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# Redesigning Schools to Be Antiracist

A Systemic Change Approach for  
School Counselors and Other Leaders

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Stephen Sharp

*Foreword by Cheryly Holcomb-McCoy*

# CONTENTS

Foreword	ix
<i>by Cheryl Holcomb-McCoy</i>	
Publisher’s Acknowledgments	xi
About the Author	xiii
Introduction: Starting Systems	1
<b>PART I. HISTORIC DESIGN</b>	
1. Colonial United States, Prototype for a Nation	9
Early Colonial America	9
Early Virginia Colonial Law	10
Massachusetts Early Colonial Law	14
Early Colonial Massachusetts Origins of American Education	16
Virginia – Partus Sequitur Ventrem (1662)	16
Virginia Slave Code of 1680	17
The First Race in Maryland and Virginia	18
Virginia Slave Code (1705)	20
Maryland Slave Code (1715)	21
Pennsylvania Slave Code (1725)	22
South Carolina Slave Code (1740)	23
Colonial Education	25
The Road to the American Revolution	26
The American Revolution (1776)	27
2. Early United States: Launching a New Country	33
The Constitution of the United States (1787)	33
The Census and Naturalization Act 1790	35
Missouri Compromise (1820)	36
Common Schools—Education and Early United States: Public Education Prototype (1852)	38

<i>Dred Scott vs. Sanford</i> (1857)	38
The American Civil War (1861–1865)	41
Reconstruction and the Freedmen Bureau (1865)	44
Black Codes	46
Civil Rights Act (1866)	49
Fourteenth Amendment (1868)	51
Fifteenth Amendment (1870)	52
Civil Rights Cases of (1883)	52
<i>Plessy v. Ferguson</i> (1896)	54
The One Drop Rule and Jim Crow	59
The Committee of Ten (1892)	61
<b>3. The Evolving America: Systems and Scientific Racism</b>	<b>65</b>
Eugenics	65
World War II and The GI Bill (1944)	73
<i>Brown v. Board of Education</i> (1954)	77
Civil Rights Act (1964)	80
Elementary and Secondary Education Act (1965)	86
<i>Green v. School Board of New Kent County</i> (1968)	87
<i>Swann v. Charlotte-Mecklenburg</i> (1971)	89
<i>Milliken v. Bradley</i> (1974)	91
No Child Left Behind (2001)	99
<i>Students for Fair Admissions, Inc. (SFFA) v. President &amp; Fellows of Harvard College (Harvard)</i> (2022)	101
<b>PART II. UNEQUAL FUTURES: THE RISK OF INEQUALITY IN SYSTEMS</b>	
<b>4. Present and Future Inequality</b>	<b>113</b>
Unequal Futures	114
Analyzing Inequality	115
Systems of Inequality	117
Education Solutions for Unequal Future	118
<b>PART III. SYSTEMIC CHANGE</b>	
<b>5. The Dynamics and Complexity of Systems</b>	<b>123</b>
Systems Characteristics	124
Systems Behavior	125
Human Hurdles in Systems Thinking	125

Limited Information	125
Unintended and Counterintuitive Consequences	126
Systemic Change Challenges	126
Policy Resistance	126
Tragedy of the Commons	127
Increasing Returns	127
Goal Calibration	127
Systemic Change	128
Conventional Problem-Solving to Systemic Change	128
Mental Models	129
Systemic Storytelling	131
Listening Languages	132
Systems Mapping	133
Graphing Over Time	133
Stock and Flow Models	134
Causal Loop Diagram	135
System Modeling and Simulation	139
Systems Leverage	140
Leading for Systemic Change	142

## **PART IV. DESIGNING EQUITABLE FUTURES**

<b>6. Reverse Engineering Racism and Equitable Designs</b>	<b>147</b>
The Systems of Racism	147
Implementing Change	147
Modeling Equity	151
Youth Participatory Action Research (YPAR)	153
Reverse Engineering Racism	156
Stroh's Four Stages of Leading Systemic Change	160
Five-Stage Design Thinking Process With Equitable Principles	165
Aligned Equitable Systems Framework	166
Bias to Critical Consciousness	170
Discrimination to Equality	172
Privilege to Cultural Humility	173
Segregation to Belonging	174
Poverty to Equity	176
Oppression to Justice	178

7. Human Design: Future Systems	181
A Thin Layer Across the Water	181
The Language of Our Humanity	182
Education Ties to Our Futures	183
Glossary	187
References	189
Index	203

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PART I

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# HISTORIC DESIGN

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# CHAPTER 1

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## COLONIAL UNITED STATES, PROTOTYPE FOR A NATION

**T**o understand racism as a series of interconnected systems, one needs to simply look at the changing definition of race and how it was applied throughout history. Many of the concepts and practices regarding race were constructed over time from European and also strictly American roots.

Seeing how race is encoded and recoded overtime is to better understand the structures, patterns, and behavior of the systems of racism and to develop a more equitable future.

The source material (original text, manuscripts, laws, and other documents) are provided directly. Small edits were made to spelling for clarity, but the original language is provided for the reader to make their own inferences.

The history of racism and race in America is interwoven with the history of education in America, too. The parallel stories provide the backdrop for how much of modern America is understood and defined. The deeper understanding of these histories, and by nature the architecture of two systems, racism and education, create a deep and textured map of each system, their aspirations, faults and legacies. Through careful reading of the ways race and racism was constructed, encoded, and applied in the many systems of America and throughout education, we can see the patterns and structures which we can use to redesign a more equitable system.

### EARLY COLONIAL AMERICA

The construction of race and racism was carried on many of the same ships that founded the earliest colonies that preceded the United States. In the centuries prior to European colonization and the rise of the transatlantic

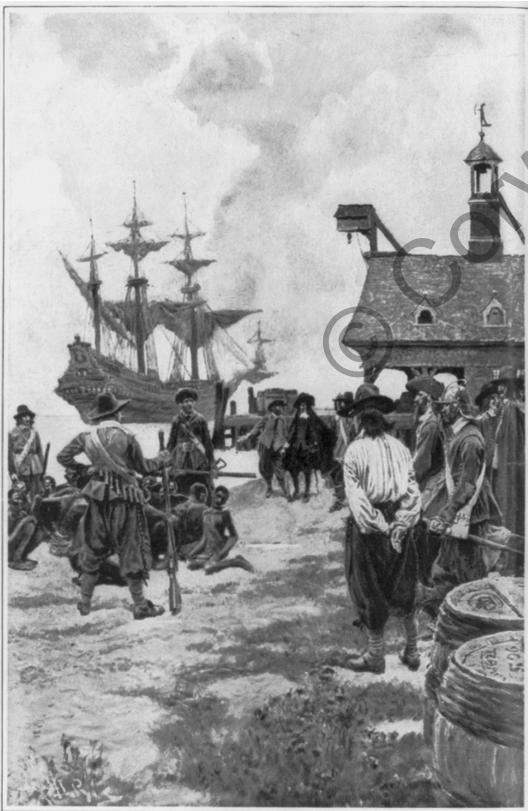


slave trade, there was expansive trade, bartering, cultural exchange, and conflict between many of the states, nations, and empires of both Europe and Africa. Following Portugal's expansion down West Africa, there was a rise in colonies to support the wealth from the development of sugar, tobacco, rice, and cotton. There was also a rise in the use of enslaved Africans, as Portugal's number of colonies grew and other European countries modeled the practices.

## EARLY VIRGINIA COLONIAL LAW

Jamestown was the first permanent British settlement in North America. As noted in 1619 by Jamestown's John Rolfe, the colony of Virginia's secretary and recorder of history, "about the last of August, there came to Virginia

**FIGURE 3 LANDING NEGROES AT JAMESTOWN FROM DUTCH MAN-OF-WAR, 1619**

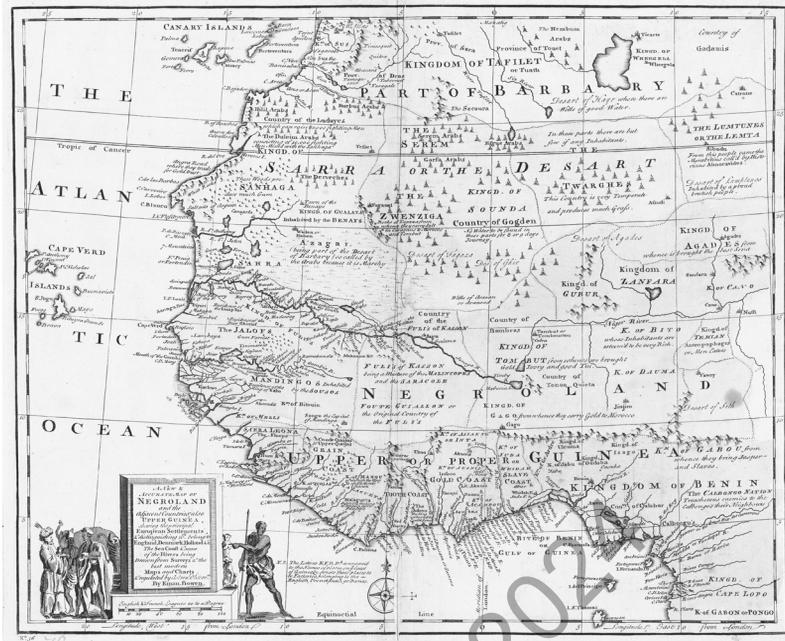


**SOURCE:** Illus. in Harper's Monthly Mag., v. 102, 1901 Jan., p. 172. Retrieved from the Library of Congress.

Dutchman of Warr that sold us twenty Negroes." Although there are records of Black people in the Americas prior to the British colonies, the first record of "negros" in the British colonies also tied to servitude. Angolan Africans were captured and boarded on a ship bound for Veracruz on the coast of present-day Mexico. While in the Gulf of Mexico, the ship was seized, along with the Angolan Africans, who were subsequently sold to the British colony in Jamestown, Virginia in 1619 (McCartney, 2020).

During this period of time, written records referred to individuals from their country of origin or perceived country of origin. British colonials were referred to as "English-born." The term Negro was likely a reference to Negroland, a designation used to describe the geographical region of Western and Central Africa as early as the mid-1100s (Cooley, 1841). This region is where the Portuguese were already enslaving Africans to send to the Caribbean and other parts of the world, and was the point of origin of the ship with the Jamestown Angolan-Africans (McCartney, 2020).

**FIGURE 4 NEGROLAND AND ADJACENT COUNTRIES 1693-1767**



**SOURCE:** Bowen, Emanuel, 1693. Retrieved from the Library of Congress.

**Coded:** *Negro* coded as “from the continent of Africa.”

The actual servitude status of the twenty Africans, though not fully clear as either indentured servitude or enslavement, would reflect a series of definition and redefinitions of both the term “negro” and nature of servitude in the years to follow (McCartney, 2020).

Colonial Virginia laws would initially codify “negros” as those the colony would not permit to have access to firearms in Act X of the Virginia Acts (1639):

All persons except negroes to be provided with arms and ammunition or be fined at pleasure of the Governor and Council.

**Coded:** *Negro* is code in Virginia for “unable to own guns.”

Negroes were again redefined as those with separate servitude conditions. John Punch, a Negro indentured servant, would have his service contract extended to a lifetime of servitude, while the English-born servants simply

had three years of service added to their contract for attempting to run away. The verdict (General Court, 2020) also had Punch's descendants (assigns) also ascribed to lifelong servitude.

By their said Indentures in recompense of his Loss sustained by their absence and after that service to their said master is Expired to serve the colony for three whole years apiece, and that the third being a negro named John Punch shall serve his said master or his assigns for the time of his natural Life here or elsewhere.

Lifetime servitude became more prevalent throughout the colony of Virginia. Notable contracts for women and children were extended for lifetimes or forever, including the sale by Francis Pott of a Negro woman and boy "for the use of him . . . forever," and a few years later a ten-year-old Negro girl named Jowan was sold for "their lifetime and successors forever" (Simba, 2022). Servitude was transforming a service contract to an inherited or biological condition on a case-by-case basis. Similar practices occurred in the neighboring colony Maryland, where two Negro men and a woman and all their descendants were sold in 1649 (Maryland State Archives, 2000).

In subsequent years, there would be an increase in the servitude contracts extended to lifelong service, increasingly rapidly after the Virginia General Assembly passed ACT XXII (Virginia General Assembly, 2020):

WHEREAS there are divers loytering runaways in the collony who very often absent themselves from their masters service, And sometimes in two or three monthes cannot be found, whereby their said masters are at great charge in finding them, And many times even to the losse of their year's labour before they be had, Be it therefore enacted and confirmed that all runaways that shall absent themselves from their said masters service shall be lyable to make satisfaction by service at the end of their tymes by indenture (vizt.) double the tyme of service soe neglected, And in some cases more if the comissioners for the place appointed shall find it requisite and convenient. And if such runnaways shall be found to transgresse the second time or oftener (if it shall be duely proved against them) that then they shall be branded in the cheek with the letter R. and passe under the statute of incorrigible rogues, Provided notwithstanding that where any servants shall have just cause of complaint against their masters or mistrises by harsh or unchristianlike usage or otherways for want of diet, or convenient necessaryes that then it shall be lawfull for any such servant or servants to repaire to the next comissioner to make his or their complaint, And if the said commissioner shall find by good and sufficient proofes, that the said servant's cause of complaint is just, The said comissioner is hereby required to give order for the warning of any such master or mistris before the comissioners in

their severall county courts, where the matter in difference shall be decided as they in their discretions shall think fitt, And that care be had that no such servant or servants be misused by their masters or mistrises, where they shall find the cause of complaint to be just. Be it further also enacted that if any servant running away as aforesaid shall carrie either peice, powder and shott, And leave either all or any of them with the Indians, And being thereof lawfully convicted shall suffer death as in case of felony.

Additional laws were passed to make a further distinction between Negro servants and English-born servants. Initially, this was done by adding years to the English-born servants caught running away with a Negro servant in the An Act to Discourage English Running Away with Negroes, 1660/1 (Henig, 1819). servitude

BEE itt enacted That in case any English servant shall run away in company with any negroes who are incapable of making satisfaction by addition of time, Bee itt enacted that the English so running away in company with them shall serve for the time of the said negroes absence as they are to do for their owne by a former act.

The law was amended less than a year later in the March 1661/2-ACT CII. Run-aways. The statute increased penalties for English-borne servants for running away with Negro servants. The law appeared to indicate Negroes were “incapable” of serving additional time, as all Negro servants would appear in this and subsequent Virginial colonial laws to be enslaved for life.

**Coded:** *Negro coded as slave, servant for life.*

Not only was there an increased frequency and prevalence of lifelong servitude. There were growing tensions with Indigenous people of the region. The Powhatans, the indigenous tribe of the region, who were involved in regional conflicts and escalation, were found in indentured servant roles, often becoming “lifelong servants.” Following the Third Anglo-Powhatan War, the English required tribal children, be taken from their homes and families.<sup>11</sup> While the English stated the boarding was for educational purposes and religious conversion, many of the children were sold in servitude. Article 10 of the Treaty Ending the Third Anglo-Powhatan War (General Assembly, 2020d) noted the following:

it is further enacted & consented, That such Indian children as shall or will freely and voluntarily come in and live with the English, may remain without breach of the articles of peace provided they be not above twelve yeares old.

Another Article (IX) in the Treaty Ending the Third Anglo-Powhatan War, written for the return of “Indian servants,” was used as legal rationale to rapidly expand the capture of Indigenous people (and Negroes) and their lands throughout the region:

all such negroes and guns which are yet remaining either in the possession of himselfe or any Indians, and that here deliver upon demand such Indian servants as have been taken prisoners and shall hereafter run away, In case such Indian or Indians shall be found within the limitts of his dominions; provided that such Indian or Indians be under the age of twelve years at their running away.

**Coded:** *In Virginia, Indian coded no right to family.*

**Coded:** *Indians are slaves.*

Virginia, as the first permanent British settlement for the continent, would serve as a model for other colonies. Maryland and New York would adopt similar laws bonding Negroes and to lifelong servitude.

## MASSACHUSETTS EARLY COLONIAL LAW

Massachusetts had early records of enslavement, as early as 1637. Following the Pequot War, Governor John Winthrop noted the death and capture of several hundred of the Pequot tribe. Over a dozen of the Pequot people were sent to Bermuda (only to ultimately land in the Bahamas). In return, the company received the following year (1638) some cotton, tobacco, enslaved Africans, and other goods (Triber, 2024).

Years later (1641) Massachusetts would publish Bodies of Liberty (1641), providing rationale and legal justification for slavery and other forms of servitude. While defining and ensuring the freedoms and rights of the colonists . . .

No mans life shall be taken away, no mans honor or good name shall be stained, no mans person shall be arrested, restrained, banished, dismembered, nor any ways punished, no man shall be deprived of his wife or children, no mans goods or estate shall be taken away from him, nor any way damaged under color of law or Countenance of Authority, unless it be by virtue or equity of some express law of the Country warranting the same, established by a general Court and sufficiently published, or in case of the defect of a law in any particular case by the word of God. And in Capital cases, or in cases concerning dismembering or banishment according to that word to be judged by the General Court.

... the document also represented the first British colony in the Americas to legalize the enslavement of Africans and Indigenous Peoples (Ward, 1641).

There shall never be any bond slavery, villinage or captivity amongst us unless it be lawful Captives taken in just wars, and such strangers as willingly sell themselves or are sold to us. And these shall have all the liberties and Christian usages which the law of god established in Israel concerning such persons does morally require. This exempts none from servitude who shall be Judged thereto by Authority.

Bodies of Liberty established both freedom and servitude as being established, and thus justified by God.

**Coded:** *Slavery is divine right.*

As the rapidly expanding Puritan plantation colonies of Massachusetts, New Plymouth, Connecticut, and New Haven continued to grow, they soon joined together to form the United Colonies of New England or the New England Confederation under the Articles of Confederation of the United Colonies of New England in 1643.

In addition to noting that the settlement of the colonies was one of Divine right, the Articles of Confederation of the United Colonies of New England (1643) established a series of treaties and other wartime agreements between the colonies, and a framework for civil law. Significantly, the Articles of 1643 created the first fugitive slave law in the colonies (Thorpe, 1909).

... It is also agreed that if any servant run away from his master into any other of these confederated Jurisdictions, that in such case, upon the certificate of one magistrate in the Jurisdiction out of which the said servant fled, or upon other due proof; the said servant shall be delivered, either to his master, or any other that pursues and brings such certificate or proof. And that upon the escape of any prisoner whatsoever, or fugitive for any criminal cause, whether breaking prison, or getting from the officer, or otherwise escaping, upon the certificate of two magistrates of the Jurisdiction out of which the escape is made, that he was a prisoner, or such an offender at the time of the escape, the magistrates, or some of them of that Jurisdiction where for the present the said prisoner or fugitive abideth, shall forthwith grant such a warrant as the case will bear, for the apprehending of any such person, and the delivery of him into the hands of the officer or other person who pursues him. And if there be help required, for the safe returning of any such offender, then it shall be granted to him that craves the same, he paying the charges thereof.

Connecticut would legalize slavery shortly after in 1650.

**Coded:** *Slavery is law across New England.*

## EARLY COLONIAL MASSACHUSETTS ORIGINS OF AMERICAN EDUCATION

During this time, the Massachusetts Bay colony also created and passed the Massachusetts School Law, the first education laws in the new colonies in 1642. Under the new law, all children ages six through sixteen years old needed to be taught to read and write. Towns in the colony with more than fifty families were required to provide public education. Larger towns with more than two hundred families were required to appoint at least one teacher (Blackwell, 2023).

All heads of households were required to teach the English language and the laws of the land to their children and other dependents, including their servants. Initially, most families would provide the education themselves or hire a third party. “Selectmen,” locally elected officials, would now be in charge of supervision of the growing education systems rather than clergy (Blackwell, 2023). Further described, in the follow-up education law, the Old Deluder Act of 1647, the selectmen were asked to surveil and monitor their neighbors to ensure the children, servants, and apprentices were being educated and trained, including vocational skills (New England Historical Society, n.d.) If heads of the household failed to educate their dependents or the children had difficulty learning the skills, the selectmen would take them from the homes and place them with new masters to provide new education and discipline (New England Historical Society, n.d.). Similar laws were passed in the other New England colonies in the years to follow.

## VIRGINIA – PARTUS SEQUITUR VENTREM (1662)

Following a suit by Elizabeth Key Grinstead, a woman who sued for her freedom and won, there was a response in colonial lawmakers to the legal victory. Elizabeth was the child of a free, white Englishman and an African servant (Robinson, 2016). She and her husband sued for her freedom, as under English common law at the time, the legal status of the father determined the legal status of the child (Morgan, 2018). In response to legal victory, the Virginia Assembly passed Act XII (1662) Partus Sequitur Ventrem, which meant in Latin “offspring follows belly.”

Whereas some doubts have arisen whether children got by any Englishman upon a negro woman shall be slave or free, Be it therefore enacted and declared by this present grand assembly, that

all children borne in this country shall be held bond or free only according to the condition of the mother—Partus Sequitur Ventrem. And that if any Christian shall commit fornication with a negro man or woman, hee or shee soe offending shall pay double the fines imposed by the former act.

This was a new law contorting standing English common law. The Virginia assembly would apply the same rules they use for livestock to those enslaved. The enslaved black woman's child would now also be enslaved. No longer would the father have responsibility for caring for the child financially or otherwise, parting from historic practice (Morgan, 2018). Children fathered through rape or coercion would also add to the enslaved population.

Slavery would now be inherited for life; slavery was tied to the Negro and was now biology.

**Coded:** *Negroes are slaves. Slavery is hereditary.*

## VIRGINIA SLAVE CODE OF 1680

Following Bacon's Rebellion (1676), Jamestown was raided and burned. In 1680, the Virginia General Assembly (2020a) reconvened in the colony, still rebuilding from the rebellion. The rebellion was a coalition of people from a wide range of servitude (indentured and enslaved), reflecting many different countries of origin. Following the rebellion, the servants and slaves of African descent became the primary focus of forced and coercive labor; in part this was due to Bacon, himself, being a former servant (Tiffany, 2017). The Virginia Assembly passed its own comprehensive slave law, "An act for preventing Negroes Insurrection," with key elements modeled from the Barbados Slave Code. Following a rebellion on Barbados, that British colony drafted a series of comprehensive slave codes (General Assembly, 2020b), which later colonies modeled. The law now defined Negro slaves as those who would be unable to congregate, carry anything perceived to be a weapon, travel from plantation grounds without permissions, or have equal protection of law ("presume to lift up his hand in opposition against any Christian"). The law not only described different forms of permissible violence against the enslaved people but also permitted kidnapping and public violence against Negroes unaccompanied by planters:

WHEREAS the frequent meeting of considerable numbers of negroe slaves under pretence of feasts and burials is judged of dangerous consequence; for prevention whereof for the future, Bee it enacted by the kings most excellent majestie by and with the consent of the generall assembly, and it is hereby enacted by the authority foresaid, that from and after the publication of this law,



it shall not be lawfull for any negroe or other slave to carry or arme himselfe with any club, staffe, gunn, sword or any other weapon of defence or offence, nor to goe or depart from of his masters ground without a certificate from his master, mistris or overseer and such permission not to be granted but upon perticuler and necessary occasions; and every negroe or slave soe offending not haveing a certificate as aforesaid shalbe sent to the next constable, who is hereby enjoyned and required to give the said negroe twenty lashes on his bare back well layd on, and soe sent home to his said master, mistris or overseer. And it is further enacted by the authority aforesaid that if any negroe or other slave shall presume to lift up his hand in opposition against any christian, shall for every such offence, upon due prooffe made thereof by the oath of the party before a magistrate, have and receive thirty lashes on his bare back well laid on. And it is hereby further enacted by the authority aforesaid that if any negroe or other slave shall absent himself from his masters service and lye hid and lurking in obscure places, comitting injuries to the inhabitants, and shall resist any person or persons that shalby any lawfull authority by imployed to apprehend and take the said negroe, that then in case of such resistance, it shalbe lawfull for such person or persons to kill the said negroe or slave soe lying out and resisting, and that this law be once every six months published at the respective county courts and parish churches within this colony.

At the same time, more broadly across the British colonies, enslaved people were clearly identified as goods (property) rather than persons as noted in the ruling of *Butts v. Penny* (1677) (Slavery Law and Power, n.d.). While the ruling was in response to a suit in Barbados, regarding “10 and one half Negroes,” it came from the King’s Bench, the highest common law court, rippling throughout the British empire and colonies.

**Coded:** *Slaves are restricted in travel.*

**Coded:** *Slaves no right to defense.*

## THE FIRST RACE IN MARYLAND AND VIRGINIA

The Black population continued to increase in the colonies. The Black populations in the colony of Maryland rose from approximately twenty in 1640 to 760 twenty years later (Maryland State Archives, 2000). The first appearance of “race” began in 1664 with Maryland’s anti-miscegenation laws. The

law was a transition for previous marriage laws prohibiting the intermarriage of “English and Freeborn” women to men of African descent (Battalora, 2013). The Maryland General Assembly wrote the following in 1681 (Maryland State Archives, 2000):

for as much a[s] diverse Freeborne English or Whitewoman sometimes by the instigation Procurement of Conievance of their Masters Mistres or dames, and always to the Satisfaction of their Lascivious and Lustfull desires, and to the disgrace not only of the English but also of many other Christian Nations, do Intermarry with Negroes and Slave.

Prior to the common prevalence of racial language, people were associated with the country and not preferred biological traits. With the 1681 law, new language emerged prohibiting the marriage of “English and other WHITE women” to men of African descent. The law is the first clear reference of race in the Americas and created race as defined as being English-born, Christian, and heterosexual. The colony of Virginia adopted similar language. In An act for suppressing outlying slaves (1691), the law said the following (Virginia General Assembly, 2020):

And for the prevention of the abominable mixture of the spurious issues which hereafter may increase in this dominion, as well as by negroes, mulattoes and Indians intermarrying with English or other white women, as by their unlawful accompanying with one another, Be it enacted by the authoritie aforesaid, and it is hereby enacted, that for the time to come, whatsoever English or other white man or woman being free shall intermarry with a negroe, mulatto, or Indian man or woman bond or free shall within three months after such marriage be banished and removed from this dominion forever, and that the justices of each respective countie within this dominion make it their perticular care, that this act be put in effectuall execution. . . .

White, as the first race, was inherited, giving hierarchical privilege (making prospective romantic partners limited to legally defined whiteness), and creating legal social boundaries to protect the “new” social class. Violation was clear—those who did not ascribe to these newly defined roles of sexual partnership would be banished or removed from the community.

**Coded:** *White is heterosexual, Christian and English-born.*

**Coded:** *White controls land and occupancy.*

## VIRGINIA SLAVE CODE (1705)

Consolidating the previous decades of laws and codes written regarding Blacks, indentured servants and slavery, the Virginia General Assembly wrote sweeping legislation called “An act concerning Servants and Slaves” (1705). In part a reaction to the continued rise in populations of enslaved Africans, and possibly in response to growing anti-slavery sentiments (like to *The Selling of Joseph* by Samuel Sewall, written in 1700), the laws expanded on those previously passed. Sewall’s writings made clear that slavery was antithetical to Christian principles, although the Curse of Cham, a narrow Old Testament interpretation of why Black people were Biblically placed into bondage, was the colonial Christian validation of enslavement (Sewall, 1700).

All non-Christian servants were declared slaves for life, regardless of the amount of time left on their service contract. Enslaved people would no longer be able to carry firearms or any perceived weapon. They would be subject to physical assault or even murder without reprisal. The words white and Christian were used interchangeably in the law, establishing different service conditions based on religions and skin color. Those enslaved were not permitted to travel long from the plantation. Intermarriage was punishable by imprisonment for white men and women, and fines for the officiant. Additional hierarchical language in the Slave Code was clear regarding those who escaped enslavement. Article XI (1705) of the Slave Code noted the following (Virginia Assembly, 1814–1823):

And for a further christian care and usage of all christian servants, Be it also enacted, by the authority aforesaid, and it is hereby enacted, That no negros, mulattos, or Indians, although christians, or Jews, Moors, Mahometans, or other infidels, shall, at any time, purchase any christian servant, nor any other, except of their own complexion, or such as are declared slaves by this act: And if any negro, mulatto, or Indian, Jew, Moor, Mahometan, or other infidel, or such as are declared slaves by this act, shall, notwithstanding, purchase any christian white servant, the said servant shall, ipso facto, become free and acquit from any service then due, and shall be so held, deemed, and taken: And if any person, having such christian servant, shall intermarry with any such negro, mulatto, or Indian, Jew, Moor, Mahometan, or other infidel, every christian white servant of every such person so intermarrying, shall, ipso facto, become free and acquit from any service then due to such master or mistress so intermarrying, as aforesaid.

Blacks captured while trying to escape would likely face death. Those assisting the capture would be rewarded, and planters whose escaped servants died during capture would be given reparation payments. The notion of payment due to slavers and annual payments to the Crown and clerks for the overarching system of slavery diminished the lives and well-being of Blacks in the region to shilling and a few hundred pounds of tobacco.

Service would be explicitly slavery and explicitly Black, as “white” would now be used for the first time to contrast differences between indentured servants and those enslaved, and differences in marriage and childbearing.

**Coded:** *Slaves are all non-Christians.*

**Coded:** *Negro is slave.*

**Coded:** *Whites are freemen.*

## MARYLAND SLAVE CODE (1715)

Following the Virginia Slave Codes, comparable comprehensive codes were expanding throughout the British colonies. Maryland passed its own version of a slave code in the Proceedings and Acts of the General Assembly, Vol. 30 (1715). Black people were seized if traveling without a pass and could face enslavement or six months in prison. Enslaved people would not be afforded a jury trial, like the colonist, presenting before one of two justices.

The Maryland law would again reiterate making all Blacks as slaves:

And be itt alsoe Enacted by the Authority that all Negroes and other Slaves Already Imported or hereafter to be Imported in this province and all Children now born or hereafter to be born of such Negroes and Slaves shall be Slaves dureing their naturall lives.

The expanse of slavery was matched by the expanse of the new *racialized* Slave Codes, as populations of those enslaved continued to expand across the southern colonies. In Maryland, the Black population was nearly one-third to one-half of the total colony’s population in the years prior to the American Revolution (Maryland State Archives et al., 2020). Race, no longer region or religion, would be the tool of categorizing humans and service.

**Coded:** *Black is slave.*

**Coded:** *Black unable to travel.*

**Coded:** *Black unequal justice.*

## PENNSYLVANIA SLAVE CODE (1725)

The expanse of slavery was even noted in other colonies, such as Pennsylvania. An Act for Better Regulating Negroes in the Province was enacted 1725–1726 (Statutes at Large of Pennsylvania, n.d.). Similar to other colonies, legal rights for those enslaved were limited through the Act.

The law limited intermarriage, and even cohabitating, between enslaved Negroes and whites, punishable for all parties, including the clergy, involved. Free people, men and women who were found lying with a white person, would be enslaved, while their partner would face the penalty of local adultery for fornication laws.

Those enslaved were limited on how or where they could travel. Negroes were banned from traveling more than ten miles from their master or finding additional work. The enslaved were also barred from drinking in or near a liquor shop and had a 9 p.m. curfew.

As there was a broader mix of freed Blacks, enslaved people and whites, the Slave Codes of Pennsylvania also laid a foundation of Codes for Black and those of mixed-race separate from those enslaved. Those enslaved were banned from any transaction with freed Black. A freed Black could also be placed into bond (indentured servitude) if that were thought to be “unwilling to work,” or unable to pay fines. Free Blacks were described in the law as noted in the following:

And whereas ‘tis found by experience that free negroes are an idle, slothful people and often prove burdensome to the neighborhood and afford ill examples to other negroes:

Therefore be it enacted by the authority aforesaid, That if any master or mistress shall discharge or set free any negro, he or she shall enter into recognizance at the respective county court with sufficient sureties in the sum of thirty pounds to secure and indemnify the city, township or county where he resides from any charge or incumbrance they may bring upon the same in case such negro by sickness or otherwise be rendered incapable to support him or herself, ‘but until such recognizance be given such negroes shall not be deemed free.

The Pennsylvania Slave Codes carried on much of the racially divisive language of other slave codes, but expanded in assigning dehumanizing characteristics in law to all people of African descent.

**Coded:** *Black – intermarriage means enslavement. Black means burdensome.*

**Coded:** *Black means limited travel.*

**Coded:** *Black means conditional and costly freedom.*

## **SOUTH CAROLINA SLAVE CODE (1740)**

The South Carolina General Assembly drafted language for the Bill for the better ordering and governing of Negroes and other slaves in this province (1740), also known as the Negro Act of 1740. The bill swept in language in the encoding race from many aspects of life and was likely in response to many growing regional and global pressures regarding slavery and colonial expansion.

As Spain and Britain became entangled in war, the Spanish Royal Decree of 1733, declared that any who escaped from enslavement in the British colonies to Florida would be granted both freedom and sanctuary (Landers, 1984) The Decree increased tension throughout the southern colonies, especially Georgia and South Carolina.

In 1739, nearly fifty enslaved people rebelled in Stono, South Carolina. The rebellion stormed and burned one of the armories, and led to many deaths for Blacks and whites. The rebellion was stopped by the colonial militia prior to reaching Florida (Niven, 2016).

The following year, the South Carolina Assembly enacted the bill. The bill was more restrictive for all Negroes and Indigenous people of the region, enslaving all and any future generations (South Carolina Slave Code, n.d.):

Be it enacted, that all negroes, Indians, (free Indians in amity with this government, and negroes, mulatos and mestizos who are now free excepted) mulatos or mestizos, who now are or shall hereafter be in this Province, and all their issue and offspring born or to be born, shall be and they are hereby declared to be and remain for ever hereafter absolute slaves, and shall follow the condition of the mother; and shall be deemed, should, taken, reputed and adjudged in law to be chattels personal in the hands of their owners and possessors and their executors, administrators and assigns, to all intents, constructions and purposes whatsoever.

The law would further clarify and expand the legal powers inherited by whiteness as whites would be the only individuals permitted to provide testimony as witness. White individuals could travel freely individually or in the company of Black people without being stopped or assaulted. A white

person could capture and assault any groups of Negroes with more than seven individuals. White people were free to capture, assault, and even kill any Black people found off of a plantation.

The value and style of clothing would also be ascribed in the racialized code. The code would clearly and narrowly define and reiterate the only attire suitable for the enslaved: “negro cloth, duffils, coarse kerseys, oznabrigs, blue linen, check linen or coarse garlix or callicoes, checked cottons or Scots plaids.”

Similar to other slave codes, blacks and other enslaved people could not travel freely in the colony and needed special tickets to leave the plantation. The law would remain unequal for the enslaved of South Carolina: If they were perceived to assault a white person, it could result in death.

Expanding previous codes, enslaved people would no longer be allowed to rent or purchase any homes, grow food, or learn to read and write.

In the southern colonies, these would be the first compulsory education laws, the banning of Black and Indigenous people in literacy and writing English language.

Shortly after the 1740 law, two enslaved men were purchased by the Society for the Propagation of the Gospel in Foreign Parts and began training to become instructors in 1741. The following year in 1742, the Society opened a school in Charleston, South Carolina. The school had three instructors, including the two Black enslaved men, with thirty students. The school was permitted to operate, claiming that Christian education made the enslaved more obedient and that the education was focused more on apprenticeship. The Charleston Negro School would remain in operation for over twenty-two years, following the death of the last remaining Negro instructor (Comminey, 1999).

**Coded:** *White, enforcer of the laws.*

**Coded:** *Slave separate fashion.*

**Coded:** *Slave banned from education.*

**Coded:** *Slave unable to own a home.*

**Coded:** *Slave limited access to food.*

## COLONIAL EDUCATION

As the education systems continued to grow along with the colonies, most education across the British colonies was a localized effort and often informal. The majority of education occurred in the home and focused on basic literacy, practical skills, and religious education. There was no established system for funding any formal education. While few regions had tax-subsidized education, most formal education would be tuition driven or rely on charitable donations, such as fuel contributions (Kober & Rentner, 2020).

While the scope and structure of the theologically-focused Massachusetts and New England education system were already noted, the other colonies had different models. The colonies in the mid-Atlantic (Delaware, New Jersey, New York, and Pennsylvania), while often run by local churches, had less of a religious focus than the New England colonies. Charities also established free schools for the poor and working class (Roos, 2022). Quakers would establish schools for Black children throughout the first half of the 1700s in New Jersey, New York, North Carolina, Pennsylvania, and Virginia (despite Quaker opposition to slaveholding) (Black Teacher Archive, 2023). In New York, the Manumission Society opened a free school for Blacks (The Education of African Americans, n.d.).

Southern colonies focused on private tutors, English boarding schools, or field schools (a community-funded schoolmaster and school). A schoolmaster might also include during the early colonial days bondsmen and indentured servants (Roos, 2022).

### Georgia Slave Code (1755)

By Royal decree in 1751, slavery was enacted in the Province of Georgia following a request by the Trustees, a group of elected officials identified in the colony's charter to govern the colony from England. The practice of slavery had originally been banned when the colony was founded in 1735 (Wood, 2021).

By 1755, the Trustees of Georgia petitioned the crown to allow for slavery in the colony. An Act for the Better Ordering and Governing Negroes and Other Slaves and to prevent intermingling or carrying away slaves from their Masters or Employers was passed in 1755.

Similar to South Carolina's sweeping restrictive education laws, teaching of writing would be banned in the Province of Georgia for enslaved people. Those enslaved could not congregate in groups, or administer medicine or treatment to anyone else enslaved. There could be no sales of alcohol to the enslaved. They were not allowed to own a home.

Enslaved people were no longer allowed to leave the plantation without written permission, to assemble in groups, or purchase their own homes.



They were also banned from carrying a firearm and could face death if they ever struck a white man.

If an enslaved person were to be maimed or disabled while being trying to be apprehended, the Act stipulated the appropriate cost of that enslaved person's able-body was five shillings. Similarly, if a constable failed to administer his duty to capture an escaping, enslaved individual, the constable would owe a sum of twenty shillings.

The most significant change in the Georgia Slave Code was the blurring of the line between race as a condition of servitude and the broader set of imposed preferred biological traits, which would be further expanded through subsequent Georgia Slave Codes. All free people of color (free Blacks, free Indigenous people and any of noted mixed heritage) "shall be proceeded and tried by the justices and freeholders appointed by this act for the trial of slaves, in like manner in herby directed for the proceedings and trial of crimes and offences committed by slaves" (Georgia, 1978).

**Coded:** *Black is unequal in the law.*

**Coded:** *Slave banned from healing.*

**Coded:** *Slave banned from celebration.*

**Coded:** *Slave banned from community.*

## THE ROAD TO THE AMERICAN REVOLUTION

As the British colonies in America drifted closer to revolution and ultimately, independence, tension also rose regarding enslavement and the ideals of liberty and freedom driving the patriotic movement. In Pennsylvania, Quakers banned their members enslaving individuals or participating in the slave trade. At the same time, Virginia, the Carolinas, and other colonies began to ban British goods that were taxed as a result of the Townshend Acts (1767). The British transatlantic slave trade was explicitly noted in the boycott in the various nonimportation agreements, which would continue as political tensions and economic pressures would continue to rise (Smith, 1940; Charleston Nonimportation Agreement, 1776).

Tensions were visible even in the streets of colonies. In Boston, the occupying British soldiers used to collect and enforce taxation and other British law led to the Boston Massacre, leading to the deaths of several colonists by the British, including Crispus Attucks. The Townshend Acts also led to the Tea Act of 1773, an attempt to encourage more colonists to purchase teas taxed under the Townshend Act, ultimately, resulting in the Boston Tea Party (Chaffin, 2000).

The Tea Party led to the Crown passing the Coercive Acts of 1774. The oppressive acts, particularly in the north, were creating increasingly challenging conditions. The Boston Port Act closed Boston Harbor until the lost tea was reimbursed; other acts like the Administration of Justice Act freed British officials from the jurisdiction of colonial laws, leading some to call it the “Murdering Act.”

The Quartering Act of 1774 allowed the British to inhabit unused buildings. However, due to unclear reporting and administration of the law, it is likely that the implementation resembled the practices of past Quartering Acts, which often resulted in British soldiers seizing private establishments and requisitioning supplies (Gerlach, 1966). The conditions were likened to slavery throughout the colonies to build resistance momentum against the Crown (Little, 2022). The comparisons to slavery were neither fair nor accurate. As the colonies expanded from economic conflict like nonimportation agreements banning British taxed goods, they would transition to outright warfare, as concepts of race, slavery, and servitude would continue to evolve. The Declaration of Independence would enshrine values of liberty, equality, and opportunity into the identity of the developing nation, while those they enslaved would seek to fight for the British at a chance for emancipation. By the end of the American Revolution, Vermont and Massachusetts all abolished slavery, with Pennsylvania, New York Rhode Island, and Connecticut establishing plans for gradual emancipation.

Drawing parallels to the enslaved pointed a trajectory for freedom for the colonies. The encoded races were similar but slightly different in each colony as systems of slavery. The tension of slavery, freedom, liberty, and tyranny set the stage for the new nation.

## THE AMERICAN REVOLUTION (1776)

As much as there had been economic and overt conflict happening in the colonies, the Declaration of Independence was the foundation for our new governments, a new country, a new system. The Declaration encoded many of the values, beliefs, and aspirations for the colonies as it served to sever ties with Britain. As the Continental Congress affirmed the document crafted by a five-person design team, including John Adams, Benjamin Franklin, and

Thomas Jefferson, the adoption of the Declaration was a landmark for the ideals of democracy and the creation of a new independent country (National Archives, n.d.a.). The Preamble of the Declaration of Independence noted (National Archives, n.d.b.) the following words:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

As the Declaration concludes, it lists twenty-seven grievances against King George III. These grievances reveal the encoding of race and highlight the tension in the new nation’s founding documents between the ideals of liberty and contemporary views of humanity. Among the grievances is this one, which reflects the colonists’ perspective on conflicts with Native Americans and also includes language which today is considered to have racial biases of the time:

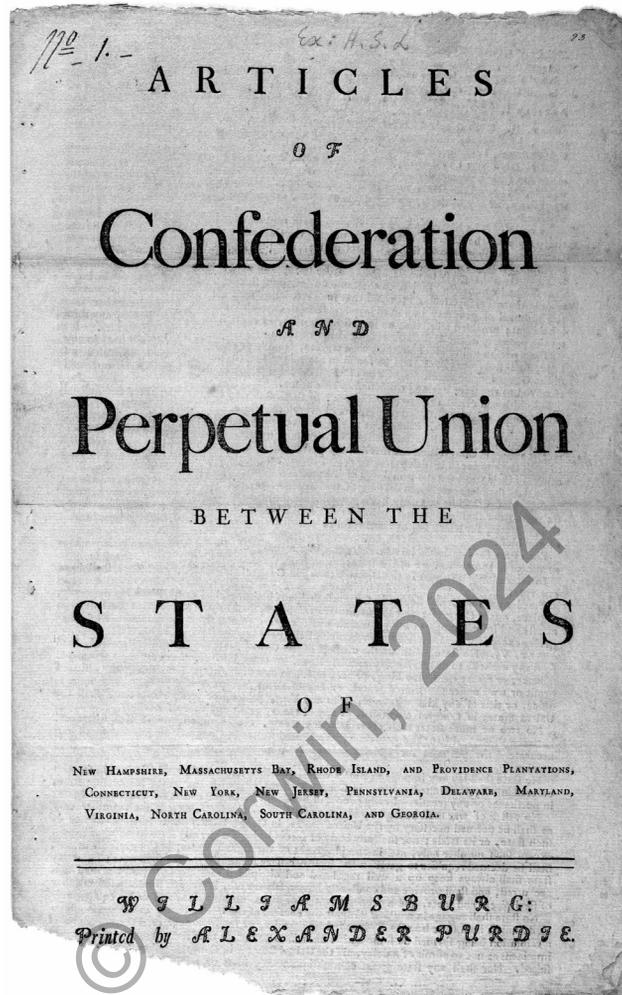
He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages whose known rule of warfare, is an undistinguished destruction of all ages, sexes, and conditions.

The “domestic insurrection” was likely in reference to rebellions and revolts of the enslaved people, and to rising tension at the time with British promises to free those enslaved to join the British cause (Ostler, 2020). The irony should not be lost that in the same document that rejected rule and subjugation of Royal lineage, the final lines would uphold heritable servitude. Other passages in the Declaration challenging slavery had been struck by the Continental Congress (De Witte, 2020)

While the Declaration appropriated Haudenosaunee frameworks of democracy, the twenty-seventh grievance also assailed Indigenous peoples. The racist and imperialist language of “savages of our frontier” was a mischaracterization of the continued toll colonization took on Indigenous people and the financial impact the continued war campaigns and expressed genocide had on the British colonies turned fledgling states (Ostler, 2020).

**Coded:** *White has the rights of violence.*

FIGURE 5 THE ARTICLES OF CONFEDERATION (1777-1787)



SOURCE: Retrieved from the Library of Congress.

Throughout the American Revolution and the years to follow, the newly birthed United States of America were guided by the framing documents known as the Articles of Confederation (Continental Congress, 1777).

The United States, in congress assembled, shall have authority to appoint a committee, to sit in the recess of congress, to be denominated, “A Committee of the States,” and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction - to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years;

to ascertain the necessary sums of money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted, - to build and equip a navy - to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state.

White as a race, an inherited biological condition, was assigned the full privileges of citizenship in the new country. Race was encoded in the foundational document, and the United States would be the first country to designate its composition, its citizens, around the concept of race.

The Articles made brief notes on slavery as well. As noted in British common law, especially in the case of *Butt v Penny*, which had been influential for nearly one hundred years, enslaved individuals were designated as goods or property. Article IV noted the following:

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from Justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other State of which the Owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them.

The mention of property and securing its subsequent removal were in all likelihood referring to enslaved people escaping to northern states where those states were increasingly ending slavery practices both during and immediately following the war (Anastaplo, 1989). Fugitive slaves laws extended the reach of slavery beyond the lines of just slave holding states. Concepts like safety, security, and freedom for the enslaved would not be possible as slavery would have no borders. In the foundational documents of the United States slavery would be enshrined.

As the Articles did not give Congress the power to tax and attempts to amend the Articles to include taxation failed, the Articles were abandoned with the drafting of the US Constitution.

**Coded:** *The United States citizens are white.*

**Coded:** *Political power is white.*

**Coded:** *Slavery is national.*

## CHAPTER 1 DISCUSSION QUESTIONS

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- How did the early labeling of people based on geographical origin (“Negro” from Negroland) shape their legal and social status in the British colonies? How does this relate to the concept of identity and legal rights today?
- Analyze the significance of laws such as the Virginia Slave Code of 1680 and Maryland’s anti-miscegenation laws of 1681. How did these laws codify racial distinctions and perpetuate inequality in the colonies?
- How did the early colonial practices in Virginia, Maryland, and Massachusetts set a precedent for the legal and social treatment of Indigenous people and people of African descent throughout the American colonies and later the United States? What are the lasting effects of these practices today?
- Compare and contrast the Virginia Slave Code (1705) with similar laws in other colonies like Maryland (1715), Pennsylvania (1725), South Carolina (1740), and Georgia (1755). What mechanisms were used to maintain these hierarchies, and what were their intended effects on enslaved people and free communities of color?
- How did the Declaration of Independence define and address issues of liberty and equality? Where did the Declaration fall short, particularly regarding enslaved individuals and Indigenous peoples?
- How did the educational and legal frameworks established during colonial times continue to influence social structures and systems of race and racism in America?
- In what ways did the ideals of liberty and freedom promoted during the American Revolution contradict the reality of slavery and racial oppression in the newly formed United States? How did these contradictions shape the nation’s early development?