

THIS MELANCHOLY LABYRINTH: THE TRIAL OF ARTHUR HODGE AND THE BOUNDARIES OF IMPERIAL LAW

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In April 1811, a jury of his peers on the island of Tortola in the British Virgin Islands declared a wealthy planter, Arthur Hodge, guilty of the murder of a slave named Prosper. Hugh Elliot, the new Governor of the Leeward Islands, wrote to his wife that the well-connected Hodge had committed acts “more dreadful than any I ever heard of within the limits of the British Empire.”¹ Witnesses described episodes in an eight-year reign of terror on the Hodge plantation involving punishments resulting in the death of at least a dozen slaves and the torture and disfigurement of countless others.² Hodge was accused of causing the death of two household slaves, Margaret and Else, by having boiling water poured down their throats.³ He had been seen supervising the vicious flogging of an enslaved man who returned empty-handed from a mission to retrieve runaway slaves.⁴ And the slave Prosper, reportedly punished for stealing a mango, was said to have lingered for days after a flogging so severe that he never walked again; his body was swept into a shallow grave at the door of his hut.⁵ Several children, including the daughter of Hodge and one of his slaves, suffered torture, too.⁶ When Governor Elliot rejected the jury’s recommendation for mercy, Arthur Hodge became the first British slave owner in the West Indies to be hanged for the murder of a slave.⁷

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1. The National Library of Scotland, Manuscript 12960, 190–93.

2. A. M. BELISARIO, A REPORT OF THE TRIAL OF ARTHUR HODGE, ESQUIRE (LATE ONE OF THE MEMBERS OF HIS MAJESTY’S COUNCIL FOR THE VIRGIN-ISLANDS) AT THE ISLAND OF TORTOLA, ON THE 25TH APRIL, 1811, AND ADJOURNED TO THE 29TH OF THE SAME MONTH; FOR THE MURDER OF HIS NEGRO MAN SLAVE NAMED PROSPER 94–157 (Middletown, Tertius Dunning 1812).

3. *Id.* at 10–11.

4. *Id.* at 17–19.

5. *Id.* at 95–98.

6. *Id.* at 11, 23–24.

7. JOHN ANDREW, THE HANGING OF ARTHUR HODGE: A CARIBBEAN ANTI-SLAVERY MILESTONE 18 (2000).

The trial of Arthur Hodge has figured mainly as a footnote in the history of abolition.⁸ An account of the trial reached newspapers across England and Scotland and was published as a pamphlet in London and in Middletown, Connecticut.⁹ Prompted by abolitionists in London, the House of Commons published Governor Elliot's correspondence about the case, and the trial became a lightning rod in debates about the regulation of slavery.¹⁰

The case deserves attention from historians not only for this role but also because it sat within a wider web of legal issues in the empire and connected directly to a set of trends composing a distinctive phase in the development of British imperial and global law. Historians of the Atlantic world have tended to enfold the first decades of the nineteenth century in an Age of Revolutions. Some have characterized the era as marking a transition to a new international order, one in which a "contagion of sovereignty" began to work its way around the Atlantic, and the world.¹¹ Others define the period as one in which positive law began to form the foundations of modern international law, a view related to a more problematic characterization of the early and middle decades of the nineteenth century as marking the origins of global humanitarianism and human rights law.¹² Some of these stories hold up better than others.¹³ They

8. This view of the case begins with BRYAN EDWARDS, 4 *THE HISTORY, CIVIL AND COMMERCIAL, OF THE WEST INDIES* 458–60 (Cambridge Univ. Press, photo. reprint 2010) (1819). For recent works that mention the trial in passing, see David Barry Gaspar, *Ameliorating Slavery: The Leeward Island Slave Act of 1798*, in *THE LESSER ANTILLES IN THE AGE OF EUROPEAN EXPANSION* 241, 256 (Robert L. Paquette & Stanley L. Engerman eds., 1996); Frederick Rosen, *Jeremy Bentham on Slavery and the Slave Trade*, in *UTILITARIANISM AND EMPIRE* 55 n.80 (Bart Schultz & Georgios Varouxakis eds., 2005); and ELSA V. GOVEIA, *SLAVE SOCIETY IN THE BRITISH LEEWARD ISLANDS AT THE END OF THE EIGHTEENTH CENTURY* 201 (1965). Seymour Drescher's overview of abolition has no mention of the case. SEYMOUR DRESCHER, *ABOLITION: A HISTORY OF SLAVERY AND ANTISLAVERY* (2009). The trial has been the subject of one book-length study that provides a very clear account of the events but little analysis. See generally ANDREW, *supra* note 7. The trial also receives brief attention in a handful of historical works on the British Virgin Islands. See, e.g., VERNON W. PICKERING, *EARLY HISTORY OF THE BRITISH VIRGIN ISLANDS: FROM COLUMBUS TO EMANCIPATION* 128–31 (1983).

9. BELISARIO, *supra* note 2, at 2. The Connecticut publisher, Tertius Dunning, owned one of ten leading printing firms in Connecticut at the turn of the nineteenth century and added the Hodge trial report to a list dominated by religious tracts. See Sister Regina Mary Adams, C.S.M., *A Checklist of Connecticut Imprints from 1801 through 1805 with a Historical Introduction* 35, 37 (1983) (unpublished Ph.D. dissertation, Catholic University).

10. See PAPERS RELATING TO THE WEST INDIES: VIZ. CORRESPONDENCE BETWEEN THE EARL OF LIVERPOOL AND GOVERNOR ELLIOT;—IN REFERENCE TO THE TRIAL AND EXECUTION OF ARTHUR HODGE, FOR THE MURDER OF A NEGRO SLAVE, ORDERED BY THE HOUSE OF COMMONS, TO BE PRINTED, 26 JUNE 1811 [hereinafter PAPERS RELATING TO THE WEST INDIES: HODGE].

11. DAVID ARMITAGE, *THE DECLARATION OF INDEPENDENCE: A GLOBAL HISTORY* 103–38 (2007); see also *THE AGE OF REVOLUTIONS IN GLOBAL CONTEXT, C. 1760–1840* (David Armitage & Sanjay Subrahmanyam eds., 2010).

12. See generally JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* (2012); ROBIN BLACKBURN, *THE AMERICAN CRUCIBLE: SLAVERY, EMANCIPATION AND HUMAN RIGHTS* (2011). This period is even overlooked in histories that trace the problem of empires within international law in the late nineteenth and early twentieth centuries.

all potentially lead us away from investigating the importance of the persistence of empires as the world's dominant political formation. Within the history of global empires, the early decades of the nineteenth century mark a very significant turning point, one in which a repeating set of legal conflicts across empires propelled imperial legal consolidation and jurisdictional streamlining.¹⁴ Colonial scandals like the Hodge case fed directly into roiling debates about the nature of imperial legal ordering. Questions about law and constitutionalism swirled around the trend toward global militarism and fired a pervasive discourse about the evils of petty despotism.¹⁵

An important part of the global politics of the age was the impulse in imperial centers to constrain the legal authority exercised in private or semi-private jurisdictions. This problem posed a challenge to social reformers, who at times opposed centralization of legal authority and at other times acted as its champions. The inconsistency was not a result of confusion but of the perception that reformist remedies might easily spawn new experiments in tyranny. Actions aimed at limiting the power of subordinate jurisdictions in the colonies required enhancing the power of other groups of middling officials, a logic that produced calls for administrative revamping, in particular for magistrates to be recast as agents of imperial order rather than supporters of local interests.¹⁶ Even as reformers focused on the goal of expanding protections for subordinate imperial subjects, legal consolidation implied the need to restrict colonial elites' prerogatives—their rights. Defenders of entrenched colonial

International lawyers in the later period debated the definition of quasi-sovereignty of subimperial politics, struggled to define the role of federations in international law, and infused the League of Nations and the United Nations with responsibilities for protecting a regime of “imperial internationalism.” On these topics, see generally ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005); MARK MAZOWER, *NO ENCHANTED PALACE: THE END OF EMPIRE AND THE IDEOLOGICAL ORIGINS OF THE UNITED NATIONS* (2009); and Lauren Benton, *From International Law to Imperial Constitutions: The Problem of Quasi-Sovereignty, 1870–1900*, 26 *LAW & HIST. REV.* 595 (2009).

13. For a critique of the story of the early nineteenth century origins of human rights, see SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* (2010).

14. On jurisdictional reconfigurations in the first part of the long nineteenth century, see LAUREN BENTON, *LAW AND COLONIAL CULTURES: LEGAL REGIMES IN WORLD HISTORY, 1400–1900*, at ch. 4, (2002); and LISA FORD, *SETTLER SOVEREIGNTY: JURISDICTION AND INDIGENOUS PEOPLE IN AMERICA AND AUSTRALIA, 1788–1836* (2009). On empires as a global force in the nineteenth century, see JANE BURBANK & FREDERICK COOPER, *EMPIRES IN WORLD HISTORY: POWER AND THE POLITICS OF DIFFERENCE* ch. 8–9 (2010).

15. The classic treatment of the fiscal-military state as a global phenomenon in the period remains C.A. BAYLY, *IMPERIAL MERIDIAN: THE BRITISH EMPIRE AND THE WORLD 1780–1830* (1989). See also P.J. MARSHALL, *THE MAKING AND UNMAKING OF EMPIRES: BRITAIN, INDIA, AND AMERICA C. 1750–1783* (2005). On the imperial constitution and militarism, see LAUREN BENTON, *A SEARCH FOR SOVEREIGNTY: LAW AND GEOGRAPHY IN EUROPEAN EMPIRES, 1400–1900*, at ch. 5 (2010).

16. See Lauren Benton & Lisa Ford, *Magistrates in Empire: Convicts, Slaves, and the Remaking of Plural Legal Order in the British Empire*, in *LEGAL PLURALISM AND EMPIRES* (Lauren Benton & Richard Roberts eds., forthcoming).

authorities matched the rights talk of abolitionists by invoking property rights, as well as of “the rights of Englishmen.”¹⁷

Such debates sat within a still wider context of a vision of global order in which imperial legal consolidation played a key role. A wave of treaty writing sought to regulate the relation between imperial powers and the multiple polities within their spheres of influence.¹⁸ Such *intra*-imperial ordering figured as a precondition for a global order founded on *inter*-imperial law. The end of each phase of inter-imperial conflicts generated treaties whose legitimacy depended directly—according to both political actors and jurists—on the understanding that empires were legally ordered sovereign entities which could and should control their many kinds of subordinate jurisdictions.¹⁹ In this regard, early nineteenth-century jurisdictional jockeying within empires represented a significant step toward a world order that in later periods has been labeled “imperial internationalism.”²⁰

It might seem absurd to try to bring such broad trends into sharper focus by examining a single criminal trial in a remote and little-populated part of the British empire. But the exercise is one of optics, a way of viewing macrohistory through the lens of microhistory. I make no claim that the Hodge case itself had transformative effects on British imperial law and on the global legal order. Although I hope to show that the case was more important than many historians have recognized, the greater value of analyzing the trial of Arthur Hodge is that the case—“this melancholy labyrinth,” as the lawyer for the crown would call it²¹—connected to a set of transformative global legal trends of the age: the perceived urgency of disciplining the jumble of colonial jurisdictions, especially the legal prerogatives of slave owners; efforts to define a new class of middling authorities in empire, particularly magistrates; and questions about the boundaries of imperial and inter-imperial law. It would not be surprising to find these phenomena coming together in London or Madrid; their conjuncture within one courtroom in a remote corner of the British Empire

17. On the fluidity of the meaning of the rights of Englishmen, see DANIEL J. HULSEBOSCH, *CONSTITUTING EMPIRE: NEW YORK AND THE TRANSFORMATION OF CONSTITUTIONALISM IN THE ATLANTIC WORLD, 1664–1830* (2005); KEN MACMILLAN, *THE ATLANTIC IMPERIAL CONSTITUTION: CENTER AND PERIPHERY IN THE ENGLISH ATLANTIC WORLD* (2011); PAUL D. HALLIDAY, *HABEAS CORPUS: FROM ENGLAND TO EMPIRE* (2010). On the relation between rights discourse and the structure of power, see MOYN, *supra* note 13, at ch. 1.

18. Jennifer Pitts, *Empire and Legal Universalisms in the Eighteenth Century*, 117 *AM. HIST. REV.* 92, 93–96 (2012).

19. *Id.*; Edward Keene, *A Case Study of the Construction of International Hierarchy: British Treaty-Making Against Slave Trade in the Early Nineteenth Century*, 61 *INT’L ORG.* 311, 311–15 (2007); Lauren Benton, *Abolition and Imperial Law, 1790–1820*, 39 *J. IMPERIAL & COMMONWEALTH HIST.* 355, 355 (2011).

20. MAZOWER, *supra* note 12, at 30–34.

21. BELISARIO, *supra* note 2, at 168.

reminds us that conflicts over rights and authority in the colonies not only reflected broader trends but also composed a rich and important part of the politics propelling those trends.

It is not an accident, of course, that I choose a case involving slavery. The connections in the first decades of the nineteenth century between debates about the law of slavery and the composition of the global imperial order deserve to be brought into sharper focus. The Atlantic slave regime depended on both intra-imperial legal ordering and a complex of transregional and inter-imperial legalities. The law defined slavery as a concession, by the sovereign, of rights to slave owners rather than focusing on the political and legal status of slaves (though that status was implied).²² Efforts to expand regulation of slavery necessarily involved the assertion of greater oversight of slave owners' prerogatives to punish. As Diane Paton has put it, "part of the legal meaning of slavery is that slaveholders have the right to inflict physical violence on their slaves, [and therefore] part of the legal meaning of slavery's abolition is that this right is withdrawn from slaveholders."²³ In the eyes of slaveholders, the goal of preserving order depended not only on the maintenance of local order but also on the defense of slave owners' prerogatives across colonies, including those under the control of other empires; news of revolts traveled through the movement of elites and their dependants, mariners, freed slaves, and captives.²⁴ Slavery operated within a regional legal regime with a repetitive series of conflicts over jurisdiction at its core.²⁵ Struggles to alter the

22. Malick Ghachem develops this point nicely and quotes Montesquieu, who defined slavery as "the establishment of a right which makes one man so much the owner of another man that he is the absolute master of his life and of his goods." As Ghachem also notes, Montesquieu recognized that "civil laws" constrained the prerogatives of slave owners so that mastery was never "absolute." MALICK W. GHACHEM, *THE OLD REGIME AND THE HAITIAN REVOLUTION* 64 (2012). The legal definition of slavery turns on "the establishment of a right" and implies a subsequent political process of calibrating that right. On the fluid and unclear legal status of captives and freed captives, see Rebecca J. Scott, *Paper Thin: Freedom and Re-enslavement in the Diaspora of the Haitian Revolution*, 29 *LAW & HIST. REV.* 1061 (2011).

23. DIANA PATON, *NO BOND BUT THE LAW: PUNISHMENT, RACE, AND GENDER IN JAMAICAN STATE FORMATION, 1780–1870* 4 (2004). This understanding of abolition is not inconsistent with insights about the moral content and religious inspiration of abolitionism. See, e.g., CHRISTOPHER LESLIE BROWN, *MORAL CAPITAL: FOUNDATIONS OF BRITISH ABOLITIONISM* (2006); and JOHN ASHWORTH ET AL., *THE ANTISLAVERY DEBATE: CAPITALISM AND ABOLITIONISM AS A PROBLEM IN HISTORICAL INTERPRETATION* (Thomas Bender ed., 1992).

24. A balanced assessment of revolutionary and authoritarian currents flowing from the circulation of news about slave revolts is David Geggus, *The Caribbean in the Age of Revolution*, in *THE AGE OF REVOLUTIONS IN GLOBAL CONTEXT*, *supra* note 11; see also Scott, *supra* note 22; Ada Ferrer, *Haiti, Free Soil, and Antislavery in the Revolutionary Atlantic*, 117 *AM. HIST. REV.* 40 (2012); Walter Johnson, *White Lies: Human Property and Domestic Slavery Aboard the Slave Ship Creole*, 5 *ATLANTIC STUD.* 237 (2008).

25. On jurisdiction and legal regimes, see BENTON, *supra* note 14, and Lauren Benton & Richard Ross, *Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World*, in *LEGAL PLURALISM AND EMPIRES*, *supra* note 16. On layered sovereignty, see BENTON, *supra* note 15. Ghachem describes the tensions over the regulation of slave owners' legal

jurisdictional prerogatives of slave owners within imperial legal orders shaped the inter-imperial legal order, while shifts in inter-imperial relations impinged directly on the legal politics of slavery inside empires.

The case of Arthur Hodge unfolded at the boundaries of intra-imperial tensions and inter-imperial law. Its analysis uncovers direct ties between efforts to rein in slaveholders' prerogatives and shifting inter-imperial legal relations. The immediate, local connection flowed through factional politics that linked the criminal case against Hodge to the operations of the vice-admiralty court overseeing disputed cases of maritime captures, or prize cases. At the center of the empire, the case merged with efforts to enhance imperial jurisdiction over both the conduct of prize courts and the operations of colonial criminal courts. The article also follows a central actor in the case, Governor-General Hugh Elliot, to consider the structural parallels of legal politics in the Leeward Islands and a major project of legal reform in Madras. The analysis thus moves outward from Tortola, first to consider another case of planter abuse of slaves on Nevis, then to the maritime Atlantic world, and finally to India, via London. Across these settings, imperial law evolved at the intersection of visions of local and global order and at the boundaries of municipal and international law.

CRIMINAL MAGISTRATES

One of the key questions about the trial of Arthur Hodge is why it happened at all. Born in Tortola and educated at Oxford, Hodge had made a good third marriage after surviving two wives and had returned to Tortola in 1803 to take over direct supervision of a large plantation with well over a hundred slaves.²⁶ The crime for which he was convicted in 1811—ordering the lethal flogging of the slave Prosper—and the other horrific violence against slaves for which the court was also prepared to charge him had occurred three or more years before the indictment in spring 1811, making it unlikely that officials were responding to fresh rumors about specific acts of cruelty.²⁷ Hodge was operating in a setting in which local legislation had for decades been heavily focused on curtailing slaves' movement and economic activities rather than checking the prerogatives of masters. The law clerk of the Committee of the Privy Council investigating the slave trade and slavery in 1788 observed that “in the Negro System of

prerogatives as a “conflict between two forms of sovereignty.” GHACHEM, *supra* note 22, at 130. I prefer the term “jurisdiction” and see the relation between imperial and planter authority as part of a pattern of layered sovereignty typical of empires. Natalie Davis reminds us that the plural legal order of slavery extended to the legal practices of slaves, in *Judges, Masters, Diviners: Slaves' Experience of Criminal Justice in Colonial Suriname*, 29 *LAW & HIST. REV.* 925 (2011).

26. See generally ANDREW, *supra* note 7.

27. BELISARIO, *supra* note 2, at 42.

Jurisprudence” in the British West Indies, efforts to “secure the Rights of Owners and maintain the Subordination of Negroes” stood in place of the goal of protecting “the Interests of the Negroes themselves.”²⁸ In 1783, the newly formed Virgin Islands legislature had passed a slave code that was typical in the British West Indies in its focus on criminalizing and establishing punishments for a range of actions by slaves, especially running away, moving freely around the islands, or engaging in commerce.²⁹

The dearth of specific legislation penalizing slave owners for excessive or cruel punishment of slaves did not mean that action was never taken against slave owners for such treatment. But such actions were certainly rare throughout the British Atlantic. The small number of cases in the North American colonies included the 1713–1714 charges brought against Frances Wilson in Virginia for “whipping one of her Husbands Slaves to death.”³⁰ In general, such cases appear “very infrequently” in southern court records.³¹ In the West Indies in the years leading up to the Hodge case, several slave owners in St. Kitts were brought to trial, found guilty, and punished for excessive cruelty to slaves in the 1780s; two of the cases involved masters who had cut off the ears of slaves, an act of mutilation that was specifically outlawed by the St. Kitts legislature in 1783 (though the defendants were tried under the common law, probably to avoid the harsher penalties proscribed in the 1783 Act).³² The London audience of abolitionists was prepared to take colonial criminal trials of whites for violence against subordinates and turn them into the stuff of scandal, as had occurred only five years before the Hodge case with the 1806 London trial

28. GOVEIA, *supra* note 8, at 167.

29. “An Act for the Good Government of Negro and other Slaves, for preventing the Harbourage and Encouragement to Runaway Slaves, and for restraining and punishing all Persons who shall abet the pernicious Practices of trafficking with Slaves for any of the Staple or other Commodities of these Islands,” available in 67 BRITISH PARLIAMENTARY PAPERS: SLAVE TRADE 154–66 (1969). See also GOVEIA, *supra* note 8, at 176–77, 48 n.2 (emphasizing the harshness of the “Act” and informing the oft-repeated generalization that slave law in the British colonies was much more harsh than its counterparts in the French and Spanish empires); JAMES EPSTEIN, SCANDAL OF COLONIAL RULE: POWER AND SUBVERSION IN THE BRITISH ATLANTIC DURING THE AGE OF REVOLUTION 27 (2012). It is worth keeping in mind, however, Ghachem’s observation, made in regard to the *Code Noir*, Louis XIV’s 1685 edict regulating slavery in the French empire, that even the most oppressive slave codes also established the principle of imperial oversight of the master–slave relation. GHACHEM, *supra* note 22, at 5. The 1783 Virgin Islands Act also introduced penalties for free persons found to have assisted runaway slaves or in other ways infringed on slave owners’ enjoyment of property rights. GOVEIA, *supra* note 8, at 177. By seeking to curb “the unwary Indulgences of Proprietors [to their] Slaves,” the act indirectly established the new Virgin Island Assembly’s authority to regulate masters’ treatment of slaves. *Id.* at 180.

30. THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860, at 165 (1996). Morris speculates that the charges against Wilson were pursued “in order to assert the authority of the Crown and the common law over the planters of Virginia.” *Id.* at 167.

31. *Id.* at 185.

32. GOVEIA, *supra* note 8, at 186.

of General Thomas Picton, the first Governor of Trinidad, for the torture of the free “mulatta” Louisa Calderon.³³ Despite growing attention in London to the issue of cruelty to slaves, criminal charges against planters remained rare events, and the move to indict Hodge would have been difficult to predict.

One might be tempted to speculate that the willingness to try Hodge had something to do with Tortola’s Quaker past. The island had been home to a small, determined Quaker community in the mid-eighteenth century with ties to Quakers in Philadelphia and London.³⁴ Tortola was also celebrated as the site of a Quaker experiment in large-scale manumission, Samuel Nottingham’s 1776 act of freeing twenty-five slaves and giving them access to land on the island.³⁵ But by 1811, the Virgin Islands no longer had an active Quaker meeting. Fewer than 1,000 whites controlled the labor of roughly 7,000 slaves on hilly plantations across the islands of Tortola, Jost Van Dykes, and Virgin Gorda.³⁶ As in Jamaica, the largest British West Indies colony, most of the wealthiest landholders were absentee planters, and the Council of the Virgin Islands was led by men who had a direct interest in the defense of slavery. If Hodge’s cruelty had been notorious on the island, as some would later claim, the rumors had prompted no complaints or actions against him during his many years in Tortola, where he served alongside other planters on the Council and Assembly.

The trial report hints at a personal feud behind the charges against Hodge. The widow Frances Robertson testified for the prosecution that Hodge’s own sister had alluded to his guilt. Robertson professed to hold no grudge against Hodge for having spoken about her “in a cruel manner.”³⁷ She also admitted that she had later prayed that he would “have his deserts . . . even with hemp.”³⁸ It had been Robertson’s son, William Cox Robertson, who had sworn the complaint against Hodge for the murder of

33. Calderon was a free person and not a slave, but the case evolved in the context of growing cultural anxieties about the brutality inherent in the slave system. And, like the Hodge case, the Picton trial prompted broader debates about whether the colonies rested within the framework of the British constitution. See EPSTEIN, *supra* note 29, at 272–75.

34. PICKERING, *supra* note 8, at ch. 3; see generally CHARLES F. JENKINS, *TORTOLA: A QUAKER EXPERIMENT OF LONG AGO IN THE TROPICS* (1923).

35. JENKINS, *supra* note 34.

36. A report in 1812 lists the number of whites on the islands as 405, “Free Colour’d Inhabitants” as 695, and the total number of slaves as 7,151. REPORT FROM THE COMMITTEE FOR THE HONORABLE HIS MAJESTY’S BOARD OF COUNCIL AND THE COMMONS HOUSE OF ASSEMBLY OF THE VIRGIN ISLANDS (Oct. 17, 1812) (on file in the National Archives of Britain [hereinafter TNA], Colonial Office [hereinafter CO] 152/100).

37. BELISARIO, *supra* note 2, at 151–52.

38. *Id.* at 152.

his slaves.³⁹ The Solicitor General told the jury not to consider “whether the accusation proceeded in the first instance from a motive of ill-will or revenge.”⁴⁰ He exhorted jurors not to credit the “indirect defense” that “enemies to Mr. Hodge . . . have conspired together to do him an injury.”⁴¹

An opening for Hodge’s enemies was created by another planter trial the previous year on the island of Nevis. In January 1810, a Nevis planter named Edward Huggins had ordered two drivers to flog about thirty enslaved men and women in the public marketplace.⁴² When a small crowd gathered to witness the punishment, unusual for its severity and the large number of slaves involved, one man, John Burke, began to count the lashes, “being under an impression that the country would take up the business.”⁴³ Burke later testified that he had recorded the number of lashes given to nine men, as ranging from 47 strokes to a heart-stopping 242 lashes.⁴⁴ Nine women had each received between 49 and 291 lashes.⁴⁵ Burke also reported that a half-dozen magistrates, whom he identified by name, had stood by while the punishment took place.⁴⁶

It is possible that a public and brutal flogging of even a large number of slaves would not have prompted official action a few years before. But debates surrounding the abolition of the slave trade were focusing attention in London on the control of planters’ “arbitrary” power over slaves. The debates had prompted West Indies elites to try to stave off imperial meddling by passing their own legislation to regulate planters’ disciplinary power by embracing strategically the project of “amelioration.”⁴⁷ In a meeting on St. Christopher’s in 1798, the General Assembly and Council of the Leeward Islands—a body that met rarely and on this occasion for the last time—passed the Leeward Islands Slavery Amelioration Act,

39. BELISARIO, *supra* note 2, at 33. Edwards labeled Hodge “a notorious duelist” who had challenged “a magistrate who had till now been his friend.” EDWARDS, *supra* note 8, at 459. This was presumably William Cox Robertson, who Edwards surmised had concluded it was “a safer proceeding to hang his enemy than to fight him.” *Id.* at 459–60.

40. BELISARIO, *supra* note 2, at 167.

41. *Id.* at 165.

42. Letter from Governor Elliot to the Earl of Liverpool (Nov. 20, 1810), in PAPERS RELATING TO THE WEST INDIES: VIZ. CORRESPONDENCE RELATING TO PUNISHMENTS INFLICTED ON CERTAIN NEGRO SLAVES, IN THE ISLAND OF NEVIS; AND TO PROSECUTIONS IN CONSEQUENCE 3, ORDERED BY THE HOUSE OF COMMONS, TO BE PRINTED IN 1811 [hereinafter PAPERS RELATING TO THE WEST INDIES: NEVIS].

43. *Id.* at 4–5.

44. *Id.*

45. *Id.*

46. *Id.*

47. Gaspar, *supra* note 8, at 241. On the links between debates about abolition and about slave punishment, see especially PATON, *supra* note 23, at 4–5, for a discussion of the links between debates about abolition and about slave punishment. See also Lauren Benton, *Just Despots: The Cultural Construction of Imperial Constitutionalism*, in LAW, CULTURE & THE HUMANITIES (forthcoming 2012), available at <http://lch.sagepub.com/content/early/2011/10/20/1743872111419583.full.pdf>.

legislation that imposed new restrictions, still relatively mild, on planters' disciplinary prerogatives.⁴⁸

After the public punishment against Huggins's slaves, a vocal faction of Nevis whites called for the planter to be brought to trial. The Nevis Assembly passed a resolution condemning Huggins for committing "an act of barbarity altogether unprecedented in this Island."⁴⁹ A grand jury indicted him soon after for violating the Amelioration Act. The grand jury also weighed whether to indict seven of the island's magistrates for failing to intercede to stop the flogging.⁵⁰ At Huggins's trial, a jury packed with allies and even some relatives acquitted the planter.⁵¹

The outcome of the trial, and the tainted process that produced it, drew sharp criticism in Nevis and London, and at the center of the storm was Hugh Elliot, the Leeward Islands' new Governor. Elliot had spent most of his first few months in office sick in bed and penning letters home to his wife complaining about the climate, his unpaid salary (for which he relied on the various island Assemblies), and the lassitude of his servants. In private correspondence, Elliot worried about his need to support his wife and eleven children back in England. With long diplomatic experience and high-placed connections in England and Scotland, Elliot was eager to make a good showing to the Home Secretary in order to secure a better and more lucrative position. The Earl of Liverpool instructed Elliot to document the Huggins case carefully and "to bring to justice and to punishment any of the parties" responsible, including "any magistrates or other officers who may have been so criminally negligent of their public duties as to have

48. Gaspar, *supra* note 8, at 242–47; "An Act more effectually to provide for the Support, and to extend certain Regulations for the Protection of Slaves, to promote and encourage their Increase, and generally to meliorate their Condition," available in 1 THE LAWS OF THE ISLANDS OF ANTIGUA: CONSISTING OF THE ACTS OF THE LEEWARD ISLANDS, COMMENCING 8TH NOVEMBER 1690, ENDING 21ST APRIL 1798; AND THE ACTS OF ANTIGUA COMMENCING 10TH APRIL 1668, ENDING 7TH MAY 1804 20–43 (London, Samuel Bagster 1805). It was often referred to as the Melioration Act. The passage of this act followed a wave of minor legislation in the Leeward Islands aimed at controlling slaves and protecting masters' prerogatives. That legislation had included provisions for the trial by magistrates of slaves accused of serious crimes. GOVEIA, *supra* note 8, at 176. In 1787, two absentee West Indian planters sponsored a House of Commons resolution calling on colonial legislatures to pass measures in order to improve the condition of slaves and to "secure to them throughout all the British West India Islands, the certain, immediate, and active protection of the Law." *Id.* at 242. .

49. Enclosure No. 3 of Letter from Governor Elliot to the Earl of Liverpool (Nov. 25, 1810), in PAPERS RELATING TO THE WEST INDIES: NEVIS, *supra* note 42, at 16, 19.

50. Enclosure No. 6 of Letter from Governor Elliot to the Earl of Liverpool (Nov. 25, 1810), in PAPERS RELATING TO THE WEST INDIES: NEVIS, *supra* note 42, at 16, 25.

51. Enclosure No. 7 of Letter from Governor Elliot to the Earl of Liverpool (Nov. 20, 1810), in PAPERS RELATING TO THE WEST INDIES: NEVIS, *supra* note 42, at 3, 10. To the outrage of critics, the jury was selected by drawing cards with the names of eligible jurors from a previously arranged deck; the panel included friends of the defendant, his overseer, and the overseer of his son-in-law's estate. *Id.* There is some evidence that an impartial grand jury might have indicted Huggins for murder. However, the grand jury included several of his sons, and critics of Huggins asserted later that a sympathetic coroner had failed to investigate whether a female slave named Fanny had died as the result of the beating she received. *Id.* at 10–12.

witnessed, or forborne to interfere . . . in . . . so disgraceful a scene.”⁵² London would continue to pester Elliot about removing Nevis magistrates from office over a year after Huggins’s acquittal.⁵³

The structure of administration in the West Indies did not give governors much authority. The island General Assemblies made legislation, and the only formal role for governors, rarely executed, was to object to legislation that went against British government interests.⁵⁴ The assemblies also passed laws limiting the powers held by governors, already reduced by their lack of resources. Officials such as the attorneys general, solicitors general, and advocates general in the vice-admiralty courts served under governors but were appointed in London by Letters Patent.⁵⁵ Some inferior officials were also appointed in England, and some were absentee patentees who selected deputies in the islands to execute their duties, sometimes awarding posts to the highest bidders for leases. Governors had only an indirect authority over most local officials, consisting in the power to suspend them.⁵⁶ Taken together, their capacities to annul legislation, suspend officials, and declare martial law composed a set of emergency powers, rather than a portfolio of direct oversight of civil and legal administration.

When Elliot complained that the courts were staffed with people who had little expertise in law, he was invoking a common theme. A local critic of Huggins had subjected himself to a libel charge by writing in the *St. Christopher Gazette* that the Chief Justice on Nevis was a “habitual drunkard, often intoxicated on the Bench” and insinuating that other slaves had died on the Huggins estate without any investigation.⁵⁷ Governor Elliot wrote to London that white society in the West Indies was composed of

52. Letter from the Earl of Liverpool to Governor Elliot (Sept. 20, 1810), in PAPERS RELATING TO THE WEST INDIES: NEVIS, *supra* note 42, at 1, 1.

53. Letter from the Earl of Liverpool to Governor Elliot (April 12, 1811), in PAPERS RELATING TO THE WEST INDIES: NEVIS, *supra* note 42, at 2, 2.

54. GOVEIA, *supra* note 8, at 74–75.

55. See D.J. MURRAY, THE WEST INDIES AND THE DEVELOPMENT OF COLONIAL GOVERNMENT, 1801–1834 20 (1965).

56. GOVEIA, *supra* note 8, at 71.

57. Enclosure No. 7 of Letter from Governor Elliot to the Earl of Liverpool (Nov. 20, 1810), in PAPERS RELATING TO THE WEST INDIES: NEVIS, *supra* note 42, at 3, 10–12. Tobin also complained that two of the people on the jury had conducted the flawed inquest in the case, including “one of the Magistrates who, with unconcern, beheld the flogging in the market-place” and that most of the lawyers appearing in the trial were “men overwhelmed with debt.” *Id.* at 12. An extract of the letter was printed in the *London Chronicle*, prompting complaints to Elliot by the Chief Justices of St. Christopher and Nevis, and one of the lawyers present at the trial who defended his advanced training in law. See PAPERS RELATING TO THE WEST INDIES, VIZ. LETTERS TO GOVERNOR ELLIOT FROM MR. GARRETT, MRS. WEEKES AND MR. PETERSON, ORDERED BY THE HOUSE OF COMMONS, TO BE PRINTED IN 1812.

“managers, overseers, self-created lawyers, self-educated physicians, and adventurous merchants.”⁵⁸ He added,

To collect from such a state of society, men fit to be legislators, judges or jurymen, is perfectly impracticable. Individual interest—personal influence—animosity of party feuds, weigh down the scale of justice, and divert the course of legislative authority into acts of arbitrary and unjustifiable power, cloaked under the semblance, and dignified with the name, of constitutional acts.⁵⁹

Elliot was still dealing with the fallout of the failed Huggins prosecution when he received a delegation from Tortola on March 23, 1811, bearing news of a complaint against Arthur Hodge for the torture and murder of slaves.⁶⁰ The delegation carried two sworn depositions, one of Pereen Georges, a freed slave who had lived and worked on the Hodge plantation, and the other of Stephen McKeough, a former overseer on the Hodge estate.⁶¹ Hodge’s enemy William Cox Robertson had organized the gathering of the depositions.⁶² After Georges gave a lurid account of the deaths of six slaves, a local estate manager was dispatched to retrieve McKeough from St. Croix, where he was working as an estate manager.⁶³ Even before McKeough returned to Tortola, Robertson signed the complaint against Hodge. Deposed twice, McKeough named another six slaves whose death had been directly caused by Hodge.⁶⁴ At a hearing on March 15, Hodge’s close associate and attorney, William Musgrave, disparaged the proceedings and used language that would later fuel attacks on Hodge in Tortola and London. Musgrave was reported to have said that “it was no greater offence in law for his owner to kill [a negro] than it would be to kill his dog.”⁶⁵

58. Letter from Governor Elliot to the Earl of Liverpool (Nov. 21, 1810), in PAPERS RELATING TO THE WEST INDIES: NEVIS, *supra* note 42, at 13, 13.

59. *Id.*

60. Letter from Governor Elliot to the Earl of Liverpool (April 1, 1811), in PAPERS RELATING TO THE WEST INDIES: HODGE, *supra* note 10, at 1.

61. *Id.* at 1, 3, 5.

62. *Id.* at 4.

63. ANDREW, *supra* note 7, at 116.

64. Letter from Governor Elliot to the Earl of Liverpool (April 1, 1811), in PAPERS RELATING TO THE WEST INDIES: HODGE, *supra* note 10, at 1, 5–10.

65. BELISARIO, *supra* note 2, at 77. It is not possible to know whether Musgrave in fact uttered this line. The prosecutor quoted his statement at the bail hearing at the trial. *Id.* It was then repeated in various summaries of the case circulating in Britain. See, e.g., *Publications on West Indian Slavery*, 19 EDINBURGH REV., Nov. 1811–Feb. 1812, at 129, 144; *West Indian Slavery: Abstract of the Affidavits on the Table of the House of Commons, Relating the Circumstances which Led to Mr. Hodge’s Trial*, 10 POL. REV. & MONTHLY MIRROR OF THE TIMES, Aug. 1811–Jan. 1812, at 367, 371. The quote remained a central focus of commentary on the case five years later. See 4 WEST-INDIAN SKETCHES, DRAWN FROM AUTHENTIC SOURCES: THE NATURE OF WEST-INDIAN SLAVERY FURTHER ILLUSTRATED BY

To Elliot, this claim of planter immunity, coupled with charges even more serious than those lodged against Huggins, spelled an opportunity to champion imperial authority, and, he surely hoped, to advance his reputation among well-placed abolitionist patrons at home and secure a better posting. The Tortola court was about to go into summer recess.⁶⁶ Elliot used one of his limited powers to appoint a special commission of oyer and terminer, and he sent a stand-in for his sick Solicitor General to Tortola to move immediately to trial.⁶⁷ On the heels of his late and ineffective handling of the Huggins case, the Governor was ready to take an active role in a part of the Western Leewards already known as a sea road for slave trading and a place of intricate legal conflicts.

PRIZE LAW AND PRIZE SLAVES

George Suckling had done his best to promote an image of the Virgin Islands as a place controlled by men with little interest in the orderly administration of justice. Suckling was appointed by the crown to be the first Chief Justice of the Virgin Islands in 1777.⁶⁸ He arrived in Tortola in 1778 to find the islands in a “tumultuous and lawless state” and under the control of a corrupt majority of the Assembly that was blocking the passage of a bill to establish courts and “arrogating to themselves an unconstitutional authority over the rights of their fellow-subjects.”⁶⁹ Without a court to preside over, Suckling was forced to spend his own savings to sustain himself in the islands and, eventually, to sail with his family back to England, where he was chastised for abandoning his post.⁷⁰ His unflattering description of the Virgin Islands depicted the richest planters as composing a self-interested party intent on blocking the creation of local courts where their creditors might bring suits against them and strategically opposing legal institutions so that they might push their plan

CERTAIN OCCURRENCES ON THE ISLAND OF TORTOLA 39 (London, Ellerton & Henderson 1816); *Antidote to “West Indian Sketches,” Drawn from Authentic Sources*, 3 COLONIAL J., March 1818, at 47, 52; EDWARDS, *supra* note 8, at 460.

66. Letter from Governor Elliot to the Earl of Liverpool (April 1, 1811), in PAPERS RELATING TO THE WEST INDIES: HODGE, *supra* note 10, at 1, 1.

67. *Id.* at 1–2.

68. GEORGE SUCKLING, AN HISTORICAL ACCOUNT OF THE VIRGIN ISLANDS, IN THE WEST INDIES: FROM THEIR BEING SETTLED BY THE ENGLISH NEAR A CENTURY PAST, TO THEIR OBTAINING A LEGISLATURE OF THEIR OWN IN THE YEAR 1773; AND THE LAWLESS STATE IN WHICH HIS MAJESTY’S SUBJECTS IN THOSE ISLANDS HAVE REMAINED SINCE THAT TIME, TO THE PRESENT 49 (London, Benjamin White 1780).

69. *Id.* at 65, 34.

70. *Id.* at 76, 86–87, 110.

for political autonomy.⁷¹ The islands' elites, according to Suckling, were "split into parties" utterly absorbed by "some very warm disputes."⁷²

A decade later, Tortola seemed still to be fertile ground for feuding. Now the stakes included not just land titles and debt but also profits from the rising business of the Tortola Vice-Admiralty Court, where navy cruisers brought captured ships, most flying under enemy flags but some suspected of falsely flying the flags of neutral nations. In this new business, the Virgin Islands' topography of steep hills and rock outcrops on a scattered ring of islands—a geography that vexed sugar growers—now became a blessing for white fortune-seekers; the islands skirted the protected shipping lane of Drake's Passage, in waters one observer described as "the best cruising ground in the West Indies," directly upwind from the slave-importing colonies of Puerto Rico, Cuba, and St. Domingue.⁷³ Even very small craft could run between the British Virgin Islands and the nearby islands of St. John, St. Thomas, and St. Croix, where a Danish ban on slave trading had done little to still the demand for captives by planters and traders. The long European wars generated a boom in business in the Tortola Vice-Admiralty Court. Now a second windfall hit the court with the 1807 Abolition Act, when it became more profitable for British cruisers (and others) to attack slave ships and for locals to condemn the ships and take control of their valuable cargos of captives.

We do not have to look far for evidence that these trends were influencing parties to the Hodge case. When Hodge's counsel, William Musgrave, claimed that Hodge had been the victim of "a foul conspiracy," he was penning his accusations from jail.⁷⁴ In the days after Hodge's hearing Musgrave himself had been tried and convicted twice on Tortola, first on charges of breach of peace for issuing a challenge to another Tortola man, George Martin, who was a close associate of Robertson, then for libeling Martin by calling him a coward when Martin refused the challenge.⁷⁵ "Mr. Martin," Musgrave wrote, "appears to be bent on my destruction."⁷⁶ Musgrave begged Elliot for permission to leave Tortola.⁷⁷

71. *Id.* at 17.

72. *Id.* at 21, 24.

73. A. MACKENROT, SECRET MEMOIRS OF THE HONOURABLE ANDREW COCHRANE JOHNSTONE: OF THE HONOURABLE VICE-ADMIRAL SIR ALEX. FORRESTER COCHRANE, K.B., AND OF SIR THOMAS JOHN COCHRANE, A CAPTAIN IN THE ROYAL NAVY, WITH AN ACCOUNT OF THE CIRCUMSTANCES WHICH LED TO THE DISCOVERY OF THE CONSPIRACY OF LORD COCHRANE AND OTHERS TO DEFRAUD THE STOCK EXCHANGE 107 (London, C. Chapple 1814). Parts of the pamphlet were reprinted and some parts were summarized in 9 NILES' WKLY. REG. 45–48 (1815).

74. Letter from Governor Elliot to the Earl of Liverpool (April 16, 1811), in PAPERS RELATING TO THE WEST INDIES: HODGE, *supra* note 10, at 10, 11. The letter was written by Musgrave on April 2; Elliot received it April 16.

75. Letter from William Musgrave to Governor Elliot (April 2, 1811), in PAPERS RELATING TO THE WEST INDIES: HODGE, *supra* note 10, at 11, 11.

76. *Id.*

We can imagine how the stuff of small disagreements might bake into a poisonous mix on a small, hot island. But it still pays us to ask why Martin and Robertson would bring all their destructive force to attack Musgrave and seek to ruin Hodge. A key factor was William Musgrave's position as an officer of the prize court. He had arrived in Tortola from Montserrat in 1808, and his legal training led Chief Justice James Robertson—the same judge who would preside over Hodge's trial—to appoint Musgrave as King's Counsel. In this post, Musgrave was responsible for representing captors of ships before the Tortola Vice-Admiralty Court. There he would have appeared before Maurice Lisle, the designee standing in as judge for Robertson. Having Lisle as judge of the vice-admiralty court must have appeared to many to be a case of the fox watching the chicken coop. Lisle was an American from New England and had been making his living representing American owners and masters of ships whose captures were being adjudicated in the vice-admiralty court.⁷⁸

Vice-admiralty courts had traditionally operated in the British Empire at the intersection of local and imperial interests. On the one hand, in adjudicating prize cases and prosecuting crimes aboard ships, the courts represented a thread of consistency across the varied legal landscape of the empire. On the other hand, the courts responded closely to local interests and created valuable fees and commissions as well as opportunities for graft. In the global warfare of the turn of the nineteenth century, prize courts had assumed a newly prominent regulatory role. Across empires, the courts recognized a set of shared conventions. Captures at sea were supposed to be taken before a court under the jurisdiction of the captor.⁷⁹ Cargos and ships could be condemned there and awarded to captors, and claimants or their representatives would be heard.⁸⁰ Prize judges referred to the customary law of nations and treaty regimes, and they examined what was often a mass of contradictory evidence about the nationality of ships and their owners, the origins of cargo, and ships' destinations.⁸¹ Judges faced the very creative strategies of ship owners and captains, who often provided vessels with multiple flags, commissions from several sovereigns, and paper trails designed to color ships as neutral or loyal carriers.⁸²

77. *Id.*

78. Alexander Mackenrot, a former magistrate of Tortola on a campaign to expose corruption on the island, called the appointment of Lisle a "great scandal and disgrace [to] the whole Bar." MACKENROT, *supra* note 73, at 28.

79. An excellent introduction to prize law in British courts of the period is HENRY J. BOURGUIGNON, SIR WILLIAM SCOTT, LORD STOWELL: JUDGE OF THE HIGH COURT OF ADMIRALTY, 1798–1828 172–241 (2004).

80. *Id.*

81. JAMES STEPHEN, WAR IN DISGUISE; OR, THE FRAUDS OF THE NEUTRAL FLAGS 56–60, 71 (London, C. Whittingham, 1806).

82. *Id.* at 187. *See also* Benton, *supra* note 19, at 355–74.

The Tortola Vice-Admiralty Court was operating in an atmosphere thick with corruption in the years leading up to the Hodge trial. Admiral Alexander Cochrane, commander of the Tortola station, in 1807 installed his brother, Andrew Cochrane-Johnstone, as an agent at the Tortola court.⁸³ Cochrane-Johnstone had been decommissioned as a naval officer after a court-martial for slave running in the West Indies.⁸⁴ Like Lisle, he was now in a position to plunder under cover of law. When the Danish islands were captured by English forces in 1807, Cochrane-Johnstone managed to convince Tortola court officials—it is easy to imagine how he convinced them—to condemn the assets guaranteeing royal Danish and Dutch loans to him as agent for the captors rather than to the crown. Cochrane-Johnstone pocketed substantial sums paid by planters on the Danish islands “in liquidation of the interest due” and fled to London.⁸⁵

A whistle-blowing former Tortola prize agent, Alexander Mackenrot, pilloried Cochrane-Johnstone and also attacked his brother, the naval commander Alexander Cochrane. According to Mackenrot, Cochrane had taken 200 slaves from ships that were captured in 1807 and 1808 and condemned as legal prize in the Tortola Vice-Admiralty Court. Instead of being freed, the slaves were transported “to be unlawfully forced to work as field negroes, on [his] sugar plantation” in Trinidad.⁸⁶ The behavior fit a broader pattern, Mackenrot reported, in which Judge James Robertson “disgraced the bench by vending justice.”⁸⁷ Rounding out the family’s reputation for corruption, Alexander Cochrane’s son, Captain John Thomas Cochrane, was accused of operating a vast smuggling scheme “with the culpable connivance of the Custom-house officers, Judge, King’s Proctor, and King’s Agent in the Island of Tortola.”⁸⁸ Captain Cochrane regularly took condemned ships and sold them and their cargo back to claimants, then used naval vessels to escort them to enemy ports where he presumably participated in the profits.⁸⁹

Even if Mackenrot’s accusations were exaggerated to expose enemies, they revealed that the Tortola Vice-Admiralty Court was operating at the center of a network of smuggling and corruption. There is certainly evidence that a broader pattern of inter-island trafficking took place under

83. DAVID CORDINGLY, *COCHRANE* 238 (2007).

84. *Id.*

85. MACKENROT, *supra* note 73, at 30. The judgment was reversed on appeal and gained public attention only after Cochrane-Johnstone was implicated, with his more famous nephew Lord Cochrane, in the stock exchange scandal of 1814. *Id.* at 33–34.

86. A. Mackenrot, *Secret Memoirs of the Honorable Andrew Cochrane Johnstone*, 9 NILES’ WKLY. REG. 45, 48 (1815). The slaves were reported to be from the brig *Amadea* and the schooner *Nancy*.

87. MACKENROT, *supra* note 73, at 27.

88. *Id.* at 109–10.

89. *Id.* at 108–10. See ALAN KARRAS, *SMUGGLING: CONTRABAND AND CORRUPTION IN WORLD HISTORY* (2010), especially chapter 3, for an overview of smuggling in the West Indies more generally.

cover of customs officials and the vice-admiralty court. The 1807 Abolition Act outlawing slave trading by British subjects created a new source of profits from intercepting slave ships. As a result of the Act, once slave ships were condemned at Tortola, their slaves were now to be freed; captives were not released but instead awarded to labor in fourteen-year apprenticeships.⁹⁰ Men could be impressed to serve as mariners on British naval vessels. Such assignments were supposed to be made by the vice-admiralty court.⁹¹ A commission of inquiry in 1823 sent to account for the fate of prize slaves captured in the waters around Tortola found that most intercepted captives had disappeared without a trace. When an English naval vessel captured the English schooner *Edward*, for example, on a voyage from Martinique to New Orleans, it found the slaves Charles, John Charles, Henry Valton, and George Valton aboard.⁹² The vice-admiralty court in Tortola condemned the *Edward* and its cargo, but there was no record of what happened to the slaves. When the brig *Miriam* was condemned in November 1811, the eleven slaves on board the vessel disappeared, so that when the judgment was reversed on appeal, in 1813, there was no record of their whereabouts.⁹³

Some slaves on board ships that were seized and brought to court were probably pressed into service on captor ships; many were sold. Puerto Rico was a nearby market, and the Danish prohibition on slave trading did not stop agents based in St. Thomas and St. John from securing slaves for resale. An American ship, the *Africa*, was seized near Tortola in 1808; commissioners investigating the Tortola court noted that the 236 slaves on board “were not taken under the protection of His Majesty, but were . . . sold as Slaves in the neighbouring foreign Colonies.”⁹⁴ Four Africans between the ages of eight and thirteen were aboard another vessel, the *Mouche*, when it sailed from St. Thomas to Jost Van Dykes, where the captives were sold and transferred onto another vessel and then onto a small sloop.⁹⁵ The practice was familiar according to an investigator, who noted that slaves on board captured vessels were typically

brought to such retired Small Islands as Jos Van Dykes [sic], and the Sound at Spanish Town [Virgin Gorda], to which the Merchants from the Danish Island of St. Thomas resorted, and

90. Mandy Banton, *The “Taint of Slavery”: The Colonial Office and the Regulation of Free Labour*, in *SLAVERY, DIPLOMACY AND EMPIRE: BRITAIN AND THE SUPPRESSION OF THE SLAVE TRADE, 1807–1975* 144 (Keith Hamilton & Patrick Salmon, eds., 2009).

91. Letter from Commissioner Moody to Secretary of State, f. 4 (August 17, 1823) (on file with TNA, CO 318/82).

92. *Id.* at f. 3.

93. *Id.* at f. 1–4.

94. *Id.* at f. 5v.

95. *Id.* at f. 6.

bought the Slaves which were afterwards sold in the foreign islands. This system was practiced quite openly, as there was neither military nor naval force in the Government of the Virgin Islands to prevent them.⁹⁶

Bribes changed hands when slaves were traded under the noses of officials. Consider the later example of the Portuguese ship, the *Dona Paula*, which wrecked in September 1819 on the dangerous shoals of Anegada on its way to Puerto Rico with a cargo of 253 captives. When the ship crashed into the reef at midnight, small vessels from Anegada and Spanish Town raced to the rescue and were able to save all but eight men and women aboard. Theirs was not a mission of mercy. It became an open secret that a “Spaniard named Arankas brought a Swedish vessel from St. Thomas up to the small uninhabited islands near Spanish town called the Dogs, where the Negroes had been secreted, and took them off.”⁹⁷ An anonymous letter sent to the commissioners reported that “a bribe of one thousand pounds” had been given to local officials to look the other way.⁹⁸

The culture of graft was in full flower at the time that Musgrave was jailed and Arthur Hodge tried and hanged. Cochrane-Johnstone’s nephew, Thomas Cochrane, had already brought the issue of vice-admiralty court corruption to the floor of the House of Commons in complaining about his treatment, as a naval officer in the Mediterranean campaign, when escorting captures to the vice-admiralty court at Malta.⁹⁹ In Malta, a single official served as both proctor and marshal of the court, charging fees for writing memoranda to himself and for reading memoranda from himself.¹⁰⁰ Cochrane complained that captors were “absolutely compelled to pay sums for the condemnation of vessels” in the vice-admiralty courts, and that the courts’ outrageous fees completed the business of wiping out any profits for the captors, who could even end up in the red.¹⁰¹ The courts oversaw “a system of abuse unparalleled in this country.”¹⁰²

Corruption in the Tortola court is difficult to trace—it was not the sort of practice that participants memorialized. It is possible to speculate that

96. *Id.*

97. *Id.*

98. *Id.* at f. 6v. The report noted that British law commanded that survivors of a wreck, including slaves, should be considered free persons. But it conjectured that the residents of Anegada and Spanish Town would not have saved any of the slaves if locals had expected the slaves to be freed.

99. DAVID CORDINGLY, *supra* note 83, at 226–30.

100. *Id.*

101. *Alleged Abuses in the Admiralty Court*, in 1 THE PARLIAMENTARY REGISTER; OR, AN IMPARTIAL REPORT OF THE DEBATES THAT HAVE OCCURRED IN THE TWO HOUSES OF PARLIAMENT, IN THE COURSE OF THE FOURTH SESSION OF THE FOURTH PARLIAMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND 369, 370–71 (London, Gillet & Son 1810).

102. *Id.* at 370. It is interesting to note that James Stephen spoke warmly against Cochrane for deriding the vice-admiralty judges and courts.

Musgrave, who arrived after the worst abuses of the Cochranes were alleged to have taken place, was a less agreeable ally in the smuggling operation. It is also possible that he was a full participant whose share was simply coveted by others. We do know that Hodge's execution and Musgrave's exile led to the advance of their enemies to positions of control over the vice-admiralty court, and to personal profit. The career of Abraham Mendes Belisario, the author of the Hodge trial report published in London and Connecticut, is instructive. A Sephardic Jewish trader, Belisario had lost a fortune as a sugar trader in Jamaica before returning to London.¹⁰³ There, like many men who had no means but knew something of the West Indies, he secured a position to oversee a sugar property in Tortola.¹⁰⁴ He was attempting to resurrect his fortune as the Hodge case unfolded. He might have been keeping quiet about being a Jew. Whereas on Jamaica, Jews were still not permitted on juries, Belisario served on the grand jury that indicted Hodge.¹⁰⁵ Along with the trial report, he sent commentary to officials in London on the problems of rule in the islands, suggesting that he be appointed to a position as a government observer in the West Indies.¹⁰⁶ But his fortune was remade in a different way after the trial; he became marshal to the Tortola Vice-Admiralty Court. Returns from August 1814 show that Belisario assigned 214 slaves taken from the Spanish ship the *Manuela* as mariners or apprentices, including twenty-four males assigned in "service" to him.¹⁰⁷ Belisario's fortune was probably small compared to the profits reaped by others, including Hodge's principal foes, George Martin and William Robinson, who were found by a later commission of inquiry to have been among the most notable beneficiaries of a Tortola system for assigning prize slaves that allowed "the *principal planters of the island*" to take their pick of the healthiest liberated Africans.¹⁰⁸

At his trial, Arthur Hodge addressed the jurors before they retired and acknowledged his guilt "in regard of many of my slaves."¹⁰⁹ The atmosphere of corruption involving prize cases and prize slaves on Tortola

103. TIM BARRINGER ET AL., ART AND EMANCIPATION IN JAMAICA: ISAAC MENDES BELISARIO AND HIS WORLDS 401 (2007).

104. *Id.*

105. On the legal status of Jews in Jamaica, see Holly Snyder, *Customs of an Unruly Race: The Political Context of Jamaican Jewry, 1670–1831*, in BARRINGER ET AL., *supra* note 103, at 151, 151–62.

106. *Captured Negroes in the West Indian Islands, Apprenticed, Etc., 1811–1819*, in 64 BRITISH PARLIAMENTARY PAPERS: SLAVE TRADE 92–96 (1969).

107. Belisario prospered enough in this role to send his son, Isaac Belisario, to study to be a painter in London (the younger Belisario returned to the West Indies and painted a well-known series of portraits of freed blacks in Jamaica). BARRINGER ET AL., *supra* note 103, at 396.

108. *Captured Negroes at Tortola, No. 4*, in 26 PAPERS RELATING TO THE SLAVE TRADE, SESSION 29 JANUARY–28 JULY 1828 125, 129 (1828).

109. BELISARIO, *supra* note 2, at 184.

made no difference to his crimes, and even if this back story had been aired in court, it would probably not have altered his punishment. The specter of struggles over the prize court offers shows clearly, though, that the men who maneuvered to send Hodge to the gallows had their own interests, and not those of the slaves, at heart.

ABOLITION AND IMPERIAL LAW

The links connecting the Hodge case and the vice-admiralty court reflect a broader intersection of colonial criminal law and maritime regulation in the empire. For abolitionists, imperial officials, and some reforming colonial elites, the goal of creating an effective ban on the slave trade was logically tied to the project of reining in slave owners' prerogatives. Both objectives depended for their success on the same condition: enhanced imperial legal authority.

Prominent abolitionists certainly saw this connection clearly. The movement is sometimes depicted as bringing a humanitarian impulse to bear on legal institutions. But the vision of a reformed colonial legal order was central to abolitionist writings from the start. Consider James Stephen, a member of William Wilberforce's inner circle and a leading voice for abolition in the House of Commons. Stephen had been a lawyer in the vice-admiralty court at St. Christopher and continued to make his living working on admiralty cases in London. Stephen's 1806 tract, *War in Disguise*, complained about the epidemic of "neutral disguise" that was allowing ships to avoid capture by sailing under the flags of neutral nations.¹¹⁰ Stephen noted that the long war with France had allowed merchants to "become perfectly well acquainted with the nature of this ordeal of the prize courts," so that they knew to coach witnesses about the nationality of ships, their cargo, and destinations.¹¹¹ Prize courts encouraged "a tribe of subsidiary impostures,"¹¹² a climate in which "every neutralizer . . . is become almost as expert in the rules of our Admiralty, in regard to evidence, as a proctor at Doctors' Commons."¹¹³ Stephen barely mentioned the slave trade in the long tract, but he certainly understood that tighter regulation of neutral shipping would benefit the abolitionist cause.¹¹⁴ He noted that vessels sailing under neutral flags were actively serving slave markets in Cuba and the French sugar islands, and that there was little

110. STEPHEN, *supra* note 81, at 67.

111. *Id.* at 182.

112. *Id.* at 99.

113. *Id.* at 107.

114. Historians of the period have often taken note of the tract without drawing direct connections to abolition. An exception is ROGER ANSTEY, *THE ATLANTIC SLAVE TRADE AND BRITISH ABOLITION, 1760–1810* 350–56 (1975).

scope for stopping even traders who, like the Americans, were “violating the law of their own country, as the law of war.”¹¹⁵

At the time when news reached London of the Huggins and Hodge cases, Stephen was leading a push to require slave registries across the West Indies. The key purpose of the registries, according to Stephen, was to prevent the contraband trade of slaves by allowing officials to take note of any unusual increase in plantation slave populations. The impulse to control contraband trade in slaves was an opening, Stephen further argued, to assert Parliament’s oversight of the “strange and unprecedented relation between master and slave” that had until now depended “on a kind of . . . custom” in the colonies rather than English common law.¹¹⁶ Colonial legislation like the Leeward Islands Ameliorating Act amounted to “mock laws” and did not interfere with the prerogatives of slave owners to punish slaves.¹¹⁷ Registries would form a wedge opening to greater oversight over the private jurisdiction of slave holders at the same time that it would establish a subordinate relation of local colonial governments to Parliament.¹¹⁸ The objective ultimately was to challenge the constitutional order of independent legislatures in the colonies capable of fending off parliamentary control.

Writing about the Hodge and Huggins cases, Elliot and the commentator Belisario offered a series of observations consistent with this vision of reform. The first common cause was reforming the colonial magistracy. Webs of influence had always guided judicial appointments in the colonies, Elliot noted, but it was time to create a new system for appointing magistrates that would amount to a reorganization of colonial governance.¹¹⁹ He cited the replacement of the magistrates in the Huggins case as one of the signal accomplishments of his governorship.¹²⁰ Belisario’s trial report echoed the view that corrupt magistrates were at the heart of the problem of order in the West Indies.¹²¹ In his opening remarks in the trial, the solicitor general had placed the issue of magistrates’ power at the center of the case, opposing the idea of a colonial order with a strong

115. STEPHEN, *supra* note 81, at 75.

116. JAMES STEPHEN, THE CRISIS OF THE SUGAR COLONIES; OR, AN ENQUIRY INTO THE OBJECTS AND PROBABLE EFFECTS OF THE FRENCH EXPEDITION TO THE WEST INDIES; AND THEIR CONNECTION WITH THE COLONIAL INTERESTS OF THE BRITISH EMPIRE 137 n.† (London, J. Hatchard 1802).

117. JAMES STEPHEN, REASONS FOR ESTABLISHING A REGISTRY OF SLAVES IN THE BRITISH COLONIES: BEING A REPORT OF A COMMITTEE OF THE AFRICAN INSTITUTION 36–38 (London, Ellerton & Henderson 1815).

118. *See id.* at 6.

119. Letter from Governor Elliot to the Secretary of State (May 15, 1811) (on file with TNA, CO 152/97).

120. *Id.*

121. *See* BELISARIO, *supra* note 2, at 88.

magistracy to a state of anarchy in which powerful men would define their own legal prerogatives:

It is to be hoped [the magistrates] will meet every aid and encouragement in the righteous discharge of their duty, and that their sentences will be respected, and carried into proper effect; otherwise we need hold no Courts, but becoming in a state of insubordination, leave every man to assert his own rights, and maintain what he may call, his own privileges in the best way he can.¹²²

Here the language of “right” appears in the service of an image of chaos in which “every man” is left “to assert his own rights, and . . . his own privileges.” Hodge’s crimes stood for more than barbarous cruelty; they represented an assertion of authority independent of law, and with a seeming disregard for the sovereignty of the imperial state.

Also echoing arguments in London, both Elliot and Belisario recommended greater uniformity in West Indies legislation regarding the treatment of slaves. Both mentioned adopting the limit of thirty-nine lashes proscribed in Jamaican legislation, a standard that Elliot later championed with success in Antigua. Of course, to call for uniformity was to focus attention on the lack of imperial authority over local assemblies. Belisario also suggested that by having a slave registry in Tortola, officials would have uncovered Hodge’s reign of terror sooner by noticing the precipitous decline of slaves on the estate—reported at trial to have gone from more than 130 to less than 40 in the space of eight years.¹²³

Stephen’s legislation to establish slave registries across the West Indies failed. But reformers got a chance to try a new institutional arrangement in Trinidad, a conquered colony that abolitionists were promoting as a site of experimentation for a new regime of slave law.¹²⁴ A year after the Hodge trial, an Order in Council in March 1812, created a slave registry in Trinidad.¹²⁵ The oversight of the master–slave relation by magistrates formed a centerpiece of the Trinidad regime, in which special magistrates were appointed to investigate slave complaints. The results were flawed.¹²⁶ But the institutional innovation put an official imprimatur on the principle

122. *Id.* at 36.

123. Letter from Governor Elliot to the Secretary of State, *supra* note 119.

124. It had been used this way by Spain, too. Stephen railed against the British decision to continue to allow slavery on the island after taking over the colony from Spain. Already in 1802 he was promoting a vision of Trinidad as a site for “an experiment of unspeakable importance to mankind.” STEPHEN, *supra* note 116, at 186. For an excellent treatment of Trinidad as a site of legal experimentation under British rule, see EPSTEIN, *supra* note 29, at ch. 3.

125. See Benton & Ford, *supra* note 16.

126. *Id.*

of remaking colonial law by creating special powers for a new class of imperial legal agents. The Trinidad regime represented an example, too, of reformers' embrace of the language of experiment in championing judicial reform.

The legal issues connected to the criminal case included all the hotly contested questions of the day: the relation of colonial legislatures to imperial power, the reach of metropolitan law to define and protect imperial subjects, and the capacity of British imperial law to regulate inter-imperial commerce. At the heart of the constitutional debates, as well as at the center of the criminal case, stood the unifying issue of asserting imperial authority over the judicial powers of the planter. Elliot summarized the wider significance of the case in referring to its relevance to a vision of imperial order, stating, "The day perhaps will come when a British Legislature may think it expedient to define with precision, and with Christian benevolence *the extent of the rights which one human being can exercise over his fellow creature.*"¹²⁷

Elliot's wording defines the crux of the case as the definition of the scope of authority of Parliament to constrain the rights of slave owners. For Elliot, as well as for abolitionists in London, the goal of reining in slave owners' legal prerogatives was closely connected to the objective of extending the protections of English law to subordinate colonial subjects. At the same time, extending jurisdiction over the master–slave relation was not the same as expanding recognition of slaves' rights. Elliot devoted more attention to the legal position of freed blacks—in particular the question of their service on West Indian militias—than he did to the specific legal capacities of slaves.¹²⁸

Historians have recently debated the degree to which the abolitionist movement should be characterized as marking the origins of global humanitarianism.¹²⁹ It is possible to challenge such a view without calling into question the sincerity of opponents to slavery or the religious roots of abolitionism. Even as abolitionists decried the inhumane treatment of slaves, they consistently condemned the excessive power of slave owners over slaves as a key institutional and moral problem. Most accounts of cruelty to slaves pointed to the excesses of masters, and only indirectly to the suffering of slaves. As one historian has put it, "Slaveholders'

127. Letter from Governor Elliot to the Earl of Liverpool (May 18, 1811) (on file with The National Library of Scotland, Manuscript 13055, 122–122v) (emphasis added).

128. Elliot wrote that "the Free Colored People . . . should be relieved from a state of disability and privation entirely contrary to the spirit of the British Constitution." The National Library of Scotland, Manuscript 13058, 206.

129. Compare MARTINEZ, *supra* note 12, with Benton, *supra* note 19.

immorality was more urgent than blacks' pain."¹³⁰ In the pervasive discourse about the petty despotism of slave owners, the condition was understood as flowing from the structural condition of a dearth of legal constraints on masters' capacity to judge and punish slaves.¹³¹ While abolitionists trained particular attention on the need to curtail flogging as a punishment for slaves, especially female captives, defenders of slavery underscored the importance of slave owners' rights to impose severe punishments to forestall slave rebellions, a danger that appeared to planters as much more immediate in the wake of the slave revolt on St. Domingue.¹³² The stuff of scandal, the Hodge case reflected something more prosaic: a struggle over jurisdiction.

MAGISTRATES AND INDIAN REVENUE

The legal capacities of middling officials, so important in the West Indies, were also at the center of debate about reform in widely distant parts of the empire in the same decades. In precisely the same years framing the Hodge case, a disparate group of British officials and investors were invoking many of the same questions in debating reforms to the revenue system in territories coming under the control of the East India Company. The key figure in the reform movement was Thomas Munro, a Scot who had served as a military officer in India and had become immersed in the details of revenue collection, particularly during his years as Principal Collector in the vast Ceded Districts surrendered into British hands as a result of the victory against Tipu Sultan in 1799—a proxy war to some degree in the global conflict with the French.¹³³ The British had already devised and implemented, at great human cost, a revenue and judicial system in Bengal, and Munro was initially expected to impose a version of that system.¹³⁴ But Munro insisted that the very different conditions of the Ceded Districts also required a new approach to revenue

130. MARGARET ABRUZZO, *POLEMICAL PAIN: SLAVERY, CRUELTY, AND THE RISE OF HUMANITARIANISM* 39 (2011).

131. House of Commons debates leading up to the Abolition Act of 1807, for example, highlighted evidence of the unpunished murder and mistreatment of slaves by Jamaican whites. One local magistrate was quoted as complaining that “the law of the Island gave him no jurisdiction or authority” over the treatment of slaves. *SUBSTANCE OF THE DEBATES ON A RESOLUTION FOR ABOLISHING THE SLAVE TRADE* 168 (Dawsons of Pall Mall 1968) (1806).

132. As Diana Paton has observed, abolitionists “portrayed flogging as the central event of the master-slave relationship, and as the defining difference between British society and colonial slave society.” PATON, *supra* note 23, at 5.

133. TIMOTHY HOLMES BEAGLEHOLE, *THOMAS MUNRO AND THE DEVELOPMENT OF ADMINISTRATIVE POLICY IN MADRAS, 1792–1818*, at 55 (2010).

134. *Id.* at 69.

collection, and he began to advocate a “ryotwari” system (later also called the Munro system) and to seek support for it in London.¹³⁵

At the time that the Huggins and Hodge cases were being debated in the London press and in the House of Commons, Munro was back in London, collaborating with others who shared his views about Indian reform. He sought in particular to influence the House of Commons Select Committee assigned to devise a new plan for the administration of India. The result was the *Fifth Report*, issued in July 1812.¹³⁶ The report is striking for its emphasis on judicial reform as the medium for implementing a new revenue system. The proposed ryotwari system encompassed two controversial reforms which, for Munro and his allies, were closely related. First, by merging judicial and police powers with revenue collection and concentrating these powers in the hands of collectors, the new order reflected the perceived need for stronger executive oversight.¹³⁷ Second, the system was predicated on the expanding role of Indians in legal administration and devolving jurisdiction over a wide range of disputes into the hands of village courts.¹³⁸ Munro and others pointed out that the system put in place by Cornwallis in Bengal had resulted in a huge backlog of cases in the lower-level Zillah courts; the ryotwari system would “throw as much as possible of the administration of justice into the hands of intelligent natives instead of confining it to European Judges who can seldom be qualified to discharge the duty.”¹³⁹

Madras was to be the site of this experiment. In 1814, Munro was appointed Special Judicial Commissioner to implement the new plan in Madras. On the eve of his departure for India, Munro learned that he would travel to India with the newly appointed Governor of Madras, Hugh Elliot, a fellow Scot.¹⁴⁰ Elliot had been recalled from the governorship of the Leeward Islands the year before to be reappointed, as he had hoped, to a more prestigious post. Elliot was the younger brother of Lord Minto, then

135. *Id.* at 87–88.

136. THE FIFTH REPORT FROM THE SELECT COMMITTEE ON THE AFFAIRS OF THE EAST INDIA COMPANY (Madras, J. Higginbotham 1866) (1812).

137. BEAGLEHOLE, *supra* note 133, at 98–99.

138. *Id.*

139. *Id.* at 99.

140. Munro and Elliot were among many other Scots populating the middle and also upper reaches of imperial administration in this period and playing a leading role in the formation of imperial policy. Elliot’s experience of service in both regions was also not atypical. On the influence of Scottish officials on policy in India in this period, see MARTHA MCLAREN, BRITISH INDIA AND BRITISH SCOTLAND, 1780–1830: CAREER-BUILDING, EMPIRE-BUILDING, AND A SCOTTISH SCHOOL OF THOUGHT ON INDIAN GOVERNANCE (2001). On Scots and West Indies imperial politics, see DOUGLAS J. HAMILTON, SCOTLAND, THE CARIBBEAN AND THE ATLANTIC WORLD, 1750–1820 ch. 7 (2005). And for an excellent analysis of the connections between Scottish agrarian concerns and British imperial policy through the profile of a William Fullarton, who spent time in India and the West Indies, see EPSTEIN, *supra* note 29, at ch. 2.

Governor General of India, and the connection brought him the appointment as the Governor of Madras. During his stay in London, he had already been introduced to Munro's ideas, and he had read the *Fifth Report*.¹⁴¹

We cannot know to what extent Eliot built his support for Munro's reforms on the basis of an analogy to legal politics in the West Indies. We know that he wavered in his support for Munro after arriving in India, then swung to give the Munro system his full backing in 1816. At that point he performed in the style of his West Indian days in enacting regulations on his own authority and against the wishes of his council, and in the face of opposition from the High Court of Madras.¹⁴²

What can we learn from putting these cases of legal conflict and reform side by side? It is certainly true that the contexts of judicial debates in the Leeward Islands and Madras were strikingly different. But, as Christopher Bayly has argued, there was a shared framework, one that was becoming increasingly explicit in precisely these years, and it culminated in a single global conversation about the imperial constitution in the Atlantic and Indian Ocean worlds of the 1820s.¹⁴³ As in the Caribbean, British liberals and Indian intellectuals joined in advocating twin reforms. The first was the end of petty despotism that the British claimed had existed in the Mughal office of the *kazi*, or local judge, and Indian observers viewed as continuing in a British system of arbitrary rule.¹⁴⁴ The second was Indian "civil rights," defined not in the abstract but in terms of participation in key judicial roles, in particular the ability to serve on juries.¹⁴⁵ As in the West Indies, both Indian and British observers complained about magistrates who could award harsh punishments without worrying about reversals on appeal.¹⁴⁶ Also, as in the West Indies, reforms presented as checks on despotism created new kinds of potentially arbitrary power. Munro's system, with its unification of collector and judicial functions, was intended both as a check on Company despotism and a means of expanding judicial oversight from London.¹⁴⁷ In both settings, relatively minor regional disputes were widely interpreted in much broader imperial constitutional terms. In India as in the West Indies, legal reforms undergirded the push for a stronger imperial executive. The new 1813 India charter and the efforts

141. BURTON STEIN, THOMAS MUNRO: THE ORIGINS OF THE COLONIAL STATE AND HIS VISION OF EMPIRE 176 (1990).

142. *Id.* at 182–83.

143. *See generally* C. A. BAYLY, RECOVERING LIBERTIES: INDIAN THOUGHT IN THE AGE OF LIBERALISM AND EMPIRE (2012).

144. *Id.* at 61–71.

145. *Id.*

146. *Id.* at 62.

147. *Id.* at 52.

by the Board of Control to assert permanent control over the Company's Board of Directors signaled this shift. For its proponents, the key to enhancing imperial authority lay in the restructuring of the capacities of middling officials in the colonial legal order.

THE IMPERIAL LEGAL WORLD

The preoccupations with order I have described look to some historians like the multicultural origins of liberalism. But the focus on imperial order also reflected neo-authoritarian responses to revolutions, other threats to order, and the proliferation of new sub-imperial or quasi-independent polities. It was not necessary for political actors to choose between liberal and authoritarian models of imperial strength—it is also not required for historians to make that false choice. Like abolitionists, reformers of the age called for an empire of command as well as a widening of the law's protections. Unruly colonial conflicts urged the same set of solutions.

The imagination of a reconfigured imperial legal order in the early nineteenth century, together with the policies adopted to create that order, deserve to be written back into a narrative of global legal change. We already know that the late nineteenth century, rather than marking the swift emergence of an international order centered on law produced by a community of nation states, represented a period of heightened concern about the role of empires in international law.¹⁴⁸ The preoccupation with empires continued into the twentieth century, with “imperial internationalism” shaping the formation of international organizations, from the League of Nations to the United Nations.¹⁴⁹ The focus on imperial order described in these later periods is rightly juxtaposed to the influence of an emerging interstate order. Early nineteenth century legal politics developed without this sharp contrast or endpoint in view. The long nineteenth century appears as one of global political change centered on projects of imperial reconfiguration.

This perspective, together with the study of British imperial legal politics in these decades, brings two other points into view. The first involves the historical meaning of debates about rights at the turn of the nineteenth century. Imperial constitutionalism at this juncture grappled with the problem of the rights of subjects in general, but it highlighted especially questions of the rights of middling agents of empire. In a longer chronological context, struggles over slave owners' prerogatives connected to well-established definitions of “rights” not as signifying the “freedom of the individual apart from the law” but instead “the relation of power or

148. ANGHIE, *supra* note 12; BENTON, *supra* note 12.

149. MAZOWER, *supra* note 12, at ch. 1.

authority over other persons or things.”¹⁵⁰ The approach cast civic privileges as lawfully held properties that were “owned” and held as a defense against the power of government.¹⁵¹ While there is nothing about empire or imperial administration in the abstract that reinforced particular constructions or meanings of rights, specific conflicts over the structure of layered authority in empires drew attention to definitions of rights in ways connected to relations of power rather than as subjective capacities.¹⁵² Atlantic political movements attacking or defending colonial and planter interests used the term “rights” more frequently to label the prerogatives of authorities within a fluid institutional order than to refer to the natural capacities of individuals or slaves. The protection of rights therefore required the promotion of particular institutional arrangements since polities functioned as the “essential crucible” of rights.¹⁵³ The same groups advocating limits on the punishment of slaves were promoting a reformed imperial legal order with clear sovereign oversight of the petty jurisdiction of slaveholders. Precisely because parliamentary capacity to make law in the colonies quickly faced limits in reaching into the domain of the plantocracy, a new class of magistrates was imagined as effective agents of imperial authority.

It is interesting, of course, to use this perspective to debunk naïve assumptions about the direct links between “rights talk” in this period and the later emergence of human rights doctrine in international law.¹⁵⁴ It is also possible to go further (or in a different direction) to identify the period as a distinctive moment in which discourse about petty despotism occupied an unusually salient place in colonial legal politics. “Despotism” was a term deeply associated with contemporary attacks on Napoleon and a longer tradition of attacks on tyranny.¹⁵⁵ Slave owners were styled as petty

150. ANNABEL S. BRETT, LIBERTY, RIGHT AND NATURE: INDIVIDUAL RIGHTS IN LATER SCHOLASTIC THOUGHT 5, 12 (2003).

151. JOHN PHILLIP REID, CONSTITUTIONAL HISTORY OF THE AMERICAN REVOLUTION 8 (1995).

152. Burbank has argued that in the Russian empire, subjects not only understood rights as defined in connection with a particular imperial legal status but also lacked a vocabulary for talking about them as universal properties. Jane Burbank, *Thinking Like an Empire: Estate, Law, and Rights in the Early Twentieth Century*, in RUSSIAN EMPIRE: SPACE, PEOPLE, POWER, 1700–1930, at 196 (Jane Burbank, Mark von Hagen, & Anatolyi Remnev eds., 2007).

153. MOYN, *supra* note 13, at 20. Moyn writes of the “state” as the context for the definition of rights in this period, but empires were in most cases the relevant polities for this process. See also the work of Karen Orren, who defines rights as “judicially enforceable claims on the person or actions of another” in *Officers’ Rights: Toward a Unified Field Theory of American Constitutional Development*, 34 LAW & SOC’Y REV. 873, 873 (2000).

154. MOYN, *supra* note 13, at 30–31.

155. The literature on despotism in Enlightenment thought is too vast to cite here. Recent interesting works on despotism and orientalism, and despotism and democracy are NASSER HUSSAIN, *THE JURISPRUDENCE OF EMERGENCY: COLONIALISM AND THE RULE OF LAW* (2003); MICHAEL CURTIS, *ORIENTALISM AND ISLAM* (2009); and PAUL A. RAHE, *SOFT DESPOTISM, DEMOCRACY’S DRIFT*:

despots. The label came to be attached by analogy to masters of other subordinate groups such as sailors, servants, convicts, ryots, soldiers, wives, and children. The rhetoric highlighted the capacity of people in direct command of subordinates to wield “arbitrary” power, in particular through unchecked and unsupervised judicial acts.

Petty despots were everywhere, but they were seen as flourishing in colonial climates.¹⁵⁶ Edmund Burke claimed that Warren Hastings had become a petty despot by promoting “an oppressive, irregular, capricious, unsteady, rapacious, and peculating despotism.”¹⁵⁷ The discourse both reflected recurring patterns of conflict and encouraged attention to the cultural practice of local power, and to the moral failings of those who grasped power in the wrong measure, exercised it badly, or sustained it for too long. As the rhetoric of debates about middling imperial agents sharpened, so did efforts of many such authorities to erect a more complete control over subordinates. Defining with greater precision the prerogatives of local rule became a prominent part of imperial politics everywhere.

Alongside this set of conflicts, imperial law was emerging, too, as the centerpiece of a vision of global order. The prominence of imperial law is evident both in jurisprudential references to treaty regimes and in a loose analogy of imperial law to inter-polity relations. As an illustration of the first phenomenon, consider a revealing detail of the 1816 *Le Louis* case. The ruling by Sir William Scott (Lord Stowell) in this case is routinely cited as marking an important shift—the end of attempts to battle the slave trade through prize law and intra-imperial or unilateral policies and a move toward positive international law and dependence on inter-imperial treaties.¹⁵⁸ The case involved the capture of a French ship off the coast of West Africa in 1816 after the 1815 peace treaty between England and France. Lord Stowell rejected the legality of the capture, arguing that there was no peacetime right to search and seizure of ships, even if they were trading in slaves.¹⁵⁹ Scott also noted that treaties by themselves were insufficient bases for ruling on the legalities of captures. Even though France had agreed in the Treaty of Vienna to implement a ban on the slave trade, the prohibition had never been announced or fully implemented

MONTESQUIEU, ROUSSEAU, TOCQUEVILLE, AND THE MODERN PROSPECT (2009); Benton, *supra* note 47.

156. Despotism in Asia was “naturalized,” as Montesquieu had put it, while Europeans only acquired the habit. CHARLES DE SECONDAT MONTESQUIEU, *THE SPIRIT OF THE LAWS* 63 (Cambridge Univ. Press 1989) (1748).

157. Frederick G. Whelan, *Burke, India, and Orientalism*, in *AN IMAGINATIVE WHIG: REASSESSING THE LIFE AND THOUGHT OF EDMUND BURKE* 127, 150 (Ian Crowe ed., 2005).

158. See, e.g., MARTINEZ, *supra* note 12, at ch. 2.

159. *Id.* The ruling prompted a move away from the adjudication of slave ship captures in vice-admiralty courts and the establishment, by treaty, of mixed commissions.

within the French empire.¹⁶⁰ The case did clearly prompt calls for international agreements to create a legal basis for conducting visits and seizures of ships suspected of slave trading in peacetime.¹⁶¹ At the same time, it urged that controls be made effective *inside* empires so that inter-imperial agreements would have greater force.¹⁶² Indeed, Lord Stowell's reasoning implied that to some degree the scope of authority of treaties depended on the integrity of imperial legal orders and the capacity of command of imperial sovereigns.

Meanwhile, the understanding that the fundamental structure of global regulation was a world of empires was nurturing the view that imperial law represented a model for international interactions. This impulse emerged most clearly in South Asia. Thomas Munro worried openly about the threat of opposition by an authoritarian empire like that of Tipu Sultan.¹⁶³ He was less concerned about the fragmented empire of the Mahrattas. Partly this was because he imagined the Company as standing in, under "ancient title," for the loose oversight of the Maratha state.¹⁶⁴ Partly, too, the view reflected the emerging vision that the empire the British were constructing in India was one of a multiplicity of subordinate and competing states. As one historian has put it, Munro's vision was "that the Indian subcontinent could become a sphere of interacting states."¹⁶⁵ In this view—which became a standard refrain of British officials in the late nineteenth century—the empire stood in for an ideal international order, one in which conflicts among multiple polities could be adjudicated by an overarching authority.

Taken together, these points caution against characterizing the early nineteenth century as a period of the spread of forms of nation–state sovereignty, the origins and influence of universal rights discourse, or the Benthamite embrace of indivisible sovereignty and neo-authoritarianism. I have used the Hodge case as a window through which to examine a different set of concurrent forces. We glimpse an extended phase in which imperial law dominated ideas about promoting local colonial order and informed an imagined global order of empires. On the edges of empire, the project of intra-imperial legal reform drew strength from elite factional conflicts over sinecures and revenue, while war and the law of war reinforced arguments in favor of new jurisdictional discipline. Jurists,

160. JOHN DODSON, REPORTS OF CASES ARGUED AND DETERMINED IN THE HIGH COURT OF ADMIRALTY: COMMENCING WITH THE JUDGMENTS OF SIR WILLIAM SCOTT: TRINITY TERM 1811[–1822] 259–261 (1828).

161. MARTINEZ, *supra* note 12, at ch. 2

162. Benton, *supra* note 19.

163. STEIN, *supra* note 141, at 18–19.

164. *Id.*

165. *Id.* at 349.

colonial reformers, and even anticolonial leaders viewed the construction of legally coherent empires as a means for reconciling seemingly contradictory goals of combating the power of petty despots and extending the reach of imperial justice.

The trial of Arthur Hodge reveals one variant of this connection between imperial reform and visions of inter-imperial global order: the connection between criminal law, a seemingly internal affair of empires, and the prize law that relied on and formed part of international law. Contemporaries observing the Hodge case and arguing about its significance for the empire understood clearly that the case, and Hodge's hanging, could be interpreted either to defend the West Indies planters against charges that they protected inhumane cruelties in their midst or to condemn the slave trade as perpetuating an unconstitutional order in the colonies. It seemed apparent to London observers, too, that personal enmities had something to do with Hodge's being brought up on charges in the first place. Yet even astute observers like James Stephen, who understood prize law and perceived the connection between the maritime traffic in slave and local administrative reforms, failed to grasp the degree to which the Abolition Act had opened vast new opportunities for profit taking from intercepting slave ships. The calculus of corruption shifted in unpredictable ways. Cox, Martin, Belisario, Lisle—these and other men in Tortola who drove the case to trial—had significant gains to make from Hodge's execution and from Musgrave's unseating. Imperial interest in the case, and the eagerness of Governor Elliot to champion the imperial cause, happened to intersect with factional enthusiasms for enhancing the prestige of the prize court and refurbishing the image of local magistrates as authentic and loyal agents of empire.

The moment for this odd coalition passed quickly. Across the region and locally, a handful of other prosecutions followed the Hodge case. In October 1812, the Virgin Islands Council and Assembly reported that "Nell Harragin, a free black Woman Indicted for Murdering a Slave, was found guilty of Manslaughter and was adjudged to be impriso'd twelve Months, and branded in the left hand with the Letter M accordingly."¹⁶⁶ On Nevis, also at the end of 1812, the son of Edward Huggins was arrested for killing a slave named Peter, the property of a "free Mulatto Man," on the street near Huggins's home in Charlestown.¹⁶⁷ Elliot sought a charge for murder, but the grand jury credited Huggins's story that the slave had trespassed on Huggins's property and threw out the bill for murder.¹⁶⁸ The jury at trial

166. REPORT FROM THE COMMITTEE FOR THE HONORABLE HIS MAJESTY'S BOARD OF COUNCIL AND THE COMMONS HOUSE OF ASSEMBLY OF THE VIRGIN ISLANDS, *supra* note 36.

167. Letter No. 17 from Governor Elliot to the Earl of Bathurst (Dec. 24, 1812) (on file with TNA, CO 152/100).

168. *Id.*

found him guilty of manslaughter, and he was fined 250 pounds—a far cry from the punishment meted out to Hodge.¹⁶⁹ Over the next two decades, a transatlantic struggle over planters' power to punish slaves continued. Between 1813 and emancipation in 1833, the campaign for greater imperial authority over slave owners' treatment of slaves was led by James Stephen, son of the abolitionist, from his post of legal advisor to the colonial office.¹⁷⁰ During the same period, the importance of prize courts in the colonies diminished after the peace of 1815 and the commencement of the British effort to shift adjudication of slave ship captures to binational mixed commissions created by treaty.¹⁷¹

It is tempting to view these trends as transforming international law by building on the rights talk and humanitarianism begun in struggles over slavery. But slavery features differently in the story told here, which is also less triumphalist, and more intricate. Conflicts over the scope of subordinate jurisdictions—whether controlled by slave owners or zamindars—pervaded colonial legal politics and fortified an image of global order as synonymous with imperial legal ordering. Reformers advocated new roles for middling officials, especially magistrates, and they routinely referenced the British constitution in labeling arbitrary power as the work of petty despots. Small struggles to define and limit colonial authority both reacted to and helped to shape inter-imperial relations, a fact grasped by abolitionists, advocates of the slave system, admiralty judges, and various other colonial actors, including elites and captives. Tensions over the jurisdiction of masters and conflicts over the regulation of inter-imperial violence drove the Hodge case to trial, and to its resolution. Arthur Hodge died as a petty despot whose excessive grasp of the power to punish threatened the global empire of law.

169. *Id.*

170. Russell Smandych, "To Soften the Extreme Rigor of Their Bondage": James Stephen's Attempt to Reform the Criminal Slave Laws of the West Indies, 1813–1833, 23 *LAW & HIST. REV.* 537, 538 (2005).

171. On the mixed commissions, see Leslie Bethel, *The Mixed Commissions for the Suppression of the Transatlantic Slave Trade in the Nineteenth Century*, 7 *J. OF AFR. HIST.* 79 (1966), and Tara Helfman, *The Court of Vice Admiralty at Sierra Leone and the Abolition of the West African Slave Trade*, 115 *YALE L. J.* 1122 (2006). On their international significance, compare MARTINEZ, *supra* note 12, and Benton, *supra* note 19.