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978-1-107-01740-5 - Jefferson's Freeholders and the Politics of Ownership in the Old Dominion

Christopher Michael Curtis

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## Introduction

### *The Tragedy of Ownership*

Addressing an audience of local citizens, James Philemon Holcombe warned that all the harbingers “of a great popular revolution” were in evidence. He explained that “recent events” had conspired to convince even “the most unbelieving amongst us” of the danger to “our constitutional rights” in the Union. His warning undoubtedly resonated with the crowd coming, as it did, a mere month after John Brown had been hung for attempting to spark a slave insurrection at Harper’s Ferry. Nevertheless, they may have been surprised to hear this jeremiad being delivered not by some aspiring demagogue but by an aloof, bespectacled law professor who was best known for mastering the obscure principles of equity jurisprudence. Perhaps even more perplexing to the crowd, however, was Holcombe’s explanation as to the source of this imminent revolution. He acknowledged the legitimate anxiety caused by Brown’s raid but assured his listeners that it had been easily suppressed and that peace had been lawfully restored. More daunting than this abolitionist design to ferment slave rebellion, he insisted, was the foreboding “spectacle” of the free-soil-inspired Republican Party grasping “possession of the Government” with its declared intention of using its power “to promote their interests at the expense of ours.”<sup>1</sup>

The interests to which Professor Holcombe referred were the private ownership rights to property – especially the right to own slaves. For him, the upstart Republicans represented a “purely Northern party” committed to undermining the integrity of the relationship between master and slave – the fundamental relationship on which Virginia’s social order and democratic government were grounded. He comfortably asserted to the sympathetic crowd that the paternalist virtues found in the master-slave relation sustained the cherished principles

<sup>1</sup> James Philemon Holcombe, *The Election of a Black Republican President an Overt Act of Aggression on the Right of Property in Slaves: The South Urged to Adopt Concerted Action for Future Safety: A Speech before the People of Albemarle on the 2d Day of January, 1860* (Richmond: 1860), 1–3. E. Lee Shepherd, “James Philemon Holcombe” in *Legal Education in Virginia: A Biographical Approach*, edited by W. Hamilton Bryson (Charlottesville: University Press of Virginia, 1982): 291–295.

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of “property, liberty, honor, and [even] civilization itself.” He believed that Republicans actively sought to destroy these principles in order to replace them with the individualistic dogmas of contract and self-ownership that defined modern commercial society. Accordingly, he urged the crowd to consider separating from the Union unless they received specific constitutional guarantees to protect their private property rights in slaves.<sup>2</sup>

Holcombe's comments hardly surprise those scholars who have studied the movement for Southern Independence. Indeed, they were quite mundane. For the past half-century, most historians have identified the preservation of slavery as the ideological cornerstone of the Southern Confederacy and the principal explanatory cause of the American Civil War.<sup>3</sup> When, a year later, Virginia's statesmen followed Holcombe's advice and seceded from the Union, they did so knowing full well that they were going to war to preserve slavery. Their decision reflected the culmination of a decades-long struggle to defend slavery from the pressures of a commercial *mentalite* that increasingly found all forms of “unfree” labor intolerable. Like Holcombe, they understood that slavery stood at the foundation of their political and social institutions and that the core values of the Republican Party were inherently hostile to their way of life.<sup>4</sup>

Yet Professor Holcombe's commitment to slavery as the foundation of liberty and self-government would have sounded odd – and perhaps even foolish – to an earlier generation of Virginians who also had decided to break the bonds of union in order to preserve their way of life. Unlike Holcombe and his contemporaries, the Virginian forbearers who chose to separate themselves from the British Empire believed that land tenure provided the only solid foundation for liberty and self-government. When given the historical opportunity to define anew both their form of government and their understanding

<sup>2</sup> Holcombe, *Election of a Black Republican President*, 5–6.

<sup>3</sup> See especially, Eugene Genovese, *The Political Economy of Slavery: Studies in the Economy and Society of the Slave South* (New York: Pantheon Press, 1965); Kenneth Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage Books, 1956); Drew Gilpin Faust, *The Creation of Confederate Nationalism: Ideology and Identity in the Civil War South* (Baton Rouge: Louisiana State University Press, 1988); and William Freehling, *The Road to Disunion: Secessionists at Bay, 1776–1854* (New York: Oxford University Press, 1990). The consequences of this historiographical revolution have been tremendous; the centrality of slavery and the corresponding issues of race have come to serve as the principal explanation for southern distinctiveness within the grand sweep of the American historical narrative – from Jamestown to the Reagan Revolution. Indeed, even those who have disagreed with Genovese's Marxist interpretation of the Old South have tended to side with him on the issue of causation and have contributed to refuting the preceding generation of revisionists who generally attributed the cause of disunion to the inability of politicians to transcend prevalent institutional flaws.

<sup>4</sup> Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1995); William Gienapp, *The Origins of the Republican Party, 1852–1856* (New York: Oxford University Press, 1988); Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English & American Culture, 1350–1870* (Chapel Hill: University of North Carolina Press, 1991); and Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998).

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of individual liberty during the American Revolution, Virginians specifically chose the ownership of land as their organizing principle in each instance. In establishing a republican form of government, political privileges and offices were awarded exclusively to those individuals who owned land. Land, not slaves, served as the cornerstone of the republican ideal that informed the creation of the Commonwealth.

It warrants mentioning at the outset that to suggest the primacy of land tenure in the republican ideology of Virginia's revolutionaries does not necessarily infer that these men were opposed to slavery. Much confusion has been caused already by those who have sought to transpose a rigid categorical dichotomy between slavery and freedom on the ambience of eighteenth-century social relations. Virginians of the period never considered the political and ideological privileges conferred on land tenure as antithetical to slavery. On the contrary, the acreage required by law to qualify a piece of land as a freehold often encouraged the acquisition of enslaved laborers in order to make the land productive. Slavery, as a preferred form of labor in the eighteenth century, was an important component of Virginia's republic.

Slavery was not, however, fundamental to the principles of republican government. Virginia's postcolonial lawmakers refused to blur the historical distinction between two separate categories of property in the English common law. The laws of personal property applied to cases dealing with moveable property such as chattels or goods, whereas a different set of laws dealt with issues involving real property in land. These categories were governed by different forms of actions and consequently existed as "distinct systems of jurisprudence" within the common law.<sup>5</sup> Eighteenth-century Virginians were well schooled in this legal distinction and consciously chose the advantages of establishing real property as the basis for political rights and participation. They preferred real property over other forms, such as slaves or money, because the immobility of the land vested its owner with a permanent interest in the tangible community in which it was situated. Furthermore, these legislators never forgot that the law recognized slaves as persons as well as property. This recognition imbued the jurisprudence of slavery with an ambiguity that, in the minds of the Commonwealth's founders, made chattel property an unsuitable base on which to ground a republican polity.<sup>6</sup> Virginians did not initially

<sup>5</sup> John Taylor Lomax, *A Digest of the Laws Respecting Real Property Generally Adopted and in Use in the United States; Embracing more Especially the Law of Real Property in Virginia* (Philadelphia: 1839).

<sup>6</sup> On the complexity of slave law and the persistent efforts of southern courts to balance the considerations of humanity and interest, see: Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill: University of North Carolina Press, 1996); Mark Tushnet, *The American Law of Slavery, 1810–1860: Considerations of Humanity and Interest* (Princeton, NJ: Princeton University Press, 1981); Ariela Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, NJ: Princeton University Press, 2000); William E. Wiethoff, *A Peculiar Humanism: The Judicial Advocacy of Slavery in the High Courts of the Old South, 1820–1850* (Athens: University of Georgia Press, 1996).

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create a slaveholding republic. Only after the proprietary characteristics of land ownership had been eroded, and land itself had adopted the commercial qualities of mobile property, did they specifically emphasize slave ownership as a foundational source of republican government.

This study examines the historical processes by which Virginia was transformed from a British colony into a southern slave state. It approaches the problem from a jurisprudential perspective and emphasizes the persistent hegemony of English common-law concepts and institutions on Virginia's postcolonial political culture. It focuses particularly on the legal construction of ownership and its changing political significance amid debates over economic development, the democratization of law and government, and slavery. Accordingly, the study begins by exploring the foundations of colonial land tenure – the traditional source of franchise – and investigates the revolutionary consequences wrought by imposing a concept of private land ownership on a common-law framework to make land tenure an adequate basis for republican citizenship. It details how the principles of ownership corrupted the customary offices of landed status and generated efforts to reform real property law to reconcile it with the dynamic contractual relations of a capitalist economy. These reforms embraced new democratic expressions of economic and political power, most notably the belief that the ownership of productive labor power should replace the freehold and other archaic forms of property qualifications as the principle source for conferring political right. In the northern states, as in England, this formula fostered the construction of workingmen's democracies.<sup>7</sup> In the South, however, the process was complicated by slavery because the ownership of labor power was not concentrated in the individual laborer. As democracy developed in Virginia, it encouraged the idea that slavery was an essential element in sustaining republican government and thus expanded the power of the slave-owning class. By 1850, the ownership of human property replaced the ownership of land as the distinguishing basis for political power in Virginia.

My findings thus suggest that the political reformation responsible for ushering in a slave-owning democracy in the Old Dominion was intrinsically linked to reforms made to the common law. Indeed, it is a principal argument of this study that it is nigh impossible to comprehend the truly revolutionary significance of republican citizenship without understanding the legal language in which it was articulated. Although it is not necessarily incorrect to generalize by using terms such as “white-male elites,” or even “property owners,” to describe the powerful in early America, such terms are far from

<sup>7</sup> Sean Wilentz, *Chants Democratic: New York City & the Rise of the American Working Class, 1788–1850* (New York: Oxford University Press, 1984); Ronald P. Formisano, *The Transformation of Political Culture: Massachusetts Parties, 1790s–1840s* (New York: Oxford University Press, 1984); Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Oxford University Press, 1990); and E. P. Thompson, *The Making of the English Working Class* (New York: Vintage Books, 1963).

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accurate. Indeed, such generalizations tend to obscure the actual mechanisms of power and, in this particular instance, serve to marginalize the novelty of a regime established by the rule of law. Additionally, because the common law was rooted in local custom, it proved particularly malleable to the varieties of governance in both colonial and postcolonial America. The history of the common law in Virginia is distinct from its history in South Carolina and Massachusetts, for example, and this distinctiveness helps explain the local nature of American political development. Understanding the nuanced complexities of the common law in each of its particular American contexts is thus essential, not only to decipher the language of Anglo-American republicanism, but also to understand the subsequent creative process that conceptualized liberal democratic citizenship.<sup>8</sup>

Admittedly, much has been written already about the political languages that informed the American Revolution. Indeed, linguistic studies have defined a generation of scholarship on the subject. An array of interpretations have demonstrated the significant influence of civic humanist, radical Whig, country ideology, natural rights, evangelical Christian, and liberal discourses on the formation of republican political thought in the intellectual cauldron of the eighteenth century.<sup>9</sup> This study does not presume to repudiate any of these particular contributions. It posits that the eclectic nature of eighteenth-century British politics encouraged a judicious blending of ideas and languages, which have sometimes come to be considered as distinct or even rival discourses. Nevertheless, this study follows a path trodden by other legal scholars who

<sup>8</sup> See John Phillip Reid, *Rule of Law: The Jurisprudence of Liberty in the Seventeenth and Eighteenth Centuries* (DeKalb: Northern Illinois University Press, 2004) on the historical development of the "Rule of Law" as a principle of governance. For a similar but more elaborate statement concerning the preeminence of legal discourse in the postcolonial period, see Christopher L. Tomlins, *Law, Labor, and Ideology in the Early American Republic* (Cambridge: Cambridge University Press, 1993), especially 21–34. Richard R. Beeman, *The Varieties of Political Experience in Eighteenth-Century America* (Philadelphia: University of Pennsylvania Press, 2004) provides an excellent synthesis of the multiple social and political structures in colonial America as well as explaining the ramifications of these original structures on the sporadic and particularistic development of democracy in America.

<sup>9</sup> Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967); Caroline Robbins, *The Eighteenth-Century Commonwealthman* (Cambridge, MA: Harvard University Press, 1959); Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt Brace Jovanovich, 1955); Trevor Colburn, *The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution* (Indianapolis, IN: Liberty Fund, reprint edition, 1998); J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975); Gordon Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina, 1969); Michael P. Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* (Notre Dame, IN: University of Notre Dame Press, 1996); and Mark Noll, *America's God: From Jonathan Edwards to Abraham Lincoln* (New York: Oxford University Press, 2002) remain essential treatments among a very abundant field of scholarship about the ideas and languages informing the American Revolution.

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have noted the prominent influence of common lawyers on the revolutionary experience and who have suggested that their early education as lawyers contributed much to their interpretation of political texts. If natural rights, civic humanism, or any other discourse offered Virginia's revolutionaries a language in which to articulate republican ideas, it did so acting as a second language, and as such was habitually translated into the vulgate of the common law.<sup>10</sup>

As prime example, the political privilege accorded to land tenure in postcolonial Virginia reflected a confluence of political discourses that situated land distribution and access at the fulcrum of government. In republican form, the possession of land was equated with an individual's ability to achieve the economic self-sufficiency required for the exercise of self-government. This agrarian ideal, however, was embodied in the Virginia Commonwealth by the very specific common-law concept of the freehold. Although, as this study indicates, both the legal definition and social construction of the freehold experienced substantial change during the eighteenth and nineteenth centuries, it was understood consistently as a specific form of tenure that signified the status of a freeman. Nominally defined at the time of the American Revolution as an estate for life of twenty-five acres of improved, or one hundred acres of unimproved, land, a freehold estate actually represented much more. Possession of a freehold had long conferred a franchise on an individual, replete with both the rights and responsibilities of political participation. In addition to the well-known freehold qualification for suffrage, freeholders served in various official capacities such as magistrates, sheriffs, and grand jurors. Through the exercise of the traditional duties of these offices, freeholders carried out the essential administration of local governance.<sup>11</sup>

Eighteenth-century Virginians embraced the common-law tradition as their own. They considered themselves as heirs of this tradition and readily imbibed the belief that it served as the historical basis for English liberties.<sup>12</sup> With the

<sup>10</sup> John Phillip Reid, *The Concept of Liberty in the Age of the American Revolution* (Chicago: University of Chicago Press, 1988). Reid has dedicated much of his scholarship to understanding the legal and constitutional contexts of the American Revolution, and his general thesis articulated here is readily explained in his four-volume *Constitutional History of the American Revolution* (Madison: University of Wisconsin Press) and most recently in *The Ancient Constitution and the Origins of Anglo-American Liberty* (DeKalb: Northern Illinois University Press, 2005).

<sup>11</sup> Charles Sydnor, *Gentlemen Freeholders: Political Practices in Washington's Virginia* (Chapel Hill: University of North Carolina Press, 1952), and Rhys Isaacs, *The Transformation of Virginia, 1740–1790* (Chapel Hill: University of North Carolina Press, 1982).

<sup>12</sup> Warren M. Billings, "The Transfer of English law to Virginia, 1606–50," in K. R. Andrews, N. P. Canny, and P. E. H. Hair, eds., *The Westward Enterprise: English activities in Ireland, the Atlantic, and America 1480–1650* (Detroit, MI: Wayne State University Press, 1979), 215–244; A. G. Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture* (Chapel Hill: University of North Carolina Press, 1981); W. Hamilton Bryson, "English Common Law in Virginia," *Journal of Legal History* 6 (1985): 249–256; Frank Dewey, *Thomas Jefferson: Lawyer* (Charlottesville: University Press of Virginia, 1986); and Charles Warren, *A History of the American Bar* (Boston: Little, Brown and Company 1911), 39–48. On the larger



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outbreak of the Revolution, they even justified their rebellion as an effort to purify what they perceived to be a corrupted legal inheritance. In the process of constructing a republic, however, they transformed their inherited concept of the freehold. They abolished its traditional association as a feudal tenure, which had long defined freeholders as tenants and subjects and had served as the basis for defining status and rights. In the place of the doctrine of tenure, they vested freeholders with an absolute right of ownership in their lands.

Within the common law, such a theory of ownership was ambiguous at best. Several scholars have noted that, in many instances, the common law proved antagonistic to the idea of absolute ownership – especially in regard to real property. Robert Gordon has examined the paradoxical claims to ownership in the common law as it was understood in the eighteenth-century law and concluded that it actually contained “very few plausible instances of absolute dominion rights” and indeed even included a multiplicity of “property relations that actually seemed to traduce the ideal of absolute individual rights.” From another perspective, E. P. Thompson’s classic study of customary rights has documented the persistence of such practices as lamas-lands and gleaning in England through the last years of the century offering clear evidence of limitations on private property rights. In British North America, Elizabeth Mensch has detailed how contradictory social and economic tendencies in colonial New York fostered profound incoherence in conceptualizing property rights in any modern sense. In one such instance, William Nelson’s notable study of Massachusetts has emphasized the significance of the act of seisin – the public investiture of land rights – in maintaining communal order and authority. Similarly, Holly Brewer’s study of entail has demonstrated how the persistence of this practice limited the transferability of land in colonial Virginia and thus created the perception of a land shortage and aristocratic consolidation. These studies challenge a persistent scholarly consensus that suggests that liberal property relations were the *de facto* norm in the colonial wilderness. Scholars advancing this mainstream interpretation have pointed to the ubiquity of fee simple estates, frequent remission in paying quitrents, and the easy transferability of colonial lands. In so doing, they have tended to confuse the daily autonomy of colonial landholders with the vested security and authority inherent in liberal ownership. As this study argues, a profound insecurity over land tenure propelled colonial Virginians toward independence and facilitated the

process of transmitting the common law into the colonial settlements, see Peter Karsten, *Between Law and Custom: “High” and “Low” Legal Cultures in the Lands of the British Diaspora – The United States, Canada, Australia, and New Zealand, 1600–1900* (Cambridge: Cambridge University Press, 2002); David Konig, “Community Custom and the Common Law: Social Change and the Development of Land Law in Seventeenth-Century Massachusetts,” *American Journal of Legal History*, 18 (1974): 137–177; and William E. Nelson, *The Common Law in Colonial America: Volume I, The Chesapeake and New England, 1607–1660* (New York: Oxford University Press, 2008). More recently, Mary Sue Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004) has portrayed the reciprocal nature of the transatlantic legal culture.

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truly revolutionary revisions to land law in the new republic. Much more scholarship is needed on the subject of colonial property rights, but the picture increasingly looks far more complicated and, arguably, less liberal than has been typically assumed.<sup>13</sup>

That said, professions of absolute ownership rapidly gained currency in the commercially oriented world of the eighteenth-century British Empire. The redefinition of the freehold in Virginia reflected this trend and represented an effort to impose a liberal theory of land ownership on the framework of the common law. Virginians referred to this form of ownership as allodial<sup>14</sup> and associated it with the customary practices of the mythic Saxon constitution. They reified this allodial vision of the freehold by sanctifying it as the sole source of political rights and responsibilities in the Commonwealth. Grounding republican citizenship in the allodial freehold expressed a belief that the absolute ownership of a tangible piece of property would reconcile the indulgent characteristics of economic individualism with a vested social attachment to a particular local community and, accordingly, foster civic virtue through self-interest. In this manner, Virginians believed that they could preserve their republic from the historic pitfalls of corruption.

This agrarian republican vision has most often been ascribed to the political thought of Thomas Jefferson. In a well-known passage from his *Notes on the State of Virginia*, Jefferson articulated a preference for a republican polity composed entirely of citizen-farmers – whom he famously proclaimed the “chosen people of God.”<sup>15</sup> Lewis Simpson has referred to this particular passage as

<sup>13</sup> Robert W. Gordon, “Paradoxical Property,” in John Brewer and Susan Staves, eds., *Early Modern Conceptions of Property* (London and New York: Routledge, 1995): 95–110; E. P. Thompson, *Customs in Common: Studies in Traditional Popular Culture* (New York: The New Press, 1993); Elizabeth V. Mensch, “The Colonial Origins of Liberal Property Rights,” *Buffalo Law Review*, 31 (1982): 635–735; William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760–1830* (Cambridge, MA: Harvard University Press, 1975), esp. 48–49; Holly Brewer, “Entailing Aristocracy in Colonial Virginia: ‘Ancient Feudal Restraints’ and Revolutionary Reform,” *WMQ*, 3rd series (1997): 307–346; and James W. Ely, Jr., ed. *Property Rights in the Colonial Era and Early Republic* (New York: Garland Publishing, 1997). *cf.* Lawrence M. Friedman, *A History of American Law*, Second Edition (New York: Simon & Schuster, 1985), 58–65, and Kermit L. Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989), 42–45 for summary statements of the historiographical consensus. Stuart Banner, *American Property: A History of How, Why, and What We Own* (Cambridge, MA: Harvard University Press, 2011) was published as this manuscript was in the final days of completion, and its arguments, which perpetuate the consensus about colonial rights but emphasize the transformative consequences of the American Revolution, have not been fully incorporated into the discussion here.

<sup>14</sup> For the sake of consistency, I have chosen to use the eighteenth-century spelling of “allodial” throughout the text. Medieval historians tend to spell the word “alodial,” reflecting its derivation from the term “alod,” signifying a particular form of allotment. See Susan Reynolds, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (New York: Oxford University Press, 1994) for a thorough explanation of the concept.

<sup>15</sup> Thomas Jefferson, *Notes on the State of Virginia*, edited by William Peden (Chapel Hill: University of North Carolina Press, 1954), 164–165.



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“the supreme text of the American pastoral” and it stands as the touchstone for Jefferson’s political thought.<sup>16</sup> His comments remain particularly significant because they have become the standard evidence of a Jeffersonian agrarian vision that has exerted tremendous influence over American history and its historiography. In popular manifestations, Jefferson’s yeoman farmers have been invoked by Americans of various political persuasions as the model of individual freedom and, by extension, have served as a foundational ideal for America’s liberal democracy. For historians, the agrarian vision has served equally as an effective interpretative concept to explain America’s persistent commitment to a liberal-individualist ethic, while simultaneously, by setting the ideal against the reality, it has been used to offer a devastating criticism of that very same ethic. To paraphrase Richard Hofstadter: For a nation that was born in the country but moved to the city, the Jeffersonian vision has provided both an ideological repository for the memories of a world that has been lost, as well as an inspirational fountainhead for professions of a democratic future.

Yet despite substantial commentary on Jefferson’s agrarian political vision, previous scholars have considered it almost exclusively from a national perspective.<sup>17</sup> Traditionally, Jeffersonian agrarianism has been contrasted with and measured against Hamilton’s commercial platform for national development. From this nationalist lens, the Louisiana Purchase represents the consummate effort to implement this agrarian philosophy and spread the seeds of democracy across an empire of liberty. Tellingly in this respect, Charles Beard began his classic study on the origins of Jeffersonian democracy by examining the debates over the Federal Constitution. And Beard was hardly alone among his contemporaries; Edward Channing’s study of “the Jeffersonian system” confined itself to the period of Jefferson’s presidency. Even Douglass Adair’s notable refutation of Beard’s interpretation grounded the roots of a national agrarian program in the collaboration between Jefferson and Madison in 1792 leading to the formation of the republican political party. More recent scholarship has offered a relatively broader perspective, but the bias of national history persists. Contemporary scholars of Jefferson’s agrarianism have asked such question as “what is still American” in his political thought, and their studies include such revealing subtitles as: “the American Sphinx” and “the Language of American Nationhood.”<sup>18</sup>

<sup>16</sup> Lewis P. Simpson, *The Dispossessed Garden: Pastoral and History in Southern Literature* (Baton Rouge: Louisiana State University Press, 1983), 24–33. For classic elaborations on this theme, see Henry Nash Smith, *Virgin Land: The American West as Symbol and Myth* (Cambridge, MA: Harvard University Press, 1950), and William R. Taylor, *Cavalier & Yankee: The Old South and the American National Character* (Cambridge, MA: Harvard University Press, 1979).

<sup>17</sup> David M. Potter, “The Historian’s Use of Nationalism and Vice Versa” in David M. Potter, ed., *The South and the Sectional Conflict* (Baton Rouge: Louisiana State University Press, 1968) discussed the propensity to write national histories and the limitations it has imposed on our historical understanding.

<sup>18</sup> Charles Beard, *The Economic Origins of Jeffersonian Democracy* (New York: The Free Press, 1915), and Edward Channing, *The Jeffersonian System, 1801–1811* (New York: Harper, 1906).

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The preponderance of Jefferson's agrarian writings, however, concerned the creation of Virginia's republic, not an American empire of liberty. He explicated the core tenets of his republican vision while drafting a proposed constitution for Virginia and again during the process of revising the colonial laws for the new Commonwealth. Jefferson's political vision was, foremost, a vision for Virginia. There, his ideal of allodial land ownership was formed in the specific context of the problems of colonial land grants and the settlement of the western lands. There, he advocated his agrarian republican ideas, not against an alternative commercial republicanism, but in opposition to a more orthodox, Christian-inspired vision of republicanism. There, his ideals initially triumphed and were legislated into practice. And there, he first recognized the limits of his freeholders' republic and sought to replace it instead with a ward system of local governance styled after the New England Township.

It is, however, deeply misleading even to speak of a Jeffersonian vision. Writings trumpeting the benefits of an agrarian-based citizenry had a long history and often were attributed to the classical political philosophy of Aristotle. This classical doctrine experienced an ideological resurgence in the face of the proliferating influence of merchant capital in early modern Europe, and it was adopted and transposed onto the English constitutional struggles by a number of political writers during the seventeenth century. J. C. A. Pocock, within his considerable body of scholarship, has devoted significant attention to the resurgence of these classical ideas and their corresponding influence on the development of modern republican political thought. Pocock situated the writings of James Harrington as pivotal in incorporating the language of civic humanism into the discourses on English republicanism during the seventeenth century, and at the core of the "country ideology" employed in opposition to the patronage power of the court during the eighteenth century. John Murrin and Lance Banning, among others, have traced the transmission, limitations, and adaption of these ideas to the soil of eighteenth-century North America. Banning, however, despite the general excellence of his study, has contributed significantly to fostering the reductive perception that agrarian ideology was simply a "Jeffersonian persuasion."<sup>19</sup>

Even Douglass Adair's strong refutation of Beard concentrated on identifying the roots of the national agrarian program in the Constitutional debates. Adair's unpublished 1943 manuscript has since been published as *The Intellectual Origins of Jeffersonian Democracy: Republicanism, the Class Struggle, and the Virtuous Farmer*, edited by Mark E. Yellin (Lanham, MD: Lexington Books, 2000). Recent work by Peter S. Onuf, *Jefferson's Empire: The Language of American Nationhood* (Charlottesville: University Press of Virginia, 2000) and Roger G. Kennedy, *Mr. Jefferson's Lost Cause: Land, Farmers, Slavery, and the Louisiana Purchase* (New York: Oxford University Press, 2003) continue to emphasize the national implications of Jefferson's agrarian policies. Both of these authors recognize, however, the significant influence that the problem in settling the Western Lands – especially Kentucky – had on Jefferson's subsequent political theories.

<sup>19</sup> Pocock, *Machiavellian Moment* and his edited volume of James Harrington, *The Commonwealth of Oceana and a System of Politics* (Cambridge: Cambridge University Press, 1992) are the writings directed most particularly at examining Harrington's influence. John