
ORIGINAL ARTICLE

Mulattoes in colonial Maryland: The effects of colonial law on patterns of freedom and enslavement

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Abstract

Objective: This study analyzes Maryland colonial law and empirically examines two sets of historical data to explore how legal codes affected the assignment of mulattoes (mixed-descent persons) to the legal categories of freedom or enslavement. Maryland law was concerned with regulating the sexual relationships between people of European descent and people of African descent, especially when the relationship was between an enslaved African man and a free European woman who might produce a mulatto child having free legal standing.

Methods: Analysis of colonial census data and Prerogative Court Records are used to estimate both the size and the composition (enslaved vs. free) of the mulatto (mixed-descent) population in the colony of Maryland in the 17th and 18th centuries.

Results: The results of the analysis of historical data show that colonial law and its sanctions limited the size of the mulatto population; it was small as expected. However, there were no dramatic differences in the proportions of enslaved and free mulattoes, a pattern that ran contrary to the logic of colonial law. The lack of any dramatic difference between the two status groups may be explained by demographic patterns specific to the early stages of colonization.

Conclusions: The attempt of colonial lawmakers to limit the proportion of free mulattoes was not effective, at least in the initial periods of building a slave society. Some suggestions for future research combining the efforts of historians and geneticists should examine how the relationships between the European and African descent populations likely had distinctive patterns in the early formation of enslavement as an institution compared to a later period where enslavement became the fate of most persons of African descent.

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This study examines one intriguing result of the European colonization of North America: the growth of a mulatto population—a product largely of the convergence of European and African descent populations. The mulatto was the outcome of sexual relationships between members of the two different migration groups, an important hybrid neither European nor African, and has been termed a set of “new people” (Williamson 1980). The land that became Maryland was already inhabited by an Indigenous population, but because the main struggle that defined freedom and enslavement involved the two immigrant groups, this study focuses on Europeans (largely English) and Africans—descent groups that were defined by numerous differences. These populations had different migration histories, languages, religions, and, of course, physical appearances. The question of the key difference thought to be the most important factor dividing these populations has usually been answered by invoking the idea of race (Jordan 1968).

Departing from this tradition, this study uses the concept of descent groups rather than race because the latter concept, if employed, potentially obscures important factors such as voluntary versus forced migration, religious boundaries, issues of power, status, and legal standing, and the growth of a mulatto population—all of which were likely involved in the social construction of the idea of race. Race is not a simple biological fact but is a socially constructed identity rooted in specific historical circumstances; it is a historical creation (Berlin 1998). Here, I draw on the insights of historian Barbara J. Fields, who argues that researchers must avoid the assumption “that any situation involving contact between people of European descent and people of African descent automatically falls under the heading of ‘race relations’” (Fields 1990, p. 98).

A central premise of this study is that the initial line of demarcation between the two descent groups was not based on biological facts about people but rather on cultural and religious differences (Lockley 2010; Morgan 1975). The people from Europe were largely English citizens who did not think of themselves in racialized terms but rather as free Englishmen and Christians (Gerbner 2019; Reuter 1918). They assigned Africans the multiple identities of Negro and heathen and slave, terms initially interchangeable (Goetz 2012), to mark clear boundaries between people from different continents. The fact that the English described themselves in ethnoreligious terms of identity without any reference to a color boundary means it took many decades for the boundary between these two descent groups to be written in the racialized identities of white and black (Hunt 2021). The way the social identity of mulattoes was negotiated—specifically, whether mulattoes born to mothers from different descent groups were free or bonded—is a key part of the story of the emergence of “race relations” in the New World.

DEFINING STATUS

Much of Maryland’s colonial law was an effort to define the legal status of different groups and to establish a line between those who were free and those who were enslaved. To remove an existing religious boundary premised on the English common law principle that Christians could not enslave fellow Christians, a law was created in 1671 that said, in effect, that if an African heathen decided to become a Christian, that shift in religious identity would not enfranchise a person and they would remain enslaved (Lockley 2010). That law began a process of shifting the bases of labor control from religion to race. Additionally, colonial lawmakers became obsessed with regulating the sexual relationships between Europeans and Africans, especially when a relationship was between an African man and a European woman, which might result in a mixed-descent freeborn child.

The free mulatto posed a potential problem to the English landowning class that imported enslaved Africans as a source of cheap, unfree labor. The founders of the Maryland colony had a vision of building a political commonwealth that replicated the patterns of community life in England. They were not in the New World simply to trade or extract potential mineral wealth and return to England; they were there to establish an English, Christian community where people were free to practice their religion (as long as it was a trinitarian Christian one). Precisely how “other” non-English, non-Christian people fit into their vision was a matter of negotiation about who could freely and fully participate in the life of the colony. It took the planter class less than 30 years to decide the status of Africans by enacting a slave law that fated

most persons of African descent and their children to a lifetime of enslavement, where their labor was used to create wealth for Europeans. It took much longer for lawmakers to determine how the mulattoes born of European women fit into colonial life.

COLONIAL SLAVE LAW

Founded in 1632, the colony of Maryland developed a parliamentary system where a General Assembly of “freemen” (yes, only males) created the law. The laws regulating the sexual relations between Europeans and Africans and the potential appearance of a mulatto population focused on defining the status of a person as “free” or “bonded.” The free person could own property and had the autonomy to work for themselves and could hire or buy other people’s labor. Those “bonded” were legally obligated, for a period of time, to work for a free person. The bond that tied one person to providing labor to a free person had two basic forms: an indentured servant had a bond to the owner of an agreement where the servant consented to provide a limited number of years of labor, typically 5 years, often to repay the owner for transportation costs from England to the Maryland colony. The other type of bonded labor was that of a slave, a legal category developed by the General Assembly defined as service for life. That bond was imposed on most Africans in pursuit of the goal of ensuring a cheap and stable labor force for the landowners in the colony.

Soon after the beginning of colonization, the Maryland economy turned to the cultivation of a highly labor-intensive plant—tobacco—produced for export to international markets England controlled. This highly specialized economy devoted to a single product as the key source of wealth created a huge demand for unfree labor. The planter class, a group that also wrote the laws of Maryland, owned large amounts of land that was relatively worthless without a stable labor force that produced the crop that enhanced the wealth of the landowners.

For several decades, the main labor force of Maryland was largely composed of indentured servants, some choosing to migrate to the colony under a labor contract. Other indentured servants were convicts and prisoners of war who were transported to the colony as punishment to provide another source of labor for the planter class. The source of indentured servants gradually dried up as economic conditions improved in England, making for fewer people ready to choose to give up 5 years of freedom to work for someone else, and when the colonists began protesting being used as a “dumping ground” for convicts and prisoners, mother England did not want.

Faced with the threat of labor shortages, the planter class embarked on a series of legislative actions to maintain their economic position and increase their wealth. In 1664, the Maryland General Assembly passed a law entitled “An act concerning negroes and other slaves.” Because the condition of slavery was not covered by English common law, this enacted colonial law was the legal foundation of enslavement. The law asserted that all Negroes and other slaves presently within the colony and all imported in future years were to serve *durante vita*: for the rest of their natural lives. A second part of the legislation stated that all children born of any Negro or other slave would be slaves for the rest of their lives. The 1664 law made all children of an enslaved man or woman bound to service for life—a rule that has been assumed to have increased the number of enslaved mulattoes by giving planters an incentive to coerce enslaved African women into sexual relationships that would produce a child—another slave.

THE STATUS OF FREE MULATTOES

The 1664 law resolved the status of one type of mulatto: those born to enslaved African women by a European father were slaves—an addition to the pool of unfree labor. Thus, it was only one type of mulatto, those born of a free European descent woman and an enslaved African descent man who was a threat to the boundary between free and enslaved that the English were attempting to forge. Whether the

child of a freeborn English woman fathered by an “outsider” or “alien” was born free and entitled to the protection of English law was the question.

To address this question, I examined Maryland colonial law and court decisions to see how mixed-descent children were defined and whether they could become a part of Maryland colonial society. Following the above discussion of the social concept of race, the social construction of a “free mulatto” identity is not a simple fact of having parents from different descent groups. The concept of a “free mulatto” refers to a socially constructed identity. This construction is tied to specific historical circumstances whereby colonial lawmakers and the court system attempted to minimize and, if possible, preclude a free person with some measure of African descent that challenged their vision of the boundaries of freedom.

Maryland colonial law provided three distinct sources for the creation of a free mulatto person: bastardy law, when it focused on European women and births outside of marriage; slave law, when it regulated what types of women and men could legally marry; and manumission law, where an owner of an enslaved person granted freedom to a former slave. In each of these types of law, the planter class attempted to close off paths to freedom for most people of any type of African descent.

In the case of manumission law, in the early stages of the colony, the principles of English common law were transported, and the owner of a slave had the right to free a slave—a form of property the owner legally controlled. Manumission operated locally and informally and infrequently; consequently, its threat to a sharp boundary between the free and the enslaved was not recognized until 1752, when a law was passed to prohibit manumission by an owner. That law was occasioned by attempts of some slave owners to grant freedom to elderly slaves who were no longer productive workers. Before the middle of the 18th century, manumissions were infrequent and did not increase in large numbers until the end of the colonial era (Berlin 1974).

Bastardy law also followed English common law and concerned children born outside of marriage. Here, the law focused on assigning the responsibility of a child to the unmarried couple so that the broader community did not bear the costs of raising the child. In the majority of bastardy cases, it was an indentured servant woman who bore the financial obligation for the dependent child; the father was often not identified. Maryland enacted a law on bastardy that allowed local courts to decide how much additional service was added to a servant’s indenture to repay the master/owner for lost time and labor. Additionally, the master usually assumed the financial costs of raising the child and was compensated by having the child bonded or indentured as a servant of the master until age 21, when he/she became a free person (McCormac 1904).

In the enforcement of bastardy law, there was a tendency to impose stronger penalties on mixed-status parents and their children in hopes of minimizing a free mulatto population that would claim citizenship and its legal protections. Bastardy was the most frequently penalized sexual offense, and some estimates suggest that 20 percent of all births in early Maryland were out of wedlock (Carr and Walsh 1977). There is documentation in some county court records that from “one quarter to one third” of all bastardy cases involved European women giving birth to a child whose father was of African descent (Berlin 1998, p. 44), a pattern also observed in the Virginia colony (Brown 1996). It is likely that a fair proportion of free mulattoes were products of the way bastardy law dealt with the outcomes of some mixed-descent unmarried sexual relationships.

Slave law departed from the fundamentals of English common law and, in part, was an attempt to control the reproductive behavior of both European and African women in the interests of the planter class. Beginning with the 1664 act that established the legal foundation of slavery in Maryland, further legislation in 1681 and 1692 stood out in 17th-century legislative efforts. All this legislation contained two sections that affirmed two basic ideas: that all Negroes and other slaves were to serve *durante vita*, for the rest of their lives, and that all children of slaves would also serve *durante vita*. The legislation over time differed in the severity of punishment allotted to European women and the complexity of the paths to freedom for their mixed-descent children.

In the 1664 law, the third section of enacted law focused on marriage and penalized a free-born European woman who married a slave, declaring she would forfeit her freedom and become indentured to her

husband's owner for the period of time the husband lived and that any children born of that marriage would be enslaved to their father's owner for the rest of their lives. Here, the European mother was not enslaved for the rest of her life but lost her freedom as long as her marriage lasted. A fourth section of the 1664 law provided that children of any European woman already married to anyone enslaved would become a servant to the father's master until the child was 30 years of age. This part of the law acknowledged that European and African marriages had occurred and punished only the children of that marriage, a move that increased the planter classes' control over the labor of others. Thirty years of unfree labor was a long sentence for an innocent child brought into this world by the "wrong" kind of parents.

This initial legislation of 1664 meant that the vast majority of mulatto children over subsequent decades would be enslaved; only those born to a free European woman and an enslaved African who married before 1664 could become a free mulatto and then only after providing 30 years of indentured service. The legislative intent was to ensure a cheap, stable labor force—gaining more slaves produced by enslaved women regardless of the father's status—and controlling the options of English women by attaching severe penalties of bonded service to those who married any slave of African descent and any children produced within the marriage.

The next law bearing on the free mulatto was a 1681 revision of the 1664 Act that potentially altered the punishments of some European women and their children in mixed-descent marriages. This law reiterated the first two sections of the 1664 law that all Negro and other slaves, as well as their children, would serve *durante vita*. But, because some planters had encouraged, sometimes coerced, European servant women and African slaves to marry to create children who would become the planter's property under the 1664 law, the new law held that European servant women who were coerced into marrying an enslaved African were automatically granted their freedom and that their mulatto child or children were also free with no term of indentured service attached. The law also called for heavy fines to any master who coerced such marriages and fines for the minister performing the marriage.

It is impossible to estimate the number of free mulattoes created by this law. It was likely small, given the lack of any court records of masters or ministers fined or punished for arranging such coerced marriages. This law addressed only coerced mixed-descent marriages after 1681 and thereby created another small group of free mulattoes that could be added to the small group created under the 1664 law's provision for the children of prior mixed descent marriages. According to most of the laws regulating marriage in early 17th century Maryland, most mulattoes were likely condemned to life-long enslavement.

That pattern was changed by a new law in 1692 that opened a new path to freedom for more mulatto children. This law restated the two principles of *durante vita* for all slaves and the children of slaves but offered new rules and punishments for different patterns of mixed-descent sexual contact. Earlier slave law focused solely on the marriage of European women and their children and ignored the issues of fornication and bastardy among unmarried women. The first new provision of the 1692 law covered all European women, free or bonded, and stipulated that they "forfeit their freedom" by either marrying a slave or "permitting themselves to be gotten with child by Negroes or any other slaves." If the relationship was formed by marriage, all women so marrying were punished by 7 years of bonded service to their local parish, and any children of such marriages were fated to serve the parish until the age of 21, after which they became free mulattoes. If the mixed-descent relationship produced a bastard child, any European woman, free or servant, lost her freedom for 7 years, and servant women were ordered to finish their existing indenture and then an additional 7 years of service to the local Parish. This law effectively replaced bastardy law and lengthened the time of service for mulatto children born to European women outside of marriage, moving that period of service from the age of 21 years to the age of 31 years.

To briefly summarize, under 17th-century colonial law, most mulattoes, regardless of parentage, born between 1664 and 1692 and thereafter were born into enslavement. Only the following groups could ever become free mulattoes in Maryland: (1) those few born to a European woman as part of a mixed-descent marriage formed before 1664, who then completed 30 years of service, (2) those born of a European woman in a coerced marriage with a slave after 1681, and (3) those born of a European woman and an enslaved African descent man after 1692 who served either 20 or 30 years before becoming a free person.

These laws and their enforcement strongly suggest that if legal rules and punishments hold, the mulatto population in the Maryland colony would be expected to be small and composed mainly of mulatto slaves born of African descent women. The path to freedom for those born of a European woman was extremely narrowly defined with severe punishments for both mother and child, sanctions aimed at keeping the number of free mulattoes as small as possible.

The questions of the size of a mulatto population and the differential in the number of enslaved versus free mulattoes have not, to my knowledge, been empirically examined by past research. Thus, two important research issues are: (1) Did the operation of the legal system result in a small mulatto population? And (2) was there a large differential in the legal status of the mulatto population, wherein it was composed of dramatically more enslaved than free mulattoes? The specific research questions are as follows:

1. What was the size of the mulatto population according to colonial census data?
2. Did colonial lawmakers' attempt to inhibit the growth of a free mulatto population result in dramatically more enslaved mulattoes?

TWO HISTORICAL DATA SOURCES

Information concerning the size of the mulatto population and the two key types of mulattoes, free versus enslaved, is limited. The federal census did not enumerate mulattoes until 1850. However, some colonial census data can be used to estimate the size of that population in the early colonial era and any differential in the legal status of those enslaved or free. Additionally, Prerogative Court Inventories in the Archives of Maryland provide some additional detailed information on the presence of enslaved and free mulattoes in colonial Maryland.

Census data

A census conducted in Maryland in 1755 that was described as "An account of the number of souls in the province of Maryland" provides a detailed, county by county, description of the colony's residents excluding the native Indian population.¹ This census was the first to report details on the Maryland population as a whole, identifying the descent categories of Europeans (whites), mulattoes, and Africans (blacks). Further, and central to this research, the legal status of the three groups was recorded, with mulattoes and blacks identified as either free/indentured or enslaved, while whites were divided into those who were free versus indentured. Additionally, residents were enumerated by age and sex. These data were examined to compare the European, mulatto, and African descent groups with each other and then focus on the status distinctions among mulattoes to see whether the proportion of enslaved mulattoes was markedly higher than those described as free or indentured.

Estate inventories

The Archives of Maryland provides additional information that addresses the question of whether the enslaved mulatto population was markedly larger as the logic of colonial law implied. The data used in this study come from the Maryland Prerogative Court Inventories from 1674 to 1755, a period spanning a large part of the colonial era. This data set is found in digital form on the website (www.freeafricanamericans.com).

¹ The 1755 census report is too detailed to repeat here. The interested reader should go to <https://babel.hathitrust.org/cgi/pt?id=mdp.39015018389273&view=1up&seq=275> to view the extensive tabulations.

Created by Paul Heinegg, an award-winning historian/genealogist, this website contains hundreds of distinct data sets collected from eight states, mainly southern, including Maryland, and is a valuable source of data used by genealogists and historians (Berlin 1998; Wilkinson 2020). Heinegg's research goal was to identify the population of free "African Americans" in various states, and to that end, he examined court records in hundreds of jurisdictions for information about African Americans who lived as "free persons." The data set used in this research contains the results of a detailed search for mulatto persons listed in the Prerogative Court Inventories of the colony of Maryland. Note that this data set is not a representative sample but as complete an enumeration as possible found in the court records (Heinegg 2020).

The Prerogative Court had the task of determining the value of a deceased person's estate.² When a deceased's estate was probated, local county officials listed the contents of the estate, including material property and human property, in the form of slave and servant labor that the deceased formerly controlled. As we have seen, under Maryland colonial law, most native-born slaves were linked to African descent women, and a slave was compelled to serve an owner for the rest of his life, while a servant had a labor obligation for a delimited term of service. This makes mulattoes who were enslaved a person likely to be born of an African descent mother. Relatedly, those with "years to serve" as part of their value to an estate and after completing a term of service became a free person likely descended from a free European woman and/or, in later generations, a free mulatto woman.

Evaluating all Inventories from 1674 to 1755 that described a person as a mulatto, I assigned the 424 mulattoes whose status could be ascertained from the assessor's description into one of five categories. Mulattoes were recorded as *enslaved* when (a) the word slave was an explicit part of the assessor's description, (b) a mulatto could be linked to an enslaved person by name or common household, or (c) a notably high monetary value was assigned to the person's future labor. A mulatto was recorded as a *free/indentured* person when (a) the terms free or free-born or born of a white woman were part of the assessor's description or (b) a "years of service remaining" notation was made. The above coding procedure of a mulatto person's description in the Prerogative Court Inventories resulted in placing each of the 424 mulattoes into one of the following five categories: (1) slave, (2) likely a slave, (3) having years to serve, (4) free-born, and (5) born to a white woman.

RESEARCH FINDINGS

Research Question #1: What was the size of the mulatto population according to colonial census data?

The census of 1755 was the first to report details on the Maryland population enumerating the descent categories of Europeans (whites), mulattoes, and Africans (blacks). What do these census data suggest about the size of the mulatto population?

Table one provides the answer; the mulatto population was small in 1755. This census reported a total population in the colony of Maryland of 152,836 persons, composed of 106,880 Europeans (70 percent), 3692 mulattoes (2 percent), and 42,264 Africans (28 percent). This small mulatto population is only two percent of the total population and represents about eight percent of all persons of African descent. Thus, the census data suggest that the legislative attempts to limit the presence of a mulatto population were largely successful. Although this conclusion is not a certainty, absent the punitive laws and punishments regulating sexual relations between free European women and enslaved men, the number of mixed-descent births would likely be higher than that observed.

² These court records have been the basis of historical studies attempting to estimate the wealth and consumption patterns of households in colonial Maryland. Historians readily acknowledge a "wealth bias" wherein probate records do not represent the total population in the colonial era (Carr and Walsh 1977). Probate Inventories have a marked over-representation of older, wealthy males who died with sufficient estates to be eligible for Court evaluation. Many Marylanders died with too few assets to probate, a fact suggesting data from probated estates be interpreted with caution. But, because it was the relatively wealthy elite who both controlled the labor of most slaves and servants and whose estates were subject to probate, the "wealth bias" may not be an obstacle to examining status differences among mulattoes. The larger, more wealthy estates are the most likely places for the occurrence of mixed descent sexual relationships in Colonial Maryland.

TABLE 1 Number of persons in the 1755 census of the Province of Maryland for three descent groups (total $N = 153,206$) and (Panel 1) free versus bonded by age and (Panel 2) percent adult, and (Panel 3) percent free by age and (Panel 4) percent mulatto of all African descent persons

	European		Mulatto		African	
Panel 1	106,880	(70 percent)	3692	(02 percent)	42,264	(28 percent)
	Free	Bonded	Free	Enslaved	Free	Enslaved
Adult	46,707	4083	554	824	188	19,226
Young	50,978	1558	811	1215	111	22,046
Panel 2	Percent adult					
	Free	Bonded	Free	Enslaved	Free	Enslaved
	48	72	38	40	63	47
Panel 3	Percent free					
	95		42		< 01	
Panel 4	Percent mulatto of all free African descent					
	83					

Note: Adult = age 16 and over; young = 15 and under.

Research Question #2: Did colonial lawmakers' attempts to inhibit the growth of a free mulatto population result in dramatically more enslaved mulattoes?

The 1755 census data suggest that a tentative answer to this second research question is no. While colonial legislation likely limited the size of the mulatto population, there is little evidence that suggests any sharp difference in the proportions of enslaved versus free mulattoes. The first panel of Table 1 displays the number of persons in each of the three major descent groups by free versus servant for Europeans and free versus slave for mulattoes and Africans as well as by two different age groupings. Panel 2 presents the percentage of adults in the status categories of the three different groups and shows that there was no appreciable difference in the age of the two status groups among mulattoes, while the other two descent groups have sharply different patterns. Among Europeans, the bonded population was markedly older than the free population, whereas among Africans, that pattern was reversed with the free population older than the enslaved population. This suggests that the European pattern of indentured labor was likely being phased out with fewer and fewer young servants present in the indentured population.

Panel 3 shows that the European population was largely free (95 percent), with only five percent having bonded status with the chance to eventually become free. Among Africans, the overwhelming proportion was enslaved—fully 99 percent. The status of mulattoes was somewhere in between the other descent groups with 42 percent free, an unexpected amount considering the clear goals of Maryland's legal codes. Additionally, Panel 4 documents an interesting status difference among those of full or partial African descent, with 83 percent of all free persons of African descent being mulattoes.

While colonial law may have held down the sheer number of mulattoes, it did not create any marked status differential—fully 42 percent of Mulattoes were free or potentially free. Given the limited role of manumission in the early years of colonization, especially for the young productive worker population, it is highly likely that most of these free mulattoes descended from free European women. To be clear, there were more mulatto slaves who descended from African descent women in 1755—only 58 percent—but

not nearly as many as would be expected by the logic of the legal system's attempt to limit the free mulatto's presence, a puzzle to be addressed later.

Turning to the Prerogative Court Inventories, another source of information on status differentials in the mulatto population of colonial Maryland, Table 2 shows how the 424 mulattoes identified in the Inventories were distributed across five descriptive categories explained above as well as by six time intervals. These data span all the years present in the court records up to 1755.

Examining the division of the mulattoes into enslaved versus free categories (in effect, whether a mother or an ancestor was of African vs. European descent), the data show that 53 percent of the mulattoes whose status could be identified were fully free/indentured. Further, in all the time intervals except one, the proportion of free mulattoes is over 40 percent—a pattern consistent with the estimate of 42 percent in the 1755 census. At a minimum, the court data suggest that the percent free found in the 1755 census might be an accurate population parameter. The fact that both the 1755 census data and the Prerogative Court Inventories point to a markedly higher proportion of free mulattoes than suggested by the logic of Maryland colonial law is the puzzle to be addressed.

DATA CONTRA COLONIAL LAW

The puzzle posed by the data reported can be addressed via two issues that are different sides of the same coin: (a) factors suggesting why the proportion of enslaved mulattoes was lower than expected and (b) factors suggesting why the proportion of free mulattoes appears higher than expected. We turn first to factors that may have suppressed the size of the enslaved mulatto population before 1755.

Immigration sex ratios

There was a highly skewed sex ratio, defined by more males than females, for both English immigrants and imported enslaved Africans, making women of both descent groups a small proportion of the Maryland population in the 17th century especially. Estimates of sex ratios have been made for those departing from England and Africa and arriving in the Chesapeake colonies (Eltis 2001; Thompson 1974). Those estimates range from as high as six to one, favoring males during the first decades of colonization and later estimates at three to one or two to one. To try to roughly estimate the number of males and females for both immigrant populations, a conservative ratio of two males for every one female for both descent groups was posited to try to account for the relatively lower number of enslaved mulattoes suggested by both data sources.

The volume of immigration from Europe, largely England, resulted in the total population (not including the Indigenous population) of the Maryland colony at around 32,000 by 1700. Most estimates place the imported African population at somewhat less than 10 percent of the total Maryland population at that time. Working from these figures, a conservative estimate of the number of European women (assuming a modest two-to-one ratio) would be around 10,000, and a similar estimate for African women would be about 1000. This exercise in extrapolation points to the obvious conclusion that European women had a much greater presence than African women, perhaps as high as 10 to one in the 17th century. If so, there was a higher likelihood that a European woman and an African man became sexually paired than the reverse pattern. In short, the sheer shortage of African women in the early history of the colony up to the last decade of the 17th century, when the importation of slaves began to increase and sex ratios became more balanced, may explain, in part, why the logic of colonial law did not hold. The small number of African women meant that the number of enslaved mulattoes produced was low in the first century of colonization.

TABLE 2 Mulattoes in Colonial Prerogative Court Records ($N = 424$) by status by period from 1674–1755, listed by the detailed information in the Tax Assessor's description

	Enslaved		Free/indentured					Total N	Percent free
	Named	Likely	Years To serve	Born free	White mother	Total N			
1674–1699	0	6	12	0	1	19	63		
1700–1709	6	8	9	0	2	25	44		
1710–1719	10	31	14	0	9	64	36		
1720–1729	4	48	31	3	8	94	45		
1730–1739	11	34	54	3	0	102	56		
1740–1755	2	38	80	0	0	120	67		
Total N	33	165	200	6	20	424	53		

Note: "Likely a slave" was the code for a mulatto having a clear connection to an enslaved African, a high monetary valuation, or when described as a "negro mulatto."

Plantation size and few slaves

Menard (1975) has shown that in the early period of the Maryland colony, over the first 80–100 years, most households had no slaves; most landowners had small plantations with only one or two slaves. Further, only a few landowners, the economic and political elite, had plantations with more than 10 to 20 slaves. Those who owned female slaves, especially on small plantations, were more interested in the field labor of a worker than anything else. Such masters saw both enslaved and indentured women as workers central to the owner's dreams of producing more tobacco, obtaining more land, and more wealth. They were people who helped produce the tobacco crop, working in the fields along with European male servants and enslaved African men.

The economic investment in women's labor was recognized in colonial law; any male found guilty of impregnating a master's servant or slave was required to compensate the owner for the time the bonded woman was not available for productive work. Thus, the incentive for a slave owner to risk impregnating a woman laborer was low, and in all likelihood, when an enslaved or indentured woman did become pregnant, it was by a bonded peer, sometimes of African descent, rather than by the owner (Berlin 1998, p. 45). Therefore, despite the fact that the slave laws of 1664 and 1681 never penalized slave owners who produced mulatto children, the economic importance of African women was likely a key factor in suppressing a high number of mulatto slave births.

Low fertility of African descent women

There was no natural increase in the African slave population in 17th century Maryland, and it was not until the 1730s that births in the African descent population exceeded deaths (Kulikoff 1977). Newly imported African women, the "first-generation," were not motivated to reproduce in a "strange new world," and owing to the trauma of the Middle Passage and poor health, both fertility and fecundity rates were low (Craven 1971). If impregnated by any male, an enslaved woman might choose abortion over bringing a child into the condition of slavery, with chances of abortion higher with forced or coerced sex with European males when it occurred. This low fertility of enslaved women may well have contributed to the lack of a dramatic difference in the proportion of mulattoes born to African and European women in the Maryland colony.

Cultural labeling practices

Because the label "mulatto" is a socially constructed identity category, it is possible that this study's key findings reflect broader naming or labeling bias that led to proportionately fewer enslaved mulattos being socially recognized. There was a widespread pattern in colonial law linking the Negro and mulatto categories; the term mulatto appeared in legal codes as a near-automatic partner to the category of Negro. Hence, any tendency to conceal the white male exploitation of African women meant the "real" identity of an enslaved mulatto could be effectively depicted as a Negro with few civic consequences; being a slave was what counted about a child of an enslaved African mother. In contrast, any parallel misclassification was unlikely in the case of a mulatto birth by a free-born European woman; there was no way to conceal that visible challenge to the status boundaries under construction.

Rethinking gender

There is one additional explanation for the lack of a sharp differential in the two types of mulattoes that speaks to a factor that may have increased the proportion of free mulattoes.

The fact that our data suggest a higher-than-expected incidence of European women and African men producing a mulatto child may be due to a higher rate of this pattern of mixed-descent sexual congress than most historians have thought possible. Both Brown (1996) and Hodes (1997) have urged a “rethinking” of race, sex, and class, especially across boundaries of descent groups and free versus enslaved status. Hodes suggests, through a series of case studies, that in the early colonial era, there were much looser boundaries regarding the choice of a sex partner. Local community norms were typically more variable and flexible in assigning people to racialized categories than was the sharp dichotomy made once the slave system was more completely institutionalized (Hunt 2021). Brown suggests that through an examination of court records in colonial Virginia, there was likely more cross-descent sex involving European women than historians have assumed. Brown cites several lines of evidence from bastardy cases that suggest that a sizable proportion of births by unmarried indentured European women were fathered by African descent men (Brown 1996, p. 199). Berlin notes that “the largest source of mixed-race children in the 17th century Chesapeake was not the imposition of White planter men on Black slave women, but the relations of Black slaves and White servants” (Berlin 1998, pp. 40–41). This means that “everybody knows” about the white owners exploiting African slave women no doubt occurred but that there was also likely more procreation between European-descent women and African-descent men than today’s popular imagination recognizes. In the 17th century, sexual contacts within the servant-slave unfree labor category likely contributed higher proportions to Maryland’s free mulatto population than expected by the logic of colonial law.

CONCLUSIONS AND A SUGGESTION FOR FUTURE RESEARCH

The most general implication of this research suggests that the appearance of free mulattoes raised important questions about freedom and bondage that, when answered, may have been part of the creation of a new boundary shifting from religion to race. In the early colonial period, ethnoreligious differences were dominant and maintained a boundary between descent groups. The fact that the planter class worked to legislatively remove the relevance of religious differences in 1671 was the first stage in the transition from religion to race as a line of demarcation. Additionally, the increasing presence of a free mulatto population, although small, can be interpreted as a visible sign of a new reality—a new kind of person. This threat to a sharp boundary between free and enslaved likely facilitated the shifting of European thinking about differences from cultural factors to more visible biologically grounded ones.³ The legal efforts to circumscribe the mere appearance of free mulattoes may have been an important stage in the creation of the social concept of race.

The admittedly limited historical data from colonial Maryland cannot resolve the many issues raised concerning the sexual relationships between African and European men and women. Nonetheless, these data are suggestive of some possibilities that could be addressed by the joint efforts of a research team combining historians, demographers, and geneticists. Recent studies of the history of European-African genetic admixture demonstrate two things about the genetic make-up of current self-identified African Americans: There is a clear pattern of sex bias in the admixture patterns: a roughly four-to-one odds that a European male, rather than a European female, was the contributor to the admixture and that historical timing of admixture was clearly linked to the time period when slavery was a prominent feature in American life (Kayser 2003; Micheletti 2020).

Our knowledge of the past would greatly benefit from more genetic research based on what historians and demographers have shown about the overall period of slavery. Most geneticists who have studied the current admixture patterns see in the sex bias a confirmation of the pattern of male European slave owners sexually exploiting their African slave women (Micheletti 2020). This was, without question, a real

³ If true, this initial historical shift in thinking about descent, difference, and “race” represents an interesting contrast with public opinion shifts over the past several decades in the United States. Specifically, whereas the earlier shift was from a cultural to a biological basis for thinking about race and inequality, the more recent has been the reverse: old-fashioned/Jim Crow racism rooted in ideas of biological/genetic inferiority has given way to a “new/modern racism” locating the source of black disadvantage primarily in cultural factors.

feature of a slave society. However, this research suggests that there may have been important differences in the sources of admixture at different periods of the institutionalization of slavery. Specifically, if the slavery period in Maryland is divided into two roughly equal time periods, this study strongly suggests that *before 1755* (roughly the first century of the Maryland colony), the frequency of admixture was low, few mulattoes were present in the colonial population, and the differences in status among mulattoes do not show a dramatic European male bias.

This means that the sources of admixture in the early stages of colonization were likely more balanced than in the later (post-1755) period of slavery that gave rise to today's admixture patterns. If so, more refined analyses of genetic admixture will likely show an increased presence of the sexual exploitation of enslaved African women in the 100 or so years after 1755—when the patriarchy was more fully developed, the status of Africans even more debased, and the boundaries between “racial” groups had been solidified. If there is one insight demographers and historians share, it is that where social patterns are historical constructions, any simple linear pattern is unlikely. The task that awaits historical demographers and geneticists is to design studies that demonstrate the likely complex set of events surrounding the growth of a mulatto population in colonial America.

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