

Fordham Urban Law Journal

Volume 50
Number 4 *Local Government Structure through
a Legal Lens: Conversations of Law and Local
Governance*

Article 7

2023

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Recommended Citation

Daniel Farbman, *Plantation Localism*, 50 Fordham Urb. L.J. 771 (2023).
Available at: <https://ir.lawnet.fordham.edu/ulj/vol50/iss4/7>

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PLANTATION LOCALISM

Daniel Farbman*

Before the Civil War and emancipation, millions of human beings were enslaved across the United States. Most of these people lived on farms and plantations across the southern part of the nation. Scholars have tended to think of slavery as a form of private despotism — oppression undertaken under the color of the private law of property. Alongside this despotic private sphere, ran a weak public sphere of county court government dominated by the planter elite. These counties provided few services, and authorized the planters who controlled them to act as they pleased on their private plantations. The people that were enslaved were thus outside of the scope of public governance — brutally excised from the exclusively white and male political community. This Essay asks: What if, instead of dividing antebellum government into a weak public sphere protecting a despotic realm of private control by white elites, we conceived of the project of government and domination as unitary? What if we rejected the distinction between public and private and looked instead at where power was being wielded and by whom? What if we understood government not as a formal institution but rather as the place where governance happened in day-to-day life? What if, in short, we understood the plantation as a form of local government? Once we understand the plantation as a form of local government that was prevalent and, in some places, dominant across the South, a few things become clear. First, that the idea of the antebellum South as a place of little government and enlarged personal freedom is a fiction. The despotic government of millions of humans on the plantation was extremely intrusive on the lives and liberties of those who were governed. More than this, county governments were not weak so

* Associate Professor, Boston College Law School. I am grateful for the comments, challenges and inspiration of Mary Bilder, Niko Bowie, Nestor Davidson, Rick Hills, Ben Levin, Emily Nasiff, Rich Schragger, Joe Singer, Rick Su, and all the participants in *Fordham Urban Law Journal's* Cooper-Walsh Colloquium. As always nothing would be possible without Brook Hopkins.

much as they were shells that both delegated power to planters and protected those planters from public oversight and accountability as they governed as despots. This reframing is primarily a historical intervention, but it also raises questions about the nature of localism today. Many local governments in the United States today appear weak but, in practice, operate as “public” shells through which power is delegated to property owners so that they may protect their “communities” from integration, redistributive taxation, and collective regulation. Although the chains of causation between past and present are attenuated, plantation localism echoes through these structural resonances in ways that should unsettle us.

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INTRODUCTION

In 1860, on the eve of the Civil War, 32% of the people living in the Southern portion of the United States were enslaved¹ — a total of

1. When writing about slavery and the people who were entangled in and dehumanized by the system, the choices we make about terminology matter. The human beings who were enslaved have frequently been referred to as “slaves” while those who enslaved them have often been referred to as “masters” or “slaveowners.” These frames of reference have a descriptive power drawn, in part, from the fact that they were the terms used and understood by the people within (and struggling against) the institution of slavery at the time. Even so, in this essay and in my previous work, I have moved away from using these terms and towards adopting the terms I use here: “enslaved people,” “planters,” and sometimes “people who claimed ownership in human beings.” I’ve made this choice because, to me, these terms best reflect the contingencies of agency, struggle, and nuance within the antebellum legal order. They fracture the smooth surface of our settled historical understanding and so, I hope, refract a less stable and more dynamic image of the past that captures some of the contingency that can be so easy to lose. Still, all of these choices are hard and there are no right answers. The best that we who write about this past can do is to make our choices thoughtfully and openly. For more on the ways that my own thinking and practice on this point have and will continue to shift, see Daniel Farbman, *Resistance Lawyering*, 107 CAL. L. REV. 1877, 1878–79 n.1 (2019).

nearly four million human beings.² In South Carolina and Mississippi, enslaved people accounted for more than half of the population while in many other southern states they made up more than a third of the population.³ Even in states like Virginia and Tennessee, where the ratios were not so high, there were hundreds of thousands of enslaved people living, laboring, and struggling as part of the populace.⁴ Below the state level, the data paints an even more striking portrait. In some counties where large plantations dominated, enslaved people accounted for more than 80% of the population.⁵ Even where the numbers were not so stark, in many, many counties across the entirety of the South, there were more enslaved residents than free.⁶ Taken together, these numbers tell a story that is both obvious and unfamiliar: enslaved people were an integral part of the populace of the antebellum American South.

These numbers are not novel in our current political consciousness. The scale and scope of the moral atrocity of slavery is not a revelation (though the effort to forget it remains a powerful political project).⁷

2. E. Hergesheimer, *Map Showing the Distribution of the Slave Population of the Southern States of the United States, Compiled from the Census of 1860* (Sept. 1861), (https://memory.loc.gov/cgi-bin/map_item.pl?data=/home/www/data/gmd/gmd386/g3861/g3861e/cw0013200.jp2&style=gmd&itemLink=r?ammem/gmd:@field%28NUMBER+@band%28g3861e+cw0013200%29%29&title=Map%20showing%20the%20distribution%20of%20the%20slave%20population%20of%20the%20southern%20states%20of%20the%20United%20States.%20%20Compiled%20from%20the%20census%20of%201860%20Drawn%20by%20E.%20Hergesheimer.%20Engr.%20by%20Th.%20Leonhardt.) [<https://perma.cc/G2JF-VSGD>] (last visited Feb. 21, 2023).

3. *Id.* The percentage of the population that was enslaved in South Carolina was 57%, in Mississippi it was 55%. In Louisiana it was 47%, in Alabama, 45%, in Florida, 44%, in Georgia, 44%, and in North Carolina, 33%. *Id.*

4. *See id.* In fact, Virginia was home to the most enslaved people of any other Southern state — 490,887. *Id.*

5. *See id.* In Georgetown County, on the coast of South Carolina, more than 85% of the population was enslaved. Down the coast in Beaufort County, 83% of the population was enslaved. These kinds of ratios were also common in the Mississippi Delta counties. More than 92% of the populations of Washington and Issaquena Counties in Mississippi were enslaved. Likewise, 91% of the population of Tensas and Concordia Parishes in Louisiana were enslaved. *See id.*

6. *See id.* A quick look at Alabama on this map shows the famous “Black Belt” (so named initially for the color of the soil, not those who worked it) where plantations dominated. *See* ALA. MUSEUM OF NAT. HIST., DISCOVERING ALABAMA: TEACHER GUIDE: ALABAMA’S BLACK BELT, https://www.discoveringalabama.org/uploads/1/0/3/2/103210354/alabama_black_belt.pdf [<https://perma.cc/NM8A-LXK4>] (last visited Apr. 7, 2023). Most of these counties’ populations were more than 50% enslaved. *See* Hergesheimer, *supra* note 2.

7. *See, e.g.,* Simon Romero, *Texas Pushes to Obscure the State’s History of Slavery and Racism*, N.Y. TIMES (Nov. 9, 2021), <https://www.nytimes.com/2021/05/20/us/texas-history-1836-project.html> [<https://perma.cc/7EVR-B2NN>].

Still, our tendency has been to understand the reality of slavery as outside of government. Enslaved people were treated as property under the formalities of state law, while their enslavers were understood as citizens and participants in the nascent project of American democracy. “Public” law was thus the province of wealthy white landowners who held power in county courts, statehouses, and in the national legislature.⁸ Beyond the reach of this public sphere existed a vast scope of private control, where those same wealthy white landowners exerted their private rights as property owners to govern the humans they claimed to own.

This Essay attempts to reframe this understanding. What if, instead of seeing the enslaved population of the South as chattel, we understood them as a part of the polity? What if, instead of dividing antebellum government into a weak public sphere protecting a despotic realm of private control by white elites, we conceived of the project of government and domination as unitary? What if we rejected the distinction between public and private and looked instead at where power was being wielded and by whom?⁹

One way to answer this (old and large) question is to focus on the question of local government. In our standard conception of Southern local government, southern states were divided into counties with relatively weak county court governments that acted mainly to protect the existing power of land and human-owning planter elites.¹⁰ It is true that county courts were essentially oligarchies run by and for planter elites. As a result, most of the people who lived in these counties were functionally excluded from self-government.¹¹ This was in sharp

8. See Paul Quigley, *Slavery, Democracy and the Problem of Planter Authority in the Nineteenth-century US South*, 11 J. MOD. EUR. HIST. 514, 519 (2013) (“Even after Jacksonian democracy had liberalised Southern politics, Southern slave-holders maintained an impressive hold on political power, providing the leadership of both the Democrats and the Whigs. During the 1850s every single Southern state governor was a slave-holder. In states like Alabama, North Carolina and South Carolina, more than three-quarters of all state legislators were slave-owners, and in South Carolina over half were planters owning twenty or more slaves.”).

9. This is, in the end, just a restatement of an old tenet of Legal Realism. Looking past the public/private distinction and asserting that “government” or “law” exists in the moment of its enforcement rather than in the abstract is an old move that I am repurposing here. See Karl N. Llewellyn, *A Realistic Jurisprudence—The Next Step*, 30 COLUM. L. REV. 431, 455 (1930).

10. See BILL CECIL-FRONSMA, *COMMON WHITES: CLASS AND CULTURE IN ANTEBELLUM NORTH CAROLINA* 32–33 (1992) (describing the county courts as undemocratic and oligarchical).

11. See *id.* To say that they were excluded from participation in local government is not to say that their lives were not entangled with it. Laura Edwards, among others, has documented the extent to which local law, in the form of county courts, was an

contrast to archetype of the New England town where Thomas Jefferson imagined that every individual was deeply implicated in the daily business of running their local governments.¹²

But when we reject the public/private divide it becomes clear that in many parts of the South, the most salient locus of local political power was not the county, but the plantation. About one quarter of all the enslaved people in the South — one million people — lived on plantations with 50 or more other enslaved people.¹³ Nearly all of the rest lived on smaller farms or plantations.¹⁴ These plantations and farms, large and small, were petty fiefdoms where planters ruled despotically with impunity. Not only did they exert near absolute power over the enslaved people they claimed to own, but in a world of weak government and few public services, their power extended over their poorer free white neighbors as well.¹⁵

One way of understanding local government is as the place where government meets the daily lives of the governed. In our modern view, we can see local government in services and regulations: crosswalks, traffic lights, marriage licenses, permission to repave driveways, police, etc. These are functions that most people associate with local public authorities — be they school boards, local police, or planning boards.¹⁶ But even where some of these functions are privatized, we may still understand them as mechanisms by which we are governed.¹⁷ When

important part of antebellum Southern life. *See generally* LAURA EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH* (2009).

12. See Letter from Thomas Jefferson to Joseph C. Cabell (Feb. 2, 1816), <https://press-pubs.uchicago.edu/founders/documents/v1ch4s34.html> [<https://perma.cc/S95Y-Q6XY>]. Jefferson imagined the New England towns as engines of democratized political power and bemoaned the fact that southern counties were too weak to mobilize political power. Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816), *in* 7 *THE WRITINGS OF THOMAS JEFFERSON: BEING HIS AUTOBIOGRAPHY, CORRESPONDENCE, REPORTS, MESSAGES, ADDRESSES, AND OTHER WRITINGS, OFFICIAL AND PRIVATE* 9, 13 (Henry Augustine Washington ed., Phila., J.B. Lippincott & Co. 1871).

13. *The Making of African American Identity: Volume I, 1500-1865 - Plantation*, NAT'L HUMAN. CTR., http://nationalhumanitiescenter.org/pds/maai/enslavement/text3/text3read.htm#_ednref2 [<https://perma.cc/D4GL-R9BK>] (last visited Feb. 14, 2023).

14. *See id.*

15. *See infra* notes 30–39.

16. Where I live, in Massachusetts, all of these public services and regulations come from the city. In other parts of the country, these services may be provided by a combination of county and town or city government.

17. *See* Barbara Coyle McCabe, *Homeowners Associations as Private Governments: What We Know, What We Don't Know, and Why it Matters*, 71 *PUB. ADMIN. REV.* 535, 535 (2011).

we look for an analogue for this intimate governance in the antebellum South, it becomes clear that it was found not at the county level, but closer to home on the plantation.

This is a short Essay, and what follows is mostly dedicated to defending the claim I have outlined here: that we can and should recognize that the plantation was a form of local governance in the antebellum South.¹⁸ This claim is not merely academic. The history of local governance exerts powerful influence over our present conceptions of how we are and should be governed. The idea of the New England Town, with its town meeting and participatory virtues remains has always been a pillar of American political imagination — from John Adams, to Tocqueville, to Jefferson, to the Tea Party and Occupy.¹⁹ On the other side, the county court system of the South occupies a parallel spot in the American political imagination. It represents a form of localism that governs little and delegates much authority to landowners in the private sphere.²⁰ In many ways, much of our localism today reflects a commitment to the kind of libertarian and minimalist vision of local government that the county represented — it is a caricature of the maxim that the best government is that which governs least.²¹

However, the fantasy of a localism that leaves landowners alone to govern their affairs elevates landowners to the status of governors, and subordinates those subject to their control and influence, be they tenants, employees, or simply those with less economic power. If only the county is “government,” then the only members of the polity with any power are the planters who run the county. All the government that takes place in “private” is removed from the public sphere. The hollowed out public sphere becomes a tool for delegating power to the private sphere.

18. To be clear, by calling plantations a form of local government, I am by no means suggesting that the anathema of plantation slavery was somehow legitimate. To the contrary, by insisting that we see the plantation as part of the machinery of government we are able to see more clearly that the entire state apparatus of the antebellum South (and perhaps the antebellum U.S.) was implicated in the oppressions of the plantation. In other words, as I use it, the term government does not legitimize the exercise of power. Rather it is a descriptive tool to help us track where and how power is exerted, by whom, and against whom.

19. See Daniel Farbman, *Reconstructing Local Government*, 70 VAND. L. REV. 413, 423, 430–32, 455 n.150 (2017).

20. See *id.* at 429.

21. Paraphrasing Henry David Thoreau, who was, himself, paraphrasing the zeitgeist. See HENRY DAVID THOREAU, CIVIL DISOBEDIENCE (1849), <https://xroads.virginia.edu/~Hyper2/thoreau/civil.html> [https://perma.cc/9WHG-JQS2].

In Part III below, I argue that this hollowing out and delegation was not only a hallmark of plantation localism, but remains alive and well today in places all over the country.²² Once we see the plantation as a form of local government, we may be reminded to look past the formal distinctions between public (the local government) and private (the homestead) and to ask the question in the present: where is government happening and who is doing it? Who regulates public order and who benefits? Who provides essential services like roads, schools, and transit, and, again, who benefits? Should we commit our localism to the protection of private property or is that a continuance of plantation localism that is out of step with our professed commitments to multiracial democracy and political inclusion?

Even if the answers to these questions must live beyond the boundaries of this brief Essay, observing that the plantation was a locus of Southern localism may offer a window into how the structures of plantation localism continue to help us understand and explain our localism today.

I. THE PLANTATION AS LOCAL GOVERNMENT

The central argument of this Essay is that plantations were forms of government.²³ A full defense of this position could (and should) fill many more pages than I have here. In the end, such a full defense goes beyond the ambition or scope of this Essay. Boiled down, however, the proposition relies not on new discoveries or new historical argument, but rather on a reframing rooted in observations already in evidence. This Part begins by demonstrating the extent to which the county court system delegated governance authority to planters and men and women who claimed ownership of other human beings. This Part then shows the ways in which these planters and enslavers did actually wield the power that they were delegated. Planters wrote codes of law, built infrastructure, and in doing so, functionally governed millions of people across the South.

A. The County Court System – The Standard Account

When the European colonizers came to the shores of North America, they brought their conceptions of governance with them. In

22. *See infra* Part III.

23. A note for the skeptical reader. It would be sufficient for the purposes of the Essay to defend the position that plantations *could be understood* as forms of local government. Since history operates as a metaphor cast against the present, in the end the difference between the stronger and weaker versions of the claim is quite small.

the northeast, puritan Congregationalists brought with them roots of what would become the New England Town — rooted in church and congregation and centered on a collective civic and religious identity.²⁴ In the South, a different local political imagination emerged, rooted in a more agrarian vision of county government and independent landowners.²⁵ With the growth of the social and economic institution of slavery, these counties developed as a framework for facilitating the quasi-feudal order of slavery.²⁶

Southern counties were run by a small group of magistrates drawn from, or carefully selected by the richest and most influential men living in the county.²⁷ The magistrates (or sometimes “justices of the peace”) frequently governed for life and from within a tightly-knit local culture of political power and privilege.²⁸ To the extent that there was an active electorate within these counties, it was, itself, made up of the most elite sliver of the white residents of the county.²⁹ By design, county courts were not robust democracies. Rather, they were vehicles for preserving the existing distributions of power, property, and privilege.³⁰

County courts were not paragons of self-government, and often were hardly recognizable as government at all. Counties had few of the trappings of burdens and services that we identify today with local government. Take, for example, two archetypal local services: roads and schools. While county courts did fund what public roads and public schools there were in the antebellum South, there were comparatively few of either.³¹ Public infrastructure projects were often reactive in the

24. *See generally* MICHAEL ZUCKERMAN, PEACEABLE KINGDOMS: NEW ENGLAND TOWNS IN THE EIGHTEENTH CENTURY (1978).

25. *See* Farbman, *supra* note 19, at 429.

26. *See id.* at 428.

27. *See id.* at 416.

28. *See id.* Thomas Jefferson was unhappy with the permanence and intractability of the county court system, but his opponents, including Chief Justice John Marshall, argued that it was precisely this stability and elite control that recommended the system. *See id.* at 429–30.

29. *Id.* at 429. The pro-slavery theorist George Fitzhugh observed that in his home county, “there are eighteen thousand souls, and only twelve hundred voters.” GEORGE FITZHUGH, CANNIBALS ALL; OR, SLAVES WITHOUT MASTERS 353, 354 (1857). These twelve hundred voters were rich and white landowners. *Id.* They were not, nor did they claim to be, representatives of their poor or enslaved neighbors. *See id.*

30. *See* Farbman, *supra* note 19, at 430–33. Thomas Jefferson waged a long and ultimately unsuccessful campaign to abolish the county courts and replace them with “ward republics” modeled on the New England town. Throughout this campaign he and his followers argued that oligarchy of the county system was a problem for self-government in the South. *See id.*

31. *See id.* at 50.

sense that an individual (usually a member of the landowning elite) would propose a project and ask for it to be funded.³² When county courts did approve road building projects, they conscripted poor whites and enslaved people to perform labor (and required that laborers provide their own tools).³³ As a result, roads across the South were built to suit the purposes of planters,³⁴ and sparse in comparison with northern states.³⁵ Stepping back, it is not surprising that roads were built and maintained with the planters' interests as the central concern. Planters ran the counties as their own collective fiefdoms,³⁶ and so it follows that counties should act to serve the private and commercial interests of the planters.

If roads were rare, public schools were even rarer. While the common school movement was growing across the North and local governments were beginning to fund and provide public education, in the South, education remained largely a private (or charitable)

32. See ROBERT IRELAND, *THE COUNTY COURTS IN ANTEBELLUM KENTUCKY* 43 (1972).

33. See *id.* at 45; KATIE YEWELL, *DECONSTRUCTING THE MYTH* 11 (2010). Yewell provides one example of this dynamic from Fayette County in Tennessee. The first public roads in the county were built in 1824. There was no public surveyor, but rather the work of proposing and surveying (and then building) the road was given to a committee of four landowners. The building and the upkeep of the road were charged to the plantation owners who would be benefitting from the roads. This, in practice, meant that the roads were built and maintained by enslaved laborers. See *id.*

34. One concrete example comes from Albermarle County, Virginia, where John Majewski documented the extent to which wealthy planters were and remained the primary investors in infrastructure projects across the antebellum period — with the predictable result that these projects were largely built to serve their own interests. See John Majewski, *Who Financed the Transportation Revolution? Regional Divergence and Internal Improvements in Antebellum Pennsylvania and Virginia*, 56 *J. ECON. HISTORY* 763, 765 (1996).

35. See YEWELL, *supra* note 33, at 9. One way to see this is to compare maps. Looking at two maps from 1850 from Kentucky and Massachusetts, both drawn by the same surveyor, it is visually evident how much sparser the roads were in Kentucky versus Massachusetts. Compare S.A. Mitchell, *Map of Massachusetts and Rhode Island* (1850), WIKIMEDIA COMMONS, (https://commons.wikimedia.org/wiki/File:1850_Cowperthwait_-_Mitchell_Map_of_Massachusetts_and_Rhode_Island_-_Geographicus_-_MA-m-50.jpg) [<https://perma.cc/EJN5-FXHW>] (last visited Apr. 7, 2023), with S.A. Mitchell, *A New Map of Kentucky* (1850), WIKIMEDIA COMMONS, (https://commons.wikimedia.org/wiki/File:1850_Cowperthwait_Map_of_Kentucky_-_Geographicus_-_KT-m-50.jpg) [<https://perma.cc/UA6D-CV8A>] (last visited Apr. 7, 2023). Incidentally, comparing these maps also reveals the drastic difference in political geography between Massachusetts, where there were many towns all connected by roads, and Kentucky, where there were very few towns (often no more than one per county) connected by significantly fewer roads.

36. See Farbman, *supra* note 19, at 425.

enterprise.³⁷ Many elite white planter families educated their children with private tutors or by sending them to northern boarding schools.³⁸ Common schools for poorer white students were rare, and where the gap was filled, it was often by charitable institutions rather than the state.³⁹ Any provisions to educate enslaved children were rarer still. In most instances the idea of even the most rudimentary education for Black children was considered unwise. In many cases, such education was made explicitly illegal.⁴⁰

The purpose of rehearsing all of this here is not to retell a history of schooling and infrastructure in the South, but rather to emphasize how minimal the public footprint of the antebellum southern county was compared to contemporary antebellum northern towns and our present ideas of local government. Counties were run by the landowning elite to facilitate their own prerogatives. Where the courts did impose themselves on public life in the South, it was generally to further the interests of the planter elites by whom they were captured. But by and large, planter elites wanted to be delegated the authority to govern in their own private spheres unimpeded. As a result, the southern county court was frequently a kind of public shell through which delegated power passed through to planters. The county both empowered planters and protected them from interference.

B. The Ordered Plantation

If the public infrastructure and governance of the southern county was sparse, plantations were a stark contrast. On plantations both large and small, the hand of governance was heavy and the demands of order specific. Those who claimed to own enslaved people bore the burden of structuring the lives of those they ruled. Not only did they police, punish, and extract labor, they also provided services and built infrastructure to pursue their own economic and social interests. The

37. See JOHANN NEEM, *DEMOCRACY'S SCHOOLS: THE RISE OF PUBLIC EDUCATION IN AMERICA* 72–80 (2017). Even where schools in the South were funded, however, they were generally run centrally by the state rather than locally by the county. *See id.*

38. See JONATHAN DANIEL WELLS, *THE ORIGINS OF THE SOUTHERN MIDDLE CLASS, 1800–1861*, at 134 (2004) (“Planters could afford to pay for private tutors or to send their children to boarding schools in the North, and most felt little obligation to pay taxes for the education of other people’s children.”).

39. *See id.*

40. See WILLIAM GOODELL, *THE AMERICAN SLAVE CODE IN THEORY AND PRACTICE* 297–302 (1853) (collecting, in his classic compendium of the laws upholding slavery, the litany of statutes from across the South outlawing the education of all black southerners — free or enslaved.).

ordering and governance of plantations and landholdings filled the gap left by minimalist county governments.

Take, for example, the plantations run by Richard Eppes in Virginia. Eppes owned four large plantations in the Tidewater region of Virginia near Jamestown. All in all, he owned more than 2,200 acres and claimed ownership over 127 enslaved people.⁴¹ In the context of the region where there were very few formal towns, Eppes' four plantations were among the largest and most developed settlements — enslaved or free.⁴² In fact, Eppes' plantations were located in one of the areas of the state where the enslaved population outnumbered the free white population.⁴³

Like many owners of large plantations, Eppes saw himself as an enlightened manager and governor.⁴⁴ On his Island Plantation, he promulgated a “Code of Laws” which he read to the enslaved people living there and used to determine the rules and punishments on the plantation.⁴⁵ The Code was styled as a compact between human beings capable of moral logic (though not, of course, equals). Eppes began by making it clear that he saw the people he enslaved “in the light of human beings possessing faculties similar to our own and capable of distinguishing between right and wrong.”⁴⁶ Not only did the Code bind the enslaved residents of the Island Plantation, but Eppes promised that he, too, would be bound by its terms.⁴⁷

41. *Slave Life on Appomattox Plantation*, NAT'L PARK SERV., <https://www.nps.gov/pete/learn/historyculture/slave-life-on-appomattox-plantation.htm> [<https://perma.cc/754R-QNFZ>] (last visited Feb. 26, 2015).

42. Looking at the 1850 map of Virginia and zooming in on the region around City Point, where Eppes' home was, there are only a few established towns. Most of the small counties in the area have no town marked at all, only a point labeled “CH” indicating the location of the county court. See S.A. Mitchell, *A New Map of Virginia (1850)*, RARE MAPS, <https://www.raremaps.com/gallery/detail/77198/a-new-map-of-virginia-with-its-canals-roads-distances-fro-mitchell> [<https://perma.cc/A9ZU-XRBJ>] (last visited March 28, 2023).

43. See H.S. Graham & E. Hergesheimer, *Map of Virginia: Showing the Distribution of its Slave Population from the Census of 1860 (1861)*, LIBRARY OF CONG., <https://www.loc.gov/resource/g3881e.cw1047000/?r=0.364,0.09,0.536,0.403,0> [<https://perma.cc/59VT-Y9Q4>] (last visited March 28, 2023). One of his largest properties, Island Plantation, was located in Charles City County, where, according to the 1860 census, enslaved people made up 62% of the population. See *id.*

44. See *infra* notes 53–56.

45. See Michael L. Nicholls, “In the Light of Human Beings”: Richard Eppes and His Island Plantation Code of Laws, 89 VA. MAG. HIST. & BIOGRAPHY 67, 67 (1981).

46. See *id.* at 74.

47. See *id.* Eppes proclaimed that he expected the enslaved people “strictly to adhere to” the code. *Id.* In response, he assured them that “they will be obeyed to the very letter by ourselves.” *Id.* Of course, there was no external authority to enforce Eppes' promise to be bound. Still the fact that he made the promise at all suggests at

This Code included detailed descriptions of what was forbidden on the plantation and how violations would be punished. These included predictable prohibitions like: “you shall not steal from your master, overseer, fellow servants, or neighbors,” and “you shall not leave the plantation without a pass from the overseer or your master except when sent on business by your master or overseer.”⁴⁸ But they also included morality regulations that were clearly aimed at regulating the behavior and culture of the plantation community. For example, Eppes decreed that the enslaved residents of Island plantation were not allowed to commit adultery and that everyone must appear on Monday morning “with a clean shirt on and cleanly dressed.”⁴⁹ Each of these offenses had an elaborated schedule of brutal punishment, with reductions in rations or a specified number of lashes dictated for first, second, and third offenses.⁵⁰

Eppes’ Code was more than a code of conduct for the people he enslaved. He also used it to articulate the privileges of the residents of the plantation. Every person was allotted a small parcel of land for a garden and allowed to raise chickens and ducks.⁵¹ Work hours were oppressive (sunrise to sundown every day apart from four holidays at Christmas and one at Easter, plus a half-day every Saturday) but they were clearly delineated, as were meal times.⁵² More than that, Eppes’ Code also delineated the duties and privileges of the “drivers,” “foreman,” and “headplougher.”⁵³ These were enslaved people who Eppes and the overseer elevated over their neighbors to manage the labor of the plantation.

Eppes’ Code was not unusual or exemplary in the context of the culture and economy of the plantation. When you look at contemporary writing by and about southern plantation owners, you see a near obsession with the topic of “plantation management.”⁵⁴ Ulrich B. Phillips was an extremely racist member of the Dunning School whose historical research sought to apologize for slavery and

least an aspirational reciprocal imagination between the governed and the despot. *See id.*

48. *See id.* at 74–75.

49. *See id.* at 75.

50. *See id.*

51. *See id.* at 77.

52. *See id.* at 78.

53. *See id.* at 77–78.

54. *See, e.g.,* ULRICH B. PHILLIPS, *Plantation Management, in* AMERICAN NEGRO SLAVERY: A SURVEY OF THE SUPPLY, EMPLOYMENT, AND CONTROL OF NEGRO LABOR AS DETERMINED BY THE PLANTATION REGIME 261, 261 (1918).

justify Jim Crow.⁵⁵ He was also a careful collector of the writings and ideas of enslavers.⁵⁶ In one of his most sweeping accounts of the system of slavery, he devotes an entire chapter to the subject of “plantation management.”⁵⁷ After reading carefully through the haze of apology for atrocity, Phillips’ exhaustive narrative does reveal many men like Eppes who sought to treat the act of running a plantation as an act of governance.⁵⁸ It was relatively common for slaveowners to write “manuals” or “codes” outlining the duties and privileges of the humans that they enslaved.⁵⁹

These written codes clearly understood the work of a planter to be a leader or governor of humans — both those that they enslaved and those that they employed as overseers or otherwise. They were charters of a sort. Of course, they were not democratic and they laid out no framework for collective or self-governance. And yet they did serve as written frameworks for governance more broadly. They laid out how the planters’ power, itself delegated from the state, would be implemented over the people subject to that power.

These written codes draw only so much of a parallel between the plantation and a formal government.⁶⁰ Beyond the obvious deficit of

55. See John David Smith, *Ulrich B. Phillips: Dunningite or Phillipsian Sui Generis?*, in *THE DUNNING SCHOOL: HISTORIANS, RACE, AND THE MEANING OF RECONSTRUCTION* 149–50 (J.D. Smith & J.V. Lowery eds., 2013). Smith’s chapter on Phillips does an excellent job of situating Phillips within the milieu of historians constructing a memory of the Civil War and Reconstruction suited to the maintenance of Jim Crow and white supremacy. For a good introduction to the work and problems of the Dunning School, see generally Eric Foner, *Foreword* to *THE DUNNING SCHOOL: HISTORIANS, RACE, AND THE MEANING OF RECONSTRUCTION* ix (J.D. Smith & J.V. Lowery eds., 2013).

56. See Smith, *supra* note 55, at 146–47.

57. See PHILLIPS, *supra* note 54.

58. See generally *id.* Even citing Phillips at all is a problematic act. There is no masking his clear desire to present the system of plantation slavery as humane and decent as part of a larger project attacking Reconstruction and the project of racial equality. Still, as ideologically repugnant as Phillips was, he was also an archivist. Those of us studying these questions in the present have much to learn from the documents that he gathered. For my purposes specifically, Phillips provides the best, most synthetic, and fullest catalogue of examples of plantation management. For this reason, and for all its complexity, I will cite him here while also making clear how deeply I reject his broader scholarly project.

59. See PHILLIPS, *supra* note 54, at 262.

60. The written-ness of these codes does distinguish the plantation from other, less formalized forms where the state has delegated the power to dominate to private actors. Although enslavers often invoked the paternalistic image of the family to justify their dominion, families were not so formally structured. Workplaces — and especially the highly ordered modernized workplace — are a more complex story. While a full comparison between the workplace and the plantation goes beyond the scope of this project, I’d simply note that my argument aligns with Elizabeth Anderson’s when she

democracy, these codes bound planters only insofar as they chose to be bound.⁶¹ In that sense, they were like any other code of law in a totalitarian system. Totalitarian governments, however, are still governments. (Nor are local governments famous for rigid knowledge of or adherence to their own written charters.)⁶² It is critical for my argument to insist that there is nothing inherently just or good about governments. As this Essay uses the term, government simply describes a site where power is being leveraged and where people are being subjected to regulation and provided services. From this perspective, Eppes' Code and the others like it demonstrate that plantations could and did act as governments and that the enslaved people living on those plantations were subject to the local government authority of planters and proprietors.

C. The Designed Plantation

But the shift to seeing the plantation as a form of local government is rooted in more than the legalisms of code. Another way to see the connection is in the infrastructure of the plantation. Large plantations were often laid out like small towns. Housing for the enslaved laborers surrounded the main houses; roads connected both to the fields. It was not uncommon for plantations to consist of all the infrastructure that the small community would need to subsist: a blacksmith's forge, an abattoir, a barn, a granary — as well as sometimes churches, and even occasionally schools.⁶³ Looking at maps or layouts of plantations, the physical similarity to the town is evident.

proposes that we understand private employers as a form of “private government.” See ELIZABETH ANDERSON, *PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON'T TALK ABOUT IT)* 6 (2017).

61. Eppes' Code makes it clear that while the work hours are set out, he can depart from them in times of “press.” See Nicholls, *supra* note 45, at 78.

62. See Charles Blain, *Bay City Officials Ignore Charter, Residents Fight Back*, TX. SCORECARD (May 31, 2018), <https://texasscorecard.com/local/bay-city-officials-ignore-charter-residents-fight-back/> [<https://perma.cc/4YEA-T2VQ>].

63. See, e.g., *Historic Buildings*, WHITNEY PLANTATION, <https://www.whitneyplantation.org/history/the-big-house-and-the-outbuildings/> [<https://perma.cc/QH7F-D4AL>] (last visited Feb. 27, 2023); JOHN MICHAEL VLACH, *BACK OF THE BIG HOUSE: THE ARCHITECTURE OF PLANTATION SLAVERY* 186 (1993); V. ALTON MOODY, *SLAVERY ON LOUISIANA SUGAR PLANTATIONS* 92 (1925). In his 1924 dissertation, Vernie Moody reported on an example of a Louisiana sugar planter who built a schoolhouse to be used by the white children on the plantation that would be used as a church for the enslaved residents on Sunday. See *id.* at 87 n.5.

Figure 1: A Modern Recreation of a Whitney Plantation Map⁶⁴

Those living in and passing through plantations understood them as public spaces. Catherine Cornelius, who was enslaved on a plantation near Baton Rouge, Louisiana recalls meeting General Butler of the Union army when he arrived during the Civil War.⁶⁵ Finding himself in a built up and densely settled place, Butler had asked her what town he'd arrived in, and she answered: "Dis ain't no town: dis a plantation."⁶⁶ Butler could be forgiven for being confused. Large plantations were so built up that in some, carpentering was the second most important labor after cultivation because of the work of building and maintaining the physical plant.⁶⁷ In the words of the architecture scholar Laura Ewen Blokker, many large plantations "were so vast and had so many buildings that they might indeed be mistaken for a town."⁶⁸

64. This is map of the Whitney Plantation in Louisiana. While it is a modern map, it is representative if slightly anachronistic. See *Historic Buildings*, *supra* note 63.

65. Laura Ewen Blokker, *Construction and Construct: Architecture of the Louisiana Plantation*, in *CHARTING THE PLANTATION LANDSCAPE FROM NATCHEZ TO NEW ORLEANS* 22 (2021).

66. *Id.* Other observers have also noted the degree to which plantations physically resembled self-contained small towns. See also VLACH, *supra* note 63, at 185–86.

67. See Blokker, *supra* note 65.

68. *Id.*

Of course, not every plantation was large or sprawling and so the comparison to the physical footprint of the town has its limits. Still, plantations, like towns, were places where people made their lives, received services (meager as they were), and were regulated. Little surprise, then that they might sometimes look like and feel like local governments.

D. The Plantation as Local Government

I could fill pages and pages with further argument and evidence that plantations were forms of government. That kind of thick historical demonstration goes beyond the ambition or scope of this Essay. Rather, in the end the central observation of the essay emerges from three linked observations already in evidence. First: nearly one third of the population of the antebellum South were enslaved. Second: the county court system of government was weak and largely delegated power to wealthy landowners. If we then insist — as I think we must — that the enslaved people living in the South were part of the functional populace, it becomes clear that there was no local government structure in place tasked with the governance of these nearly four million people.

Third, then, plantations were in fact the places where millions of people were governed in a daily, local, and despotic way. From legal codes, to infrastructure, to architecture, plantations professed what they were: places where governance took place.

It might be tempting to say that the very overt despotism of the plantation disqualifies it from being a form of government. Without denying the despotism at all, this objection gets the question precisely wrong. Despotism *is* a form of government.⁶⁹ In fact, arguably, what southern elites called democracy in the antebellum South was itself, actually a form of despotism at the regional, or even national level.⁷⁰ More to the point, there is no reason to think that local government was not, or could not be, despotic. A despotic local government is no

69. I should say here that there are a thousand grounds upon which one might quibble with my definition of “government.” If, for example, you take the position that no government is legitimate which is not democratic or that government must imply forms of accountability, you could easily argue that true despotisms are not, in fact, government. My own definition is more simplistic. Government as I use the term here simply means a mechanism whereby people are governed either with the direct authority of the state or, as in the case of the plantation, with the explicit and/or implicit sanction of the state.

70. For a pointed contemporary polemic making this argument, see RICHARD HILDRETH, *DESPOTISM IN AMERICA: AN INQUIRY INTO THE NATURE, RESULTS, AND LEGAL BASIS OF THE SLAVE-HOLDING SYSTEM IN THE UNITED STATES* (1854).

less a government when it polices residents, regulates public behavior and morality, and dictates the generally applicable rules of public life. These are all roles that plantation owners (and/or their designated agents) played in the lives of the people enslaved on farms and plantations.

In this, I rest my case on the primary argument of this essay: we should understand the plantation as a form of local government that was constitutive of the legal and cultural fabric of the antebellum South. This next Part asks what, if anything, this conclusion has to say about how we understand local government and the distinctions it draws between the public and the private sphere, in the present.

II. PLANTATION LOCALISM'S SHADOW

Local government is a place in American life where political theory becomes materially manifest. It is at the local level where we are all subject to a myriad of impositions from the state. Local governments tell people where to park and cross the street. Local governments have the power to license, tax, surveil, police, and punish. They are also where the state serves us directly. Local governments collect trash, pave and plow streets, and maintain playgrounds. They educate, protect, facilitate, and sometimes even entertain.

Much of what we believe about government in a broader sense is forged in personal experience and imagination of local government. Those of us who grew up in places where government appeared to “work” may be more inclined to have faith in a view of government as a collective enterprise aimed at both creating a participatory civic space and serving the public good.⁷¹ By contrast, others who have experienced local government as an oppressive and extractive force may be inclined toward skepticism that government more broadly can do anything for them beyond protecting their property rights.⁷² In other words, ideas of what the state is, what it can do, and whether it is a force for good are partly shaped by our experience of local

71. In previous work, I've referred to this perspective as faith in “communitarian” localism. See Farbman, *supra* note 19, at 419. Upon reflection, I'm not sure that this term is perfect, since the idea of “community” does not quite capture the aspiration towards participation and civic dynamism that animates this view. Perhaps “civic” localism or “participatory” localism would be better terms. In the end, reducing the view to a single label will always be reductive and delimiting, and so it is likely best to leave things where they lie.

72. In previous work, I've referred to this view as “proprietary” localism. See *id.* Here again, the term may be too limiting, though the salience of the protection of property as the highest and best goal of local government is a central idea.

government as the most immediate and proximate contact we have with the state.⁷³

In caricature, those of us who have encountered local government as real or potential source of support or community emerge with more faith in government at other levels. By contrast, those of us who have either been alienated by local government or simply never engaged with it are more likely to emerge with a more libertarian skepticism about the role of government more broadly.⁷⁴ It matters, then, what we mean by local government, where we find it, and how we engage with it. It matters as a matter of framing, but also to the deeper questions that have and continue to animate our political dissensus.

So where does the history of the plantation fit in, and why is it useful to think of the plantation as a form of local government? To answer this, let me tell you a story. In 1999, the town of St. James was incorporated in Brunswick County, North Carolina.⁷⁵ Like so many other instances of modern-day incorporation, St. James was formed to protect the property owners living in the planned development there from being annexed by nearby towns — in short, it was incorporated to keep taxes low, preserve the existing character of the community, and protect the governance authority of the Property Owners' Association (POA).⁷⁶ The name of the quasi-gated development? St. James *Plantation*.

73. It might be tempting to reduce the divide between places where local government works and does not work to the divide between urban and rural. There is something to this, but I think the divide is more nuanced and localized than this binary would suggest. My point is that the experience of local government is extremely localized and personal. The owner of a brownstone in Brooklyn will experience their relationship to the city of New York very differently than a renter in the public housing complex down the street.

74. Nothing I say here is groundbreaking political theory! In essence I am redescribing how our electorate is split between urban voters (who live in denser, higher taxed, more service-rich localities) and rural voters (who live in more sparse, lower taxed, and service-poor localities). See generally James Gimpel et al., *The Urban–Rural Gulf in American Political Behavior*, 42 POL. BEHAV. 1343 (2020).

75. See *History of St. James*, ST. JAMES PLANTATION PROP. OWNERS ASS'N, <https://www.stjamespoanc.org/page/HISTORY> [<https://perma.cc/2DEG-4XRC>] (last visited Feb. 27, 2023). I am in debt to one of my students, Emily Nassif, for introducing me to the story of St. James and for gathering so much valuable information on the town. Emily was in my Local Government Law class in the fall of 2022 and she wrote a brilliant research assignment on St. James which came across my desk just as I was finishing this essay. I have used her research as a jumping off point for much of what follows here.

76. The Property Owner's Association own history of the town admits as much! See *id.*

St. James Plantation is a complex of cul-de-sacs developed on a former pine swamp near Southport and Oak Island at the mouth of the Cape Fear River in North Carolina. These piney barrens were not prime agricultural land, and yet, since the eighteenth century, the area had been home to a number of plantations that exploited enslaved labor to grow pine trees that supplied pitch, rosin, tar, and turpentine for naval production.⁷⁷ One of these plantations was owned by John Bell, and it was actually the site of the Brunswick County Courthouse for a few years.⁷⁸ The old courthouse had been destroyed by a hurricane in 1769;⁷⁹ in the Revolutionary War, the British razed the town of Brunswick (where the courthouse had been located).⁸⁰ When the North Carolina legislature met to decide where to build a new courthouse to be the center of Brunswick County government, they also chose John Bell's plantation as the temporary site to conduct court business while the courthouse was being built.⁸¹ Without a richer historical record, we are left only to speculate on why Bell's plantation was chosen as the temporary home of the courthouse. In Part I, I argued that the county court system of local government was designed by and for planters as a system for maximizing their own delegated powers.⁸² Given that, and given the fact that there were very few settlements that were *not* plantations in places like Brunswick County, it is hardly surprising that Bell's plantation would be chosen.

The precise location of Bell's plantation and the other surrounding plantations is a little hard to determine in the present — and it may well be that the land that St. James now sits on was not part of any one plantation. Still, not only is it land that was surrounded by plantations

77. See David Cecelski, *A Day in Piney Grove – A Journey into Brunswick County's Past*, DAVID CECELSKI (Apr. 14, 2020), <https://davidcecelski.com/2020/04/14/a-day-in-piney-grove-a-journey-into-brunswick-countys-past/> [<https://perma.cc/UU6V-ND8X>]. Maps show at least four plantations surrounding the area where St. James Plantation currently sits: Bell, Galloway, Goose Marsh, and Myrtle Grove. See R.V. Asbury, Jr., *A Map Showing Some of the Old Plantations in the Lower Cape Fear Area (Oct. 1961)*, CAROLANA, https://www.carolana.com/NC/Counties/cape_fear_plantations_asbury_1961.html [<https://perma.cc/ES3P-4Y27>] (last visited Apr. 7, 2023).

78. See Rudolph Mintz, *Court Houses-Brunswick County*, in BICENTENNIAL: BRUNSWICK COUNTY NORTH CAROLINA 9 (1964).

79. See *id.* at 7.

80. See *A History of Brunswick County*, CAROLANA.COM, https://www.carolana.com/NC/Counties/brunswick_county_nc.html [<https://perma.cc/5U8V-CY3S>] (last visited Feb. 27, 2023).

81. See Mintz, *supra* note 78, at 7.

82. See *supra* Part I.

where enslaved laborers lived,⁸³ but the very location of the old courthouse attests that these plantations were central to the local governance of that land before emancipation.

After emancipation and long into the twentieth century, the land that would become St. James was uninhabited. In the 1980s, a man named Homer Wright bought hundreds of acres of these pines with the dream of building a retirement paradise near the sea.⁸⁴ He began developing what would become four “neighborhoods” within a broader development.⁸⁵ Each neighborhood has its own gate.⁸⁶ These neighborhoods are organized around a dense set of residential amenities. There is a membership-based club which includes four golf courses, racquet sports (including a lot of pickle ball), swimming, and other country club amenities.⁸⁷ Beyond the club, the plantation property owners association provides a set of amenities available to every resident of the development.⁸⁸ While there is no explicit rule restricting who may live there, St. James Plantation and the club are

83. One of these plantations was likely the home of the parents of the famous fugitive slave, revolutionary, and Reconstruction politician Abraham Galloway. See Cecelski, *supra* note 75. Galloway escaped enslavement in North Carolina to become an abolitionist leader and advocate of armed revolution — he went on a mission to Haiti to try to stir up an armed invasion of the South. See DAVID S. CECELSKI, *THE FIRE OF FREEDOM: ABRAHAM GALLOWAY & THE SLAVES’ CIVIL WAR* 28–29 (2012).

84. See Hillary Brady, *The Wright Life: Meet Homer Wright, the Founder of St. James Plantation*, LIFE IN BRUNSWICK COUNTY (Sept. 29, 2011), <https://lifeinbrunswickcounty.com/the-wright-life-meet-homer-wright-the-founder-of-st-james-plantation/> [https://perma.cc/Z6YA-RNLA].

85. In addition to the “Main” neighborhood, St. James Plantation consists of “Seaside” (which is not actually on the water), “Regency,” and “The Grove.” See *Town of St. James Street Map (July 2021)*, TOWN OF ST. JAMES, N.C., https://www.townofstjamesnc.org/vertical/sites/%7BF8CF8D32D-A03D-47D6-AE34-DCA8B6F446F1%7D/uploads/TOSJ_Road_Map_2021.pdf [https://perma.cc/KU3S-ULX5] (last visited Apr. 7, 2023).

86. *See id.*

87. It is called “The Clubs at St. James,” and it is managed by a private company (Troon) that manages other similar properties around the world. See *About Us*, THE CLUBS AT ST. JAMES, <https://www.theclubsatstjames.com/about-us> [https://perma.cc/HV53-9U8Q] (last visited Feb. 27, 2023). Residents of St. James Plantation are not automatically members of the club — there are three different membership classes that provide different levels of access to the club amenities. See *Membership*, THE CLUBS AT ST. JAMES, <https://www.theclubsatstjames.com/membership> [https://perma.cc/6RSS-262F] (last visited Feb. 27, 2023).

88. These include a private beach club on nearby Oak Island, a boat launch, a number of parks, and even a lending library. See *Amenities*, ST. JAMES PLANTATION POA, <https://www.stjamespoanc.org/> [https://perma.cc/85NN-WFYK] (last visited Feb. 27, 2023).

clearly marketed toward retirees.⁸⁹ Indeed, as of the 2020 census, more than 61.9% of the population of the town was over 65.⁹⁰ It is even more racially and economically exclusive; 93.9% of the residents identify as white,⁹¹ and the median household income in St. James is roughly two times higher than the median income in surrounding Brunswick County.⁹²

When the town incorporated in 1999, the boundaries were drawn to include all of St. James Plantation plus a small parcel of land outside the gates to house a city hall and community center.⁹³ That means that there are no residents of St. James who are not also residents of St. James Plantation.⁹⁴ The government of the town of St. James is strikingly minimal. The town was incorporated “to provide self-determination and independence to the residents of the St. James development, particularly in the face of possible annexation by several neighboring towns.”⁹⁵ The town government itself provides very few services or amenities. There is no school district (the few children living in the town attend county schools), no police department (the town contracts with the county sheriff’s office and the Plantation provides its own private security), no public parks, or other amenities.⁹⁶

89. The slick video that greets you on the homepage for The Clubs at St. James leads with the promise that “Your best stage of life starts here.” The video proceeds to show lots of images of happy looking older adults. *See* THE CLUBS AT ST. JAMES, <https://www.theclubsatstjames.com/> [<https://perma.cc/8TMY-UQ4T>] (last visited Feb. 27, 2023).

90. By contrast, only 2.5% of the population was under 18. *See QuickFacts: St. James Town, North Carolina, U.S. CENSUS BUREAU* <https://www.census.gov/quickfacts/fact/table/stjamestownnorthcarolina/RHI225221> [<https://perma.cc/VA9P-R6QL>] (last visited Feb. 27, 2023).

91. *See id.*

92. The median household income in St. James is \$115,040 compared to \$64,400 in Brunswick County. *Id.*; *QuickFacts: Brunswick County, North Carolina*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/brunswickcountynorthcarolina/PST045222> [<https://perma.cc/3MLY-7Z8S>] (last visited Feb. 27, 2023).

93. *See Town of St. James Street Map*, TOWN OF ST. JAMES, N.C., https://www.townofstjamesnc.org/vertical/sites/%7BF8CF8D32D-A03D-47D6-AE34-DC8B6F446F1%7D/uploads/2019_Street_map.pdf [<https://perma.cc/G5XE-PNZZ>] (last visited Apr. 3, 2023)].

94. In fact, the boundaries of the town were drawn to exclude another, unrelated development called “Arbor Creek Plantation.” Arbor Creek is apparently a more family-friendly and affordable neighborhood that buyers might choose “over expensive gated communities to avoid high monthly membership fees.” *See Arbor Creek Plantation*, CMTY. FINDER, <https://realestatescorecard.com/community-reviews/coastal-southern-north-carolina/arbor-creek-plantation> [<https://perma.cc/58V9-9J5X>] (last visited Feb. 28, 2023).

95. *See History of St. James*, *supra* note 75.

96. *See Town and Council Functions & Financial Summary (2021–2022 Fiscal Year)*, TOWN OF ST. JAMES, N.C.,

The town does provide a small volunteer fire department, regulates zoning, and facilitates the provision of utilities and trash and recycling collection.⁹⁷

Despite the sparse government services, it would be a mistake to say that St. James is a libertarian paradise. St. James Plantation is a heavily regulated and infrastructure-rich community. The Plantation provides security at the neighborhood gates, amenities such as parks, a beach, and a lending library.⁹⁸ Also, like many other homeowners' associations, it heavily regulates the uses of the residents' private property.⁹⁹ Property owners pay substantial fees to the POA to maintain these services. Going even further within this heavily regulated and infrastructure-rich community, the Club offers a still more expensive and exclusive form of community to those who can afford it.

Therefore, while the town of St. James appears to be a minimal shell of public governance, we should not just think about the town when conceptualizing what local government is. We should also think about the Plantation, that the town's structure protects. It is at the level of the Plantation and the Club where most of the taxation, regulation, and service provision is happening.

In the context of this Essay, it is tempting to focus on the literal connection between the antebellum plantation and modern St. James naming itself a "plantation." It is true that there is something gruesomely ironic about an all-white retirement community adopting the twisted nostalgia that the name plantation implies. But it would be a mistake to over-read the connection as a matter of historical causation. Whatever the echoes of white supremacy, segregation, and

https://www.townofstjamesnc.org/vertical/sites/%7BF8CF8D32D-A03D-47D6-AE34-DCA8B6F446F1%7D/uploads/The_St._James_Town_and_Council_-_Functions_Financial_Summary.pdf [<https://perma.cc/PCJ5-HGUP>] (last visited Feb. 28, 2023); *St. James Plantation*, CMTY. FINDER, <https://communityfinder.com/community-reviews/coastal-southern-north-carolina/st-james-plantation> [<https://perma.cc/YSW7-5JNY>] (last visited Mar. 1, 2023); ST. JAMES PLANTATION PROP. OWNERS ASS'N, *THIS IS ST. JAMES* (2023) [hereinafter *THIS IS ST. JAMES*], https://cdn.ymaws.com/www.stjamespoanc.org/resource/resmgr/resources/a_guide_to_living_in_st_jam.pdf [<https://perma.cc/2JTZ-CMPU>].

97. See *Town and Council Functions & Financial Summary (2021–2022 Fiscal Year)*, *supra* note 92; *THIS IS ST. JAMES*, *supra* note 96.

98. See *ST. JAMES POA*, *supra* note 96 at 3, 11, 12–13, 15.

99. See Michael Praats, *St. James Plantation Homeowner Cries Foul after Neighborhood Cites Him for 'Black Lives Matter' Flag*, *WECT NEWS 6* (Mar. 22, 2022, 4:23 PM), <https://www.wect.com/2022/03/22/st-james-plantation-homeowner-cries-foul-after-neighborhood-cites-him-black-lives-matter-flag/> [<https://perma.cc/3M92-LM3F>].

exclusion that structure modern St. James, a retirement community is not a plantation and the petty tyranny of a POA is not the brutal despotism of an enslaver.

And yet, the overdetermined nominal resonance does point to a more nuanced structural similarity between antebellum plantation localism and the present. The relationship between the town of St. James and St. James Plantation is reminiscent of the relationship between the county court and the antebellum plantation. Like the old county court, the modern town of St. James exists as a pass-through public structure to delegate power to the Plantation to govern the residents unfettered by the pesky collectivism and redistribution that would attend city or even county governance. This is not an accident, nor is it true that the public form of the town is simply weak or inert. Rather, it was erected by and is still managed by the property owners within the town who benefit from the protection of the public shell — protection from annexation, protection from county taxation, and protection from sharing money and resources with those who are not residents of the plantation. What public governance the town represents is the empowerment of the property owners to manage their affairs in the “private” sphere as they see fit. As it was in the antebellum South, the proper conclusion to draw is not that there is no local government, but rather that this model of thin public institutional governance delegates the task of governance to private actors wielding power behind the protection of the public form.

Of course, one might reasonably argue that these structural similarities are not damning to St. James today. After all, the private power that St. James Plantation protects is the relatively mundane (if still inequitable) power for a self-selecting group of property owners to preserve their low taxes, exclude those who cannot afford to live there, and govern themselves. This is not the same power to oppress, exploit, rape, and murder human beings that the county court protected for planters. Stipulating this, I submit that the structural similarity is still troubling. By reducing the public form of government to a pass-through to delegate private power, places like St. James reinscribe the old fiction (common to the plantation) that the only legitimate power resides in private ordering. We reduce our conception of local government to a tool of protection (a “night watchman”) that keeps the other, more intrusive elements of “the state” at bay: ideas of civic collectivism, redistribution, multiracial conceptions of the demos.

Obviously, this is troubling to those of us who like these ideas and might aspire to a localism that fosters them.¹⁰⁰

But the trouble runs deeper too. St. James is hardly the only place to adopt this revamped plantation localism today. There are other gated communities that have incorporated into towns purely to preserve their gates and delegate power to the homeowners.¹⁰¹ But even where the community has no gates and there is not a single group of property owners in control behind the scenes, the same impulses are at work across the landscape of our localism. In place after place, local governments are incorporated and maintained with the purposes of keeping taxes low and protecting the property of those who live there.¹⁰² Local government services are made fee-for-service or privatized,¹⁰³ local duties are contracted out,¹⁰⁴ and homeowners' associations are empowered. Even if these places are less explicit than St. James, the shadows of plantation localism are still visible in the ways in which relatively weak public shells protect the autonomy and power of the property owners living in these places.

That autonomy may serve the residents' economic self-interests, but it also reproduces inequality and impoverishes a broader sense of civic community. The plantation localism of a place like St. James hollows out the conception of government and replaces it with a fantasy of self-determination. In reality, however, that self-determination is itself thickly governed and regulated. The residents of St. James Plantation may not be governed by the town of St. James, but they are deeply entangled in the coercive structures of the POA. In place of the complex reality of imperfect public government, they are left with a fiction of self-determination entangled with the reality of private constraint.

This is neither the time or place to fully expose or bemoan the thinning of the public sphere at the local level. Rather, the dynamic between St. James and St. James Plantation is symptomatic of a larger dynamic in which local governments act as thinned out public shells in

100. I am on record as one such aspirational localist. *See generally* Farbman, *supra* note 19.

101. The most famous example of this is Rolling Hills on the Palos Verdes Peninsula near Los Angeles. *See* GARY MILLER, *CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION* 90–91 (1981). But there are other examples as well. *See* Setha Low, *How Private Interests Take Over Public Space: Zoning, Taxes, and Incorporation of Gated Communities*, in *THE POLITICS OF PUBLIC SPACE* 93–94 (2005).

102. *See* MILLER, *supra* note 101, at 86.

103. *See* Laurie Reynolds, *Taxes, Fees, Assessments, Dues, and the “Get What You Pay For” Model of Local Government*, 56 *FLA. L. REV.* 373, 376–77, 380 (2004).

104. *See* MILLER, *supra* note 101, at 91.

service of a delegation to a fetishized “private” sphere where owners may act more freely and where the market may govern in place of democracy.¹⁰⁵ These private spheres are no more ungoverned than plantations were. As was true in the antebellum South, it is increasingly true that if we want to find where local government is really happening, we must look beyond the public shells and into the homeowners’ associations, charter school corporations, community improvement districts, private security agreements, private utility contracts, and other forms of delegated coercive authority. When we do, we find that those who wield power in these fora are less democratically accountable, less fettered by public oversight, and more likely to already hold political and economic power more broadly. Where local governments facilitate the powers and privileges of private owners, they act as pass-throughs for power to residents who may or may not be elected, may or may not be subject to any formal oversight, and, who acting in their private spheres are authorized to expand upon the power that they already wield.

CONCLUSION

And so we are returned to St. James *Plantation*. Why is it called a plantation? Nothing is planted there. Nor is anyone enslaved there.¹⁰⁶ It is hardly the only private development in the South to take the name.¹⁰⁷ These are names chosen as marketing ploys. They are chosen to evoke a feeling in the prospective buyer — a feeling of remove, of independence, of nostalgia for a simpler life. It is hard to stomach the brutal histories that these marketing ploys gloss over. But the history and the present are linked together in ways that go beyond marketing.

105. I will resist a full dive down the rabbit hole, but there is a rich literature on the ways in which deregulation and neoliberalism have delegated governance power and authority to employers privileging market imperatives over democratic self-determination. Unsurprisingly, the same dynamic that I am talking about with local government is at work here as well. For a thoughtful engagement with this issue see Nikolas Bowie, *Antidemocracy*, 135 HARV. L. REV. 160 (2021).

106. Though one presumes that there are a number of low wage workers who are employed by the Plantation and the Club who cannot afford to live on the property.

107. A simple google search reveals more examples than I can catalogue here. See, e.g., *Plantation of Carrollwood*, PLANTATION HOMEOWNERS ASS’N., https://plantationtampahoa.com/outside_home.asp [https://perma.cc/A6YA-S9YC] (last visited Feb. 27, 2023); *The Plantations Subdivision Near Damascus, Maryland*, PLANTATIONS CMTY. ASS’N, <https://plantations1.org/> [https://perma.cc/G94Q-VH55] (last visited Feb. 27, 2023); THE PLANTATION AT LEESBURG, <https://www.palhoa.com/> [https://perma.cc/TQP3-D2WR] (last visited Feb. 27, 2023); PLANTATION OLIVE BRANCH, MISS., <https://www.plantationpoa.com/> [https://perma.cc/ET5U-RSVA] (last visited Feb. 27, 2023).

Plantations were a form of local government. Planter despots governed the lives of millions with power delegated through and protected by a thin shield of public local power.

As a matter of history, it may be enough to simply make this claim and reorient our thinking around the public and private sphere in the antebellum South. But I think this history, read through both St. James (the town and the plantation) and the present state of our localism, offers more. It suggests that while plantations are no longer institutions of local governance, plantation localism still casts a shadow over local government both in the public imagination and in fact.