Even more importantly, Welke transcends the historiographic divide between political economy and personal identity by applying critical race and gender theory to the emergent liberal state. She shows that public regulatory power, far from being a straightforward response to industrialization or the logic of capital, was fundamentally dependent upon cultural constructions of femininity, manhood, race, and respectability. In Welke's account, liberalism is itself constituted by the very gender and racial identities it is supposed to dissolve. The book does have a few imperfections. Its distinction between the old order of individualism and autonomy and the new regime of regulated liberty is too schematic, and its author adopts too much of the vocabulary (though thankfully not the conceptual problems) of modernization theory. But overall, *Recasting American Liberty* is a brilliant work of scholarship that points toward a new synthesis of the strange career of the liberal state.

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Correspondence

To the Editor,

In his review of Hoffer, *The Great New York Conspiracy of 1741* (*Law and History Review* 23 [2005]: 212–13), Winthrop Jordan makes two surprising and serious errors of fact. While Jordan is not a legal historian and may be excused for not being current on the legal scholarship, the mistakes are basic to any understanding of the origins of slavery in British North America. First, he asserts that slavery was a part of the common law. While it is true that some commentators on the common law did discuss slavery, every respected student of the common law, from Lord Mansfield in *Somerset's Case* to Sir John Baker, and almost every leading scholar of American slave law, including Paul Finkelman, Judge Leon Higginbotham, Thomas Morris, Philip Schwarz, Alan Watson, and William Wiecek, reject the notion that the common law of England was the origin of the version of chattel slavery practiced in the colonies.

Relying in part on this mischievous and insupportable assertion that the common law countenanced slavery, Jordan leaps to his second error, that the origin of slave law in the British colonies was the common law. Although the crown accepted the existing law of slavery in the colonies (even chartering a royal monopoly in the slave trade), in fact, chattel slavery, the reduction of men and women to property, was foreign to English notions of bound labor. In effect, the colonial legislators had to invent chattel slavery for themselves, borrowing certain civil law notions of slavery and binding these together with the exigencies of slave trafficking and use in the Caribbean. The foundational document was the Barbadian slave code, as scholars from Richard Dunn to Schwarz and Watson have found. While slavery and the rudiments of slave law in Virginia and other colonies predated the Barbadian code, that document would absorb

and in turn provide the model for a more thorough and far less flexible and humane set of colonial black codes after 1661.

The engine behind this pernicious but inventive spirit in colonial lawmaking was the economic incentive, not racism per se, an argument in Hoffer diametrically opposed to Jordan's own writing on the subject. When a reviewer is defending his own earlier published opinions against the ideas in the book under review, a decent respect for the opinions of the readers demands he reveal his vested interest. It is intellectually dishonest not to do so and leads to mistakes like those committed in the present review.

Respectfully,

Peter Charles Hoffer
University of Georgia

To the Editor,

My review of Professor Hoffer's book referred to "legal doctrines concerning slavery" having "their firm foundation in the Common Law" in the thirteenth century. This statement was not as precise as it should have been, and I apologize to the author and the editors of this journal for its lack of clarity. I was referring to a longstanding historical memory about debased status that may well have helped foster receptivity toward shaping a similar status for African and Indian labor in the New World. In the thirteenth century Bracton had provided a firm justification for enslavement of prisoners taken in just wars. Moreover, during the period of early English expansion overseas, the "country justice" handbooks for J.P.s described "villeinage" or "bondage" as if this status still existed in England, though it did not.

If my review had claimed that "slavery was a part of the common law"or that slavery in the British colonies had its "origin" in the Common Law, it would indeed have been in "error." But my review did not. The author is correct in asserting that "colonial legislators had to invent chattel slavery for themselves, borrowing certain civil law notions of slavery and . . . [from] slave trafficking and use in the Caribbean." My review hoped to extend this short list of borrowed sources to include historical legal memory. As for the "foundational" importance of the Barbadian code, there is direct evidence of its influence in South Carolina and Georgia but not in the other continental colonies, including New York.

I have never maintained that "racism" was the reason why colonial legislatures passed statutes establishing slavery. "Economic incentive" was the sine qua non of slavery in the American colonies, as I unoriginally pointed out long ago. But this old "origins debate" has little to do with the subject of the author's book. At issue here is that the law was part of a particular historical episode, and writing about its application needs, in my opinion, to include careful delineation of the social and affective context prevailing at the time. My review made clear that I thought the book was unsuccessful in this respect. More broadly, focus on the *law* of slavery—or the law itself—has sometimes tended to cast the law as an independent entity, playing it own role in near isolation from the cultures of which it has always been an inherent part. But this complex interrelationship is a wider subject.

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