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POISON! An Africana Legal Studies Investigation into Enslaved Africans and Their Deadly Roots

Angi Porter†

Introduction: Opening the File

Auntie Sue had seven masters
she outlived all
'cept the last
she served them mint julep
with sugar and ground up glass
– Listervelt Middleton, *Southern Winds African Breezes*¹

†. Assistant Professor of Law, American University Washington College of Law. “When we wanted to meet at night we had an old conk, we blew that. We all would meet on the bank of the Potomac River and sing across the river to the slaves in Virginia, and they would sing back to us.” James V. Deane, enslaved in Maryland, said those words. Interview with James V. Deane in Baltimore, Maryland (Sept. 1937) *published in* 16 George P. Rawick, *The American Slave: A Composite Autobiography*, Maryland Narratives at 6, 8 (George P. Rawick ed., 1972). This article is meant to be a voice in a collective song, an invitation to sing back. This voice is imperfect; on its own, it is limited in language, experience, and insight, but I hope, as part of the collective voice, it is powerful, and can help connect with those across the river. *Medaase* (thank you) to the ancestors, to all African people who found themselves on this side of the ocean, to the Akan-speaking peoples of then and now. Deepest gratitude to my direct ancestors to the origins of the family, including those who lived on land in what is now called Maryland, to my wise grandparents, to my loving parents, to my amazing family. *Asante Sana* to Greg Carr, Valethia Watkins, Mario Beatty, and the ASCAC family. A big thank you to Jordan Griffin, for your tremendous research assistance finding rare sources and for the thoughtfulness and enthusiasm you put toward this project. I am grateful for the contributions of Khelani Clay at AUWCL’s Pence Law Library, Raychelle Burks from American University’s Department of Chemistry, and Darby Nisbett from the Maryland State Archives. Endless gratitude to those whose sharing and feedback touched this project, including Fatou Camara, Deborah Cantrell, Aderson François, Sandy Wells, participants in my talks at New York Law School and Villanova University Charles Widger School of Law, and my AUWCL colleagues. Thank you to the members of the ASALH Bethel Dukes chapter for introducing me to the Listervelt Middleton poem which opens this piece. And my deepest appreciation to all others who helped along the way, including the wonderful students who inform, propel, and steer this Africana Legal Studies conversation in awe-inspiring and mysterious ways. Finally, special appreciation to my friends Cookie, Raegan, and Hatsi, my personal “conjurers” who helped me heal.

1. LISTERVELT MIDDLETON, *SOUTHERN WINDS AFRICAN BREEZES* 50 (1987). Middleton goes on to write, “We still need glass grinders[;] in almost every profession[;] people willing to work[;] to sabotage white oppression.” *Id.*

This article is a murder investigation.²

And a strange one, as the victims might be the suspects, and the suspects might be the victims. Or, even stranger, who we are calling the victims might be the enforcers of an entirely different justice system we did not initially see.

This is a cold case: we are investigating African people enslaved in the Province of Maryland during the eighteenth century. It is really a collection of cases—all cases of poisoning. These enslaved Africans were poisoning their enslavers. The incidents are described in legal records and newspapers. But what do these poisonings really mean? It is our job in this moment to take a closer look.

According to the colonial legal system, the subjects of our investigation, the African poisoners, were criminals. But that legal characterization of the poisoners is not the only characterization. We are tasked with reexamining these cases, this time with some key methodological insights in our investigative toolbox, insights from disciplinary Africana Studies.

In one paradigm, we could think of the poisoners as murderers. And we could argue that they were using self-defense. Or, in another paradigm, we could conclude that, by poisoning, these Africans were addressing wrongdoing according to their own indigenous governance systems. By applying Africana Legal Theory, this investigation demonstrates the shift in orientation that reveals those African governance systems at work. In centering the perspectives of the Africans who used their deadly roots to poison the enslavers, our characterization of the “murderers” necessarily changes. They are criminals in one system and agents of justice in another.

Our investigation will be informed by the knowledge of indigenous African governance, what Africana Legal Theory calls

2. Throughout this article, I use a narrative framing device inspired by Greg Carr’s longstanding use of the acronym “CSI” (Crime Scene Investigation) to refer to his critical examination of popular historic tourist sites around the world, cleverly recasting those sites as scenes of crimes against African people. After exposure to this usage, in my years as a practicing attorney, including as a university attorney conducting sexual misconduct and discrimination investigations, I came to appreciate the complexities of the investigation process and its approaches. The nature of an investigation can dramatically shift depending on what conduct is being investigated and the assumptions of the investigator. It is for these reasons that this article uses the rhetoric of investigation to explore the orientation shift at the center of Africana Legal Theory. This article includes excerpts from narratives and interviews with formerly enslaved people. Some quotes include racial slurs. I have chosen to retain the originally published language for historical accuracy and so as not to disrupt the words of the ancestors.

“Protocol”—specifically, the Protocol of Akan speakers of West Africa. We will be tracking this Protocol to eighteenth century Maryland. By tracing the steps of Akan Protocol along this one passageway, we may begin to contemplate the larger implications of Protocol’s continuity in the Western Hemisphere.

I. Investigative Tool-Kit: Definitions and Grounding Principles

As Africana Legal Studies investigators, we are guided by the theoretical underpinnings of disciplinary Africana Studies and the work of African-Centered thinkers. Disciplinary Africana Studies, and Africana Legal Studies by extension, is not simply about the subject matter Africana—“Africa and Africans wherever and whenever you find it/them.”³ It is about the *methodology* used to approach that subject matter.⁴

Africana Legal Studies takes particular interest in the idea of Governance, defined by Greg Carr as the “sets of common rules and/or understandings [that] Africans create to internally regulate their lives”⁵ The European world—that is, the West—has its own Governance and uses its own systems and principles to create, implement, and sustain that Governance. We call that Law. Law arises out of the Western experience and tradition.⁶ It is inappropriate to assume that all peoples of the world have always subscribed to this European version of Governance or the underlying concepts and assumptions that inform it. Accordingly, it is inappropriate to use the same language created from European Governance to describe, say, African Governance. For more detail on this problem, which I call the “QLO” (Qualified Law

3. Greg Carr, *Teaching and Studying the African(a) Experience: Definitions and Categories*, in AFRICAN-AMERICAN HISTORY COURSE: LESSONS IN AFRICANA STUDIES 13 (Sch. Dist. of Phila. ed., 2006).

4. See JACOB H. CARRUTHERS, AFRICAN WORLD HISTORY PROJECT: THE PRELIMINARY CHALLENGE 1 (Jacob H. Carruthers & Leon C. Harris eds., 1997) (“Most African historians trained in foreign universities have been shackled with non-African theoretical frameworks, historiographies, and methodologies.”); see also Angi Porter, *Africana Legal Studies: A New Theoretical Approach to Law & Protocol*, 27 MICH. J. RACE & L. 249, 256 (2022) (describing and demonstrating the Africana Legal Studies approach).

5. See Carr, *supra* note 3, at 15 (defining “Governance”). “Governance” can also mean the ways in which African people “make decisions, resolve disputes, recognize authority, interact with others, establish common tastes and styles, etc.” *Id.* at 13.

6. See Kenneth B. Nunn, *Law as a Eurocentric Enterprise*, 15 LAW & INEQ. 323, 324–25 (1997).

Orientation), extensive discussion is found in my article, *Africana Legal Studies: A New Theoretical Approach to Law & Protocol*.⁷

Thus, a primary methodological task of Africana Legal Studies is distinguishing African Governance from European Governance by using distinct language and avoiding use of Legal terms of art to describe African Governance. “Law” and “Legal” are thus capitalized to emphasize that these are references to European Governance. The word “Protocol” is used as a placeholder to signal the “epistemic rupture,”⁸ a primary step needed to respect African Governance on its own terms—terms that should, ultimately, as a result of a necessarily collective effort, be described using African languages.⁹ “Protocol” serves as an open challenge to the presumed ubiquity of Law and, more significantly, a gateway toward indigenous African thought on Governance, and it will therefore be used throughout this investigation.

Overall, our approach attempts to move from an orientation that centers Law to an orientation that centers Protocol.¹⁰ Let’s begin.

II. Crime Scene: Africans Were Poisoning Their Enslavers

In the 1700s, the African world—continental and diasporic—was experiencing one of the most intense periods of the *Maafa*, the “disaster” or “the great suffering of our people at the hands of Europeans.”¹¹ One roaring furnace in the boiling-house of the

7. Porter, *supra* note 4.

8. Cf. Decolonialidade e Perspectiva Negra, *Desaprendendo Lições da Colonialidade: Escavando Saberes Subjugados e Epistemologias Marginalizadas* [Unlearning Coloniality Lessons: Excavating Subjugated Knowledges and Marginalized Epistemologies], YOUTUBE (Dec. 26, 2019), <https://www.youtube.com/watch?v=zeFI9vTl8ZU> [https://perma.cc/S6PS-7ED9] (broadcasting Oyèrónké Oyèwùmí’s remarks referencing an “epistemic rupture” with feminism, made on October 7, 2016).

9. *Id.* (referencing a “linguistic rupture”); *see also* Porter, *supra* note 4, at 283 n.161 (“African minds will not be truly liberated from Western hegemony until we are able to think and dream in the languages of our ancestors.”).

10. Porter, *supra* note 4, at 321–22.

11. MARIMBA ANI, LET THE CIRCLE BE UNBROKEN: THE IMPLICATIONS OF AFRICAN SPIRITUALITY IN THE DIASPORA 12 (1980) (defining Kiswahili *Maafa* as “disaster”); *see also* MARIMBA ANI, YURUGU: AN AFRICAN-CENTERED CRITIQUE OF EUROPEAN CULTURAL THOUGHT AND BEHAVIOR xxi (1994) (defining *Maafa* as “the great suffering of our people at the hands of Europeans in the Western hemisphere”); Greg E. Kimathi Carr, *The African-Centered Philosophy of History: An Exploratory Essay on the Genealogy of Foundationalist Historical Thought and African Nationalist Identity Construction*, in CARRUTHERS, *supra* note 4, at 288 n.10 (defining *Maafa* as “the processes of human aggression visited by Europeans upon African people globally over the past half millennium” and attributing its popularization to Ani).

Maafa was the Province of Maryland, a primary center of enslavement which, along with Virginia, held over half of the enslaved African population in the United States in bondage at one point.¹²

The occupants of this place—Europeans with the nerve to claim the land already inhabited by Indigenous peoples, many of them Algonquin speakers, like the Piscataway, Sekohese, Nanticoke, and Accomack peoples¹³—were so devoted to atrocity that, in 1790, four out of every ten white families in Maryland were enslaving Africans.¹⁴

12. Richard C. Wade, *Foreword* to LETITIA WOODS BROWN, *FREE NEGROES IN THE DISTRICT OF COLUMBIA, 1790-1846*, at vi (1972) (“Indeed, Maryland and Virginia contained over half of the [enslaved African] population of the entire nation in the first census [in 1790].”); *see also* HOWARD FRENCH, *BORN IN BLACKNESS: AFRICA, AFRICANS, AND THE MAKING OF THE MODERN WORLD, 1471 TO THE SECOND WORLD WAR* 387 (2021) (describing Maryland and Virginia as “the heartland of American slavery during the eighteenth century”); CEDRIC J. ROBINSON, *BLACK MOVEMENTS IN AMERICA* 4 (1997) (explaining that Maryland was a principal slaveholding colony). While created borders define U.S. life and history and the contours that frame Law, it is important to step back and recognize that there is an absurdity to thinking within the bounds of the colony of Maryland when considering the African perspective. Africans were not Marylanders. They were people of their respective nations, peoples, and kin. Nevertheless, I have chosen to focus on Maryland for several reasons, not least of them owing to the fact that I have ancestry in the state extending back through the time of enslavement. I also feel compelled to explore the history of the place where I reside and honor those who were here by holding up their stories.

13. *See* NED BLACKHAWK, *THE REDISCOVERY OF AMERICA: NATIVE PEOPLES AND THE UNMAKING OF U.S. HISTORY*, at x (2023); ELIZABETH RULE, *INDIGENOUS DC: NATIVE PEOPLES AND THE NATION’S CAPITAL* 11 (2023); *see also* *The First Marylanders*, MD. OFFICE OF TOURISM, <https://www.visitmaryland.org/article/first-marylanders> [<https://perma.cc/LQ4M-XWAY>].

14. BRUCE LEVINE, *HALF SLAVE AND HALF FREE: THE ROOTS OF THE CIVIL WAR* 39 (Eric Foner ed., 2005).

However, African people,¹⁵ enslaved and “free,”¹⁶ on the coasts of the African continent,¹⁷ aboard ships on the high seas,¹⁸ and on

15. Throughout this piece, in line with the African-centered and pan-African work, I use the term “African” in the broadest sense to include both continental and diasporic African people. See, e.g., NGŪGĪ WA THIONG’O, SOMETHING TORN AND NEW: AN AFRICAN RENAISSANCE 48, 52, 89 (2009). We must note that the notion of “African” identity is, at times, used in the modern, pan-African sense and, at other times, used as a term of scholarly convenience, as African people during the period up to the 1830s would not have identified themselves as “African.” I use the term, as many scholars of Africana must, to reference a macro group in hindsight, and not to suggest members of this group would have seen themselves according to the term. See MICHAEL A. GOMEZ, EXCHANGING OUR COUNTRY MARKS: THE TRANSFORMATION OF AFRICAN IDENTITIES IN THE COLONIAL AND ANTEBELLUM SOUTH 5 (1998) (marking 1830 as the point when African American identity emerged rather than identity based on ethnicity); TOBY GREEN, A FISTFUL OF SHELLS: WEST AFRICA FROM THE RISE OF THE SLAVE TRADE TO THE AGE OF REVOLUTION 268 (2019) (“[I]n the seventeenth and eighteenth centuries . . . people did not see themselves as ‘African’ but rather as belonging to a specific lineage, kingdom and ritual community — just as people did not see themselves as ‘Europeans’ at the outset of this time”); FRENCH, *supra* note 12, at 256 (“[I]t is important to consider that in an era when few Africans had yet made return voyages to Europe, and almost none had any picture of the purposes to which Africans were being put in the New World, little synthetic or unified sense of African identity existed.”).

16. I use “free” in scare quotes here because African people designated as “free” under colonial and later U.S. Law were not “free” in any real sense of the word; they could be kidnapped on a whim, they could be punished with enslavement, and they were prohibited from voting, using banks, and owning real estate. There were numerous Laws restricting their lives. JEFFREY R. BRACKETT, THE NEGRO IN MARYLAND: A STUDY OF THE INSTITUTION OF SLAVERY 175–91 (Herbert B. Adams ed., 1889). Ultimately, no African person in the Western Hemisphere was truly free from the *Maafa*, though many, regardless of the designation as “slave” or “free,” used their agency to reject oppression and create a maximum sense of freedom. My emphasis on nominal freedom is meant to challenge the Legal status of “free” created by colonial and U.S. statutes.

17. See, e.g., MD. GAZETTE, July 27, 1769, at 2, <https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001281/html/m1281-0843.html> [<https://perma.cc/Q2FY-TN5B>] (“It is reported that the King of Brack, a powerful Chief on the Gold Coast, has commenced Hostilities against the Dutch, and taken one of their Factories . . .”).

18. Resistance to enslavement occurred on the continent and “captives on board ships crossing the Atlantic rebelled with regularity.” Patrick Manning, *Slavery & Slave Trade in West Africa: 1450–1930*, in THEMES IN WEST AFRICA’S HISTORY 99, 109 (Emmanuel Kwaku Akyeampong ed., 2006). See also QUOBNA OTTOBAH CUGOANO, *Thoughts and Sentiments on the Evil and Wicked Traffic of the Slavery and Commerce of the Human Species, Humbly Submitted to the Inhabitants of Great-Britain* (1787), reprinted in THOUGHTS AND SENTIMENTS ON THE END OF SLAVERY 1 (Vincent Carretta ed., 1999). Cugoano explains that, while on the slave ship with his country-people, “death was more preferable than life, and a plan was concerted amongst us, that we might burn and blow up the ship, and to perish all together in the flames.” *Id.* at 15. This plan was for the women and boys to blow up the ship, not the men, who “were chained and pent up in holes.” *Id.* at 15. See also WALTER C. RUCKER, THE RIVER FLOWS ON: BLACK RESISTANCE, CULTURE, AND IDENTITY FORMATION IN EARLY AMERICA 35 (2006) (“[T]he Akan were viewed as prone to shipboard revolts . . .”).

land across the Western Hemisphere, were refusing to be terrorized, tortured, or imprisoned.¹⁹ They were, instead, escaping.²⁰

They were plotting revolts.²¹ They were sabotaging equipment and destroying property.²² They were fighting overseers and other Whites.²³ They were taking their own lives and the lives of loved

19. See, e.g., Manning, *supra* note 18, at 110 (“The anti-slavery movement began the moment enslavement began, in the minds of those enslaved, and was revealed in acts of rebellion in the barracoons, on board ship [sic] and on slave plantations.”).

20. See, e.g., 2 LATHAN WINDLEY, RUNAWAY SLAVE ADVERTISEMENTS: A DOCUMENTARY HISTORY FROM THE 1730S TO 1790 (1983) (highlighting through Maryland runaway advertisements just how frequently Africans escaped enslavement); Interview by Claude Anderson with Elizabeth Sparks in Mathews, Virginia (Jan. 13, 1937), published in 16 GEORGE P. RAWICK, THE AMERICAN SLAVE: A COMPOSITE AUTOBIOGRAPHY, Virginia Narratives at 50, 53 (George P. Rawick ed., 1972) (“Plenty of slaves ran away.”) (providing account from a woman formerly enslaved in Virginia); BRACKETT, *supra* note 16, at 89. I have chosen to use the language “escape” rather than “runaway” here. “Runaway” is from the standpoint of the plantation or enslaving estate—from the standpoint of the slaveholder. “Escape” centers the perspective of the enslaved person.

21. See 4 JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO 35 (Helen Tunnichiff Catterall ed., 1936) (“Depositions of several Negroes in Prince Georges County relating to a most wicked and dangerous Conspiracy having been formed by them to destroy his Majestys [sic] Subjects within this Province, and to possess themselves of the whole Country . . .”); see also BRACKETT, *supra* note 16, at 96 (“Insurrection wholly local and the work of a few negroes only, was not unknown in Maryland.”).

22. See, e.g., JOHN R. MCKIVIGAN & STANLEY HARROLD, ANTISLAVERY VIOLENCE: SECTIONAL, RACIAL, AND CULTURAL CONFLICT IN ANTEBELLUM AMERICA 4 (John R. McKivigan & Stanley Harrold eds., 1999); JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO, *supra* note 21, at 44 (concerning “*Negro Cesar* . . . setting fire to the Barn”). Arson was a very common as a form of resistance. Enslaved Africans were destroying “white property.” See, e.g., WILLIAM F. CHEEK, BLACK RESISTANCE BEFORE THE CIVIL WAR 91–94 (1970).

23. See, e.g., Frederick Douglass, *Narrative of the Life of Frederick Douglass, an American Slave*, in FREDERICK DOUGLASS: AUTOBIOGRAPHIES 64–65 (1994) (detailing Douglass’s epic fight with Covey, the overseer); ZORA NEALE HURSTON, BARRACON: THE STORY OF THE LAST “BLACK CARGO” 59 (Deborah G. Plant ed., 2018) (detailing an episode when the overseer tried to whip an enslaved African woman, and the enslaved African men took the whip away from the overseer and whipped *him* with it); Frederick Douglass, *My Bondage and My Freedom*, in FREDERICK DOUGLASS: AUTOBIOGRAPHIES, *supra*, at 182 (detailing a physical fight between an enslaved woman named Nelly and the overseer) (“She was whipped—severely whipped; but she was not subdued, for she continued to denounce the overseer, and to call him every vile name. He had bruised her flesh, but had left her invincible spirit undaunted.”); John B. Cade, *Out of the Mouths of Ex-Slaves*, 20 J. NEGRO HIST. 294, 315 (1935) (providing the account of Emma Gray, formerly enslaved in Morehouse Parish, Louisiana, who said: “I then snatched the whip and struck him [the overseer] on the head. This drew blood . . . After fifteen minutes of hard tussling, he let me go and never attempted to whip me again.”); BRACKETT, *supra* note 16, at 139 n.1 (explaining that, in 1836, a white man “had . . . undertaken to chastise a black woman who was not his slave, and . . . she resisted and whipped him . . .”); Interview with James V. Deane in Baltimore, Maryland (Sept. 1937), published in

ones as a way to break free from the nightmare they found themselves in.²⁴

They were attacking and killing their enslavers.²⁵ And they were doing all of this *constantly*.²⁶

Oh—and they were poisoning.²⁷

RAWICK, *supra* note 20, Maryland Narratives at 6, 7 (detailing an incident where a slave-owning White woman slapped an enslaved African woman and the enslaved African woman struck her back).

24. MCKIVIGAN & HARROLD, *supra* note 22, at 4 (referencing suicide and highlighting instances when “slave mothers . . . killed their babies to save them from a life of bondage.”).

25. *See, e.g.*, JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO, *supra* note 21, at 19–20 (49 Md. Arch. 489, Oct. 1665) (detailing the trial of “Jacob, the Negro,” who stabbed the woman who was his “owner,” Mary Utye, in her arm twice, killing her); *id.* at 35 (28 Md. Arch. 257, Apr. 1742) (“Negroes Seamore, Cesar, Charles, Ben, Cooper, Mol and Marlborough on clear Evidence for the Murder of Jeremiah Pattison their Master . . .”); *id.* at 39 (31 Md. Arch. 34, June 1754) (“Negro Cesar the Slave of Walter Dulany and Tom the Slave of Margaret Gaither for assaulting Duncan Robertson and Mary Suttor . . . in the Night . . . and . . . Carrying away . . . Sundry Effects . . .”); *id.* at 42 (32 Md. Arch. 3, Apr. 1761) (detailing an instance when a “Negro Peter” murdered the wife and child of his enslaver); PHILIP D. MORGAN, SLAVE COUNTERPOINT: BLACK CULTURE IN THE EIGHTEENTH-CENTURY CHESAPEAKE & LOWCOUNTRY 329–30 (1998) (“An overseer, provoked by a slave woman’s impertinent language, struck her; she retaliated by hitting the overseer so many times ‘with fists and switches’ that he died.”); EUGENE D. GENOVESE, ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE 34–36 (1974) (discussing multiple instances of overseers who were killed by enslaved Africans for treating enslaved Africans cruelly); *id.* at 34 (detailing a 1791 case in Virginia, in which an enslaved man named Moses was acquitted after killing his overseer, who was trying to kill Moses); T. STEPHEN WHITMAN, CHALLENGING SLAVERY IN THE CHESAPEAKE: BLACK AND WHITE RESISTANCE TO HUMAN BONDAGE, 1775–1865 15 (2007) (noting that six slave revolt plots were uncovered by enslavers in Virginia between 1709 and 1731); Interview with Rev. Silas Jackson, *published in* RAWICK, *supra* note 20, Maryland Narratives at 29, 32 (“In 1858 two white men were murdered near Warrenton on the road by colored people, it was never known whether by free people or slaves.”); Interview with Richard Macks, *published in* RAWICK, *supra* note 20, Maryland Narratives at 51, 55 (“One time a slave ran away and was seen by a colored man, who was hunting, sitting on a log eating some food late in the night. He had a corn knife with him. When his master attempted to hit him with a whip, he retaliated with the knife, splitting the man’s breast open, from which he died. The slave escaped and was never captured.”); BRACKETT, *supra* note 16, at 131 (detailing how seven Africans enslaved in Maryland killed their enslaver).

26. *See, e.g.*, Interview with Richard Slaughter, *published in* RAWICK, *supra* note 20, Virginia Narratives at 49, (“Did slaves ever run away! Lord, yes. All the time.”); FRENCH, *supra* note 12, at 338 (“Here and there in the Black Atlantic, smaller fires were almost constantly being lit.”).

27. *See, e.g.*, PHILIP J. SCHWARZ, TWICE CONDEMNED: SLAVES AND THE CRIMINAL LAWS OF VIRGINIA, 1705-1865, at 94–95, 103, 113 (1988); *id.* at 95 (“Between 1740 and 1785, more enslaved Virginians stood trial for poisoning than for any other crime except stealing.”); Diana Paton, *Witchcraft, Poison, Law, and Atlantic Slavery*, WM. & MARY Q. 235, 261 (2012); GENOVESE, *supra* note 25, at 616 (“Poison held a special place in the arsenal of slave weapons throughout the Americas.”); Adriano Pedrosa,

Including in Maryland.

In 1737, Negro Preston attempted to poison Ezekiel Gillis and his wife in Anne Arundel County, Maryland.²⁸

On March 20, 1738, “a certain Negro Pompey and Negro Indey[,] two slaves belonging to the hon[ora]ble George Plater[,] Esqr,” conspired to poison “the Overseer[,] Clerk[,] and Gardiner of the said Mr[,] Plater.”²⁹

In May 1738, in Prince Georges County, “a certain Negro named Bess the Slave of a Certain John Beale . . . feloniously attempt[ed] to murder with poyson [sic] the af[orementione]d John Beale her Master”³⁰

Hélio Menezes, Lilia Moritz Schwarcz, & Tomás Toledo, *Emancipations*, in *AFRO-ATLANTIC HISTORIES* 82, 82 (Adriano Pedrosa & Tomás Toledo eds., 2021) (“Riots occurred during the long sea voyages, with captives rising up on board slave ships. This continued into the daily life of the slave quarters. From the 16th century onward, the Afro-Atlantic landscape witnessed uprisings, escapes, insurrections, the establishment of runaway communities, and the poisoning of plantation owners.”); YVONNE CHIREAU, *BLACK MAGIC: RELIGION AND THE AFRICAN AMERICAN CONJURING TRADITION* 70 (2006) (“From the mid-1700s to the turn of the century, proceedings against poisoners constituted some of the most frequent actions taken against African Americans by local courts in South Carolina, Maryland, North Carolina, and Virginia.”). See generally Chelsea L. Berry, *Poisoned Relations: Medicine, Sorcery, and Poison Trials in the Contested Atlantic, 1680–1850* (2019) (Ph.D. dissertation, Georgetown University) (on file with Georgetown University Institutional Repository) (exploring over five hundred investigations and trials of alleged poisonings, centered on African medical practitioners, in slave societies); Paton, *supra*, at 251–52 (detailing John Newton’s account of enslaved African men attempting to poison or tamper with the ship’s water in order to spiritually harm their captors).

28. *The Upper House U.H.J.*, ARCHIVES OF MD. 219 (14 May 1739, at 12), <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000040/html/am40--219.html> [<https://perma.cc/9GWE-34FM>]. Most of the cases listed in this article were collected in the foundational work of Helen Tunnickliff Catterall. See, e.g., *JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO*, *supra* note 21. I was first introduced to these poisoning cases there, and I then consulted records in the Maryland State Archives, finding additional details. For ease of reading, and to emphasize the orientation-shift narrated in this piece, these incidents are described from the orientation of the colony, stated in a voice assuming that each person committed the crime. In the records, these enslaved Africans were convicted for the crimes listed. However, this does not necessarily mean that they in fact committed these acts. They were certainly capable of doing these acts, as is explored below, but considering the nature of the Legal system during colonial times (and today), wrongful convictions were likely.

29. *Proceedings of the Council of Maryland, 1738/9*, ARCHIVES OF MD. 161 (March 20, 1738, at 27), <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000028/html/am28--161.html> [<https://perma.cc/E4SL-4ZMV>]; BRACKETT, *supra* note 16, at 131.

30. *Proceedings of the Council of Maryland, 1738*, ARCHIVES OF MD. 137, <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000028/html/am28--137.html> [<https://perma.cc/G3W9-B36C>]; see also *JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO*, *supra* note 21, at 34.

In June 1755, convictions were entered for “Negro[] Anthony and Negro Jenny for Consulting, Conspiring & advising to Poison their late Master Jeremiah Chase”³¹

Also in June 1755, “Negro Jack . . . attempt[ed] to Poison his Master Francis Clements.”³²

Later that year, in St. Mary’s County, “Negro Harry the Slave of Philip Key the younger & Negro Cork, the Slave of Philip Key Esqr [were sentenced to death] for feloniously consulting, advising, conspiring and Attempting to Poison a Certain John Key, and also at Prince Georges County . . . Negro Thomas the Slave of John Prather [was sentenced to death] for Feloniously consulting, advising, and conspiring & Attempting to Poison a Certain Richard Duckett”³³

Yet another 1755 poisoning is recorded, wherein “another Negro wench was likewise found Guilty for intending to poison her Master, which fell in the Way of two Negro Children, who [consumed] it, and both died.”³⁴

In 1757, in Anne Arundel County, “Negro . . . [F]ida . . . attempt[ed] to poison” her enslaver, Ephraim Gover.³⁵

31. *Proceedings of the Council of Maryland, 1753–1761*, ARCHIVES OF MD. 56–57 (June 24, 1755, at 69), <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000031/html/am31--69.html> [<https://perma.cc/548Z-4T3H>].

32. *Id.* Records note that Jack was executed “[a]t the same time, and on the same Gallows” as Anthony and Jenny, and a William Stratton (who was likely a European indentured servant). MD. GAZETTE, Jul. 10, 1755, at 3, <https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001279/html/m1279-0744.html> [<https://perma.cc/SFP2-A3F6>].

33. *Proceedings of the Council of Maryland, 1753–1761*, ARCHIVES OF MD. 79 (Oct. 23, 1755), <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000031/html/am31-79.html> [<https://perma.cc/T32E-TGB8>]; *see also* MD. GAZETTE, Oct. 9, 1755, at 3, <https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001279/html/m1279-0744.html> [<https://perma.cc/ET54-RP7H>] (“Negro Harry, and Negro Cork, were indicted, found guilty, and condemn’d, for attempting to poison the late Dr. John Key, of that County, deceased.”).

34. MD. GAZETTE, Jun. 26, 1755, at 3, <https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001279/html/m1279-0736.html> [<https://perma.cc/JC2R-G2AS>].

35. *Proceedings of the Council of Maryland, 1753–1761*, ARCHIVES OF MD. 182, <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000031/html/am31--182.html> [<https://perma.cc/BJ7A-SAXP>]; MD. GAZETTE, Mar. 10, 1757, at 3, <https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001279/html/m1279-1102.html> [<https://perma.cc/2PJ3-FPFB>] (“This Day a Negro Wench named Fida, belonging to Ephraim Gover of Herring-Bay, was Tried at the County Court,

In May 1760, Bett Pone of Talbot County, Maryland, attempted to poison her overseer.³⁶ This record provides some additional detail: “Negro woman named Bett Pone . . . of her malice, propense, and forethought voluntarily and feloniously did consult[,] advise[,] conspire[,] and attempt with poison and poisonous, venomous, and virulent powder mixtures and other poisonous, venomous, and virulent ingredients and matter put and mixt in and with certain food and victuals to wit cream, milk, small homminy, boild bacon, and boild salades.”³⁷ Bett Pone “attempted to kill, murder, and poison” a “planter” (enslaver) named David Robinson.³⁸ Robinson was Bett Pone’s overseer.³⁹ Robinson “became sick and lanquished [sic].”⁴⁰ Interestingly, during the previous month another enslaved African named Buckinfield, also of Talbot County, attempted to poison this same David Robinson.⁴¹

In 1761, enslaved Africans Samuel, Abigail, and Rachel of Calvert County attempted to poison a Mrs. Smith.⁴² They were executed, though one of the women’s executions was postponed due

for attempting to Poison her Master and a Negro Man, found Guilty, and received Sentence of Death.”)

36. *Talbot County Court, Criminal Record, 1755–1761*, ARCHIVES OF MD. (May 10, 1760, at fol. 374),

<https://msa.maryland.gov/megafile/msa/speccol/sc5400/sc5496/051600/051600/html/51600bio.html> [<https://perma.cc/N6FB-ZULF>]. Bett Pone was “owned” by Henrietta Maria Goldsborough, an example demonstrating that white women owned property and were also enslavers. *Id.*

37. *Id.*

38. *Id.*

39. *Proceedings of the Council of Maryland, 1753–1761*, ARCHIVES OF MD. 423, 438,

<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000031/html/am31--438.html> [<https://perma.cc/7R5B-TGRC>].

40. *Talbot County Court, Criminal Record, 1755–1761*, ARCHIVES OF MD., *supra* note 36.

41. *Id.* Buckinfield was “owned” by Margaret Robins, yet another case indicating that white women could and did “own” enslaved Africans. *See id.*

42. *Proceedings of the Council of Maryland, 1761–1769*, ARCHIVES OF MD. 16 (at 312),

<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000032/html/am32--15.html> [<https://perma.cc/DAR6-4WGZ>].

to her pregnancy.⁴³ This delay was likely motivated by greed rather than humanitarianism.⁴⁴

In 1764, “Negroes from Calvert County . . . Toe, Sambo, and Betty . . . attempt[ed] to poison Mr. [William Hamilton] Smith and his Wife.”⁴⁵ Mr. Smith ultimately died after months of sickness.⁴⁶

In 1766, Negro David from Talbot County attempted to poison his enslaver, Samuel Mulliken.⁴⁷ During his trial, an enslaved African woman testified about “his preparing a Dose Composed of Ground puppies and other ingredients which he supposed poisonous with intent to give it to his Master.”⁴⁸ “Ground puppies” is a

43. MD. GAZETTE, Oct. 15, 1761, at 3, <https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001280/html/m1280-0628.html> [<https://perma.cc/VS5K-TG2W>] (“On Wednesday, last week, a Negro Man and Woman, were Executed in *Calvert* County, pursuant to their Sentence, for attempting to Poison the late *Mrs. Smith*. One other Wench is under sentence of Death for the same crime, but her Execution is respited on Account of her Pregnancy.”).

44. Pregnancy would have offered enslavers a chance to benefit from the value of another enslaved human being. See BRACKETT, *supra* note 16, at 119 (explaining that enslavers were “loath to lose” the value of those they enslaved as a result of criminal execution).

45. *Proceedings of the Council of Maryland, 1761–1769*, ARCHIVES OF MD. 91, <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000032/html/am32-91.html> [<https://perma.cc/K4VB-QY8Y>]; BRACKETT, *supra* note 16, at 132.

46.

Calvert County, May 15, 1764. On Monday the 14th of this Instant, Died, Mr. William Hamilton Smith, in the 22nd Year of his Age; he had been Ten Months declining in his Health, and could get no Relief; it was suspected by all about him, that his Ailments were the Effect of Poison given to him by his own Negroes.

MD. GAZETTE, May 17, 1764, at 2,

<https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001280/html/m1280-1197.html> [<https://perma.cc/8WN2-458Q>].

47. *Proceedings of the Council of Maryland, 1761–1769*, ARCHIVES OF MD. 445 (Nov. 15, 1766, at 178),

<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000032/html/am32-178.html> [<https://perma.cc/D2UU-AG4V>]; Handwritten Record, ARCHIVES OF MD. (Dec. 24, 1766),

https://msa.maryland.gov/megafile/msa/speccol/sc5400/sc5496/051500/051570/negro_david_commission_record_page_214.pdf [<https://perma.cc/3WTF-2JXT>];

Biographical Series: David (b. ? – d. 1767), ARCHIVES OF MD., MSA SC 5496-51570, <https://msa.maryland.gov/megafile/msa/speccol/sc5400/sc5496/051500/051570/html/51570bio.html> [<https://perma.cc/5D4Y-5PGK>]; CHIREAU, *supra* note 27, at 73 (referring to a man named Nero who was convicted alongside David for poisoning his enslaver with “groundpuppies”).

48. *Talbot County Court, Criminal Record, Negro David*, ARCHIVES OF MD. (Nov. Court 1766, at fol. 499–500),

https://msa.maryland.gov/megafile/msa/speccol/sc5400/sc5496/051500/051570/negro_david_page_499_criminal_record.jpg [<https://perma.cc/F4Z9-E9KM>]; *Proceedings of the Council of Maryland, 1761-1769*, ARCHIVES OF MD. 32 (Nov. 15, 1766, at 178),

reference to dried salamanders.⁴⁹ The skin of salamanders, by the way, is poisonous.⁵⁰

In 1769, enslaved African Pompey of Charles County (“owned” by an enslaver named Benjamin Davis) attempted to poison Leonard Burch.⁵¹

In 1797, decedent Robert Dunn’s will stated that an enslaved African woman would be emancipated once all of his family members died; that enslaved African woman poisoned and killed Dunn’s three children.⁵²

These are the poisoning cases from the eighteenth century—the cases that we *know* about.⁵³ Even more arise later during the nineteenth century, beyond the scope of our investigation.⁵⁴

<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000032/html/am32-178.html> [<https://perma.cc/D2UU-AG4V>]; *Biographical Series: David (b. ? – d. 1767)*, ARCHIVES OF MD., *supra* note 47.

49. 4 JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO, *supra* note 21, at 46; CHIREAU, *supra* note 27, at 73 (explaining that “groundpuppies” were dried salamanders and “would be a staple in the ritual formulae of African American Conjurers in the post Emancipation era.”).

50. Interview with Raychelle Burks, Assoc. Professor, Dep’t of Chemistry, Am. Univ., in Washington, D.C. (Nov. 3, 2023); Tim Lüddecke, Stefan Schulz, Sebastian Steinfartz & Miguel Vences, *A Salamander’s Toxic Arsenal: Review of Skin Poison Diversity and Function in True Salamanders, Genus Salamandra*, SCI. NATURE, Sept. 4, 2018, at 2–3.

51. *Proceedings of the Council of Maryland, 1769-1770*, ARCHIVES OF MD. 313 (Sept. 12, 1769, at 73),

<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000032/html/am32-313.html> [<https://perma.cc/FRJ6-GCMZ>].

52. MD. GAZETTE, Apr. 27, 1797, at 2, <https://msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001285/html/m1285-0492.html> [<https://perma.cc/52LF-HBP7>].

53. Interview with Raychelle Burks, *supra* note 50. Dr. Burks highlighted the context of poison in the eighteenth century.

54. For example, there is the July 7, 1855, incident when 14-year-old Josephine Webb, enslaved in Caroline County, Maryland, attempted to poison her enslaver, Elizabeth Baynard, and poisoned Baynard’s cousin, Mary Reid. *Biographical Series: Josephine Webb (b. 1841 – d. 1867)*, ARCHIVES OF MD., MSA SC 5496-002965 <https://msa.maryland.gov/megafile/msa/speccol/sc5400/sc5496/002900/002965/html/02965bio.html> [<https://perma.cc/2K79-PAST>]. Josephine served the coffee to the women; they both got sick, and Reid died. *Id.* The newspaper of the time stated, “Miss Reed had had occasion a few days previous to the occurrence to correct the girl for some misconduct, and report says that the girl at the time made a declaration that she would ‘make a change there before long,’ or words to that amount.” *Distressing Homicide*, BALT. SUN, 18 Jul. 1855,

https://msa.maryland.gov/megafile/msa/speccol/sc5400/sc5496/002900/002965/images/webb_2.pdf [<https://perma.cc/WQY5-FZPP>]. While this was reported as involving “arsenic or some other poisonous substance,” the newspaper also included a report that Josephine stated to the man who took her to jail that she mistakenly put “polk-root” (likely poke root) in the coffee. *Id.* Pokeweed—*Phytolacca Americana*—was

A. Motive, Means, and Opportunity

American University Chemist Raychelle Burks explains that the eighteenth century was an era when a person “could absolutely poison someone and get away with it.”⁵⁵ Poisonous substances were abundant in North America, and detection methods were not refined.⁵⁶ It is important to note that what Europeans in the Western Hemisphere called “poison” was not limited “to substances that provoke[d] purely pharmacological reactions”—rather, the term “poison” was applied more broadly to substances intended to harm.⁵⁷ I, too, am using this broad view because it just so happens to align with the expansive world-senses⁵⁸ Africans brought with them from home.

It is also important to note that “every poisoning is not meant to be homicidal”—poisoning could have been a means of achieving the broader notion of what Burks calls “chemical control,” or poisoning with the goal of slowing people down, altering their consciousness as a means of distraction, or causing them to be less

used to treat illnesses like arthritis, mumps, and ulcers; however, “[a]ll parts of the pokeweed plant (leaves, roots, berries) are considered to be toxic.” EDDIE L. BOYD & LESLIE A. SHIMP, *AFRICAN AMERICAN HOME REMEDIES: A PRACTICAL GUIDE—WITH USAGE AND APPLICATION DATA* 87 (2014) (emphasis added); see also HERBERT C. COVEY, *AFRICAN AMERICAN SLAVE MEDICINE: HERBAL AND NON-HERBAL TREATMENTS* 65, 106, 125 (2007). Despite this, it was used as food too: “The leaves and more tender shoots are frequently used for greens, by the negroes.” WILLIAM ED GRIMÉ, *ETHNO-BOTANY OF THE BLACK AMERICANS* 160 (1979) (quoting PATRICK BROWNE, *THE CIVIL AND NATURAL HISTORY OF JAMAICA* (London, B. White & Son 1756)); see also COVEY, *supra*, at 106 (explaining that the toxicity of pokeweed is determined by the quantity ingested). Later, Josephine allegedly stated that she poisoned the coffee on purpose and used arsenic. *Distressing Homicide*, *supra*. Another nineteenth-century incident involved a 14-year-old enslaved woman named Judith, who, on November 6, 1834, admitted to poisoning and killing the two sons of Maryland enslaver and renowned physician and horticulturalist John Bayne. *Biographical Series: John H. Bayne (b. 1804 – d. 1870)*, ARCHIVES OF MD., MSA SC 5496-10538, <https://msa.maryland.gov/megafile/msa/speccol/sc5400/sc5496/010500/010538/html/010538bio.html> [<https://perma.cc/UK6G-G7RC>]. Judith reportedly also stated that she had earlier killed Bayne’s infant daughter and had also tried to burn the estate house down. *Id.*

55. Interview with Raychelle Burks, *supra* note 50.

56. *Id.*

57. See Paton, *supra* note 27, at 243. European colonists were coming out of their own history and continental experience, which included witchcraft and high-profile poison plots in Europe. *Id.* at 239–40, 242.

58. Oyèrónké Oyèwùmí uses the term “world-sense” in her discussion of African societies and cultures, critiquing “worldview” as a linguistic reflection of “the West’s privileging of the visual.” OYÈRÓNKÉ OYÈWÙMÍ, *THE INVENTION OF WOMEN: MAKING AN AFRICAN SENSE OF WESTERN GENDER DISCOURSES* 2–3 (1997).

violent.⁵⁹ If homicidal, the killing might not have been intended to be immediate; a poisoner might have had the purpose of slowly and subtly making someone sick over a long period of time.⁶⁰

The prevalence of poisoning, often surprising to modern learners, was well-known during enslavement—by both Africans and Europeans.⁶¹ And it is important here to remember that, while our investigation centers on Maryland, the African practice of taking lives through use of lethal substances was a hemispheric phenomenon, extending beyond the region, colony, country, and continent.⁶²

III. Allegations: “Violence,” “Revenge,” and the Legal Orientation

We know about these poisonings because they were prosecuted and memorialized in the colonial criminal record. Within a Legal framework, one would see these acts of poisoning as illegal acts—crimes, most saliently.⁶³

In 1715, Maryland, a slave state, codified its system of enslavement.⁶⁴ Fourteen years later, in 1729, the colony proscribed certain conduct of enslaved Africans in its Act for the More Effectual Punishing of Negroes and Other Slaves; and for Taking Away the Benefit of Clergy from Certain Offenders.⁶⁵ This statute explained,

Whereas several Petit-Treasons, and cruel and horrid Murders, have been lately committed by Negroes, which Cruelties they were instigated to commit with the like Inhumanity, because

59. Interview with Raychelle Burks, *supra* note 50; *see also* Berry, *supra* note 27, at 165 (referencing “taming” practices used by enslaved Africans to control enslavers’ emotions and make them less violent).

60. Interview with Raychelle Burks, *supra* note 50; *see, e.g.*, MD. GAZETTE, May 17, 1764, *supra* note 46 (“Calvert County, May 15, 1764. On Monday the 14th of this Instant, Died, Mr. William Hamilton Smith, in the 22nd Year of his Age; he had been Ten Months declining in his Health, and could get no Relief; it was suspected by all about him, that his Ailments were the Effect of Poison given to him by his own Negroes.”).

61. KELLEY FANTO DEETZ, BOUND TO THE FIRE: HOW VIRGINIA’S ENSLAVED COOKS HELPED INVENT AMERICAN CUISINE 95 (2017) (“[P]oisoning was a well-known tactic used by enslaved domestics to kill or harm their enslavers.”).

62. *See, e.g.*, Paton, *supra* note 27, at 255 (“[A] lieutenant judge in the colony described Saint Domingue as ‘swarming with slaves, so-called soothsayers and sorcerers who poison.’”).

63. In the civil realm, poisoning may be considered tortious battery as well. *See* DAN B. DOBBS, PAUL T. HAYDEN & ELLEN M. BUBLICK, THE LAW OF TORTS § 36 (2d ed. 2024). My focus in this article is poison as a crime.

64. William M. Wiecek, *That Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America*, WM. & MARY Q., April 1977, at 262, n.13.

65. Act for the More Effectual Punishing of Negroes and Other Slaves; and for Taking Away the Benefit of Clergy from Certain Offenders, Md. Laws (1729).

they have no Sense of Shame, or Apprehension of future Rewards or Punishments: And that the Manner of executing Offenders, prescrib[e]d by the Laws of England, is not sufficient to deter a People from committing the greatest Cruelties, who only consider the Rigour and Severity of Punishment: be it therefore enacted . . . That when any Negro[], or other Slave, shall be convict [sic], by Confession, or Verdict of a Jury, of . . . Murder . . . it shall be made lawful for the Justices before whom such Conviction shall be, to give Judgment against such Negro[], or other Slave, to have the right Hand cut off, to be hang'd in the usual Manner, the Head severed from the Body, the Body divided into Four Quarters, and Head and Quarters set up in the most public[] Places of the County where such Fact was committed.⁶⁶

Eight years after this, in 1737, the colony amended the statute to expressly specify poisoning (and conspiring to poison) as a crime and streamlined its method of punishment to simply “death”:

Whereas, the Laws in Force, for the Punishment of Slaves, are found insufficient, to prevent their committing very great Crimes and Disorders; and that a further Provision is necessary to keep them in proper Bounds and due order; And for a more speedy Method to bring them to Justice, than is prescribed by the Laws heretofore made . . . Be it therefore enacted . . . That if any Slave or Slaves shall at any Time as of the Publication of this Act, *consult, advise, or conspire* . . . to murder or *poison* any Person or Persons whatsoever . . . and be thereof convict, by Confession or Verdict, shall suffer *Death*, as in Cases of Felony, without Benefit of Clergy.⁶⁷

Correspondingly, this is the same year our first poisoning incident (by “Negro Preston”) is recorded.⁶⁸

66. *Id.*

67. A Supplementary Act to the Act Entitled an Act for the More Effectual Punishment of Negroes and Other Slaves and for Taking Away the Benefit of Clergy from Certain Offenders, Md. Laws (1737) (emphasis added). In 1751, the legislature added attempted poisoning to the list and enabled courts to convict an enslaved African based on their silence at trial. See Act for the More Effectual Punishment of Negroes and Other Slaves, and for Taking Away the Benefit of Clergy from Certain Offenders, Md. Laws (1751) (“Be it therefore Enacted, . . . that if any Slave or Slaves, shall at any Time consult, advise, conspire, or attempt . . . to Murder or Poison any Person or Persons whatsoever . . . and be thereof convict by Confession or Verdict, or who shall of Malice stand Mute . . . shall suffer Death . . . without Benefit of Clergy.”) (emphasis added). These Maryland laws existed in a broader universe of similar statutes imposed by other enslaving colonies and polities, all of whom learned from one another the ways to try and control the threat of poison. A 1682 slave code of Saint Domingue (now Haiti), for instance, targeted poisoning by forbidding “superstitious ceremonies and assemblies,” use of “makandals” or “magical packets,” and “pretended magic.” See Paton, *supra* note 27, at 255.

68. *The Upper House U.H.J.*, ARCHIVES OF MD. 219 (May 14, 1739, at 12), <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000040/html/am40--220.html> [<https://perma.cc/6BBE-YDAA>].

In the consciousness of European inhabitants of the Maryland Colony, the poisonings at the center of our investigation violated these statutes. They were crimes. But how should we talk about these acts? Should we replicate the historic record and merely examine these acts as criminal? Should we applaud these as acts of resistance?

It, of course, depends on our orientation. The Legal orientation necessarily maintains that these acts are crimes, because it is a European-centered orientation that shuns violence against those at its center—Europeans—even when they are enslavers.

After all, violence is not tolerated in Law and in societies that value the rule of Law. Well . . . unless that violence is violence imposed by the state in the form of executions. Or is violence conducted through operation of war.⁶⁹ Or is violence deemed a reasonable use of force by state agents.⁷⁰ Or is violence, including deadly force, used against a person one “reasonably” believes to be breaking into one’s home.⁷¹ Or is violence used where the perpetrator has the non-violent opportunity to retreat and avoid an aggressor but also has a right to be in the place where they are.⁷²

When we contemplate the place of violence in Law, we quickly see that there is no equality in the Legal narrative around violence. The medal of righteousness is not equally granted. For (continental and diasporic) African people,⁷³ *non*-violence is preferred (but see COINTELPRO).⁷⁴ Non-violence is good interior decoration, so long

69. Ponder, as an example, the American Revolutionary War.

70. *See, e.g.*, Verdict of Not Guilty, *Minnesota v. Yanez*, No. 62-CR-16-8110 (Minn. Dist. Jun. 16, 2017) MCRO [Minnesota Court Records Online] No. 127 (finding police officer Jeronimo Yanez not guilty of manslaughter in the fatal shooting of Philando Castile).

71. *See, e.g.*, Information, *Missouri v. Lester*, No. 23CY-CR00894-01 (Mo. Cir. Ct. Sept. 1, 2023) (charging Andrew Lester for the shooting of 16-year-old Ralph Yarl, who rang the doorbell and allegedly touched the door of a house where he thought his siblings were); *but see* MO. REV. STAT. § 563.031(2)(2) (2024) (codifying the Castle Doctrine, which allows deadly force if someone unlawfully enters a dwelling occupied by the defendant).

72. FLA. STAT. § 776.012 (2023) (Florida’s “Stand Your Ground” statute).

73. Please note that I use the term “African” broadly, to reference both continental and diasporic African people, which includes “African descendants,” “African Americans,” and the like.

74. *See* ROBINSON, *supra* note 12, at 151–53. COINTELPRO was an FBI operation that targeted non-violent organizations like the Student Nonviolent Coordinating Committee, the Congress of Racial Equality, the Southern Christian Leadership Conference, the Mississippi Freedom Democratic Party, and the NAACP. *Id.*

as it does not disrupt the underlying architectural design of the Western Social Structure.⁷⁵

But poisoning is violent. And it disrupted the social order of enslavement. Therefore, its characterization as a crime makes sense from the Legal orientation. Yet, the simple Legal narrative about poisoning and other African resistance acts as criminal acts that were criminally punished is an act of violence in and of itself. This is narrative violence that snuffs out African memory and harms the African psyche by rendering the catalyst for African resistance—the *original violence*—invisible.

What about the precedent violence that necessitated the poisoning? The violence inflicted by Europeans against the Africans they enslaved? Put simply, the “White violence” preceding the “Black violence”?

We claim to be against simply “violence.” But we tend to ignore the White violence. By failing to mention this category of violence and casting a spotlight only on violence employed by African people, we imply that violence itself is exclusively the province of African people and that Europeans (including European Americans) do not do violence. As a result, European or White violence is allowed to hide, to evade scrutiny, to lie in wait. This is what Greg Carr would refer to as the “invisibility of Whiteness”:

If you say, “White,” you have made it visible . . . and the power of Whiteness . . . lies in its invisibility. As long as you don’t say it, the assumption is race is not operating, when the reality is the exact and utter opposite.⁷⁶

Thus, if we reference the original European violence provoking other violent acts, we make Whiteness visible and thereby weaken its clandestine power in the narrative, and we help address the ongoing narrative violence against African people.

Relatedly, poisoning, as a type of African violence, is sometimes cast as “revenge,”⁷⁷ which is perhaps a more descriptive and comprehensive characterization than “crime,” as it at least

75. Carr defines “Social Structure” as “the social, economic, political and/or cultural environment that Africans found themselves living under during the period under study.” Carr, *supra* note 3, at 14; *see also* NGÜGI WA THIONG’O, *MOVING THE CENTER: THE STRUGGLE FOR CULTURAL FREEDOMS* 43 (1993).

76. Karen Hunter Show, *In Class with Carr, Ep. 135: The Kanye Complex*, YOUTUBE (Oct. 8, 2022), <https://youtu.be/10RGVT6kGI8?t=7540> [<https://perma.cc/5BKV-RQGV>] (2:05:00); *see also* Porter, *supra* note 4, at 275 (detailing Carr’s teachings, inspired by Clyde Taylor, on the “invisibility of language” and Whiteness).

77. MORGAN, *supra* note 25, at 618 (“Thomas Anburey heard from Virginians about the ‘remarkable’ abilities of slaves to cause swift or slow deaths ‘agreeable to their ideas of *revenge*.’”) (emphasis added).

hints at the presence of the precedent violence and the initial aggressor. But the trouble with “revenge” is that it carries connotations of moral wrong, and vengeance is not seen as legitimate in Law. This may partially explain why imminence, necessity, and (the culturally-defined) “reasonableness” are often required for the privilege of self-defense to apply: “the modern doctrine of self-defense allows that otherwise criminal force can be justified so long as the actor *reasonably* believes its use *necessary* to protect against *imminent* and unlawful attack.”⁷⁸

How curious, though, are the delicate distinctions between impermissible vengeance and justified violence.⁷⁹ When we go to the movies, for example, and we watch characters escape kidnapping, torture, or abuse, even if they have to violently strike down their abuser to do so, we applaud and cheer. The hesitancy by some to express this same reaction with respect to African violence under the same or similar circumstances speaks to the dehumanization of African people in the Western-centered⁸⁰ narrative.

As I have stated before, “Characterization is a matter of orientation.”⁸¹ Considering this, there must be another way to characterize the violent acts of poisoning by enslaved Africans in Maryland and elsewhere. Let us move to the other side of the room, change our orientation, and view this crime scene from a different angle. Could it be that we have the victim and suspect confused? Perhaps the characterization of self-defense is promising

IV. Dead-End Interrogation: The Legal Frame of Self-Defense Does Not Go Far Enough

The notion of revenge is a potential clue about the poisonings, hinting to a precedent violent act. It seems our suspects’ acts might

78. Fritz Allhoff, *Self-Defense Without Imminence*, 56 AM. CRIM. L. REV. 1527, 1529 (2019) (emphasis added); see James Q. Whitman, *Between Self-Defense and Vengeance/Between Social Contract and Monopoly of Violence*, 29 TULSA L. REV. 901, 901–02 (2013). Significantly, but beyond the scope of this discussion, the privilege of self-defense is allowed only where the attack defended against is “unlawful”; in other words, there is no privilege to defend against lawful attacks—say, for example, various types of attacks by enslavers on those they enslaved.

79. Whitman, *supra* note 78.

80. Oyèrónké Oyèwùmí explains that the term “Westocentric . . . reaches beyond ‘Eurocentric’ to include North America.” OYÈWÙMÍ, *supra* note 58, at 18.

81. Porter, *supra* note 4, at 262. In a conversation about the present article, Fatou Kiné Camara offered a poignant example of the power of characterization when noting that, “[I]n the USA, when a person is sentenced to death and then killed, they say that the prisoner has been executed by lethal injection, not that the judge has poisoned him.” Communication from Fatou Kiné Camara, Professor, Université Cheikh Anta Diop, Dakar, Senegal (Apr. 26, 2024).

be justified under Law as a type of tolerable violence: violence in defense of self. Once we make the initial aggressor and their violence visible, we may be able to exonerate our suspects while still operating in a Legal framework. Ultimately, however, I do not think we have nailed the case. While the self-defense frame is a key orientation shift, it does not shift far enough.

The self-defense argument, which attempts to recharacterize poisoning murders as justified acts, may take the following form:

Captured, displaced, and enslaved Africans have a “defense” for their “crimes.” The force (e.g., poisoning) used by African people resisting enslavers and other European oppressors was a reasonable use of force to deflect violence, minimize violence, avoid violence, and prevent further violence by proponents and agents of Whiteness in their repeated, ongoing, and unabating kidnapping, false imprisonment, assault, battery, coercion, duress, rape (of women, men, and children), intentional infliction of emotional distress, murder, terrorism, and genocide.

This argument has been made in various ways.⁸² And it seems compelling. One may defend oneself and others against violence.⁸³ Assuming we get over the Legal hurdles of the privilege (e.g., reasonableness, imminence, and necessity, to name a few),⁸⁴ self-defense provides an exonerating theory for those who used the deadly force of poisoning.⁸⁵

82. “[T]here is near universal agreement that slavery was oppressive and often led black people to acts of violent self-defense.” MCKIVIGAN & HARROLD, *supra* note 22, at 4. Frederick Douglass made the self-defense argument in 1893 when referencing the Haitian Revolution:

Much has been said of the savage and sanguinary character of the warfare waged by the Haitians against their masters and against the invaders sent from France by Bonaparte with the purpose to enslave them; but impartial history records the fact, that every act of blood and torture committed by the Haitians during the war was more than duplicated by the French.

Frederick Douglass, *Haiti Among the Foremost Civilized Nations of the Earth: An Address*, in FREDERICK DOUGLASS: SPEECHES & WRITINGS 690 (David W. Blight ed., 2022).

83. See Allhoff, *supra* note 78, at 1529.

84. There may be academic arguments about lack of imminence in the poisoning scenarios, and those arguments might be addressed with rebuttals similar to arguments involving “battered woman syndrome” or “battered spouse syndrome,” given Africans in the 1800s were trying to survive in a hostile environment where they were under constant attack. See *id.* at 1538–41 (exploring “battered woman syndrome” and its relationship to the imminence requirement). These arguments do not get rid of the imminence requirement, but they seek to establish that it was “reasonable to believe that an attack is imminent.” *Id.* at 1541. Allhoff urges emphasis on necessity, rather than imminence, and argues that the imminence requirement be abandoned altogether in self-defense frameworks. See *id.* at 1542.

85. See *id.* at 1529.

Indeed, even at the time of the “murders,” self-defense—couched within a “natural rights” argument—could be a viable defense where an enslaved African killed their enslaver.⁸⁶ The evidentiary restrictions of slave codes were a formidable barrier here, though.⁸⁷ For example, in Maryland, as in most states, enslaved Africans could not testify against Whites, so they effectively could not defend themselves in cases like the ones we are investigating.⁸⁸

In our current interpretation, applying a self-defense framework to the poisoning incidents provides a perhaps satisfying result, but that result is not worth subscribing to the rationale that gets us there. This is because the self-defense framework is still a Legal framework. At its core, it prioritizes a Western Way of thinking about Governance and silences and invalidates the African Way.⁸⁹

Additionally, we cannot forget the ill-gotten ubiquity of Law.⁹⁰ African people—continental and diasporic—have been forcibly pushed to subscribe to Law as our sole frame of reference for Governance. Many have resisted that push,⁹¹ but Law has held a tight chokehold on approaches to Governance worldwide. This does not make a Legal framework inherently wrong for everyone, but we

86. GENOVESE, *supra* note 25, at 34. Genovese describes a 1791 case where an enslaved man named Moses killed his overseer. *Id.* Moses was acquitted based on an argument by counsel that referenced the natural right of self-preservation. See BROWN, *supra* note 12, at 51–54. An observer of the trial stated that “slaves were the subject of no law but that of nature.” *Id.* at 53. The acquittal of Moses was not without controversy: another observer lamented,

[I]f [slaves] are taught to believe that they have a right to defend themselves from the restraints which their situations have hitherto subjected them to, and even to kill the man who shall offer to controul [sic] them, I greatly fear, that the trial of Moses will be an era from whence to date the rise of many serious and awful consequences to the defenceless individuals to this country.

Id. at 54.

87. THOMAS D. MORRIS, *SOUTHERN SLAVERY AND THE LAW, 1619 – 1860*, at 229, 232, 234 (1996).

88. *Id.* African people could not testify in capital cases, except to confess to the crime. *Id.* at 234. They *could*, however, testify against other Africans. See *id.* at 238.

89. See CARRUTHERS, *supra* note 4, at v (using the phrase “the African Way” in its title for Part I: “The Challenge: Restoring the African Way”). I am analyzing at a macro scale, so I have maintained use of the singularized “Way” despite the awareness that, in the histories of both continents, there are countless ways of governing.

90. Cf. John Henrik Clarke, *Foreword* to JACOB H. CARRUTHERS, *MDW NTR: DIVINE SPEECH; A HISTORIOGRAPHICAL REFLECTION OF AFRICAN DEEP THOUGHT FROM THE TIME OF PHARAOHS TO THE PRESENT*, at xv (1995) (“The colonizing of history is equal to the crime of slavery, because one crime relates to the other.”).

91. See, e.g., SYLVIANE A. DIOUF, *SLAVERY’S EXILES: THE STORY OF THE AMERICAN MARRONS 2* (2014) (discussing marronage and its project of autonomy).

must acknowledge that its vast adoption by continental and diasporic African subjects and thinkers was coerced.

Accordingly, part of bringing justice⁹² is to pick up, dust off, embrace, and elevate that which we were forced to let go.⁹³ To restore “an African-centered perspective free from the shackles of Western paradigms.”⁹⁴ This is critical, especially when the topic we are contemplating is African people themselves—and enslaved Africans at that. Using a Western frame to validate their actions paints over their own systems of thought with a broad, Western brush, as thinking in (Western) Legal terms would not be the default way of thinking for those who remembered their own systems of Governance in Africa. Against the twin coercive acts of enslavement and chaining the enslaved to the Western theoretical model, we restore balance by centering how African people themselves may have thought about their own actions and experience. So, let us take a close look at the self-defense framing of these poisonings and why it is a poor fit for our investigation, particularly after we have repositioned ourselves to view the crime scene from an African-centered perspective.

The self-defense frame is one of victimhood: imminent victimhood requires one to victimize another. Oddly, this mutual victimhood model creates two absurdities for our investigation. First, viewing Africans as victims obscures their agency and long memory. Second, in this Legal system, European victimhood is promoted over African victimhood. This spells a losing game for the Africans involved. I will discuss each problem in turn.

First, casting our poisonings as self-defense fails to fully contemplate African agency and promotes the view that the prominent identity of the poisoners was that of imminent victims. This connotation might apply in many instances, but it disregards the power of enslaved Africans who perceived their actions as being carried out with a sense of control and long memory about how the world should work and how wrongdoing should be addressed. In

92. A classical African way of saying “bringing justice” or “bringing truth” might be to say “doing Maat” or *jrt mAat*. See CARRUTHERS, *supra* note 90, at 163 (explaining the concept of “Maat” as “justice” and translating the ancient text “Nine Petitions of the Farmer Whose Speech Is Good”) (“Speak Maat, Do Maat; Since it is important, it is great and it endures.”); see also JAMES P. ALLEN, MIDDLE EGYPTIAN: AN INTRODUCTION TO THE LANGUAGE AND CULTURE OF HIEROGLYPHS 180, 147 (3d ed. 2014).

93. Clarke, *supra* note 90, at xi (“The task before the Africans both at home and abroad is to restore to their memory what slavery and colonialism made them forget.”).

94. CARRUTHERS, *supra* note 4.

ignoring this form of power, the theory of self-defense also ignores the collective power of African cultural continuity; it does not readily contemplate the “deep well”⁹⁵ of precedent culture and Governance from which Africans would have drawn to frame their actions. What if these poisoners were not merely victims backed against a wall with no other option? What if they were also, or instead, agents acting according to their Protocol?

Chelsea Berry, who examined poison trials across the Western Hemisphere that occurred between 1680 and 1850, explains that “[w]hen we focus exclusively on poison as a ‘weapon of the weak,’ we are in danger of uncritically adopting the perspective of Europeans and missing the fuller and much more complex picture of how different people in the Atlantic world understood poison and poisoning cases.”⁹⁶ This reflects Asa Hilliard’s related point that “[p]eople of African descent in the United States can only be understood when *both* the African cultural and Western hemispheric political realities are taken into account together.”⁹⁷

The second problem with applying the self-defense frame and its dual victimhood model to enslaved Africans is that doing so automatically places the African “victim” in jeopardy of invalidation. Make no mistake: in the framework of self-defense, the defender is still the defendant—just perhaps a justified one. Self-defense is a *defense*. This means, even in a self-defense framework, it is the self-defender who bears the burden of justification; the defender is on trial and required to prove the privilege. This posture, while illuminating precedent violence, continues to center and primarily scrutinize the violence of the defender, implicitly centering the victimhood of the plaintiffs or the people the State views as the victims—here, the European enslavers. This is fitting: to this day U.S. Law does not place European and African victimhood on equal footing.⁹⁸

Thus, using the self-defense frame is still Western-centered, European-centered, Law-centered. It does not contemplate the

95. JACOB H. CARRUTHERS, *INTELLECTUAL WARFARE*, at xv (1999) (“We must draw our ideas from the deep well of our heritage.”).

96. Berry, *supra* note 27, at 23.

97. ASA G. HILLIARD, *THE MAROON WITHIN US: SELECTED ESSAYS ON AFRICAN AMERICAN COMMUNITY SOCIALIZATION* 7 (1995) (emphasis in original).

98. See, e.g., *Race and Wrongful Convictions in the United States*, NAT’L REGISTRY OF EXONERATIONS 5 (Samuel R. Gross ed., 2022) (“Many studies in at least 15 states have shown that defendants who are charged with killing white victims, regardless of their own race, are more likely to be sentenced to death than those charged with killing Black victims.”); see also *id.* at 3 (“Black murder defendants are not only more numerous than whites, they are also more likely to be innocent, especially if the victims were white.”).

world-senses and Governance systems—the Protocol—of African peoples. African people in the Western Hemisphere are not merely “a color group”; they are a collection of cultural groups linked to nations and polities with distinctly African histories and cultures.⁹⁹ These people with memory would have thought about poison using minds informed by that memory.

The self-defense orientation might be useful when employed by a defense attorney, or someone cast in the role of savior, as it is a useful narrative for exoneration in the Legal system, a persuasive narrative to pull on the heartstrings of benevolent arbiters like judge and jury, who may empathize and may be eager to save Black “victims.” But that narrative, with its strategic benefit of Legal exoneration and Legal justification, represents one characterization, not the rich diversity of experience of enslaved Africans. It is, thus, a flattening narrative. While perhaps a well-intentioned attempt to defend African actors, it is still imprisoned by (Western) Legal constructs.

Even assuming, for the sake of argument, that the concept of self-defense—a human being is justified in fighting a human attacker—is universal among human beings,¹⁰⁰ the ideas behind the concept are not necessarily *part of the Governance* of every human culture. As a Legal concept, the idea of self-defense and the conclusions we attach to that idea (e.g., that it is justified if proportional and necessary in response to imminent attack) come from the story of Law’s development, which is a Western story.¹⁰¹ The concept and the principles related to the concept arise out of the Western experience.¹⁰²

Law uses a center that is not that of the people being examined. In other words, this orientation is not African-Centered: it does not prioritize the views and systems of thought of the people it characterizes; it does not characterize what people were doing in the way *they* would characterize it. It undermines the goal described

99. See HILLIARD, *supra* note 97, at 8. “Distinctly African” is used here as a macro description, particularly to highlight distinction from European histories and cultures.

100. When we begin to interrogate universality, we might further investigate whether there are examples in the human experience where culture nullifies the preservation of self.

101. See Nunn, *supra* note 6 at 324–25 (“Law, as understood in European-derived societies, is not universal. It is the creation of a particular set of historical and political realities and of a particular mind-set or world-view.”)

102. Cf. OYÉWŪMÍ, *supra* note 58, at 18 (“The questions that inform research are developed in the West, and the operative theories and concepts are derived from Western experiences.”).

by Ngũgĩ, which is to “understand[] all the voices coming from what is essentially a plurality of centres all over the world.”¹⁰³

And while we can never describe things the way enslaved Africans would have without being able to speak to the people themselves, in their native language, one thing we can do, as best we can, is “break the chain that links African ideas to European ideas and listen to the voice of the ancestors without European interpreters.”¹⁰⁴ We know Africans had their own Governance systems that preceded, and therefore did not need or use, (European) Legal constructs. We therefore do not need to use Legal constructs in describing those Governance systems.

How do we chain-break in this investigation? We start by recognizing the Western-centered Governance (Legal) bias that permeates our theoretical landscape, and we proceed by marking every Legal theory, every Legal term of art, as inherently suspect, attempting to describe African Governance without using such terms, zooming out the lens, and studying the relevant Governance *on its own terms*, as best we can, in the time that we are in, using what language we have.¹⁰⁵

So, then, with respect to our poisonings: are we even standing in a “crime scene”? Or is this the site of something else? If the poisoning “murders” were not justified in self-defense, do we return to the theory of vengeance—in other words, Africans taking the Law into their own hands?¹⁰⁶ But what if Africans weren’t taking the Law into their own hands? What if their hands were already holding something: another system entirely? And they were acting within the framework of *that* system?

. . . Thereby revealing that our poisoner-suspects weren’t actually victims . . .

They were executioners

103. NGŪGĨ, *supra* note 75, at 11.

104. CARRUTHERS, *supra* note 90, at xviii.

105. See Carruthers, *supra* note 4, at 1 (“While we should avail ourselves of any methods that benefit our project, we should first seek African ways of thinking and searching before embracing foreign epistemes, which we may not need and which may in fact defeat the objectives of the project.”).

106. Whitman, *supra* note 78, at 903 (referencing the notion of taking the law into one’s own hands as connected to ideas about self-defense and revenge).

V. A New Lead: Africana Legal Theory Reveals Poison as Protocol¹⁰⁷

Sir I freely and Chearfully acknowledge, that I am of the African race, and in that colour which is natural to them of the deepest dye (My father was brought here a S[lav]e from Africa)

. . . . Sir, Suffer me to recall to your mind that time in which the Arms and tyranny of the British Crown were exerted with every powerful effort in order to reduce you to a State of Servitude

. . . . Here Sir, was a time in which your tender feelings for your selves had engaged you thus to declare, you were then impressed with proper ideas of the great valuation of liberty, and the free possession of those blessings to which you were entitled by nature; but Sir how pitiable is it to reflect, that altho you were so fully convinced of the benevolence of the Father of mankind, and of his equal and impartial distribution of those rights and privileges which he had conferred upon them, that you should at the Same time counteract his mercies, in detaining by fraud and violence so numerous a part of my brethren under groaning captivity and cruel oppression, that you should at the Same time be found guilty of that most criminal act, which you professedly detested in others, with respect to yourselves

– Benjamin Banneker, to Thomas Jefferson, Secretary of State, 1791¹⁰⁸

African people—continental and diasporic—have historically been considered one of the “groups thought to lack a capacity for law.”¹⁰⁹ We know that this is not true, but if we think in Legal terms, we may find ourselves searching for Legal concepts across Africana, which is nonsensical when we step back to realize that African people come from countless polities with their own systems of Governance existing for and arising out of the millennia

107. The reader will notice from this point on that, as a thematic frame for this article, I am juxtaposing criminal investigation lingo with phrases evoking Protocol. This is intentionally ironic. Juxtaposing Legal concepts with Protocol concepts illustrates how one may feel in the beginning stages of shifting orientation. We are holding two worlds, two systems of thought. These systems can coexist and interact, so long as there is awareness and appreciation regarding what each of them truly means. This is the promise of Africana Legal Studies: the ability to deflate the inflated sense of Law and, *at the same time*, understand the vast expanse occupied by Protocol.

108. Letter from Benjamin Banneker to Thomas Jefferson (Aug. 19, 1791), in 22 THE PAPERS OF THOMAS JEFFERSON 49, 50–54 (Charles T. Cullen, Eugene R. Sheridan & Ruth W. Lester eds., 1986), *Founders Online*, NAT'L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/01-22-02-0049> [<https://perma.cc/7P3E-CRU3>].

109. See MARK S. WEINER, BLACK TRIALS: CITIZENSHIP FROM THE BEGINNINGS OF SLAVERY TO THE END OF CASTE 10–11 (2004).

preceding European intrusion.¹¹⁰ This is because Law, while presenting as an absolute and universal truth for all human cultural constituencies, is in fact one way of thinking about Governance, and it arises from the European historical experience and worldview.¹¹¹

We must therefore deflate the false universalism of Law and restore and amplify knowledge about Protocol. This Protocol approach is what we will explore for the remainder of this investigation. It is our new lead.

When we enter the minds of enslaved African poisoners and make the pivotal shift from a Legal orientation to their Protocol orientation, we may consider the following statements:

- Poisoning was not revenge. It was justice.
- Poisoning was not self-defense. It was a remedy.
- The poisoners were not victims. They were executioners.
- Poisoning was not a crime. It was a punishment.
- Poisoning was not wrongdoing. It was a method of *addressing* wrongdoing.¹¹²

Again, “[c]haracterization is a matter of orientation.”¹¹³ These are not the *only* characterizations, and they are not necessarily exclusive.¹¹⁴ But these orientation-shifting statements are made to emphasize, and to compel us to start from, a particular orientation: the Protocol orientation. From this orientation, our poisoners were rejecting the Law that told them they could not harm their enslavers.¹¹⁵ And they were championing their vision of how things are done and how wrongdoing is addressed.

*A. Unapologetically Pursuing the New Lead in the Face of
the Powers That Be*

To understand fully any aspect of Afro-American life, one must

110. This is the dynamic of what I call the Qualified Law Orientation (“QLO”), which is the improper imposition of Western Legal constructs onto African Governance. For an extended discussion on the QLO, see Porter, *supra* note 4, at 273.

111. Law is not separate from culture; Law arises from culture. And “[c]ulture is a product of a people’s history.” NGUGI, *supra* note 75, at 42; *see also* Nunn, *supra* note 6, at 323–27.

112. I present these as binary to amplify the point that there is an underappreciated orientation that requires our focus.

113. Porter, *supra* note 4, at 262.

114. *See, e.g.*, CHIREAU, *supra* note 27, at 71 (“Poisoners were viewed by many African Americans as arbiters of justice and, certainly, revenge.”).

115. *See, e.g.*, An Act for the More Effectual Punishing of Negroes, and Other Slaves; and for Taking Away the Benefit of Clergy from Certain Offenders, Md. Laws (1737).

realize that the black American is not without a cultural past . . .

– John Henrik Clarke¹¹⁶

To pursue this new lead, we will have to go to bat with the usual doubters, detractors, and objectors. Let us pause to consider our grounding theoretical principles as well as the classic arguments.

First, there is no one way to narrate history. As we ready ourselves to examine Protocol, you should know going in that positive characterizations of the African past, of Protocol, and of African resistance are sometimes, in turn, characterized as “romanticization.”¹¹⁷ Because this characterization comes up repeatedly, it must be addressed, repeatedly.

The fallacy of the “romanticization” characterization is that it assumes there is some objective manner of history-telling. There is not.¹¹⁸ Instead, various narratives are created out of many cultures with their unique collective experiences and world-senses. In other words, we are all operating from different centers.¹¹⁹ There is not, and there cannot be, a single narrative.

Thus, the old adage that “history is told by the victors” is misleading. *Mainstream* history is told by the victors. The

116. John Henrik Clarke, *The Origin and Growth of Afro-American Literature*, in *AFRICAN INTELLECTUAL HERITAGE: A BOOK OF SOURCES* 218, 218 (Molefi Kete Asante & Abu S. Abarry eds., 1996).

117. See, e.g., Sabelo J. Ndlovu-Gatshehi, *Inkosi Yinkosi Ngabantu: An Interrogation of Governance in Precolonial Africa—The Case of the Ndebele of Zimbabwe*, 20 S. AFR. HUMANS. 375, 375 (2008) (“[T]his article engages with the central issue of precolonial forms of governance in Africa with a view to countering those ahistorical perspectives that unduly blamed precolonial African traditions and cultures for bequeathing a politics of disorder on the post-colonial state, together with those that romanticise precolonial forms of governance as a golden age of pristine democracy and consensual politics.”); Steve Kibble & Alex Vines, *Angola: New Hopes for Civil Society?*, 90 REV. AFR. POL. ECON. 537, 537 (2001) (“[I]t is important not to romanticise the attempts of Angolans to organise themselves for self-help, peace promotion and the like. Many organisations do not last, there are divisions amongst and between groups and a lack of government structures able or interested in dialogue.”); PHIL CLARK, *THE GACACA COURTS, POST-GENOCIDE JUSTICE AND RECONCILIATION IN RWANDA: JUSTICE WITHOUT LAWYERS* 47 (2010) (“[T]he Rwandan government (and some commentators) wrongly romanticise gacaca as a form of time-honoured justice automatically acceptable to all Rwandans.”).

118. See Carr, *supra* note 3, at 13 (“Historical narratives make necessary decisions on what events to include based on the social, economic, political and/or cultural priorities of the author.”); NGÜGI, *supra* note 75, at 9.

119. See NGÜGI, *supra* note 75, at 9. Because the narratives we create are not fully compatible with one another, there cannot be a just or accurate singular narrative. Despite attempts to create one, such a narrative is doomed to flatten and gloss over the stories and interests of many constituents. Lawyers and investigators in particular should know this well, working as they do with witnesses and their various perspectives on truth.

dominant, overrepresented history is told by the victors. But there is more than one history.¹²⁰ The victors have their history. Everyone else has theirs.¹²¹ Just because you have not heard the other histories does not mean no one is telling them.

We must remember that there are, in fact, multiple narratives. And the various narrators have various perspectives, world-senses, and experiences.¹²² As invisible as the Western center is made in Western narratives, *all* narratives have their centers, and all narratives must make choices about what goes in, what stays out, what deserves emphasis, and what is relegated to a footnote.¹²³

African people have always been telling our own stories.¹²⁴ The problem is that, currently, as well as for the last 500 years, we African people have been living in a Social Structure defined by Western power.¹²⁵ There is a power imbalance, and that power dynamic comes as a result of historical atrocity. This is a situation in which the party with ill-gotten power defines history-telling by romanticizing its own role in history while pathologizing Africa and its people—continental and diasporic.¹²⁶

For generations in Western thought, discourse, and education, the assertion that Africa has no history has prevailed and influenced various actions and enabled various atrocities.¹²⁷ Many European narrators promoted the myth that Africans did not have indigenous Governance and that they did not have the capacity to create Governance systems.¹²⁸ As Howard French stated, “Western

120. See Greg E. Carr, *Towards an Intellectual History of Africana Studies: Genealogy and Normative Theory* (2006), in *THE AFRICAN AMERICAN STUDIES READER* 438, 440 (Nathaniel Norment, Jr. ed., 2007) (noting “distinct African and European systems of communal meaning-making”).

121. See Carr, *supra* note 3, at 13. Carr poses the question, “How do [the people being studied] view themselves, their origins and their world in any given time and place?” *Id.* Simply asking this question reveals that there are always two macro-orientations for studying African people: the orientation of the non-African narrator, and the orientation of African people.

122. *Id.*

123. *Id.*

124. See Carr, *supra* note 120, at 443.

125. See Carr, *supra* note 3, at 14–15.

126. See NGŪGI, *supra* note 75, at 42–43; CHEIKH ANTA DIOP, *THE AFRICAN ORIGIN OF CIVILIZATION: MYTH OR REALITY* xiv (Mercer Cook ed. & trans., Lawrence Hill & Co. 1974) (1967) (“Our investigations have convinced us that the West has not been calm enough and objective enough to teach us [Africans] our history correctly, without crude falsifications.”).

127. BASIL DAVIDSON, *THE BLACK MAN’S BURDEN: AFRICA AND THE CURSE OF THE NATION-STATE* 52 (1992) (noting the use of the “Africa-has-no-history assertion” to justify colonization and territorial dispossession).

128. See *id.* at 12 (“Because, according to the British, there were no African models, these states would have to be built on European models.”).

culture has labored long and hard to perpetuate ideas of precolonial Africa as a space of unadulterated primitivism and lack of human capacity for advancement.”¹²⁹ This has led to the dismissal of indigenous African systems of Governance (Protocol) as mere “prepolitical” “folk beliefs.”¹³⁰

It is in this foggy atmosphere that we must fly. Shining the light on Africa, and a bright light at that, is how we must propel ourselves through the muck of distorted discourse. In this circumstance, I take the tact of Chancellor Williams, who explained that we African people who are “under perpetual siege and fighting an almost invisible war for survival” cannot afford to tell history in an “objective” manner, in a manner lacking characterization.¹³¹

What is “objectivity” here? Limiting Africana-positive statements and opinions in scholarship? Such a posture would deliberately disregard the reality on the ground, where Africana-negative, pathological discourse runs amok. Such intellectual recklessness would only usher along the abysmal status quo.

It is grossly negligent to ignore the difference in situation between scholarship on European and European-derived subjects and scholarship on Africana.¹³² If we have any chance of climbing out of the hole that has been dug for us and reaching net-positive, we must tell history from an African center, with no apology, highlighting our past strengths, analyzing our past weaknesses,

129. FRENCH, *supra* note 12, at 70.

130. See MCKIVIGAN & HARROLD, *supra* note 22, at 5. Such a designation is both dismissive and fallacious, as it assumes Africans to be on a track of development built by the West, when, in fact, all human constituencies developed their *own* pathways and ways of contemplating and sensing the universe. As scholars like Oyèwùmí have noted, Africa was not and is not “the West waiting to happen.” OYÈWÙMÍ, *supra* note 58, at 21; see NGŪGÍ, *supra* note 75, at 26 (“The problem arises from the tendency to see the local and the universal in mechanical opposition; and the relativity of cultures in a temporal ground of equality almost as if cultures within a nation and between nations have developed on parallel bars towards parallel ends that never meet, or if they meet, they do so in infinity.”). Enslaved Africans did not come from nations that were a preformed or deformed version of the West. They came from fully formed, uniquely African societies. Their beliefs were not in some lesser category of “folk” knowledge.

131. CHANCELLOR WILLIAMS, *THE DESTRUCTION OF BLACK CIVILIZATION: GREAT ISSUES OF A RACE FROM 4500 B.C. TO 2000 A.D.* 22 (1987).

132. Cf. U.N. Comm. on the Elimination of Racial Discrimination, General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention of the Elimination of All Forms of Racial Discrimination, ¶ 8, U.N. Doc. CERD/C/GC/32 (Sept. 24, 2009) (“To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same.”).

and using lessons learned “for the express purpose of determining *what to do now*.”¹³³

As I have noted, merely bringing Africa into focus, and daring to have a positive tone whilst doing so, is *not* misleading or intellectually dishonest, as the “romanticization” characterization insidiously suggests.¹³⁴ Rather, it is a manner in which a narrator with an African center describes the world, a manner that presupposes the beauty, value, and worth of Africana. To remedy centuries of demonization and marauding of Africana, to fill the void of ignorance, to restore balance to the global African community, it is necessary to create, amplify, and encourage audacious African-centered narratives that staunchly refuse to engage in pathology and dare not apologize for emphasizing the good. It is okay—necessary—to do *sankofa*, to “tak[e] the *best* of the past to build a better future.”¹³⁵

As part of this larger project, we must investigate, study, and elevate Protocol—the uniquely African concepts of Governance. We must learn how Protocol evolved, adapted, borrowed, innovated, and persisted across space and time. And we must ask what Protocol might have been had it developed, unencumbered by the *Maafa*, according to African Ways of Knowing¹³⁶ and world-senses. This imagining tells us what might be, today and in the future.¹³⁷

B. Modus Operandi: Akan Protocol and Poison

Slaves were humans, but they were also Africans from specific cultural and sociopolitical contexts. The types of resistive behavior Africans and African Americans engaged in were largely shaped by their African past.

– Walter C. Rucker, *The River Flows On*¹³⁸

To observe Protocol in the Western Hemisphere, we first need some understanding of Protocol on the African Continent.¹³⁹

133. WILLIAMS, *supra* note 131, at 22 (emphasis in original).

134. Porter, *supra* note 4, at 261–64.

135. Kwadwo Appiagyei-Atua, *Contribution of Akan Philosophy to the Conceptualisation of African Notions of Human Rights*, 33 COMPAR. & INT’L L.J. S. AFR. 165, 171 (2000) (emphasis added). “*Se wo were fi na wo san kofa a yenkyi*,” or “It is not a taboo to learn from the past,” is an Akan proverb suggesting that the past is a useful source of knowledge and guidance for the future. *Id.* at 168.

136. Carr, *supra* note 3, at 15. Carr defines “Ways of Knowing” as “systems of thought” that “African peoples develop[ed] to explain their existence.” *Id.*

137. Porter, *supra* note 4, at 318–20 (emphasizing the importance of imagining).

138. RUCKER, *supra* note 18, at 4.

139. See, e.g., NORA WITTMANN, SLAVERY REPARATIONS TIME IS NOW: EXPOSING LIES, CLAIMING JUSTICE FOR GLOBAL SURVIVAL 448 (2012) (“It is therefore vital to

Without this requisite knowledge, we cannot identify or recognize the Protocol as it existed during the *Maafa*. Marimba Ani instructed, “Not knowing ourselves, we have not known how to recognize manifestations of our heritage.”¹⁴⁰ As one might say in a Legal context, we cannot pick out the relevant facts—we cannot “issue spot”—if we do not know the relevant rules.

What were African people doing *before we were so rudely interrupted*? It is essential that we explore this question in order to understand the actions and thoughts of Africans during the continuing disaster.

i. The Akan Speakers

There is complexity as to African ethnicities in the Western Hemisphere. Some ethnolinguistic distinctions were not existent in pre-*Maafa* Africa and were essentially created by European traders and enslavers yet taken on as identity by enslaved Africans. As investigators, we will acknowledge and work through the complexity rather than throw up our hands and dismiss African groupings in the story of enslavement.¹⁴¹

The site of our investigation is Maryland, and scholars have traced certain African ethnic identities to Maryland and the Chesapeake region.¹⁴² These identities include a group of African people collectively referred to as “the Akan” or “Akan speakers.”¹⁴³

un-earth and re-assess pre-*Maafa* African political systems and ways of organizing society through pertinent research to add to what we already know from great ancestor researchers such as Cheick [sic] Anta Diop.”).

140. ANI, *supra* note 11, at 2.

141. RUCKER, *supra* note 18, at 8 (“Completely dismissing these identities, no matter how problematic they may be, would be another step toward the denial of African or African American agency.”).

142. See GWENDOLYN MIDLO HALL, SLAVERY AND AFRICAN ETHNICITIES IN THE AMERICAS 110–11 (2005).

143. The terms “Akan” and “Akan speakers” are, however, inexact, for reasons thoroughly explained by Walter C. Rucker. WALTER C. RUCKER, GOLD COAST DIASPORAS: IDENTITY, CULTURE, AND POWER 1–17 (2015). Rucker uses the term “Coromantee” to reference Africans in the Western Hemisphere whose identities were associated with peoples of the Gold Coast, including peoples who spoke languages other than Akan—such as Ga, Adanme, and Ewe. *Id.* at 6–7. He warns against hyperfocus on Akan speakers or the Asante empire and advocates for this more expansive reference. *Id.* at 26; *see also* THE AKAN PEOPLE: A DOCUMENTARY HISTORY 14 (Kwasi Konadu ed., 2016) (critiquing “Asante-centric preoccupation”). Rucker also advises that the contours of Akan culture are complex, and it is error to think of the culture as “genetic, homogeneous, [or] timeless.” RUCKER, *supra*, at 238 n.2. Additionally, isolating Akan speakers is somewhat fictive, as many Africans were multilingual when on the Continent and experienced cultural exchange. *See* Berry, *supra* note 27, at 52. Considering this important discussion, for the sake of

The Akan speaking peoples are from the “Gold Coast” of West Africa.¹⁴⁴ Akan speakers are in two subgroups: Twi (in the area that is now Ghana) and Baule (in the area that is now eastern Côte d’Ivoire).¹⁴⁵ Barima Kodwo Eduadwa IV explains, “The Akans are, all the Twi-speaking people of Ashanti [Asante], Akuapim, Brong-Ahafo, Akim, Wassaw, Sefwi, Denkyira, Kwahu and the Fantes along the coastal belt.”¹⁴⁶

As the *Maafa* began, it was Akan speakers who were at the center of gold production that launched the Western world into “modernity.”¹⁴⁷ Around 1690—after the *Maafa* had begun—Akan Protocol included unification of polities into the Asante nation and the authority under the *Sika Dwa* (golden stool), a symbol of divine ancestral unity, authority, and power.¹⁴⁸ In the 1700s, Akan was widely spoken in the Gold Coast region, and “between 1700 and 1765 most of the Gold Coast Africans sucked into transatlantic

this investigation, we are zooming in our lens with attention to the concept of Akan speakers, as elusive as it might be, as the unit of analysis here. This choice is made in large part due to preference for an African-oriented term (the Akan) and a need in this particular interrogation to focus on the Governance structures of a narrower group in the pre-*Maafa* context. It must be acknowledged, however, that the question of identity is an important one that we are continuing to collectively understand.

144. See GOMEZ, *supra* note 15, at 65; Frederick Knight, *Sankofa: Slaves from the Gold Coast and the Evolution of Black Culture in North America*, 10 TRANSACTIONS HIST. SOC’Y GHANA, NEW SERIES 183, 184 (2006–2007) (“The Gold Coast, a term coined during the years of European commercial expansion onto the West African littoral because of the region’s mineral, runs from the Tano to the Volta Rivers.”); HALL, *supra* note 142, at 101 (“In Lower Guinea, the European maritime traders named African coasts for the major products they purchased there.”).

145. GOMEZ, *supra* note 15, at 105; HALL, *supra* note 142, at 107 (“Akan languages, mainly Twi, predominated in the Gold Coast and spilled over into the Ivory Coast to the west and into the Slave Coast to the east.”).

146. Barima Kodwo Eduakwa IV, *Preface* to NANA AKUA KYEREWAA OPOKUWAA, *AKAN PROTOCOL: REMEMBERING THE TRADITIONS OF OUR ANCESTORS* 8 (1997). They include various linguistic groups such as the Asante, Fante, Akyem, Bron, Kwahu, Akwamu, and many others. GOMEZ, *supra* note 15, at 105; RUCKER, *supra* note 143, at 75. “What distinguishes one group from the other is their dialect, otherwise they speak the same language and their customary practices are not different from each other.” Eduakwa, *supra*; see also J.E. CASELY HAYFORD, *GOLD COAST NATIVE INSTITUTIONS: WITH THOUGHTS UPON A HEALTHY IMPERIAL POLICY FOR THE GOLD COAST AND ASHANTI*, at x (1903) (“[B]oth the Fantis and the Ashantis come from the same stock, and may be regarded as cousins, if not brothers, the difference in character arising merely from their respective local environments.”).

147. See GREEN, *supra* note 15, at 37.

148. DAVIDSON, *supra* note 127, at 53–56. Note that the “Asante Empire was founded in 1695 at Kumasi by Akan peoples uniting under a banner of militarized expansion—the name ‘Asante’ deriving from the Twi for ‘war,’ *esah*, and *esantefor*, meaning ‘because of war.’” GREEN, *supra* note 15, at 297.

slave trading vortices knew Akan as a primary, secondary, or tertiary language.”¹⁴⁹

ii. Akan Protocol and Ways of Knowing

Before even the British came into relations with our people, we were a developed people, having our own institutions, having our own ideas of government.

– J.E. Casely Hayford, 1922, *quoted by* Walter Rodney¹⁵⁰

The Akan had Protocol—what Western-centered scholars might call “Law.”¹⁵¹ Searching for Protocol is not easy. At any given time, Protocol is evolving and adapting. It is difficult to understand its state at a certain point, as with Law or any other subject we are seeking to understand across time and space. And, as with other subject matter, there are general overarching characteristics and features that change more slowly and that hold continuing relevance in the story. As African-centered investigators, we cannot be deterred by the resulting difficulty created by the attack on and concealment of our history. We must do our best to piece the stories together and push one another along, collectively, to restore meaningful and usable knowledge.

Akan had their Protocol, as J.E. Casely Hayford explained in 1903: “I have endeavoured to show that, on the Gold Coast, you are not dealing with a savage people without a past, who are merely striving to copy or imitate foreign Institutions.”¹⁵² Rather, the continental Akan had their own institutions, “which we

149. RUCKER, *supra* note 143, at 22; *see also id.* at 27 (noting Akan’s prevalence in geographic scope and speakership even before 1700). Akan was “the major language on the Gold Coast.” HALL, *supra* note 142, at 101.

150. WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* 33 (1982).

151. *See* DAVIDSON, *supra* note 127, at 76 (referencing the nation-state-like attributes of the Asante, who became a unified polity during the *Maafa*). That Africans had their own Governance systems before the *Maafa* is a fact that should not need to be stated or proven. However, in Western discourse, as it was with colonial U.S. law, the burden is on the black. *See* Wiecek, *supra* note 64, at 263. The idea that “the burden is on the black” is an old one that used to be expressly enshrined in law. *Id.* In South Carolina (1740) and Georgia (1755) this notion was established in freedom suits. *Id.* It was presumed that a black person was a slave unless they could prove their “free” status. *Id.* This became part of common law of southern states after “Independence.” *Id.* The notion that the burden is on the black is still in effect today in various respects. I will leave it to the reader to ponder just how. As for the burden of proving that Africans had their own Governance systems, that burden should not exist. The burden should be on those who take the nonsensical position—those who doubt that human beings with society possessed Governance. *See* CARRUTHERS, *supra* note 90, at 13 (discussing the absurdity of placing “the burden of proof on those who argue the obvious”).

152. CASELY HAYFORD, *supra* note 146, at 128.

understand, and which from experience [we]re adapted to us.”¹⁵³ Akan speakers likely used systems of Protocol that were consistent among Akan-speaking nations.¹⁵⁴ This Protocol was organized and governed polities with a variety of interacting institutions.¹⁵⁵

An important threshold issue in our examination of Akan Protocol is understanding its place in the cultural logic.¹⁵⁶ In considering what comprises the body of any Protocol, the question may arise: how can we know that the subject matter being studied (e.g., poison) is *part of* or connected to Protocol? What does Protocol touch? What touches Protocol?

The answer depends on the cultural logic in which we are operating. In the cultural logic, does Governance touch only some things rather than touching everything? Does Governance occupy a discrete area of life, with a degree of separateness from other areas? Today, in the West, because of the West’s history and culture, some conceptualize Law as occupying a discrete space in Western cultural logic, for example, a space separate from religion.¹⁵⁷ But in another cultural logic, perhaps Governance includes religion.

153. *Id.* at 127–28.

154. *Id.* at 21 (“In the Gold Coast proper we have . . . the native states of Fanti, Ahanta, Insima, Ga, Wassa, and others, *having more or less the same laws and customs*, and speaking generally the same language, or dialects of the same language.”) (emphasis added).

155. John Mensah Sarbah commented in 1903 that “when, in 1481, Portuguese navigators and other European trading adventurers first appeared on the Gold Coast, they found an organized society having kings, rulers, institutions, and a system of customary laws, most of which remain to this day.” *Advertisement to the Second Edition* of JOHN MENSAH SARBAH, *FANTI CUSTOMARY LAWS: A BRIEF INTRODUCTION TO THE PRINCIPLES OF THE NATIVE LAWS AND CUSTOMS OF THE FANTI AND AKAN DISTRICTS OF THE GOLD COAST* (Alpha Editions 2020) (1904); *see also* DAVIDSON, *supra* note 127, at 52–63 (describing the “Asante polity”). While Sarbah is theorizing in his time, and therefore using the framework of customary law (what Africana Legal Studies theory would reference as the Qualified Law Orientation or “QLO”), his point can be taken to suggest a complex Akan Protocol, that is, an Akan system of governance.

156. Oyèrónké Oyèwùmí uses the term “cultural logic” in her discussion of African cultures and world-senses. OYÈWÙMÍ, *supra* note 58.

157. For a great discussion on Law as a discrete category of culture, *see* FERNANDA G. NICOLA & GÜNTER FRANKENBERG, *COMPARATIVE LAW: INTRODUCTION TO A CRITICAL PRACTICE* § 9.2.3 (forthcoming 2024); *see also* Seth Tweneboah, *Religion, Law, and Politics in Ghana: Duabo (Imprecation) as Spiritual Justice in the Public Sphere*, 14 AFR. J. LEGAL STUD. 209, 215 (2021) (contrasting Akan imaginings of governance with, for example, Austinian notions of law); *cf.* ANI, *supra* note 11, at 6 (relating the same point with respect to science and religion). The U.S. Constitution’s First Amendment prohibits Congress from making laws “respecting an establishment of religion,” reflecting the European historical experience in which multiple religions, or religious approaches, were in conflict with one another. U.S. CONST., Am. I.

The key to understanding Protocol's space in African cultural logics lies in the notion of "Ways of Knowing," a category from Carr's Africana Studies Framework that pushes beyond sharply-defined concepts of religion, spirituality, philosophy, and worldview to encompass, more broadly, Africans' "ideas about themselves, the world and the universe."¹⁵⁸ Using this term helps us navigate various African cultural logics to consider the place of Protocol.

Perhaps the cultural logic under investigation does not *include* Ways of Knowing. Perhaps, instead, Ways of Knowing permeates all aspects of the cultural logic.¹⁵⁹ It is commonly understood that the cultural logics of many African peoples follow this Permeative Principle.¹⁶⁰ Therefore, Ways of Knowing becomes the medium in which the cultural logic lives and operates. Ways of Knowing is the water in which the cultural structure is submerged. Accordingly, when Permeative Principle applies, Ways of Knowing informs everything, it is the conduit to everything—we must travel through it to reach any aspect of culture, including Protocol, including poisoning.

Permeative Principle exists in the Akan cultural logic.¹⁶¹ Nana Akua Kyerewaa Opokuwaa attested to this: "Akan culture and spirituality are one. There is no way to separate an Akan from the

158. Carr, *supra* note 3, at 15. Carruthers might call this same idea "African Deep Thought." CARRUTHERS, *supra* note 90, at 15 ("I substitute the term African Deep Thought for African and Black philosophy.").

159. Note that I sometimes use "Ways of Knowing" as a singular noun, especially when I use it to refer to the singular category in Carr's Africana Studies Framework.

160. See, e.g., STERLING STUCKEY, *SLAVE CULTURE: NATIONALIST THEORY AND THE FOUNDATIONS OF BLACK AMERICA* 96 (25th ann. ed., 2013) ("Religion encompassed more for [enslaved Africans] than for whites, rendering irrelevant the distinction between the sacred and the secular—a false dichotomy to a people for whom emotional fervor and dance were integral to religious expression."); see also Tweneboah, *supra* note 157, at 210 (suggesting that religion-as-law—or what I would call Ways-of-Knowing-as-Protocol—is alive and well in contemporary Africa). For more on Permeative Principle, see Porter, *supra* note 4, at 299. If we are to take heed of Ida B. Wells's observation that "[t]he white man's dollar is his god," we might surmise that Western culture has its own permeative principle, with money serving the role of religion. See *Southern Horrors: Lynch Law in All Its Phases*, in IDA B. WELLS, *THE LIGHT OF TRUTH: WRITINGS OF AN ANTI-LYNCHING CRUSADER* 57, 78 (Mia Bay & Henry Louis Gates, Jr. eds., 2014). This is why, often, with respect to Western societies, we can "follow the money" to make connections between seemingly unrelated components of the Western cultural logic.

161. CASELY HAYFORD, *supra* note 146, at 101 ("Overshading and permeating the political, judicial, and social economy of the Aborigines [Indigenous people of Ghana] is that system of faith and worship known as Fetishism."). Observing the Akan women's practices in war, Casely Hayford continued, "So fervent is [the Akan] belief in spiritual forces influencing mundane affairs." *Id.* at 92; see also Tweneboah, *supra* note 157, at 215 (showing the spiritual and legal intersections of *duabɔ*).

spiritual aspects of his or her humanness.”¹⁶² Irene Odotei further clarified that “in the world view and belief system of Ghanaians, *every activity* has its source and is sustained by the spiritual world through the gods and ancestors.”¹⁶³ For the Akan, “everyday living is considered a spiritual experience that cannot be compartmentalized.”¹⁶⁴

This is why, when searching for Akan Protocol, and to understand the Protocol behind the poisonings potentially influenced by or carried out by Akan speakers, we should look to Akan Ways of Knowing.¹⁶⁵ We must travel through Akan Ways of Knowing to reach the destinations of Protocol, poisoning, and any related notions (such as Protocol *of* poisoning and poisoning *as* Protocol).¹⁶⁶

iii. Akan Ways of Knowing Regarding Death

The Akan world-sense contemplates a universe “filled with spiritual forces” that cause uncommon occurrences in our lives.¹⁶⁷ The world is full of *obosum* (divine entities and ancestral spirits).¹⁶⁸ They can impact our lives and cause our deaths.¹⁶⁹

Owu is the idea of death in Akan language.¹⁷⁰ And its opposite is *awo* (birth).¹⁷¹ *Owu* (death) is considered to be *awo* (birth) into the ancestral realm.¹⁷² *Owu* is “a departure and not a complete annihilation of a person.”¹⁷³ It is “cross[ing] the water.”¹⁷⁴

Generally, *owu* is considered “a time for celebration It is believed that the departed is leaving this world to continue his work

162. OPOKUWAA, *supra* note 146, at 26.

163. Irene Odotei, *Festivals in Ghana: Continuity, Transformation and Politicisation of Tradition*, 6 TRANSACTIONS HIST. SOC'Y GHANA, NEW SERIES 17, 18 (2002) (emphasis added).

164. OPOKUWAA, *supra* note 146, at 127.

165. Tweneboah, *supra* note 157, at 215 (“[T]he Akan do not separate the religious from the legal.”).

166. *Id.* (“[T]he Akan do not separate the religious from the legal.”); *id.* at 212 (“[R]eligion provides ‘the validating foundations for human rights’ in this [contemporary Ghanaian] society.”) (quoting ABAMFO OFORI ATIEMO, RELIGION AND THE INCULTURATION OF HUMAN RIGHTS IN GHANA 30 (2013)).

167. See RUCKER, *supra* note 143, at 88.

168. See *id.* at 89; Berry, *supra* note 27, at 60 (describing seventeenth century Akan usage of the word *bosom*).

169. See RUCKER, *supra* note 143, at 88.

170. Joseph Brookman-Amissah, *Akan Proverbs About Death*, 81 ANTHROPOS 75, 77 (1986).

171. *Id.*

172. *Id.*

173. JOHN S. MBITI, AFRICAN RELIGIONS AND PHILOSOPHY 152 (2d ed. 1969).

174. OPOKUWAA, *supra* note 146, at 76.

in the spirit world.”¹⁷⁵ A person continues to live after death, as death is merely “a transition.”¹⁷⁶ And there is no belief in a hell or eternal damnation: “as for a material hell, the scarecrow of the missionaries, he [the Native of the Gold Coast] merely smiles at such a suggestion. Is there not trouble enough in this world? God knows there is. Why should God add trouble to trouble?”¹⁷⁷

Seventeenth and eighteenth century writers noted that Akan speakers in Jamaica and the Danish West Indies saw death as a “blessing” and believed it would return them to their homeland.¹⁷⁸ This belief buoyed resistance to enslavement, as it limited the operation of fear being killed during an uprising.¹⁷⁹ What Western thinkers reference as “suicide” to the Akan “represented the ultimate contingency plan” during resistance efforts.¹⁸⁰ It “allowed them to be reborn in Africa as free people.”¹⁸¹

But not all death is a good death in Akan Ways of Knowing. The Akan believe in two categories of death, as explained by Joseph Brookman-Amissah: there is *owu pa*, good death from natural circumstances, and *owu bon*, bad death, brought on by violence, accident, or “malignant magic.”¹⁸² If a person has *owu bon*, their spirit will become *tofo*, or a “wandering and aggressive spirit.”¹⁸³ It was thought that *owu bon* (bad death), sickness, or misfortune was due to “the activation of spiritual forces or the ancestors by an aggrieved party.”¹⁸⁴

One Akan proverb, referencing *Odomankoma*, “the creative aspect of *Nyame*, the Supreme Being,” states: *Odomankoma na oma owuo di akane* (“It was none but *Odomankoma* who made Death eat poison.”).¹⁸⁵ This proverb personifies Death as an entity vulnerable to defeat—and by poison, no less. Thus, in Akan cultural logic, Death can be met with poison, perhaps bringing about *owu bon*, bad death, to Death itself.

175. *Id.*

176. *Id.* at 87.

177. CASELY HAYFORD, *supra* note 146, at 103.

178. RUCKER, *supra* note 18, at 53.

179. *Id.*

180. *Id.*

181. *Id.*

182. Brookman-Amissah, *supra* note 170, at 78.

183. *Id.*

184. See RUCKER, *supra* note 143, at 88.

185. Brookman-Amissah, *supra* note 170, at 83–84.

iv. Akan Protocol of Addressing Wrongdoing

One way to address wrongdoing in Akan Protocol was (and is) to use a ritual in which one verbally invokes a divine punishment.¹⁸⁶ This “grievance imprecation” is called *duabɔ*, and it is a request for “a deity to unleash divine wrath or a curse on the target or wrongdoer.”¹⁸⁷ As Seth Tweneboah explains, *duabɔ* is “an essential mode of justice” and is used “as a means to seek justice and to settle disputes in society.”¹⁸⁸

The word *duabɔ* is thought to come from the noun *dua* (tree, wood, club) and the verb *bɔ* (hit, strike, knock).¹⁸⁹ Being hit and killed by a fallen tree was considered a terrible occurrence in the culture of the Akan.¹⁹⁰ And if someone experienced something terrible in their life, it might be said that *dua abu bɔ no*—“a tree has fallen on [them].”¹⁹¹ Through *duabɔ*, then, a person—through ritual invocation—can topple the figurative tree and bring calamity to another person’s life.¹⁹²

Duabɔ is based on the belief that ancestors and divine entities, the *obosum*, participate in Protocol—as *abrafo*, or enforcers, punishers, and executioners.¹⁹³ Thus, the ritual is used to voice grievances, signaling to ancestors and divine entities the existence of hate and conflict.¹⁹⁴ Considered to be serious, swift, and effective, *duabɔ* is used as a ritual of last resort, reserved to address egregious wrongdoing.¹⁹⁵

186. See Tweneboah, *supra* note 157, at 214.

187. Kofi Agyekum, Ntam ‘Reminiscential Oath’ Taboo in Akan, 33 LANGUAGE SOC’Y 317, 318 (2004).

188. Tweneboah, *supra* note 157, at 220, 229.

189. *Id.* at 213. *Dua* is alternatively linked to the word *dué* (woe). *Id.* at 214.

190. *Id.* at 213 (“[I]n the old Akan society, to be killed by a fallen tree was deemed as the worst form of calamity.”) (citing personal communication with Sefa Nyarko).

191. *Id.* Kwame Gyekye explains that the “ultimate cause” for the tree falling is a spiritual one, and he elaborates:

It is not that the Akans do not know that a falling tree can kill a person
In such situations the question the Akan poses is not “Why did the falling tree kill him?” but “Why did *that* tree fall at *that* particular time and kill *that* particular person?”

KWAME GYEKYE, AN ESSAY ON AFRICAN PHILOSOPHICAL THOUGHT: THE AKAN CONCEPTUAL SCHEME 78 (1987) (emphasis in original).

192. See Tweneboah, *supra* note 157, at 213–14.

193. *Id.* at 214–15 (“The potency of *duabɔ*, then, rests on society’s belief in the pertinence of the deities who are held as occupying crucial agentic role in law and order of the traditional society. The deities are understood to enforce their laws, striking imprecatees dead or visit some form of misery on one’s adversary.”); THE AKAN PEOPLE, *supra* note 143, at 17.

194. See Tweneboah, *supra* note 157, at 214–15.

195. See *id.* at 215–16, 219.

Akan speakers of the Gold Coast region over time had various ideas about what constituted wrongdoing. In 1903, Casely Hayford pointed out that, historically, wrongdoing included “stealing from a farm, rape, swearing an oath upon the King’s life, selling a real-born Ashanti, kidnapping, [and] immorality of a certain kind . . .”¹⁹⁶ Akan Ways of Knowing also informed *who* was perceived as responsible for wrongdoing. According to J.M. Sarbah, Akan Protocol includes collective responsibility, meaning an entire family is responsible for the wrongs of one family member.¹⁹⁷ It is reasonable to infer that these contours would have been subsumed into the practices of Protocol, like *duabɔ*.

Finally, *duabɔ*—at least today—sometimes involves food, drink, and animal slaughter.¹⁹⁸ Tweneboah references highly-publicized *duabɔ* rituals in 2016, in which ritual participants used “eggs and schnapps” and slaughtered sheep to address the wrongdoing of certain leaders.¹⁹⁹ If we ponder this Protocol practice of *duabɔ*, specifically contemplating its connection to food, drink, and meat, we can see the potential link to our poisoning cases. The form of administration and the parties involved may not be an exact match, but there are enough shared components to keep *duabɔ* in mind as we continue our investigation.

Another Akan Protocol practice involving food and drink is *ntam*—a ritual for promise-making and promise-keeping.²⁰⁰ This practice is seen in other systems of Protocol as well.²⁰¹ *Ntam* was used in Akan Protocol to initiate conflict, resolve conflict, and declare innocence.²⁰² Rucker explains, “[i]n most cases, taking an

196. CASELY HAYFORD, *supra* note 146, at 29–30. The way we think of stealing in this context, though, must be informed by other aspects of Akan Protocol, *e.g.*, collective “ownership” as opposed to the Western idea of individual ownership. *See id.* at 46–47 (“[I]n the Customary Law, we find no trace of individual ownership. What the head of a family acquires to-day in his own individual right will, in the next generation, be quite indistinguishable from the general ancestral property of which he was a trustee.”).

197. SARBAH, *supra* note 155, at 39.

198. *See* Tweneboah, *supra* note 157, at 219.

199. *Id.*

200. *See* RUCKER, *supra* note 143, at 90–91; Barfuo Abayie Boaten I, *The Asafo and the Use of ‘Ntam’ in Conflicts and Conflict Resolution in Asante*, 2 TRANSACTIONS HIST. SOC’Y GHANA, NEW SERIES 29, 30 (“*Ntam* is a forbidden word or a statement made to remind one of an event of a catastrophic nature. From this standpoint there are personal oaths, family oaths, society oaths and state oaths.”).

201. Promise-making rituals like *ntam* were not unique to Akan Protocol but were seen in other African cultures as well. RUCKER, *supra* note 143, at 92; *see, e.g.*, Berry, *supra* note 27, at 22 (describing “ordeal draughts” of Kikongo speakers of West Central Africa).

202. *See* Boaten, *supra* note 200, at 30–31.

oath was a sacred act that involved eating or drinking substances believed by adherents to contain sufficient spiritual potency to kill anyone taking the oath on false pretense or breaking the terms of a sworn agreement.”²⁰³ And, in line with Permeative Principle, the ancestors “were regarded as the custodians of the oath(s).”²⁰⁴ The drink served as a linking instrument between the living Akan and the ancestors who protected them, as well as between the living Akan and each other.²⁰⁵

Typically, in the Gold Coast region, *ntam* was “administered by divine priests at the beginning of a military campaign and was a virtually unbreakable pact.”²⁰⁶ If a leader made a promise to fight, “the elders and the warriors, the young men, would have to go through the process of *Abosonom* which was the ‘drinking of fetish; a kind of oath swearing through the drinking of a herbal preparation to signify that they were with the chief in his desire to fight [I]f a member failed to fight till death then he had defiled the oath”²⁰⁷

In 1705, Willem Bosman, a Dutch explorer who was on the Gold Coast for thirteen years, wrote the following of this promise:²⁰⁸

Where they drink the *Oath-Draught*, ‘tis usually accompanied with an Imprecation, *that the Fetiche* may kill them if they do not perform the Contents of their Obligation. Every Person entering [sic] into any Obligation is obliged to drink this Swearing Liquor.²⁰⁹

203. RUCKER, *supra* note 143, at 91.

204. Boaten, *supra* note 200, at 30.

205. RUCKER, *supra* note 18, at 45.

206. *Id.*

207. Boaten, *supra* note 200, at 31.

208. Paton, *supra* note 27, at 244 (referencing Bosman’s time on the Gold Coast as fourteen years); RUCKER, *supra* note 143, at 77 (referencing thirteen years).

209. WILLIAM BOSMAN, A NEW AND ACCURATE DESCRIPTION OF THE COAST OF GUINEA, DIVIDED INTO THE GOLD, THE SLAVE, AND THE IVORY COASTS 149 (English trans., London 1705). Generally, we must be cautious and discerning when relying upon sources written about African people from a European center. See THE AKAN PEOPLE, *supra* note 143, at 15. It is important to note the bias of Bosman’s text and that it is full of mischaracterizations and insults toward African people. See, e.g., BOSMAN, *supra*, at 116 (calling Gold Coast peoples “crafty, idle and careless”); *id.* at 117 (“They are besides so incredibly careless and stupid”); *id.* at 138 (calling Gold Coast peoples “perverse,” “lumpish Wretches”). A student of mine, Asma Mohammadi, once raised a point about how citing Western voices is “almost of a form of validation.” Asma Mohammadi, Draft Africana Legal Studies Paper: Deconstructing Islamic Slavery—An Analysis of Shariah and African Governance 9 (April 10, 2023) (unpublished paper on file with author). This is a key concern. Being African-centered I think means prioritizing African knowledge and voices, stating them first and foremost. Centering them. That does not mean other statements

Bosman continued: “If you ask what Opinion the *Negroes* have of those who falsify their Obligations confirmed by the Oath-Drink; they believe the perjured Person shall be swelled by that Liquor till he bursts; or if that doth not happen, that he shall shortly dye [sic] of a Languishing Sickness”²¹⁰

Ntam could also be used as *Nsidie*, a declaration of innocence or “a situation when one puts a curse on oneself to claim innocence in a conflict situation.”²¹¹ Casely Hayford described this use in Legal terms:

Where there is a strong conflict of evidence, and the Court is unable to arrive at a decision, the ordeal is resorted to, which consists of drinking a large quantity of a herbal preparation known as *edum*. If the party drinking returns the stuff, he is declared free, or not guilty. If he retains the *edum*, he is found guilty.²¹²

The substances used to concoct the drink used for *ntam* (e.g., rum, gunpowder, blood, water, millet) were essential.²¹³ Rucker explains that “most accounts of seventeenth- and eighteenth-century Gold Coast oathing ceremonies involve the creation of special drinks made from a variety of substances,” with ingredients symbolizing the manner of death that would befall violators of the promise (e.g., blood for a violent death, water for drowning, millet for prevention of enjoying the fertile gifts of the earth).²¹⁴ If we step back to contemplate the operation of *ntam* and the Ways of Knowing that drive it, we see that our notion of “poison” can be related to this form of Akan promise-keeping—because if the promise was unkept,

should not be referenced as a secondary or marginal matter. It is important to use these statements as evidence (particularly with *Africana* in the Western Hemisphere, where we have an evidence problem due to the *Maafa*) and marshal the admissions and concessions of enslavers and others who themselves recognized the existence of a fact. This evidence is compelling because it smokes out ignorance. Even enslavers recognized the agency of African people. It is the future generations who attempted (and failed) to conceal that power. *See also* KATRINA HAZZARD-DONALD, *MOJO WORKIN’: THE OLD AFRICAN AMERICAN HOODOO SYSTEM* 19 (2013) (explaining that while many sources are “racist and pejorative, it is still possible, however, to glean comparative factual information concerning traditional African religious practices that would carry over into the New World.”).

210. BOSMAN, *supra* note 209, at 149–50.

211. Boaten, *supra* note 200, at 30.

212. CASELY HAYFORD, *supra* note 146, at 94; *see also* BOSMAN, *supra* note 209, at 150 (“If any Person is suspected of Thievery and the Indictment is not clearly made out, he is obliged to clear himself by drinking the *Oath-Draught*, and to use the Imprecation, that the *Fetiche* may kill him if he be guilty of Thievery.”).

213. *See* RUCKER, *supra* note 143, at 91.

214. *Id.*

it was assumed that the violator would experience a painful death involving sickness and bloating.²¹⁵

Up to now, we have considered the internal Protocol of the Akan, that is, the Protocol used to manage their own lives.²¹⁶ At some point during the *Maafa*, African people had to decide how to respond to the atrocious and brazen conduct of Europeans around them. This externally-directed Protocol used to interact with the new problems presented by the Social Structure and sanctioned by its Governance (Law) was likely drawn from extant African cultural logic and Ways of Knowing.²¹⁷

In examining the practices of *Duabɔ* and *ntam*, we observe that Akan Protocol includes longstanding practices of using food and drink in the process of inviting divine entities and ancestors to punish wrongdoers.²¹⁸ Common sense tells us that the knowledge flowing from these practices was undoubtedly applied by the Akan to address the wrongs of European enslavement, creating an adapted form of externally-directed Protocol to meet the *Maafa*. Accordingly, the enslaved Akan and their collaborators could bring about *owu bon* (bad death) and send the spirits of European

215. RUCKER, *supra* note 18, at 46.

216. See Carr, *supra* note 3, at 15 (noting the distinction between studying how Africans governed themselves versus how Africans interacted with Whites).

217. Cf. Nunn, *supra* note 6, at 323–24 (explaining that “law” is a creation of culture). Beyond the scope of this article, another form of externally-directed Protocol arguably occurred when African people used poisoning within various polities on the Continent or against other “African” people in the Western Hemisphere. See CHIREAU, *supra* note 27, at 70–71 (detailing “intra-black poisonings”); MORGAN, *supra* note 25, at 614–15 (same); JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO, *supra* note 21, at 44 (32 Md. Arch. 101, Dec. 1764) (detailing “Negro Jack Slave[s]” act in poisoning “Negro Clair Slave”); *id.* at 46 (32 Md. Arch. 188, April 1767) (providing the example of “Negro Glasgow” attempting to poison “a certain Negro Man”). These poisonings are potentially *externally-directed* Protocol, as Africans like the Akan speakers would not have thought of themselves as “African” during the eighteenth century, but rather would have held identities in terms of their nation, culture, and kinship. Pan-African identity came later, and our referent “African” as applied to these earlier times is for discursive facility and scholarly convenience, not an attempt to identify as people would have identified themselves. See GOMEZ, *supra* note 15, at 5, 12–13 (noting that in British North America, there was no pan-African consciousness until the 1830s and that enslaved Africans to that point largely saw themselves as members of different African polities or ethnicities); GREEN, *supra* note 15, at 268 (“[P]eople did not see themselves as ‘African’ but rather as belonging to a specific lineage, kingdom and ritual community—just as people did not see themselves as ‘Europeans’ at the outset of this time, but rather defined themselves according to the style of Christian belief and nation.”). It is important that we keep this in mind and not lump actions by Africans as to other Africans before 1830 as “Black-on-Black crime,” that is, internal Protocol.

218. See Tweneboah, *supra* note 157, at 219.

enslavers into endless wandering, depriving them of any celebrated rebirth or peaceful existence after life.²¹⁹

VI. Tracking Movements: Continuity of Protocol from the African Continent to the Western Hemisphere

I . . . thought of my grandfather, and of the long nights I had passed with him, listening to his narratives of the scenes through which he had passed in Africa.

– Charles Ball, enslaved in Maryland just before the Civil War²²⁰

Did captive, enslaved, and “free” Africans in the Western Hemisphere remember their Protocol, such as the Akan Protocol of addressing wrongdoing through use of divinely-imbued food and drink? It is our job to try to answer this question by using what clues we have to track African “Movement and Memory.”²²¹ Many scholars, “guilty of underestimating the perseverance of African culture even among second, third, and fourth generation creoles,” might doubt such a project.²²²

As John Henrik Clarke explained, “the Black Race did not come to the United States culturally empty-handed.”²²³ The “African” in “African American” is not a mere phonetic cadence. It is a reference to a place and its peoples, deep history, and longstanding cultures. Africans—enslaved, colonized, or otherwise oppressed—were not and are not hollow shells waiting to be filled by Western culture. Many may have trouble understanding this, especially as we tend to look at the historical record as a complete representation of reality. It is not. When we study the lives of African people during enslavement, we must take note of the simple and obvious fact that Africans existing in the hostile environment of the Western Hemisphere during this era actively hid things from Europeans.²²⁴

This contributes to what I call the “Evidence Problem,” the written information gap presented by a Social Structure in which

219. See Brookman-Amisshah, *supra* note 170, at 78.

220. Knight, *supra* note 144, at 195–96 (quoting Charles Ball’s autobiography).

221. Carr, *supra* note 3, at 16 (outlining “Movement and Memory” as a conceptual category of the Africana Studies framework) (“This category asks the question, ‘how did Africans during the period being studied preserve memories of where they had been and what they had experienced, and how did they pass these memories to future generations?’”).

222. RUCKER, *supra* note 18, at 5.

223. Clarke, *supra* note 116, at 218.

224. See, e.g., STUCKEY, *supra* note 160, at 87 (“In America . . . much of African culture was hidden from whites . . .”).

Europeans controlled written knowledge and history production to a stifling degree. This phenomenon existed not only because of Europeans' control of information; African people were also controlling the flow of information.²²⁵ To survive—as a matter of life, death, and peace—our ancestors feigned ignorance, lied, and concealed.²²⁶ The Evidence Problem also arises from the Western preoccupation with written modes of production, which enshrines written sources as a requirement for legitimacy and truth, and conflicts with the primarily oral cultures of many African peoples.²²⁷ The phrase “Evidence Problem” is meant to both problematize that Western fixation and describe its result.

The Evidence Problem was a solution for enslaved Africans, yet it exists as a problem for us (investigators, scholars, learners) today, a problem not of a permanent or dismaying sort, but a challenge to be met and solved. Crafting our solution will involve awareness of the underlying cause and dynamics of the Evidence Problem. Scholars of Africana should avoid the trap of thinking that simply because there is scant or no written evidence of a thing, the thing did not exist. In such a situation, we must use common sense and an African-centered approach to understand the context and make necessary inferences.

Our initial recognition is the most obvious one: African people who found themselves in the Western Hemisphere during the eighteenth century were human beings. Humans remember things. Humans communicate with one another in the languages they know.²²⁸ Humans tell stories. Humans talk to their children.

Based on these threshold recognitions, we can confidently infer that Africans in the Western Hemisphere, including in eighteenth century Maryland, knew and remembered their

225. See, e.g., LEVINE, *supra* note 14, at 145 (quoting Charles Colcock Jones in 1842) (“[Of African people:] They are one thing before the whites, and another before their own color.”); STUCKEY, *supra* note 160, at 84 (“The clearest indictments of slavery and the deepest expressions of sorrow must have been spoken in the native tongues and sung as well, but they are unrecorded.”).

226. See, e.g., LEVINE, *supra* note 14, at 145 (quoting an anonymous formerly enslaved person) (“The white folks made us lie . . . We had to lie to live.”).

227. See GREEN, *supra* note 15, at xvii (“To the Western historical mindset, drawing on oral histories . . . is an anti-historical endeavor. But in West Africa, history is an oral genre, held and recounted by professional historians known as praisesingers, or griots, whose patrons ask them to sing important histories at key public events and commemorations.”).

228. Enslaved African people had their own languages. This is illustrated in a Maryland runaway slave advertisement from 1759, which notes that an African woman who escaped “talks in her own Language very fast . . .” WINDLEY, *supra* note 20, at 35 (MD. GAZETTE, Dec. 6, 1759). Of course, enslaved Africans would have used their first languages to communicate.

Protocol.²²⁹ And they were able to talk to each other about it.²³⁰ Their communal and intergenerational communication carried cultural memory, enabling continued cultural practice.²³¹

And in Maryland, the site of our investigation, waves of African-born people arrived well into the nineteenth century, with each new wave carrying African memory.²³² While enslavers in Maryland imposed endless constraints on enslaved Africans, there was still time and space for Protocol and other aspects of African culture to continue on their properties. Enslaved Africans in Maryland had time outside of laboring, and during this time, they talked to one another.²³³

On Sundays, holidays, and bad-weather days, enslaved Africans used the time they had for their own activities.²³⁴ These occasions provided time for storytelling, conversation, and, in turn, cultural transmission and continuity.²³⁵ In fact, Maryland passed a law in 1723 prohibiting anyone from working, or requiring enslaved people to work, on “the Lord’s day.”²³⁶ James V. Deane, a man formerly enslaved in Maryland, explained: “On Sunday we fed the stock, after which we did what we wanted.”²³⁷ Evenings were also an opportunity to use time. Formerly enslaved Charles Coles explained his personal experience in Maryland in the 1850s and 60s: “They required the farm hands to work from 7 a.m. to 6:00 p.m.; after that their time was their own.”²³⁸ Also enslaved in Maryland,

229. See Berry, *supra* note 27, at 22 (“People from [Europe, West Africa, and West Central Africa] brought their ideas with them into the western Atlantic and adapted them to new circumstances . . .”).

230. See GOMEZ, *supra* note 15, at 13, 26–27 (referencing “interplantational relations” and ethnic clusters).

231. See, e.g., LEVINE, *supra* note 14, at 104 (detailing intergenerational transmission of culture, including the example of “Big Lucy,” who one Louisiana enslaver complained “corrupt[ed] every young negro in her power”).

232. See Douglass, *My Bondage and My Freedom*, *supra* note 23, at 168 (“There is not, probably, in the whole south, a plantation where the English language is more imperfectly spoken than on Col. Lloyd’s [Maryland plantation]. It is a mixture of Guinea and everything else you please. *At the time of which I am now writing, there were slaves there who had been brought from the coast of Africa.*”) (emphasis added); see also Porter, *supra* note 4, at 268.

233. See, e.g., Douglass, *My Bondage and My Freedom*, *supra* note 23, at 188.

234. See LEVINE, *supra* note 14, at 107; BRACKETT, *supra* note 16, at 104; Charles Coles, in RAWICK, *supra* note 20, Maryland Narratives at 5 (“I do not remember whether the slaves worked or not on Saturdays, but I know the holidays were their own.”); Dennis Simms, in RAWICK, *supra* note 20, Maryland Narratives at 60.

235. See LEVINE, *supra* note 14, at 107.

236. BRACKETT, *supra* note 16, at 108.

237. James V. Deane, in RAWICK, *supra* note 20, Maryland Narratives at 7.

238. Charles Coles, in RAWICK, *supra* note 20, Maryland Narratives at 4; see also

Richard Macks remembered specifically that “[a]t nights the slaves would go from one cabin to the other, talk, dance or play the fiddle or sing.”²³⁹ The time and space of the enslavement landscape also enabled family members (especially fathers) to use nights and Sundays to visit kin who lived on other properties.²⁴⁰

For some, restrictions made it more difficult to create and maintain space to gather and communicate. Dennis Simms explained that on the Contee plantation in Maryland, “we were never allowed to congregate after work . . . we were very unhappy.”²⁴¹ Nevertheless, Simms continued, “[s]ometimes we would, unbeknown to our master, assemble in a cabin and sing songs and spirituals.”²⁴² Mr. Simms and his community were not alone in gathering this way; over a century before them, other enslaved African people gathered and met in large groups to the extent that, in 1723, the Maryland General Assembly got involved in trying to prevent such meetings.²⁴³ By statute, constables were appointed to stop these gatherings, and any person who encouraged large meetings of enslaved Africans on their own property could be liable for a fine of 1,000 pounds of tobacco (later \$20).²⁴⁴ Colonial legislators made note of what they perceived to be the problem on the ground: “tumultuous Meetings & Cabaling of Negroes,” or, from an African-centered perspective, gatherings in which Africans participated in their Ways of Knowing.²⁴⁵

Several years later, in 1729, legislators again attempted to counter the persistence of African Ways of Knowing by amending the punishment imposed for African crimes from conventional

Rev. Silas Jackson, in RAWICK, *supra* note 20, Maryland Narratives at 32 (“When work was done the slaves retired to their cabins, some played games, others cooked or rested or did what they wanted.”).

239. Richard Macks, in RAWICK, *supra* note 20, Maryland Narratives at 56.

240. Allan Kulikoff, *The Beginnings of the Afro-American Family in Maryland*, in LAW, SOCIETY, AND POLITICS IN EARLY MARYLAND 189 (Aubrey C. Land et al. eds., 1974) (“Fathers had regular visiting nights.”).

241. Dennis Simms, in RAWICK, *supra* note 20, Maryland Narratives at 61.

242. *Id.* In nearby Virginia, Georgina Giwbs explained, “[s]ometimes de men slaves would put logs in de beds, and dey’d cover ‘em up, den dey go out. Mastah would see de logs and think dey wuz de slaves.” Georgina Giwbs, in RAWICK, *supra* note 20, Virginia Narratives at 16; see also Elizabeth Sparks, in RAWICK, *supra* note 20, Virginia Narratives at 53 (“Nigguhs used to go way off in quarters an’ slip an’ have meetins. They called it stealin’ the meetin’.”).

243. BRACKETT, *supra* note 16, at 100, 104.

244. *Id.* at 100–01.

245. *Proceedings of the Council of Maryland, 1753-1761*, ARCHIVES OF MD. 81 (Oct. 21, 1755),

<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000031/html/am31--423.html> [<https://perma.cc/W26C-F3QS>].

execution to maiming and torturing.²⁴⁶ Why? From the European perspective, and the Legal perspective, more earthly brutality was required, as Africans had “no sense of shame or apprehension of future rewards or punishments.”²⁴⁷ This is a statement about African Ways of Knowing regarding what happens after death; Europeans recognized that African people in the colony possessed beliefs distinct from their own religion and Christian-infused morality. Ironically, such racist and condescending statements serve as express acknowledgment of the cultural continuity of African Ways of Knowing in Maryland.

Despite these Legal measures, as Mr. Simms’ story illustrates, African people, enslaved and “free,” continued to gather.²⁴⁸ Their “interplantational relations” throughout the colonies and states show that they were not isolated, as many imagine them to have been.²⁴⁹ Despite *Maafa* conditions, they built and retained their community and continued practicing their Ways of Knowing.²⁵⁰ Such a situation would have facilitated the continuation of Protocol.

A. Following the Trail: Akan Protocol Continuity in Maryland

Our practices are an indication that our ancestors brought Akan culture and traditions with them and indeed preserved those traditions as best they could in such a hostile environment. It could not be taken away from them nor us.

– Nana Akua Kyerewaa Opokuwaa, *Akan Protocol: Remembering the Traditions of Our Ancestors*²⁵¹

Generally, the cultural continuity of African people in the Western Hemisphere has been well-documented, and scholars have done the additional work to link the Africans taken from the Gold

246. See BRACKETT, *supra* note 16, at 120; An Act for the More Effectual Punishing of Negroes and Other Slaves; and for Taking Away the Benefit of Clergy from Certain Offenders, LAWS OF MD., Aug. 8, 1729 (“[T]he manner of executing offenders, prescribed by the laws of England, is not sufficient to deter from such offences a people who consider only the severity of a punishment . . .”).

247. BRACKETT, *supra* note 16, at 120; An Act for the More Effectual Punishing of Negroes and Other Slaves; and for Taking Away the Benefit of Clergy from Certain Offenders, LAWS OF MD., Aug. 8, 1729.

248. BRACKETT, *supra* note 16, at 199, 203. Indeed, one particularly large meeting was documented in 1860. *Id.* at 203.

249. GOMEZ, *supra* note 15, at 26.

250. Kulikoff, *supra* note 240, at 189–90 (“Slave society was characterized by hundreds of interconnected and interlocking kinship and friendship networks that stretched from plantation to plantation and from county to county.”).

251. OPOKUWAA, *supra* note 146, at 18.

Coast to the Hemisphere.²⁵² Gwendolyn Midlo Hall explained that “[c]lustering of Africans shipped to the Americas from the Gold Coast is very clear.”²⁵³ Africans from the Gold Coast were a “consistent” and “constant presence” in British North America over the duration of the British trade in African people.²⁵⁴ And most captives from the Gold Coast arrived in the colonies during the 1700s.²⁵⁵ Many were bound for Jamaica, which had a “marked concentration of Gold Coast Africans,” and from there were “reexported” to the mainland colonies in a common phenomenon known as “transshipment.”²⁵⁶

Gold Coast captives, who were mostly Akan speakers, were known as “Coromantee,” “Kromantine,” or other variations, and

252. See Knight, *supra* note 144, at 192; see also GOMEZ, *supra* note 15, at 105 (“The sources are in agreement that captives coming out of the Gold Coast were, for the most part, Akan-speaking.”). For example, Knight explains cultural continuity in a “free” Black settlement in Plymouth, Massachusetts:

[T]he archaeologist James Deetz points to the clustering of the twelve-foot by twelve-foot houses without chimneys owned by Quaminy and the other free blacks in the community. This architectural and settlement pattern differs from the Anglo-American pattern, which was a more dispersed settlement of houses with chimneys and measured sixteen-foot by sixteen-foot.

Knight, *supra* note 144, at 192. Knight also explains that the members of the settlement decorated their ancestors’ graves with broken glass and pottery, “quite possibly from a Gold Coast practice,” or a practice from elsewhere in Africa. *Id.* at 193.

253. HALL, *supra* note 142, at 110; see also Knight, *supra* note 144, at 184–85 (explaining that there were ethnic clusters of Gold Coast Africans, with “higher concentrations in some regions than others”) (emphasis in original).

254. GOMEZ, *supra* note 15, at 31, 33–34. The Akan presence in North America was “influential.” *Id.* at 105.

255. Knight, *supra* note 144, at 184 (“The majority of the people from the Gold Coast who were enslaved in North America entered during the eighteenth century.”); see RUCKER, *supra* note 18, at 31 (“[T]he English managed to export approximately 320 slaves per month from the Gold Coast between 1690 and 1730.”); HALL, *supra* note 142, at 122. (“After 1650, Africans from the Gold Coast were most likely to be found primarily in British America, where they were widely recorded as Coromanti.”). At least 665,000 Africans from the Gold Coast were exported during the Atlantic trade, most being war captives. GOMEZ, *supra* note 15, at 106. The wars happening on the continent were driven by a desire to meet European demand for captives. *Id.*

256. RUCKER, *supra* note 18, at 32 (“During the eighteenth century, mainland colonies like South Carolina, Rhode Island, Virginia, Maryland, and New York received cargoes from Jamaica”); Knight, *supra* note 144, at 186. See also GOMEZ, *supra* note 15, at 106 (“Jamaica in particular developed a strong preference for the Gold Coast”). In fact, Gold Coast Africans, or Akan speakers, were the strongest numerical representation of Africans in Jamaica, where enslavers believed Akan speakers were physically stronger than others. *Id.* at 107. Relatedly, the term “Obeah” was used to reference “African ritual practices” or Ways of Knowing in the British Caribbean, an acknowledgement of the cultural continuity of Africans in that part of the hemisphere. Berry, *supra* note 27, at 95.

they were favored by enslavers in the Western Hemisphere, who associated them with “physical strength and a capacity to work.”²⁵⁷ However, European enslavers also considered the Akan to be particularly resistant: “The perception of Akan rebelliousness was ubiquitous in eighteenth-century commentary.”²⁵⁸ This had some foundation in reality, as “many people who became Coromantees in the Americas had been soldiers with training in the arts of war.”²⁵⁹

Meanwhile, Maryland was one of the five core colonies with the most significant populations of enslaved Africans in British North America.²⁶⁰ The general African presence in the colony was strong during the eighteenth century; Whitman notes that “by the 1720s, a substantial majority of blacks in the Chesapeake were African-born,” and “[b]y the eve of the American Revolution perhaps no more than one-fifth of American slaves had begun life in Africa.”²⁶¹

257. GOMEZ, *supra* note 15, at 105–07; *see also* HALL, *supra* note 142, at 122, 134; RUCKER, *supra* note 18, at 29–30, 32; Knight, *supra* note 144, at 184. The term “Coromantee” is a reference to “two Fante-speaking towns, Upper and Lower Kormantse, and a nearby trading factory in Atlantic Africa’s Gold Coast—a region coterminous with modern-day Ghana.” RUCKER, *supra* note 143, at 2.

258. Rucker, *supra* note 18, at 34–35 (“In particular, Akan-speakers from the Gold Coast were perceived to be the most recalcitrant group in the British Caribbean and were likely a sizable portion of the ‘Refuse’ and ‘Malefactors’ sold to New York on the eve of the 1712 revolt . . . [T]he Akan were viewed as prone to shipboard revolts.”).

259. RUCKER, *supra* note 143, at 5.

260. GOMEZ, *supra* note 15, at 24.

261. WHITMAN, *supra* note 25, at 12–13.

There was a specifically Akan presence and influence in Maryland.²⁶² Michael Gomez explains that “[t]here were . . . relatively substantial numbers of Akan speakers in . . . Maryland, as those from the Gold Coast were universally acclaimed and sought.”²⁶³ This is reflected in newspaper advertisements like the following from the *Maryland Gazette* in 1762:

ATTENDANCE will be given at *Annapolis*, on Tuesday next, the 24th of *August*, by some of the Subscribers, for the Sale of the NEGROES from the *Gold-Coast*, imported in the Snow *Favourite Polly*, consigned to Col. *Taylor*, Col. *Thornton*, Mr. *Ritchie*, and Us,

IGNATIUS DIGGES,
JOHN BRICE,
DAVID ROSS.

They are very Fine Healthy SLAVES.

JUST IMPORTED,
In the Snow Favourite Polly, Captain *Thomas Campbell*, from the GOLD-COAST,

A CHOICE Parcel of SLAVES, consisting of Men, Women, Boys, and Girls, to be Sold by the Subscribers at *Emerjan's Warehouse*, on *Wye River*, for ready Bills of Exchange, or Current Money.

The Sale to begin on Wednesday next, the 25th Instant, and continue until they are all sold.

ROBERT CAMPBELL,
CLEMENT SEWELL,
JAMES M'LACHLAN.

August 19, 1762.
X 1762/9

Source: MD. GAZETTE, Aug. 19, 1762, at 2

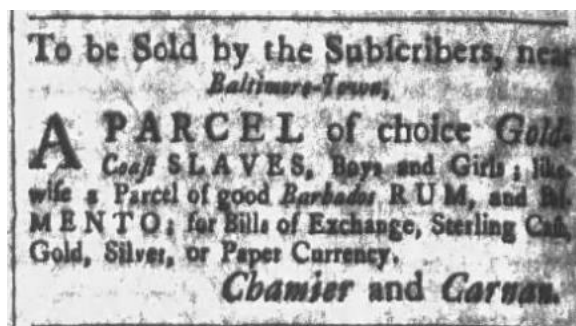
Attendance will be given at Annapolis on Tuesday next, the 24th of August, by some of the Subscribers, for the Sale of the Negroes from *the Gold-Coast* . . . They are very Fine Healthy Slaves . . . from the Gold-Coast, a Choice Parcel of slaves, consisting of Men, Women, Boys, and Girls, to be Sold by the Subscribers at Emerson's Warehouse on Wye River, for ready Bills of Exchange, or Current Money.²⁶⁴

262. See GOMEZ, *supra* note 15, at 107, 113; see also MORGAN, *supra* note 25, at 587 (“[A]n Asante drum made from African woods and decorated with carvings apparently accompanied an African to Virginia.”).

263. GOMEZ, *supra* note 15, at 150. But see HALL, *supra* note 142, at 111 (“[A] surprisingly small percentage of Atlantic slave trade voyages arrived in South Carolina and Virginia from the Gold Coast.”) (noting twenty-five voyages to Virginia).

264. MD. GAZETTE, Aug. 19, 1762, at 2, <https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001280/html/m1280-0802.html> [<https://perma.cc/H6YZ-HBPW>] (emphasis added).

About 1,500 Gold Coast Africans landed in the colony, meaning 23% of the African community in eighteenth century Maryland was from the Gold Coast and likely Akan speaking.²⁶⁵ And these are conservative numbers, as they do not account for transshipment from the Caribbean.²⁶⁶ The following 1755 *Maryland Gazette* advertisement hints at transshipment, placing enslaved Africans with Caribbean liquor: “To be Sold by the Subscribers, near Baltimore-Town, A Parcel of choice Gold-Coast Slaves, Boys and Girls; likewise a parcel of good Barbados Rum”²⁶⁷



SOURCE: MD. GAZETTE, Jan. 23, 1755, at 4.

The trail of Akan cultural continuity in Maryland is also illuminated by the presence of personal names from the Akan naming system. Akan Ways of Knowing include the belief that living human beings have three components: (1) *mogya* (blood) or the physical aspect of a person, inherited from the mother; (2) *ntoro* (spirit) or the personality, inherited from the father; and (3) *kra* (soul), of which there are seven types, depending on one’s day of birth.²⁶⁸ From this flows a naming system: “Akan children receive a first name determined by the actual day of their birth. On reaching adulthood, the original day-name is typically used in conjunction with familial names, and its continued use creates a sense of camaraderie, which often transcends gender lines, among those born on the same day.”²⁶⁹

265. Knight, *supra* note 144, at 184–85.

266. *Id.* at 186.

267. MD. GAZETTE, Jan. 23, 1755, at 4,

<https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001279/html/m1279-0632.html> [<https://perma.cc/8B2F-AQUG>].

268. GOMEZ, *supra* note 15, at 111.

269. RUCKER, *supra* note 18, at 38.

In many instances, Africans retained their African names in the Western Hemisphere.²⁷⁰ In Maryland, eighteenth century advertisements in search of escaped Africans reference names like “Cuffy” and “Cuffee.”²⁷¹ In fact, one such “Negro Coffee the Slave” was convicted of murder in Maryland in April 1762.²⁷² The names of these Africans suggest they were Akan speakers or from the Gold Coast region.²⁷³ These names were probably what we would write today as “Kofi” or “Kwefi,” the Akan day-name to reference males born on *Efi-da* or *Fiada* (Friday).²⁷⁴

If Akan speakers were present in eighteenth century Maryland, they probably would have remembered their culture, including their Ways of Knowing, their Protocol, and its practices, such as *ntam* and *duabɔ*. For example, we know that enslaved Africans across the hemisphere were imbibing a mixture of graveyard dirt and blood to bind themselves to resistance efforts against the Europeans.²⁷⁵ Walter C. Rucker has explored this extensively.²⁷⁶ According to Rucker, the promise-drink was “ubiquitous” in revolts in the Western Hemisphere involving Akan speakers, and the ingredients of graveyard dirt and blood held symbolic significance: “Graveyard dirt linked the conspirators to

270. See Knight, *supra* note 144, at 195 (“While African naming practices generally died out by the end of the eighteenth century, some were still known by African names well into the nineteenth century.”). However, aliases and name changes were often used by enslaved Africans, for various purposes, including as a means to escape detection. See, e.g., WINDLEY, *supra* note 20, at 11–12 (MD. GAZETTE, Oct. 4, 1749) (showing advertisement by Thomas Stockett); see *id.* at 15 (MD. GAZETTE, Aug. 14, 1751) (“She at times dresses in Men’s Cloaths, and changes her own and Master’s Name, when it suits her; and at other Times pretends to be Free.”); see *id.* at 24 (MD. GAZETTE, June. 26, 1755) (“[A] Negroe Slave named Exeter, (but has given himself the Name of Edward Smith, and says he is a Freeman)”).

271. WINDLEY, *supra* note 20, at 4–5 (MD. GAZETTE, June 9, 1747) (referencing a man named “Cuffy” who was “much scarified on his Forehead, and has Holes in all his teeth”); *id.* at 15 (MD. GAZETTE, Oct. 23, 1751) (mentioning “A Man, named Cuffee”); *id.* at 66 (MD. GAZETTE, Sept. 18, 1766) (referencing “a Negro Man named Cuffee”).

272. JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO, *supra* note 21, at 43. In 1750, one colony over, in Caroline County, Virginia, “Cuffy Coleman” was hanged after being convicted of poisoning. DEETZ, *supra* note 61, at 94.

273. RUCKER, *supra* note 143, at 134–35. It should be noted that “Cuffee” became a “more general referent” in eighteenth and nineteenth century North America. *Id.*

274. See *id.* at 84; see also ASANTE TWI: DICTIONARY AND PHRASEBOOK 258 (2015).

275. See RUCKER, *supra* note 18, at 41.

276. See, e.g., RUCKER, *supra* note 143, at 179–86 (outlining specific evidence of continuation of Gold Coast oath-taking traditions into the Western Hemisphere).

ancestral spirits, creating an inviolable oath,” and “blood represented the forged bond between the living.”²⁷⁷

Interestingly, the presence of the Akan promise—*ntam*—in the Hemisphere goes hand-in-hand with the reputation the Akan had among Europeans for being uniquely resistant to enslavement.²⁷⁸ Relatedly, among Europeans, the Akan speakers had a reputation for deliberately taking their own lives.²⁷⁹ This also makes sense, as *ntam* suggests a promise-maker’s willingness to die for their cause.²⁸⁰ Important context for analyzing this act is the Akan speakers’ belief in death as a transition or continuation, not an end.²⁸¹

Based on the evidence, we know that the Akan cultural tradition of asking ancestral spirits to impose consequences on the living (for broken promises, and perhaps, for other reasons) did not disappear.²⁸² If *ntam* and other Akan cultural practices appeared in New York and in Jamaica, they probably made it to Maryland.²⁸³ While *ntam* and *duabɔ* were originally promises and curses for use within the African setting, in the continued and adapted Protocol of the Western Hemisphere, the acts of cursing and the skill of preparing divinely-imbued food and drink were likely applied to harm enslavers.

Enslaved Africans had to develop mechanisms by which they could address problems arising in the quarters, or were otherwise unique to their lives and separate from their relations with the slaveholder. In order to adjudicate cases and resolve disputes, they

277. RUCKER, *supra* note 18, at 43–46. Ritual use of graveyard dirt by Africans in the Western Hemisphere endured up to the time of emancipation. For example, Page Harris, a formerly enslaved woman in Maryland, recounted another practice involving graveyard dirt: “It was always said that slaves, when they ran away, would try to go through a graveyard and if he or she could get dirt from the grave of some one that had been recently buried, sprinkle it behind them, the dogs could not follow the fleeing slave, and would howl and return home.” Page Harris, *in* RAWICK, *supra* note 20, Maryland Narratives at 24.

278. RUCKER, *supra* note 18, at 34, 45.

279. MORGAN, *supra* note 25, at 641 (“Some Africans, particularly ‘Keromantees’ [Gold Coast Africans], he [a Delaware missionary] continued, committed suicide calmly and deliberately as a result of their faith.”).

280. It is evocative of another time in Africana, when Fisk University students signed their last wills and testaments before traveling to Alabama for the Freedom Rides in 1961. See PBS, “Who the Hell Is Diane Nash?” *From Freedom Riders*, YOUTUBE (Sept. 23, 2016), <https://www.youtube.com/watch?v=GiffL6KplzQ> [<https://perma.cc/EQ9Y-JKUF>].

281. See MBITI, *supra* note 173, at 152.

282. RUCKER, *supra* note 143, at 196.

283. See RUCKER, *supra* note 18, at 41 (detailing the presence of the oath in Jamaica); *id.* at 27–29, 35–38 (explaining the Akan cultural connections to a 1712 revolt in New York City).

would have necessarily drawn from the wealth of their experiences in Africa.²⁸⁴

B. Conspiracy: The Skilled Community Behind the Poisonings

We may have a conspiracy on our hands.

As is evident from the litany of incidents giving rise to our investigation, poisoning was often a collective endeavor.²⁸⁵ The Maryland records show the often communal nature of this act, as when enslaved Africans Pompey and Indey worked together to poison their enslaver's overseer, clerk, and gardener;²⁸⁶ and Anthony and Jenny "conspir[ed]" to poison their enslaver;²⁸⁷ and Harry and Cork worked together to attempt to poison a man;²⁸⁸ and Bett Pone and Buckinfield, held by two different enslavers, attempted on separate occasions to poison the same overseer;²⁸⁹ and Samuel, Abigail, and Rachel worked together to try to poison "Mrs. Smith";²⁹⁰ and Toe, Sambo, and Betty (in the same county as Samuel, Abigail, and Rachel) later collectively attempted to poison a "Mr. Smith and his wife."²⁹¹ Across Maryland, African people were *working together* to poison. It is a hint at the notion of—and persistence of—African community in the enslavement landscape.

For these conspiracies to work, participants with knowledge of both herbs and ancestral connection were required—people who knew African Ways of Knowing, understood the power of plant life, and had facility interacting with the ancestral and spiritual forces with which concoctions must be imbued. These certain members of

284. GOMEZ, *supra* note 15, at 152.

285. See DEETZ, *supra* note 61, at 96.

286. *Proceedings of the Council of Maryland, 1738/9*, ARCHIVES OF MD. 161, *supra* note 29.

287. *Proceedings of the Council of Maryland, 1753–1761*, ARCHIVES OF MD. 56–57, *supra* note 31; MD. GAZETTE, Jul. 10, 1755, *supra* note 32.

288. *Proceedings of the Council of Maryland, 1753–1761*, ARCHIVES OF MD. 79, *supra* note 33.

289. *Talbot County Court, Criminal Record, 1755–1761*, ARCHIVES OF MD., *supra* note 36; *Proceedings of the Council of Maryland, 1753–1761*, ARCHIVES OF MD. 423, *supra* note 39.

290. *Proceedings of the Council of Maryland, 1761–1769*, ARCHIVES OF MD. 16, *supra* note 42.

291. See JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO, *supra* note 21, at 34 (28 Md. Arch. 161, March 1739); *id.* at 39 (31 Md. Arch. 69, June 1755); *id.* at 42 (32 Md. Arch. 17, Oct. 1761); *Proceedings of the Council of Maryland, 1761–1769*, ARCHIVES OF MD. 91.

<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000032/html/am32--91.html> [<https://perma.cc/P3KU-5MJ2>] (referencing the attempted poisoning by Toe, Sambo, and Betty).

the African community possessed the traditional knowledge and exacting skill to employ substances in a way that would deliver sickness and death.²⁹² These people were known as “conjurers.”²⁹³ And their work is known by many names: conjure, root work, or Hoodoo, which Katrina Hazzard-Donald defines as “the indigenous, herbal, healing, and supernatural-controlling spiritual folk tradition of the African American in the United States.”²⁹⁴

It is said that there was a conjurer on each sizeable enslaving estate.²⁹⁵ Abolitionist William Wells Brown (c. 1814–1884) explained, “Nearly every large plantation . . . had at least one, who claimed to be a fortune-teller, and who was regarded with more than common respect by his fellow-slaves.”²⁹⁶ Most enslaved Africans in North America felt the influence of a conjurer in their lives.²⁹⁷ Conjurers possessed knowledge from the African continent that was carried over with African people to the Western Hemisphere.²⁹⁸ And this persisting knowledge included the skills for formulating and using the righteous weapon of poison—or, put another way, carrying out the Protocol of invoking divine response to wrongdoing.²⁹⁹

An obvious point that still must be stated is that African people had their own deep experience in the area of Science and Technology vis-à-vis what Westerners might characterize as the

292. CHIREAU, *supra* note 27, at 72 (“It was frequently reported that native African slaves carried Old World knowledge of herbs, roots, and other preparations necessary for creating toxic substances with them to the New World.”).

293. See COVEY, *supra* note 54, at 17.

294. HAZZARD-DONALD, *supra* note 209, at 4 (This system is also referenced pejoratively as “black magic, witchcraft, . . . [and] superstition.”).

295. See Walter C. Rucker, *Conjure, Magic, and Power: The Influence of Afro-Atlantic Religious Practices on Slave Resistance and Rebellion*, 32 J. BLACK STUD. 84, 94 (2001).

296. *Id.* (quoting William Wells Brown).

297. *Id.* (“[T]here is ample proof that conjurers were an ever-present factor in the lives of the majority of North American slaves.”).

298. See COVEY, *supra* note 54, at 76–77.

299. CHIREAU, *supra* note 27, at 73 (“Utilized in Africa as a lethal weapon, poisoning techniques survived among blacks in the diaspora.”); see also Olaudah Equiano, *The Interesting Narrative of the Life of Olaudah Equiano, or Gustavus Vassa, the African*, in I WAS BORN A SLAVE: AN ANTHOLOGY OF CLASSIC SLAVE NARRATIVES 49 (Yuval Taylor ed., 1999); GENOVESE, *supra* note 25, at 616 (“Long before Africans fell prey to the slave trade they had mastered the art of poisoning as a means of dealing with enemies.”); HURSTON, *supra* note 23, at 26 (providing the narrator, Kossula’s, account that “wicked” men in Africa made poison from the whiskers of a leopard, so the leader of his people would confiscate leopard whiskers to prevent people from getting killed). For example, in 1445, the Portuguese got a firsthand taste of the poison expertise of Africans when Portuguese enslaver Nuno Tristão and twenty-one of his compatriots were killed on the West African coast by the poisonous arrows and darts of African fighters. FRENCH, *supra* note 12, at 72.

natural world.³⁰⁰ This experience made them highly skilled in interactions with herbs, plants, and other natural substances.³⁰¹ As to the Akan, specifically, spiritual leaders in Akan-speaking society in the Gold Coast region were experts in the use of herbal remedies.³⁰² Of traditional Gold Coast society, Casely Hayford clarified that “the actual working of the [spiritual] system is in the hands of the Priests, who combine with their office the cure of disease.”³⁰³ These spiritual leaders employed *aduru*—medicine in the form of liquid or powder—such as herbal concoctions capable of inducing deep sleep.³⁰⁴ They also used *suman* (divine objects, that is, charms and amulets) when doing their work.³⁰⁵

Enslaved Africans in Maryland had access to herbs and roots and often kept gardens.³⁰⁶ Formerly enslaved James Deane explained, “[Y]es, some slaves had small garden patches which they worked by moonlight.”³⁰⁷ He went on: “The slaves had herbs of their

300. See RUCKER, *supra* note 18, at 81 (explaining that enslaved Africans had knowledge of poisons from their scientific experiences in West Africa); *see also* Carr, *supra* note 3, at 16 (defining the “Science and Technology” section of the Africana Studies framework as “ideas about how nature works . . . and devices . . . create[d] to shape the[] natural, animal, and human environment[]”). They were experienced with forests and the skill of forest clearing. *See, e.g.*, Knight, *supra* note 144, at 186 (“Furthermore, the era of the slave trade to the Americas also coincided with the Asante project of forest clearing, work which British American colonial planters also depended upon their slaves to perform.”)

301. *See, e.g.*, HALL, *supra* note 142, at 61 (referencing the Bissagos’ use of poisoned arrows against the Portuguese in Upper Guinea); *id.* at 67 (emphasizing the domestication of rice in the greater Senegambia, Upper Guinea, and Madagascar). *See generally* COVEY, *supra* note 54.

302. CASELY HAYFORD, *supra* note 146, at 106–07.

303. *Id.* at 106.

304. RUCKER, *supra* note 18, at 43; *see also* Rucker, *supra* note 295, at 89. The Akan have a traditional story, in which a spiritual leader’s son brought a drink to his father to put him into a deep sleep. Thinking he was dead, the attendants killed the son as punishment. Then, the priest woke up, saw his son’s severed head, and died—blaming those who hastily killed his son. This cautionary tale about hasty judgement also indicates the Akan community’s use of concoctions to bring about profound physical reactions. *See* Mensah Sarbah, *Akan Religion*, in AFRICAN INTELLECTUAL HERITAGE, *supra* note 116, at 107–08.

305. RUCKER, *supra* note 18, at 43; *see also* Rucker, *supra* note 295, at 89.

306. BRACKETT, *supra* note 16, at 104 (“Generally, the slave had at least a garden and chicken coop, from whose proceeds he got such luxuries as coffee and tobacco.”). For example, Thomas Foote, a formerly enslaved man in Maryland, explained that his mother, Eliza Foote, was a healer who helped another enslaved African recover from an ailment: “When this slave was searched, he had in his possession a small bag in which a stone of a peculiar shape and several roots were found. He said that mother had given it to him, and it had the power over all with whom it came in contact.” Thomas Foote, in RAWICK, *supra* note 20, Maryland Narratives at 14–15. Eliza Foote was “accused of Voodooism by the whites of Cockeysville[, Maryland].” *Id.*

307. James V. Deane, in RAWICK, *supra* note 20, Maryland Narratives at 7.

own, and made their own salves.”³⁰⁸ Menellis Gassaway, also enslaved in Maryland, explained: “So far as being sick, we did not have any doctors . . . [T]he colored doctored themselves with herbs, teas and salves made by themselves.”³⁰⁹ These accounts demonstrate the cultural continuity of African Science and Technology.

But this expertise in plant science was not science as known in the West. According to Permeative Principle, it was part of African Ways of Knowing. There was divinity in it, just as was attested with respect to “medicine” in the Gold Coast region.³¹⁰ Historian Anthony Parent explained that “enslaved midwives and herbalists” possessed, in addition to their technical expertise, a distinct spiritual power, giving rise to anxiety among enslavers.³¹¹ Expertise in plant science went hand-in-hand with spiritual insight. This was the essence of a conjurer’s work.

Bearing all of this in mind, it was probably the conjurers who prepared the poisons used against Europeans in the Western Hemisphere.³¹² And conjurers were certainly in Maryland, even into the nineteenth century. Page Harris described a conjurer called “Old Pete the mechanic . . . known by some as the herb doctor and healer.”³¹³ He worked on a farm in La Plata, Maryland.³¹⁴ Harris explained that Old Pete “would not be punished on any condition”; that he saved money and gave it to enslaved people who wanted to escape; and that he ultimately escaped himself.³¹⁵ “He eluded the dogs for several weeks, escaped, got to Boston and no one to this day has any idea how he did it; but he did.”³¹⁶

Thomas Foote, formerly enslaved in Maryland, described his mother, Eliza, of Cockeysville, who was trained in Western medicine but also known to have given an escaped African man “a small bag in which a stone of a peculiar shape and several roots

308. *Id.* at 9.

309. Menellis Gassaway, in RAWICK, *supra* note 20, Maryland Narratives at 18.

310. CASELY HAYFORD, *supra* note 146, at 106.

311. ANTHONY S. PARENT, JR., FOUL MEANS: THE FORMATION OF A SLAVE SOCIETY IN VIRGINIA, 1660–1740, at 231 (2003).

312. CHIREAU, *supra* note 27, at 75, 69. “Within trial accounts, depositions, and court reports spanning the Chesapeake region and the lower South, Conjurers were regularly identified as responsible for creating and administering poisons.” *Id.* at 69.

313. Page Harris, in RAWICK, *supra* note 20, Maryland Narratives at 24.

314. *Id.*

315. *Id.*

316. *Id.*

were found.”³¹⁷ The escaped man claimed that the bag “had the power over all with whom it came in contact.”³¹⁸ European Americans, clearly recognizing the spiritual aspect of Eliza Foote’s practice, accused her of “voodooism.”³¹⁹

Frederick Douglass, also enslaved in Maryland, referenced an elder enslaved African man named Sandy Jenkins, who Douglass called “an old adviser” and who was married to a “free” African woman.³²⁰ Sandy directed Douglass to accompany him to find “a certain *root*” that Douglass would carry, “always on my right side.”³²¹ Sandy asserted that the root “would render it impossible for [the brutal overseer] Mr. Covey, or any other white man, to whip me.”³²² Douglass initially, “rejected the idea,” but at Sandy’s insistence, took the root and carried it on his right side.³²³ As it turns out, Covey and Douglass had an epic fight, lasting nearly two hours.³²⁴ Douglass noted that, during this fight, Covey did not whip him at all; in fact, “he had drawn no blood from me, but I had from him.”³²⁵ He went on to explain: “The whole six months afterwards, that I spent with Mr. Covey, he never laid the weight of his finger upon me in anger.”³²⁶ Douglass added that, over the next four years of remaining enslaved, “I had several fights, but was never whipped.”³²⁷

Douglass also tells the story of a man named “Uncle Isaac Copper” who was alternatively referred to as “Doctor Isaac Copper.” Tellingly, he describes Copper in the following way: “He was our doctor of medicine, and doctor of divinity as well He was too well established in his profession to permit questions as to his *native* skill, or his attainments.”³²⁸

Conjurers were not solely helping to heal or prevent harm. They also knew how to inflict harm. They had “knowledge of roots

317. *Thomas Foote’s Story, Dec. 16, 1937*, in vol. viii UNITED STATES WORK PROJECTS ADMINISTRATION, THE PROJECT GUTENBERG EBOOK OF SLAVE NARRATIVES, Maryland Narratives, at 11–12 (2004).

318. *Id.* at 12.

319. *Id.*

320. Douglass, *Narrative of the Life of Frederick Douglass*, *supra* note 23, at 63.

321. *Id.* (emphasis added).

322. *Id.*

323. *Id.*

324. Douglass, *Narrative of the Life of Frederick Douglass*, *supra* note 23, at 64–65.

325. *Id.*

326. *Id.* at 65.

327. *Id.*

328. Douglass, *My Bondage and My Freedom*, *supra* note 23, at 164–65 (emphasis added).

and herbs [that] gave them the simultaneous ability to cure the ailing and to poison wrongdoers.”³²⁹ Wielding such an arsenal of spiritual and chemical weaponry would have required meticulous skill, as the difference between healing and killing is often a matter of dosage: “It is really sometimes a very thin line between what is a medicine and what can be a murder weapon.”³³⁰ This dynamic substantiates a key guiding principle in our investigation: to find the poisoners, look at the healers.³³¹

Considering this evidence, there is certainly one party in our investigation who becomes a person of interest, and that is Anthony, who worked with Jenny to poison their enslaver, Jeremiah Chase, in 1755. Maryland newspaper records reference Anthony as “a Negro Doctor.”³³² “Negro Doctor” was another term for “conjurer.”³³³ He was also referenced as “Toney the Poison Doctor.”³³⁴ Toney, a healer and a poisoner. A conjurer.

Toney the conjurer and others like him in Maryland likely possessed intergenerational expertise in the Ways of Knowing related to the power of plants and the power of invoking ancestors and other divine entities to cause chemical control,³³⁵ sickness, and “swift or slow deaths” in response to the wrongdoing in their midst.³³⁶ What was known as poison to Whites was not only Protocol of addressing wrongdoing, but it was also a form of practicing

329. Rucker, *supra* note 295, at 98.

330. Reactions, *Raychelle Burks on Poisons, Medicine, and Communicating Science*, YOUTUBE (Apr. 28, 2014), <https://www.youtube.com/watch?v=kb-XDGcAuLM> (last visited Feb. 21, 2025); *see also* COVEY, *supra* note 54, at 79 (“What is true is that those who successfully worked with such toxic plants must have been well trained in herbal and plant cures because the line between poisoning a patient and curing them can be very fine.”); PARENT, *supra* note 311, at 232 (“[T]hey also assumed the capacity to poison as well as to heal.”). African expertise also probably included *healing the poisoned*, as a 1750 advertisement in the *Maryland Gazette* suggests: “Negro Caesar’s Cure for Poison, and the Bite of a Rattle Snake.” MD. GAZETTE, Dec. 19, 1750, at 3, <https://www.msa.maryland.gov/megafile/msa/speccol/sc4800/sc4872/001278/html/m1278-1304.html> [<https://perma.cc/Q8G2-VXMH>].

331. CHIREAU, *supra* note 27, at 69 (“Within trial accounts, depositions, and court reports spanning the Chesapeake region and the lower South, Conjurers were regularly identified as responsible for creating and administering poisons.”).

332. MD. GAZETTE, Jun. 26, 1755, *supra* note 34.

333. CHIREAU, *supra* note 27, at 69–70, 74.

334. MD. GAZETTE, July 10, 1755, *supra* note 32 (“On Friday last, William Stratton, Negro Toney the Poison Doctor, and Negro Jemmy [sic] were all executed . . . for poisoning the late Mr. Chase . . .”).

335. Interview with Raychelle Burks, *supra* note 50 (explaining “chemical control”).

336. MORGAN, *supra* note 25, at 618 (“Thomas Anburey heard from Virginians about the ‘remarkable’ abilities of slaves to cause swift or slow deaths ‘agreeable to their ideas of revenge.’”).

African Ways of Knowing.³³⁷ Poison was both harmful and “spiritually powerful.”³³⁸ Accordingly, African conjurers served a potent cocktail of functions: plant scientists, botanists, doctors, spiritual leaders, priests, healers, poisoners, executioners.³³⁹

VII. Motive: The Wrongs Being Addressed

Considering Akan Protocol practices together with cultural continuity and collective action in Maryland helps us step back to look at our proverbial investigation board and see the broad connections. If any of our poisonings involved Akan speakers, or were influenced by Akan speakers, or other Africans with similar Ways of Knowing and practices, our poisonings were likely grounded in (1) the idea that ritual can bring about someone’s bad death, or *owu bon*; (2) the notion that ancestors and other divine entities can be called upon to act as executioners, or *abrafo*; and (3) the expertise from the Continent in using natural and ingestible substances to cause sickness and death.³⁴⁰ Through an Africana lens, these are all aspects of Protocol. What is usually seen through a Western lens as merely the crime of poisoning, we have reframed as Protocol addressing wrongdoing.³⁴¹

I can feel us getting closer now to the key findings of our investigation. If poisoning was a practice included in the Protocol of addressing wrongdoing, this raises the question: What wrongs were enslaved Africans addressing?

A. *Enslavement and Legal Restrictions on Freedom*

Slaves know enough of the rudiments of theology to believe that those go to hell who die slaveholders.

– Frederick Douglass, 1855³⁴²

337. See Paton, *supra* note 27, at 235 (“Makandal [leader of uprising in Saint Domingue] inspired a network of Maroons and plantation slaves whose secret spiritual medicine, understood by slaveholders as poison, was used in religious ceremonies.”).

338. *Id.* at 235 (“[T]he ritual use of spiritually powerful substances to strengthen attacks on the plantocracy.”); *id.* at 248 (“Poison was relative: its effect was not a simple physiological matter but one intimately related to the spiritual world.”).

339. Interview with Raychelle Burks, *supra* note 50. The Akan speakers, in particular, were trained in social organizations like the *Nnoboa*, who helped tend to activities such as farming and removing weeds. Appiagyei-Atua, *supra* note 135, at 183–84.

340. See THE AKAN PEOPLE, *supra* note 143, at 17.

341. See CHIREAU, *supra* note 27, at 71 (“Poisoners were viewed by many African Americans as arbiters of justice and, certainly, revenge.”).

342. Douglass, *My Bondage and My Freedom*, *supra* note 23, at 163.

Africans poisoned their oppressors specifically in the context of enslavement. This collective action largely stopped when enslavement ended.³⁴³ When we consider poison as Protocol, therefore, the Protocol must have related to the wrongdoing of enslavement itself.³⁴⁴ As we have explored, some posit that enslaved Africans' resistance was merely self-defense and not a greater challenge to enslavement as a system.³⁴⁵ But why can't both be true? The acts could be self-defense *and* a principled way of addressing a larger wrong. This is easier to contemplate with an awareness of labor systems in Africa.

Enslavement in Maryland would have been offensive to the Akan—similar to how it would have been offensive to most enslaved Africans in the Western Hemisphere. As Nora Wittmann put it, “transatlantic slavery was not ‘slavery’ such as practised in some African societies, but indeed a crime against humanity and genocide.”³⁴⁶ Despite the Western insistence on characterizing the Akan and other African polities as enslavers of the same kind and on equal footing as European traders, this was not so: the European system of enslavement was materially distinct from the systems of labor and integration found in West Africa.

The Western-centered tendency to point to African labor systems as some sort of rebuttal to enslavement in the Western Hemisphere is no more than what critical anti-trafficking scholar Lyndsey Beutin characterizes as a “rhetorical alibi[] for white historical innocence.”³⁴⁷ Unfortunately for those relying upon it, the alibi doesn't hold up.

Indeed, the Akan labor system—like other neighboring systems—“was not, as in chattel slavery, an irreversible rejection from the society that employed it: on the contrary, it supposed an organic absorption of subjected persons into the society that used them.”³⁴⁸ Casely Hayford noted in 1903 that “ill-informed writers”

343. DEETZ, *supra* note 61, at 95 (“Post-emancipation records show a striking absence of poisoning convictions, suggesting that the crime was associated with resistance to enslavement.”).

344. One might argue that, after enslavement, access to the act of poisoning also ended, but this is not true. Blacks and whites remained in close proximity, as post-enslavement life for Blacks was still dominated by service roles to whites.

345. See MCKIVIGAN & HARROLD, *supra* note 22, at 4.

346. WITTMANN, *supra* note 139, at 35.

347. LYNDSEY P. BEUTIN, TRAFFICKING IN ANTIBLACKNESS: MODERN-DAY SLAVERY, WHITE INDEMNITY, AND RACIAL JUSTICE 3 (2023).

348. DAVIDSON, *supra* note 127, at 58. “The characterisation of a slave as *chattel* was however, not part of the Ghanaian slavery experience. In Ghana the slave was

characterize the Gold Coast as having a “slave-raiding propensity” with Hayford stating, “You may as well call the war of the North and the South of the United States, or the struggle in the British Isles to preserve the integrity of Great Britain, slave-raiding wars.”³⁴⁹ He went on to explain that the proper interpretive frame would conclude that the (Akan-speaking) Asante federation made efforts “by war or otherwise . . . to keep the Union together.”³⁵⁰

The Akan labor system maintained distinct reasons for relegating a person to dependent status: war captivity, punishment for wrongdoing, and failure to pay debt owed.³⁵¹ While the West had and still has its prison system, Akan society had this dependency system, where valuable work was the method of vindicating one’s wrong.³⁵² This dependency system was never large-scale or central to Akan society—it was marginal and small-scale.³⁵³ Wittman explained, of “slaves” in Africa, “Many of them lived and worked just as their so-called masters did, and Europeans, and often even other Africans, could not tell them apart.”³⁵⁴ In relative terms then, the Akan system of labor was “not oppressive in comparison with the classic plantation-type of the Americas during the 18th century.”³⁵⁵

It must also be stated that, while the Asante are well-known to have sold many people to European enslavers during the 1700s and 1800s, this was *after* the *Maafa* had begun, and consequently

regarded as a human being and was entitled to certain rights and privileges.” AKOSUA ADOMA PERBI, A HISTORY OF INDIGENOUS SLAVERY IN GHANA: FROM THE 15TH TO THE 19TH CENTURY 4 (2004); *see also* DAVIDSON, *supra* (“Slaves bought or captured for farming work were normally accepted into the family or other unit for which they toiled.”); FRENCH, *supra* note 12, at 103 (“For the Akan, a sprawling collection of ethnic groups whose languages shared a high degree of mutual intelligibility, slaves had traditionally been acquired during internecine competition, as well as during expansionary drives against unrelated groups [T]he general emphasis was on assimilating them into society as rapidly as possible.”); CASELY HAYFORD, *supra* note 146, at 82. (“Gold Coast slavery was neither the slavery of ancient Rome, nor that of Afro-American history.”). There was also pawnship: “The uncle pledged his nephew, or his niece, for a sum of money, with a proviso for redemption upon the first opportunity.” CASELY HAYFORD, *supra* note 146, at 83.

349. CASELY HAYFORD, *supra* note 146, at 20.

350. *Id.*

351. WITTMANN, *supra* note 139, at 52; *see* PERBI, *supra* note 348, at 3.

352. WITTMANN, *supra* note 139, at 51 (“Please consider in that context that slaves were usually convicted criminals or war captives, and that there were no prisons.”); *see also id.* at 53 (“It was an absolute principle in Akan society that no human being could be punished without trial.”).

353. *Id.* at 52; *see also* PAUL E. LOVEJOY, TRANSFORMATIONS IN SLAVERY: A HISTORY OF SLAVERY IN AFRICA 21 (2d ed. 2000) (explaining the dynamics of slavery in Africa before it became integrated into the international network of slavery as an area of supply).

354. WITTMANN, *supra* note 139, at 41.

355. *Id.* at 38 (quoting Raymond Dumett).

after European demand for captives had grown and degraded many various African polities into a kill-or-be-killed spiral.³⁵⁶ In fact, the expansion of the Asante empire was in large part due to the European trade in enslaved Africans.³⁵⁷ And “slavery” generally did not start in the region that would later be known as the Gold Coast until the late 1400s, which is in tandem with the beginnings of the *Maafa* on the Gold Coast.³⁵⁸

Before the *Maafa* devastated the region, the Akan speakers of the region had a system of labor with an established Protocol that was downright humane in contrast to European enslavement.³⁵⁹ While their social status was certainly discrete and imposed constraints on association and certain conduct (some of which was punishable by death),³⁶⁰ people in the “lowest social group” were “integrated as part of the family” and had what one using a Legal orientation might characterize as “rights.”³⁶¹ Akan labor Protocol allowed those in this lowest social group to marry, make independent income, have children considered to be “free,” inherit, and participate in Protocol, generally—including participation in processes to address wrongdoing, make promises, and similar activities.³⁶² They could also employ their own dependents (referred to by some as “slaves”).³⁶³ Akan Protocol prohibited mutilating or killing workers.³⁶⁴ Furthermore, grueling gold mining work was limited to those who had committed wrongdoing in the community or those who had been captured during war with neighboring polities.³⁶⁵

Such contours and “rights” were painfully absent in the lives of those racially enslaved or designated as “free” under European

356. *See id.* at 47.

357. Manning, *supra* note 18, at 107.

358. WITTMANN, *supra* note 139, at 48.

359. PERBI, *supra* note 348, at 117 (“On the whole, the records portray a picture of humane treatment.”); WITTMANN, *supra* note 139, at 47. “[A]ll ethnic groups studied by Perbi carry oral traditions that stress how slaves were generally well treated in pre-Maafa Ghana.” *Id.* at 50.

360. WITTMANN, *supra* note 139, at 51.

361. *Id.* at 49–51; *see also* PERBI, *supra* note 348, at 4, 111.

362. WITTMANN, *supra* note 139, at 50.

363. *Id.* at 53.

364. *Id.* at 47 (“Anyone who killed a human being, free or slave, without royal permission, was persecuted for murder.”). Both acts required permission from the ruler. *Id.*

365. *Id.* at 49. Given the Akan labor system relegated war captives and wrongdoers to its lowest laboring social status, this form of social organization was part of the Akan Protocol of addressing wrongdoing.

rule.³⁶⁶ In Maryland, aside from the obvious day-to-day suffering and terror experienced by enslaved Africans, Africans could not meaningfully participate in the Legal system. They could not testify in cases against Europeans.³⁶⁷ A separate and unequal (lesser) Legal regime was established and maintained for African people.³⁶⁸ Additionally, enslavement was a “lifetime condition” for enslaved Africans, and it was passed down to the children they birthed.³⁶⁹ How preposterous, then, it would have been for the Akan to find themselves in a worse situation in the Western Hemisphere, an inhumane labor system, complete with torture, psychological terror, and no escape—all absent their own wrongdoing.

Even if individual enslaved Africans had committed some wrongdoing or had been prisoners of war, the consequence of enslavement was not commensurate with any wrongful act, as it was excessively long (lifelong), extensive (intergenerational, did not allow for any social mobility),³⁷⁰ and cruel (included physical and psychological torture).³⁷¹ Such arbitrarily-imposed mistreatment ran counter to Akan labor Protocol and Protocol of addressing wrongdoing. Its unjust imposition must have felt like the most severe violation. It was, thus, a uniquely egregious wrong that required punishment in the ways that were possible. Spiritual attack, for example death by poison, was surely a just remedy.

B. Taking Life and Other Offenses

Another clear wrong that the Akan and other Africans³⁷² would have sought to address was the taking of precious life, the

366. For restrictions on the lives of Africans Legally designated as “free,” see BRACKETT, *supra* note 16.

367. Pursuant to a law of 1717, no Indigenous person or African person (“negro”)—enslaved or “free”—or biracial person (“mulatto”) could testify in any case concerning a Christian white person. *Id.* at 191; Douglass, *Life and Times of Frederick Douglass*, *supra* note 23, at 486 (“The criminal was always dumb, and no slave was allowed to testify other than against his brother slave.”). *But see* Wiecek, *supra* note 64, at 269 (stating that in Maryland, unlike other slaving states, enslaved Africans *could* testify against European-Americans in lawsuits).

368. *See generally* MORRIS, *supra* note 87 (detailing the development of this regime through the 17th, 18th, and 19th centuries).

369. Wiecek, *supra* note 64, at 262–63.

370. In Maryland, “[t]he act of 1664 and its successors, declar[ed] the children of slaves to be slaves.” BRACKETT, *supra* note 16, at 37.

371. *See, e.g., Caroline Hammond, A Fugitive, 1938, in UNITED STATES WORK PROJECTS ADMINISTRATION, supra note 317, at 14* (referencing the statewide reputation of the Revells family for their brutality toward those they enslaved in Anne Arundel County).

372. In referencing other Africans belonging to other African polities here, I am

slaughter of their fellow captives, or, in Legal terms, murder.³⁷³ Death was frequently being dealt by European enslavers, to an extent which we may never be able to ascertain.³⁷⁴ In Maryland, enslavers killed enslaved Africans “under [their] correction.”³⁷⁵ And, as Douglass noted, the Legal system did not address this wrong: “I speak advisedly when I say that in Talbot Co[unty], Maryland, killing a slave, or any colored person, was not treated as a crime, either by the courts or the community.”³⁷⁶

In pre-*Maafa* Akan Protocol, killing a person was considered a grave mistake, and a dependent or “slave” could not be killed by the person under whom they labored.³⁷⁷ Only the *Asantahene* (leader) and others in leadership positions possessed the authority to end life.³⁷⁸ Death as a punishment could be imposed only by a certain high level of leadership in the community—leaders who exercised power with the approval of the community.³⁷⁹

However, in Maryland and elsewhere, such Governance was absent.³⁸⁰ European enslavers—from the barracoons at the initial site of capture on the Gold Coast, to the ships during the horrendous voyage, to the enslaving estates—tortured and killed enslaved Africans with impunity and with no regard for process.³⁸¹ Aside from the salient tragedy and pain involved here, the lack of structure and procedure in determining whose life was to be cut short and for what reason would have gone against Akan Protocol.³⁸²

recognizing the cultural unity of Africa and the likely commonalities in various systems of Protocol in pre-*Maafa* Africa: “If one were to make a comparative listing of political structures in precolonial Africa, the result would confirm that precolonial political cultures undoubtedly displayed a great diversity, but an even greater unity of underlying concept.” DAVIDSON, *supra* note 127, at 63.

373. For more on enslavement-era jurisprudence regarding killing of enslaved Africans, see MORRIS, *supra* note 87, at 162–64.

374. See, e.g., GENOVESE, *supra* note 25, at 39 (“Despite the efforts of the authorities and the courts, masters and overseers undoubtedly murdered more slaves than we shall ever know.”).

375. BRACKETT, *supra* note 16, at 142–43.

376. Douglass, *Life and Times of Frederick Douglass*, *supra* note 23, at 515.

377. PERBI, *supra* note 348, at 118–19; WITTMANN, *supra* note 139, at 51.

378. PERBI, *supra* note 348, at 119 (“The Akans say *Ohene nkoara na owo sikan* (it is only the chief who wields the sword).”); WITTMANN, *supra* note 139, at 51.

379. Brookman-Amisshah, *supra* note 170, at 79.

380. See ch. 7 *Southern Law and the Homicides of Slaves*, in MORRIS, *supra* note 87, at 161–81.

381. Two examples in Maryland of torture included enslavers attaching an iron collar and a ball and chain to enslaved Africans. BRACKETT, *supra* note 16, at 142–43.

382. See WITTMANN, *supra* note 139, at 51.

It is at this point that we might recall the Akan proverb about the divine entity who poisoned Death itself: *Odomankoma na oma owuo di akane*, or “It was none but *Odomankoma* who made Death eat poison.”³⁸³ With death all around them, the Akan in Maryland may have considered it divinely appropriate to make the personification of that Death eat poison.

C. Displacement

We learned that kidnapping was considered a wrong in Akan internal Protocol.³⁸⁴ How, then, would the collective kidnapping by Europeans have been perceived as other than a profound wrong?

Akan oral traditions hold that the ancestors “emerged from the ground,” emphasizing the importance of land and place.³⁸⁵ “For the Akan, the land belonged to the ancestors,” and land was associated with *Asase Yaa* (an divine earth mother entity).³⁸⁶ Furthermore, land is kept by the ancestors and the living community; communalism undergirds the Akan Protocol regarding how people interact with land.³⁸⁷

This consciousness and relationship to land would have colored the Akan experience of separation from their native land and forced placement onto the land originally inhabited by Algonquin speakers and other Indigenous North American peoples, yet at the same time occupied by European enslavers and extractors. “Displacement was . . . a traumatic, personality-altering experience,” Gomez explained, “especially as it terminated in a sugar cane or tobacco field on the other side of the world.”³⁸⁸ Displacement would have not only had a profound impact on Akan speakers, but it would have been seen as a violation of the order of things, of Protocol.

D. Community Disruption

Enslavement was a full-scale attack on African social organization, including family life—and to appreciate what that

383. Brookman-Amissah, *supra* note 170, at 83–84.

384. CASELY HAYFORD, *supra* note 146, at 29–30.

385. See RUCKER, *supra* note 143, at 28.

386. GOMEZ, *supra* note 15, at 112.

387. See SARBAH, *supra* note 155, at 57. Sarbah also notes the communalism of the Akan: “In this country joint property is the rule, and must be presumed to exist in each individual case until the contrary is proved . . . Absolute, unrestricted, exclusive ownership, enabling the owner to do anything he likes with his immoveable property, is the exception.” *Id.* at 61–62.

388. GOMEZ, *supra* note 15, at 112.

means, we must consider that an African notion of “family” at this time would have been broader than the European definition.³⁸⁹ The Akan, specifically, had an extensive definition of “family”;³⁹⁰ it meant “the entire lineal descendants of a head *materfamilias*.”³⁹¹ The Akan people organized themselves into *abusua* or kinship groups based on matrilineage.³⁹² They believed “that the welfare of the community transcended that of the individual.”³⁹³ This is suggested in the Akan proverb *Abusua ye dom*, or “There is strength and bond where there is unity in the family.”³⁹⁴ Nana Akua Kyerewaa Opokuwaa explained this further:

When you speak of parent it means your mother or father, your uncle, your aunt, an elder in the village. When you speak of sister and brother you may be referring to what we call cousin, your friend or some other peer relationship. In Akan culture, we are all members of the same family.³⁹⁵

Enslavement, including enslavement in Maryland, was incredibly destructive to the notion of family, even if defined in the closely-held sense of the European nuclear family. Africans were capriciously “divided into families,” as one enslaver phrased it—nuclear families in the Western sense—and then enslavers proceeded to break apart *those* families.³⁹⁶ Africans were also arbitrarily coupled by enslavers.³⁹⁷ And the bonds that Africans themselves developed were not respected.³⁹⁸ Forced family separations by fickle enslavers were commonplace.³⁹⁹

389. See Niara Sudarkasa, *Conceptions of Motherhood in Nuclear and Extended Families, With Special Reference to Comparative Studies Involving African Societies*, JENDA: A JOURNAL OF CULTURE & AFRICAN WOMEN STUDIES, at 3 (2004) (“I consider the term ‘nuclear family’ to be an inaccurate description for both the monogamous and polygamous families that made up indigenous African extended families.”); PERBI, *supra* note 348, at 112 (“It [the family] went beyond that of the nuclear family to include members of the extended family, servants and slaves.”).

390. Brookman-Amisshah, *supra* note 170, at 80 (“For the Akans as also other African peoples the concept of ‘family’ extends beyond the limits of what is known in industrial societies as the ‘nuclear’ family.”).

391. CASELY HAYFORD, *supra* note 146, at 76.

392. See Brookman-Amisshah, *supra* note 170, at 78–80.

393. GOMEZ, *supra* note 15, at 112.

394. Appiagyeyi-Atua, *supra* note 135, at 172.

395. OPOKUWAA, *supra* note 146, at 119; see also PERBI, *supra* note 348, at 112 (“The family was of great sociological significance in pre-colonial Ghana.”).

396. LEVINE, *supra* note 14, at 102.

397. See *id.* at 102–03; see also Cade, *supra* note 23, at 302 (“The utter helplessness of the slave both as regards the selection and retention of a bosom mate is clearly illustrated by these testimonies.”).

398. LEVINE, *supra* note 14, at 102–03; Cade, *supra* note 23, at 305 (“The sanctity of this so-called slave family was not at all regarded by the master, as many witness.”).

399. LEVINE, *supra* note 14, at 102–03; Cade, *supra* note 23, at 306.

Furthermore, as Douglass put it, “[s]lavery ha[d] no use for either fathers or families, and its laws do not recognize their existence in the social arrangements of the plantation.”⁴⁰⁰ Enslavement in Maryland included violation of sexual consent and targeting of couples.⁴⁰¹ Enslaved African women were under frequent attack from both White men and women. Formerly enslaved in Charles County, Maryland, Richard Macks provided his thoughts on these attacks:

Let me explain to you very plain without prejudice one way or the other, I have had many opportunities, a chance to watch white men and women in my long career, colored women have many hard battles to fight to protect themselves from assault by employers, white male servants or by white men, many times not being able to protect, in fear of losing their positions. Then on the other hand they were subjected to many impositions by the women of the household through woman’s jealousy.⁴⁰²

This attack on African women was perceived as a community-wide issue for African women and men together.⁴⁰³

All of this—family separations, sexual assaults, community fragmentation—would have been considered by many Africans, including the Akan, to be intensely wrong.⁴⁰⁴ Poisoning, as Protocol, could challenge all these wrongs while also championing an African vision for society and how it should work. And given what we know about Akan Protocol and the notion of collective responsibility, it would be no surprise if some African poisoners viewed entire

400. Douglass, *My Bondage and My Freedom*, *supra* note 23, at 151.

401. Douglass, *Life and Times of Frederick Douglass*, *supra* note 23, at 495–97; *see also Personal Interview with Richard Macks, Ex-slave*, in UNITED STATES WORK PROJECTS ADMINISTRATION, *supra* note 317, at 29–30 (“This attack was the result of being goodlooking, for which many a poor girl in Charles County paid the price. There are several cases I could mention, but they are distasteful to me.”).

402. *Personal Interview with Richard Macks, Ex-slave*, in UNITED STATES WORK PROJECTS ADMINISTRATION, *supra* note 317, at 30.

403. The fact that Richard Macks spoke of this demonstrates his own concern, as an African man, about this problem. Africana Studies professor Valetia Watkins cautions against seeing the assault on Black women as a solely Black women problem, noting that Western narratives siloing issues into gendered categories “function[s] as a Trojan horse for the global intellectual imperialism of Western scholars’ interpretation of the cultural order.” Valetia Watkins, *Contested Memories: A Critical Analysis of the Black Feminist Revisionist History Project*, 9 J. PAN-AFR. STUD. 271, 284 (2016). She emphasizes community in African consciousness, pointedly asking, “Why should our history remain severed along gender lines? Whose interests does this serve?” *Id.* She explains that the specific problems experienced by African women or men in the past and today were and are “our shared burden as a group as well as our mutual responsibility to address since the ramifications were rarely limited to a specific gender but impacted the quality of life of all African people, regardless of gender.” *Id.* at 285.

404. *See* Wiecek, *supra* note 64, at 272 n.63 (Act of 1723, chap. 15, and Act of 1751, chap. 15, Laws of Md.).

European families as the proper responsible parties to answer for these egregious acts.⁴⁰⁵

E. Conflicts of Law and Protocol

In his section, “The Conflict of Systems,”⁴⁰⁶ Casely Hayford explains that “the idea of representative government . . . is the very essence of the Native [Akan] State System.”⁴⁰⁷ The legitimacy of leadership goes hand-in-hand with moral righteousness, as suggested by the following Akan proverb: *Nea adee wo no na odie*, or “It is the rightful person who is entitled to rule.”⁴⁰⁸

Take, for a moment, this simple fact that Akan peoples in the enslavement colonies came from a homeland where their Protocol included community participation at a deep level. In their memory, they had Governance that *they* shaped. Why in the world, then, would they respect a system of Governance—Maryland Law—that afforded them no engagement or representation?

To the Akan, Law, including its prohibitions against poisoning, was not legitimate. And especially where Law is viewed as illegitimate, inadequate, alien, backward, or ineffective, Protocol is—and, from an African-centered orientation, should be—used.⁴⁰⁹ Even if enslaved Africans had the desire to use Legal methods to respond to their circumstances (and we should not assume that they always did), they were most often unable to effectively do so.⁴¹⁰

It might take an eyewitness account to help on this point. Frederick Douglass explained, reflecting on his enslaved life in Maryland, that the plantation on which he was enslaved was

a little nation of its own, having its own language, its own rules, regulations and customs. The laws and institutions of the state, apparently touch it nowhere. The troubles arising here, are not settled by the civil power of the state. The overseer is generally accuser, judge, jury, advocate and executioner. The criminal is

405. SARBAH, *supra* note 155, at 39.

406. CASELY HAYFORD, *supra* note 146, at 119.

407. *Id.* at 126.

408. Appiagyei-Atua, *supra* note 135, at 175.

409. *Cf.* Tweneboah, *supra* note 157, at 212 (“In the absence of effective monitoring of state legislations and implementation of its secular and modern ideals, people rely on the invisible forces—which the modern state casts as irrational superstitions—to settle crucial disputes of national concern.”); *id.* at 225, 228. Additionally, Law was not effective, especially its prohibition against African testimony in cases concerning Europeans, that is, people of European descent. See BRACKETT, *supra* note 16, at 119–20.

410. See BRACKETT, *supra* note 16, at 191 (explaining that African people could not testify in cases concerning Christian whites).

always dumb. The overseer attends to all sides of a case.⁴¹¹

Such a condition made it clear to enslaved Africans that the Legal process was not available and was not going to work. Such a Governance system holds no allure for those who already have their own.

VIII. Notes for the File, For Future Investigations

Let us ponder what we learned in this investigation.

A. *Preliminary Findings: The Illuminating Function of the Orientation Shift*

Thinking back to “self-defense” as a frame for African action or reaction in the Western Hemisphere, let us contemplate a notion of “self-defense” in Akan Protocol. Such a notion might exist in Akan Protocol. But assuming so and leaning on this Legal construct means that we use the shortcut of Law to think about African governance. We chain “African ideas to European ideas,” and without even studying or understanding the African ideas we are attempting to chain.⁴¹²

Doing this creates a big risk of missing the intricacies of Akan Protocol, ignoring the broader cultural logic that the Protocol lives in, and failing to see the relationships between multiple Akan Protocol concepts. All of this is a bad side-effect of the Qualified Law Orientation (or “QLO”), which is the improper imposition of European Legal constructs onto peoples and polities where they do not belong.⁴¹³

By skipping to the familiar and sharply-defined Legal construct and by not beginning with Akan thought and world senses, we make the erroneous assumption that the pre-*Maafa* Akan viewed the world as a set of scenarios where a ‘self’ defended against personal attacks—where actions were taken by self on behalf of self. What if that were not the case in the Akan world-sense? What if the ‘self’ was not the primary identity? What if identity was primarily collective and the world of the living was brimming with a community of ancestors and divine entities (*obosum*), who participated in attacking various parties in response to some precedent request, a broken promise, or widely understood wrong?

411. Douglass, *My Bondage and My Freedom*, *supra* note 23, at 160.

412. Carruthers, *supra* note 90, at xviii.

413. See Porter, *supra* note 4, at 256.

As with all Legal terms of art, the term ‘self-defense’ misses these questions, and is therefore incapable of capturing the richness and depth of the African world-sense. Accordingly, in *all* of our investigations, we must confront the assumptions attached to Legal terms of art by releasing them as our primary mode of describing African governance and doing our damndest to articulate the messages in the African Deep Well on their own terms.⁴¹⁴

*B. Interviews Outstanding: Oral and Non-English
Language Sources*

This investigation mostly engaged with written, English-language sources. It is limited by the knowledge of the investigator. Collective work is required to push similar investigations to deal primarily in African-language sources and information in the oral tradition. As Kwame Daaku has explained, “[d]espite shortcomings, the Akan oral traditions, like similar traditions of other African people, are the best evidence the historian of Africa can employ to understand the Africans and their history.”⁴¹⁵ We want the best evidence.

C. Still at Large: What About Law?

We could talk more about Law. We could talk about the severe sentences and punishments faced by Africans who poisoned their enslavers.⁴¹⁶ We could talk about laws prohibiting enslaved Africans from practicing medicine.⁴¹⁷ We could talk about the

414. See Carruthers, *supra* note 90, at xviii (“African Deep Thought must now speak for itself.”).

415. Kwame Y. Daaku, *History in the Oral Traditions of the Akan*, in THE AKAN PEOPLE, *supra* note 143, at 101; see also OPOKUWAA, *supra* note 146, at 16 (“Akan tradition is an oral tradition.”).

416. Wiecek, *supra* note 64, at 274 (“Colonial statutes severely punished blacks who committed . . . poisoning and attempted poisoning.”) (citing Act of 1751, chap. 14, Laws of Md., 1). Beyond hanging enslaved Africans who committed serious crimes, Maryland legislators resolved to cut off an offender’s right hand before hanging them; to the Europeans of the colony, deterrence was furthered by mutilation and public display of a person’s body after death. BRACKETT, *supra* note 16, at 120.

417. The Virginia Slave Code of 1860 contained a provision on the “Sale of Poisons to Negroes Prohibited”: “It shall not be lawful for any apothecary, druggist or other person to sell to any free negro, or to any slave without the written permission of the owner or master of such slave, any poisonous drug.” 1 DOCUMENTS OF AMERICAN CONSTITUTIONAL & LEGAL HISTORY, VOL. 1, FROM SETTLEMENT THROUGH RECONSTRUCTION 397 (Melvin I. Urofsky ed., 1989).

statutes meant to preserve the system of enslavement and quell European fear of African justice.⁴¹⁸

We could talk about the unfairness of the Legal system, including the fact that Africans were governed by not only slave codes but also criminal codes, the fact that sentences under the criminal code imposed on Africans were more harsh than those imposed on Whites for similar conduct, the fact that enslaved Africans and “free” Blacks could not testify in cases against Whites.⁴¹⁹ We could talk about how Law attempted to interfere with Protocol by seeking to lessen the collective power of enslaved Africans and the collective nature of their Protocol with restrictions on assembly and on practicing African Ways of Knowing.⁴²⁰

We could talk about how capitalist greed could trump the operation of Law, when enslavers concealed the illegal conduct of those they enslaved so that they could avoid the monetary loss that would result if they were executed.⁴²¹ We could also talk about how enslaved Africans knew about the Law and used this knowledge to navigate the Legal landscape (or, perhaps more appropriately, hellscape) in which they found themselves.⁴²²

418. PARENT, *supra* note 311, at 129 (“Armed with a formidable array of laws and punishments, white society in 1705 was prepared to preserve racial slavery to the death.”).

419. *See, e.g.*, 1 DOCUMENTS OF AMERICAN CONSTITUTIONAL & LEGAL HISTORY, *supra* note 417, at 397 (“Slave codes . . . regulated the daily life of the slaves, but if they broke the law, they also had to contend with the state’s criminal code, which often punished slaves far more harshly than it did white men for the same crime.”); BRACKETT, *supra* note 16, at 119–20 (explaining that the testimony of enslaved and so-called “free” Africans was deemed legally invalid in any case concerning European-Americans).

420. Paton, *supra* note 27, at 258.

421. *See* BRACKETT, *supra* note 16, at 119 (“It was also found that some masters of slaves who had committed heinous offences had concealed the crimes, thus hindering the execution of justice, rather than lose the slaves.”); *see, e.g.*, GENOVESE, *supra* note 25, at 36 (describing how, after enslaved Africans killed an overseer, the enslaver “calmly sold them” and “protected his investment”).

422. For example, Dennis Simms’ interview shows the knowledge of Law in Maryland:

Simms asserted that even as late as 1856 the Constitution of Maryland enacted that a Negro convicted of murder should have his right hand cut off, should be hanged in the usual manner, the head severed from the body, divided into four quarters and set up in the most public places of the county where the act was committed. *He said that the slaves pretty well knew about this barbarous Maryland law*, and that he even heard of dismemberments for atrocious crimes of Negroes in Maryland.

Dennis Simms, *in* RAWICK, *supra* note 20, Maryland Narratives at 61 (emphasis added). James Wiggins, formerly enslaved in Anne Arundel County, Maryland, explained that his father could read and write, and “once he was charged with writing passes for some slaves in the county.” James Wiggins, *in id.* Maryland Narratives at 66.

But before we engage in these interrogations and depositions, we cannot shortchange this important moment. A moment that should be extended. That is, the moment when Protocol stands alone and is respected and valued in its own right.

Law need not be the focus at the moment.⁴²³ Law is not the accrediting body for Protocol. Protocol stands on its own. Stated differently, it is enough to explore the fact that Law and its punishments could not stop these Africans from championing the system of Governance that they brought with them from their long history.⁴²⁴

Conclusion: Leaving the File Open

Based on the foregoing, the investigator has reasonable cause to believe that the African poisoners in eighteenth century Maryland—and elsewhere—were carrying out the Protocol of their homelands. This investigation was one piece in the larger collective work of African-centered thinkers. Here, we tracked one example of Protocol—that of Akan speakers—to one place in the Western Hemisphere—colonial Maryland. But the lessons from this investigation are grand.

The Protocol orientation shift obliterates the notion of Black criminality, as it reveals the subjective nature of the term “criminal” and the fragility of the idea of “crime.” The Protocol orientation reveals the hidden hand driving these notions: Western-centered thought. The myth that Black criminality will always necessarily rely on Law, a self-serving system of Governance that has defined what is “criminal.” What is criminal is not the same as what is wrong; and what is wrong depends on a people’s world-sense, their orientation in the universe.

Through the orientation shift facilitated by this investigation, we have seen that one Governance system’s criminals are another Governance system’s champions. A fearful objection might worry that such an orientation shift might be used to justify violence today. Such fear should be met with deep contemplation and exploration of the concept of violence in general and on the specific violence at issue. The thoughts around violence and “crimes” by

423. Centering Law promotes a narrative I call the “We did it too!” narrative. This narrative may be appropriate for children, to counteract the Black Lack deficit narratives they are bombarded with. However, as a serious scholarly endeavor, the “We did it too!” narrative necessarily centers a non-African audience, and therefore, is by definition *not* African-centered.

424. RUCKER, *supra* note 18, at 27 (“[N]o set of laws could effectively destroy the spirit of insurrection among the enslaved.”).

African actors ought to be investigated and interrogated. Is there precedent violence that should be made visible? Is there a conflict between Law and Protocol at play? The answers will not always be yes, but the questions should be asked.

Relatedly, we are at the scene of a bigger “crime”—wrongdoing at a grander scale—that we must investigate: the “crime” of miscasting our ancestors, mischaracterizing their actions, and burying alive their experiences of governing themselves according to their own Ways of Knowing. We seek to bring justice to them. And not through co-optation or integration into a singular narrative. Such a strategy would be led by the “delusion of inclusion,” because in such a project, the Western center is always maintained.⁴²⁵ Other perspectives are only nominally referenced, while the narrator ultimately genuflects before the original, Western-centered conclusions.

There is no one narrative. The notion that there can or should be one—and that that one would be adequate, meaningful, or useful—is a fantasy. We do not need fantasy. We need power. And power flows from truth, *our* truth, in the presence of several truths. We need not only a wealth of information, but a wealth of perspective on that information—the proverbial “arc shot.”⁴²⁶ Only with a “plurality of centres” do we have the full arc of perspectives, giving us the power and the freedom to make meaningful choices about the facts and the consequences.⁴²⁷ Legal thinkers, of all people, cannot deny this idea: the entire trial process is built around it.

African thinkers must build. We must be bold in our work, undeterred by the prospect of mistake, and unrelenting in the face of hostility. We must define our world, not as adrift hallucinators, but as anchored visionaries animated by the undying African spirit. In this grounded fashion, we may successfully restore an African center to serve as the basis for innovation, imagination, and future

425. See Porter, *supra* note 4, at 281.

426. Kyle Deguzman, *The Arc Shot—Examples and Camera Movements Explained*, STUDIOBINDER, Apr. 30, 2023, studiobinder.com/blog/arc-shot-in-film-definition/ [<https://perma.cc/TNZ9-H4EW>]; see also WILLIAM BROWN, SUPERCINEMA FILM-PHILOSOPHY FOR THE DIGITAL AGE 98 (2013) (referencing the 360-degree “bullet time” shot in the film *The Matrix*, when the camera circles around the character Neo to showcase the bullet approaching him from all angles) (“[S]uch shots, which for spectators seem easy to follow but the complexity of which is hard to explain, offer multiple, parallel perspectives . . .”).

427. NGŪGI, *supra* note 75, at 11.

investigation.⁴²⁸ Fortunately, we have the brilliance and resilience of our ancestors to draw from. Their voices enable us to “break the chain” and make our plan for today based on our stories, our traditions, our lessons learned, our Protocol.⁴²⁹

428. CARRUTHERS, *supra* note 90, at xi (“The task before the Africans both at home and abroad is to restore to their memory what slavery and colonialism made them forget.”).

429. *Id.* at xviii.