gazette* offering a reward for enslaved teenager Sandy, who had escaped. Thomas Jefferson, Public domain, via [Wikimedia Commons](https://commons.wikimedia.org/wiki/File:Run_away_from_the_subscriber.jpg).

However, in the 1770s, some European empires began experimenting with ethnic cleansing regimes of their own. France required all “negroes and mulattoes” to register with the Office of Admiralty in 1762 which was the first step toward their ordered deportation in 1777. Portugal closed its borders to black immigrants in 1773. England’s high court’s 1772 *Somerset v. Stewart* decision effectively abolishing slavery on the mainland was motivated by fears of a growing black population.

Jefferson’s new legal code revived the banishment of any white woman who had a child with a black or mixed-race man from the state (though black women who bore the children of white men were exempt because their offspring was the property of their white fathers). But unlike the ancient precedent Jefferson copied, his measure was aimed more at policing the borders of race than morality, for his proposed law exiled both mother and her free mixed-parentage child. In those earlier times when the upholding of public morals was a higher concern and whites having children with people of color was always considered to be fornication leading to bastardy because interracial marriage itself was illegal, it was a crime punishable by whipping (with harsher beatings

prescribed for the darker-skinned partner). Jefferson, obviously not one to be troubled by such rules of conduct, exploited this crime of morality to achieve his larger goal of diminishing the black population.

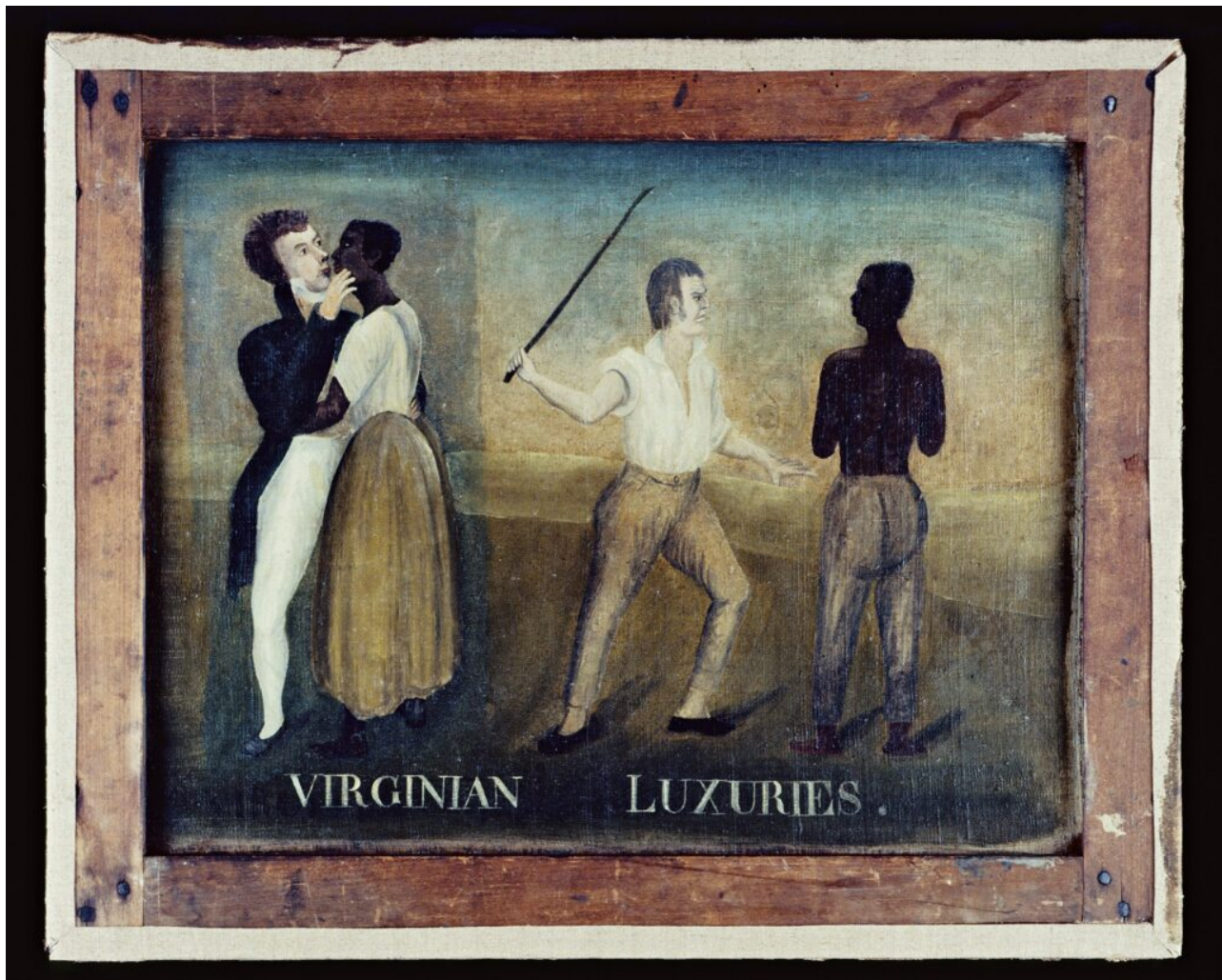


Figure 7: Virginian Luxuries, ca. 1825. [The Colonial Williamsburg Foundation](#). Museum Purchase.

More directly, Jefferson's proposed law to choke off the international trafficking of slaves shifted from a traditional reliance on tariffs and stiff fines for violators to a simplified ban on bringing into the state any people of color on a permanent basis. This law can be (and has been) mistakenly read as one encouraging the freeing of enslaved people by its language that apparently encourages freedom: "Negroes and mulattoes which shall hereafter be brought into this commonwealth and kept therein one whole year, together, or so long at different times as shall amount to one year, shall be free." But what appears on its surface to be a measure freeing illegally imported slaves is actually just a means of enforcing a much broader ban on the importation or migration of any people of color, free or enslaved. This is made abundantly clear in the succeeding passage that [requires](#) any people freed in this way to either leave the state or become outlaws: "But if they shall not depart the commonwealth within one year thereafter they shall be out of the protection of

the laws.”

The phrase “out of the protection of the laws” had serious but different implications for enslavers, the enslaved, and free people of color. For slave merchants, the sanction of rendering their human chattel unprotected by the state’s legal code and courts essentially destroyed its value as property. For enslaved people, being “out of the protection of the laws” legally entitled any Virginian to seize, beat, maim, or kill them with abandon. Free people of color “out of the protection of the laws” could be killed, or they could be seized and claimed as property.

As this law referred not to “slaves” but to “Negroes and mulattoes” it served as a prohibition on the entry into Virginia of any free person of color. This feature of the law was made clear in a subsequent passage that made an exception for black “seafaring persons,” who were commonly not enslaved, and were allowed one day in port before being subject to being seized and claimed by any Virginian as their legal property.

Having closed off the avenues of entry of black people, Jefferson turned his attention to finding other parts of the legal code that could be turned to expel black Virginians from their home. Buried away in a different bill was a provision whose intent was to continually push people of color out of the state. Any enslaved person who committed an offense “punishable . . . by labor”, which in the jargon of the day meant serious felonies such as manslaughter, arson, robbery, and horse-stealing, but also lesser offenses such as housebreaking and larceny, were to be “transported to such parts in the West Indies, S. America or Africa, as the Governor shall direct, there to be continued in slavery.”

[1779]

A Bill for proportioning crimes and punishments in cases heretofore capital.

Whereas it frequently happens that wicked and dissolute men resigning themselves to the dominion of inordinate passions, commit violations on the lives, liberties and property of others, and the secure enjoyment of these having principally induced men to enter into society, government would be defective in it's principal purpose were it not to restrain such criminal acts, by inflicting due punishments on those who perpetrate them; but it appears at the same time equally deducible from the purposes of society, that a member thereof, committing an inferior injury, does not wholly forfeit the protection of his fellow citizens, but, after suffering a punishment in proportion to his offence is entitled to their protection from all greater pain, so that it becomes a duty in the legislature to arrange in a proper scale the crimes which it may be necessary for them to repress, and to adjust thereto a corresponding gradation of punishments.

And whereas the reformation of offenders, tho' an object worthy the attention of the laws, is not effected at all by capital punishments, which exterminate instead of reforming, and should be the last melancholy resource against those whose existence is become inconsistent with the safety of their fellow citizens, which also weaken the state by cutting off so many who if reformed, might be restored sound members to society, who, even under a course of correction, might be rendered useful in various labors for the public, it would be living & long continued spectacles to deter others from committing the like offences.

And forasmuch the experience of all ages & countries hath shewn that cruel & sanguinary laws defeat their own purpose by engaging the benevolence of mankind to withhold prosecutions to smother testimony, or to listen to it with bias, when if the punishment were only proportioned to the injury, men would feel it their inclination as well as their duty, to see the laws observed.

For rendering crimes and punishments therefore more proportionate to each other:

42052

V4-177

Figure 8: Thomas Jefferson, Draft Bill for Proportioning Crimes and Punishment, 1777-1779. Manuscript. [Library of Congress](https://www.loc.gov/rr/ead/jefferson.html).

Slavery itself was attacked by easing restrictions on manumission, which technically was not simply setting someone free, but was the complicated legal ability of an enslaver to convey his ownership of a person to the person himself. Jefferson's system encouraged manumissions by eliminating the longstanding requirement that only an act of the assembly could legally transform an enslaved person into a free one. The catch, and it was a catch upon which rested much of Jefferson's racial architecture, was that all manumitted persons were required to leave Virginia forever, or face re-enslavement.

In the end, Jefferson's racial architecture for his native state proved incomplete because he failed to mortise in the keystone of his plan. Since he first sat in the colonial House of Burgesses in 1769, Jefferson had been eager to introduce a plan for the gradual ending of slavery. Older and more politically astute colleagues convinced him to shelve his ideas then and decades later, being more experienced and politically savvy himself, he felt even more headwinds and never offered his plan for gradual emancipation to the legislative docket. Tellingly, no text of it survives and the only barest outline exists in [Jefferson's Notes on Virginia](#). There, in introducing his lengthy section detailing the racial differences of blacks, whites, and Indians, Jefferson recounts the features of the bill that he regretted did not see the light of day:

To emancipate all slaves born after passing the act . . . and further directing, that they should continue with their parents to a certain age, then be brought up, at the public expence, to tillage, arts or sciences, according to their geniuses, till the females should be eighteen, and the males twenty-one years of age, when they should be colonized to such place as the circumstances of the time should render most proper, sending them out with arms, implements of household and of the handicraft arts, seeds, pairs of the useful domestic animals, &c. to declare them a free and independent people, and extend to them our alliance and protection, till they have acquired strength; and to send vessels at the same time to other parts of the world for an equal number of white inhabitants; to induce whom to migrate hither, proper encouragements were to be proposed.



T. JEFFERSON.

Scotes, sc.

WILLIAM & MARY DARLINGTON
MEMORIAL LIBRARY
UNIVERSITY OF PITTSBURGH

NOTES

ON THE

STATE OF VIRGINIA.

WITH AN

APPENDIX.

By THOMAS JEFFERSON.

Third American Edition.

NEW-YORK:

PRINTED BY M. L. & W. A. DAVIS.—FOR FURMAN & LOUDON,
OPPOSITE THE CITY-HALL.

1801.

Figure 9a and b: Thomas Jefferson, *Notes on the State of Virginia*, Third American Edition (New York: M.L. & W.A. Davis, 1801), [frontispiece](#). Courtesy of the Internet Archive.

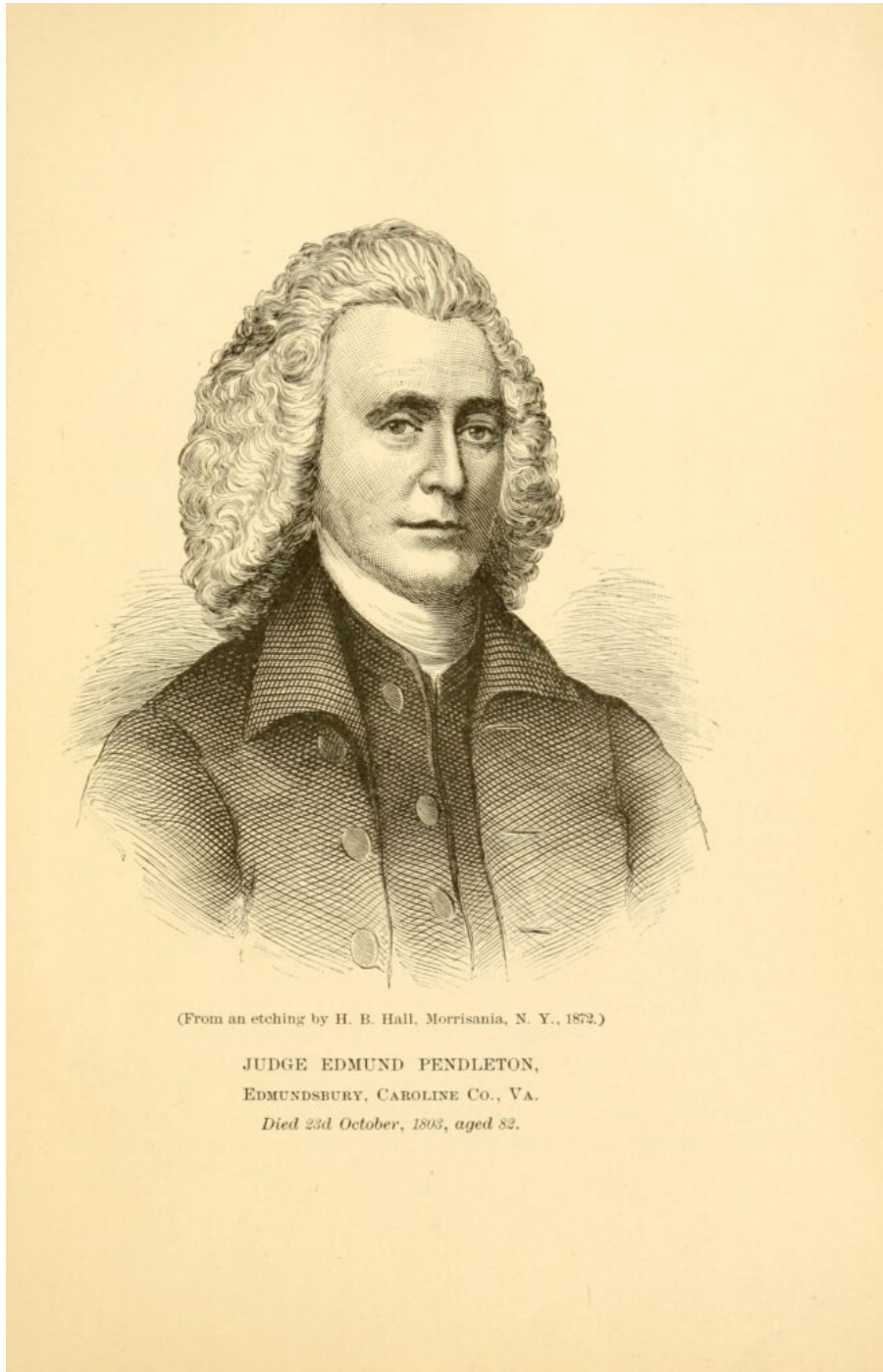
Later, as he parsed out the elements of his comprehensive plan to end slavery and diminish the black presence in his state, Jefferson again contemplated introducing a gradual emancipation act to the assembly, but was dissuaded, again, by his estimation that he could not garner enough support to pass such a bill.

In discussing this episode in his *Autobiography*, Jefferson reveals much about how his opposition to slavery and his opposition to the presence of black

people were intertwined. He connects his plan of emancipation to his belief, stated even more robustly in *Notes on Virginia*, that white and black people could not possibly live together in a single republican nation. Moreover, in discussing what should happen to freed men and women, Jefferson does not use the term "colonization" that had the benevolent connotations of aiding people to be self-sufficient and to flourish on their own, but the term "deportation" which not only was legally a form of punishment, but also identified those "deported" as not being members of the body politic in any way. Only those who were not included within the community of citizens could be "deported":

The principles of the amendment however were agreed on, that is to say, the freedom of all born after a certain day, and deportation at a proper age. But it was found that the public mind would not yet bear the proposition, nor will it bear it even at this day. Yet the day is not distant when it must bear and adopt it, or worse will follow. Nothing is more certainly written in the book of fate than that these people are to be free. Nor is it less certain that the two races, equally free, cannot live in the same government. Nature, habit, opinion has drawn indelible lines of distinction between them. It is still in our power to direct the process of emancipation and deportation peaceably and in such slow degree as that the evil will wear off insensibly, and their place be pari passu filled up by free white laborers.

Though he felt the bill for general emancipation was politically premature, Jefferson did author a bill to quicken the pace of white immigration and replace people of color. Jefferson's fellow revisor Edmund Pendleton sketched out a first draft of a law that encouraged immigration and naturalization of Protestants, even titling the bill, "Bill for the Naturalization of Foreign Protestts." The bill offered easy terms of naturalization, a twenty-dollar payment "for the purpose of defraying his passage hither over sea" and a bounty of "fifty acres of unappropriated lands wherever he shall chuse." Jefferson edited Pendleton's draft, excising all references to Protestants, thereby broadening the potential pool of white foreigners that might be enticed to immigrate.



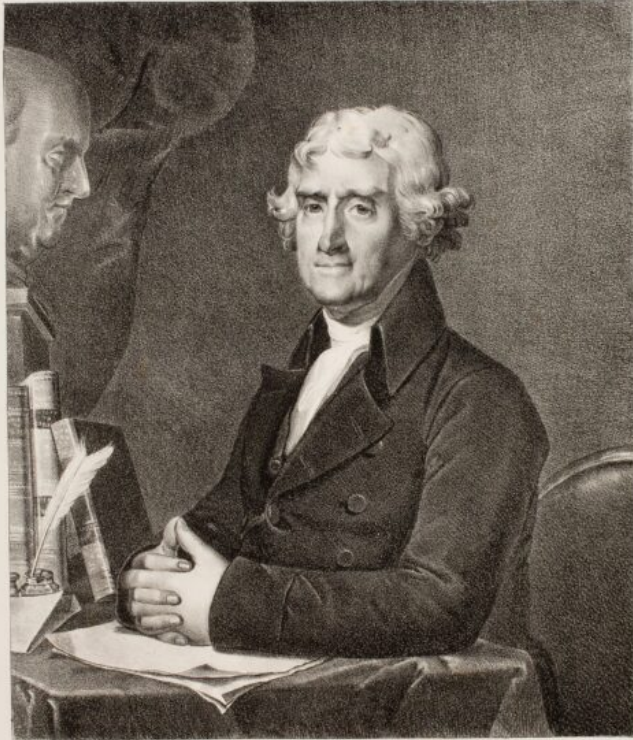
(From an etching by H. B. Hall, Morrisania, N. Y., 1872.)

JUDGE EDMUND PENDLETON,
EDMUNSBURY, CAROLINE Co., VA.
Died 23d October, 1803, aged 82.

Figure 10: Judge Edmund Pendleton. Unknown artist, Public domain, via [Wikimedia Commons](#).

Jefferson's master plan to end slavery and remove all black people from Virginia was never fully implemented. His fellow legislators, most of whom were enslavers themselves, chose not to restrict their own freedom to dispose of their human property as they saw fit and in 1782 passed a manumission law without Jefferson's requirement that freed men and women be banished. But when this law was revised in 1806, Jefferson's original requirement that all freed men and women leave Virginia within one year or face re-enslavement "for the benefit of the poor" was restored.

Jefferson's last effort to revive his vision of a Virginia without slavery or black people came in 1783 as he was preparing to return to Congress. That year he sent to James Madison, who was just then about to make the opposite journey from Congress back to Virginia, a confidential draft Constitution for the state. Jefferson included in his charter a deceptively brief antislavery clause that barred the state's legislature "to permit the introduction of any more slaves to reside in this state, or the continuance of slavery beyond the generation which shall be living on the 31st. day of December 1800; all persons born after that day being hereby declared free." Though it didn't pass, it proved influential to Madison and others who a few years later would hammer out a new constitution for both Virginia and the United States.



THOMAS JEFFERSON.

Figure 11: *Thomas Jefferson* (New York: E. Bisbee, not before 1832). Courtesy, American Antiquarian Society.

As some historians have pointed out, the fifteen- or sixteen-year gap between when this Constitution could have been ratified and the deadline for freedom in 1800, would have stimulated a vast outflow of African Americans as masters sold enslaved people to eager buyers in other states. Absent some sort of prohibition on such sales, this simple device of setting a future date for emancipation would have worked to achieve both of Jefferson's longstanding goals—the ending of slavery and the expulsion of all people of color from the state.

Further Reading

Autobiography of Thomas Jefferson 1743-1790, ed. Paul Leicester Ford (New York: G.P. Putnam's Sons, 1914).

The Papers of Thomas Jefferson, vol. 2, January 1777 to June 1779, ed. Julian P. Boyd (Princeton University Press, 1951), esp. 306-308.

The Statutes at Large of Virginia, from October Session 1792, to December Session 1806, vol. 3, ed. Samuel Shepherd (Richmond: Samuel Shepherd, 1836), esp. 251-53.

William Cohen, "Thomas Jefferson and the Problem of Slavery," *Journal of American History*, 56, no. 3 (Dec. 1969): 503-26.

David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (Ithaca: Cornell University Press, 1975).

Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson*, 2nd ed., (New York: M.E. Sharpe, 2001).

Kevin J. Hayes, *The Road to Monticello: The Life and Mind of Thomas Jefferson* (New York: Oxford University Press, 2008).

John Chester Miller, *The Wolf by the Ears: Thomas Jefferson and Slavery* (New York: Free Press, 1977).

Sue Peabody, *There are No Slaves in France: The Political Culture of Race and Slavery in the Ancien Régime* (New York: Oxford University Press, 1996).

This article originally appeared in April 2023.

Timothy Messer-Kruse is a professor of Ethnic Studies at Bowling Green State University and author of *The Patriots' Dilemma: White Abolitionism and Black Banishment in the Founding of the United States of America*, forthcoming from Pluto Press.