

Bridle the Horse, Rein in the Man: Free-Ranging Horse-Control Measures and Contests for Authority in
the Seventeenth-Century Chesapeake

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Introduction

A sorrel mare is grazing in a copse of leafless, stunted trees. Then, she bolts. She has spotted, or perhaps smelled, a man with a gun approaching. Although most of her life has been spent away from humans, she knows what the man's presence means. He is there to ensure she not bear any foals. The man is not deterred by her flight, however. Slowly, inexorably, he follows her. He knows that his livelihood is tied to the success of his mission, and he is good at what he does. He has much experience shooting feral horses. The mare tries to put distance between herself and the man, but she cannot escape. The man lifts his gun and fires, striking the mare in her rump. The chase is over. The man reloads his gun. He has spotted another horse, and he intends to shoot this one, too.¹

The man is Dr. Jay Kirkpatrick, and the gun he carries is loaded with an immunocontraceptive vaccine dart that will render the mare sterile for about a year. She lives on a wildlife refuge on Assateague Island and, as one of the Chesapeake's feral horses, is part of a herd that has become a beloved cultural icon. To protect the refuge's natural resources, without which the two herds that live on the island could not sustain themselves, the National Park Service and the Chincoteague Volunteer Fire Company carefully manage Assateague's horse population. They work to ensure that the herds remain large enough to be genetically viable but small enough so that they do not disrupt their island habitat. Their population-control efforts are designed to protect the horses, which might otherwise eat themselves out of a home.²

Or is the man a seventeenth-century Maryland ranger, armed with a musket and a commission from the colony's governor giving him license to kill unruly, feral horses? This man does not want to protect the horses he encounters. These horses, the ancestors of those that are in the twenty-first century confined to Assateague, are often the subject of legislation in both Maryland and Virginia designed to

¹ Harpers Ferry Center NPS, "Back to the Wild: The Wild Horses of Assateague Island," June 22, 2020, video, 9:08, <https://www.youtube.com/watch?v=44KhYh3LVLU>.

² "Resource Brief – Horses," Assateague Island, National Park Service, January 16, 2021, <https://www.nps.gov/asis/learn/nature/resource-brief-horses.htm>.

limit their numbers and confine them to fenced pastures. These horses are not a treasured symbol of the Chesapeake; they are a nuisance, a threat that must be controlled.

But what was so threatening about unconfined horses? Why, in the latter half of the seventeenth century, did legislators in Maryland and Virginia write, debate, and enact a significant number of statutes intended to control and limit the Chesapeake's population of free-ranging horses? One answer to this question immediately presents itself: lawmakers sought to regulate the region's loose horses because their behavior jeopardized the livelihoods of settlers and, more broadly, England's North American colonization project.

Although little direct evidence of free-ranging horses' impact on the seventeenth-century Chesapeake landscape survives, recent biological research demonstrates that feral horse activity significantly effects ecosystems worldwide.³ Indeed, riparian areas like the Chesapeake are particularly susceptible to damage from horses, including damage that planters in the 1600s might not have been able to observe directly. For instance, equid activity leads to soil erosion and declines in microbial abundance, plant biomass, and plant litter cover (lower levels of plant litter can lead to less nutrient-rich soil, which impacts the ability of new plants to grow).⁴ Of course, planters did notice and comment on some of the impacts of free-ranging horse behavior. Certainly, by devouring corn; destroying fruit trees; and impregnating breeding mares that could otherwise produce larger, more useful offspring, horses that lived on the open range disrupted European-style agriculture and imperiled the Chesapeake economy.

But horse behavior alone does not explain the breadth of the horse-control laws proposed and passed by the general assemblies of Maryland and Virginia. Legislators, including those in their colonies' lower houses, used their power to control free-ranging horses to systematically disenfranchise White nonlandowners and stratify colonial society into a system that better suited the interests of wealthy landowners. Despite the differing political histories of Maryland and Virginia, despite the various societal

³ David J. Eldridge, Jingyi Ding, Samantha K. Travers, "Feral horse activity reduces environmental quality in ecosystems globally," *Biological Conservation* 241 (2020): 1-9.

⁴ Eldridge, Ding, Travers, "Feral horse activity," 4, 6.

upheavals that shook the Chesapeake over the last decades of the seventeenth century, these efforts proceeded with little opposition across the region, partially because legislatures were able to mask the true intent of acts that limited the rights of poorer Whites with appeals to the common good. Unregulated free-ranging horses, they argued, harmed all, and limiting their number and restricting the open range was necessary to prevent the great evils that they wrought. By controlling horses, lawmakers enforced their will on human and nonhuman residents of Maryland and Virginia alike.

This study sits at the nexus of several historiographies. First is the body of literature, produced in the middle decades of the twentieth century by scholars like Wesley N. Laing, focused on the maturation of animal agriculture in Britain's North American colonies. Laing and his contemporaries noted the importance of domestic animals to the long-term success and prosperity of places like Virginia and Maryland. Of particular interest to historians of the period were the open-range livestock practices of the English-settled American South, which led directly to the proliferation of feral animals across the area.⁵ However, the wild descendants of imported livestock exist only on the peripheries of these accounts, appearing as occasional inconveniences to planters. This scholarship does not directly connect the presence of free-ranging horses, pigs, and cattle to class tensions or colonization.

In the 1970s, scholars like Alfred W. Crosby began to acknowledge the centrality of cattle, swine, horses, and sheep to the success of European colonization across the globe.⁶ Unlike their

⁵ Wesley N. Laing, "Cattle in Seventeenth-Century Virginia," *The Virginia Magazine of History and Biography* 67, no. 2 (1959): 143-163. On open-range livestock in the colonial period, see James C. Bonner, "The Open Range Livestock Industry in Colonial Georgia," *The Georgia Review* 17, no. 1 (1963): 85-92; Gary S. Dunbar, "Colonial Carolina Cowpens," *Agricultural History* 35, no. 3 (1961): 125-131; Earl W. Hayter, "Livestock-Fencing Conflicts in Rural America," *Agricultural History* 37, no. 1 (1963): 10-20; Terry G. Jordan, "The Origin and Distribution of Open-Range Cattle Ranching," *Social Science Quarterly* 53, no. 1 (1972): 105-121. Bonner, Hayter, and Jordan place open-range livestock practices in Frederick Jackson Turner's model of frontier development, while Dunbar challenges the relevance of Turner's model to colonial South Carolina.

⁶ Alfred W. Crosby, Jr., *The Columbian Exchange: Biological and Cultural Consequences of 1492* (Westport: Greenwood, 1972) and *Ecological Imperialism: The Biological Expansion of Europe, 900—1900* (New York: Cambridge University Press, 1986). See also William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983); Elinor G.K. Melville, *A Plague of Sheep: Environmental Consequences of the Conquest of Mexico* (New York: Cambridge University Press, 1994); Carolyn Merchant, *Ecological Revolutions: Nature, Gender, and Science in New England* (Chapel Hill: University of North Carolina Press, 1989); Timothy Silver, *A New Face on the Countryside: Indians, Colonists, and Slaves in South Atlantic Forests, 1500—1800* (New York: Cambridge University Press, 1990).

predecessors, these historians emphasized the contingency of European colonial success and recognized the threat that feral animals posed to European colonial designs. Virginia DeJohn Anderson's *Creatures of Empire: How Domestic Animals Transformed Early America* remains the most important study of this kind on livestock in colonial America.⁷ Anderson argues that feral livestock in the Chesapeake harmed agricultural productivity, as they bred with domestic animals, much to the consternation of livestock owners; damaged fences and crops; and, if recaptured, proved difficult to manage. Feral livestock interfered with Indian lands, prompting conflicts between indigenous and colonial societies. Further, the presence of feral livestock in the Chesapeake undermined the authority of colonial governments, challenging English conceptions of property rights, making it harder to detect and prosecute animal thieves, and inviting criticism from European observers used to animal husbandry practices that relied on containment. Ultimately, feral animals forced colonists in the Chesapeake to prove their own civility to outside observers.

Scholars since Anderson have described the wild descendants of domestic animals as simultaneously aiding and imperiling European colonization. Noting the challenges that feral animals posed to English colonists in Virginia, Abraham H. Gibson also describes feral animals as the vanguard of English colonization of the inland American South, preceding humans in the disruption of Indian ways of life.⁸ Similarly, Andrea L. Smalley, in her history of the colonization of North America's indigenous fauna, argues that free-ranging and feral livestock were at once collaborators in the European colonization of North America and threats to English plans to improve the land.⁹

Eventually, the forces of settler colonialism, including livestock, succeeding in remaking North America's landscape. Additionally, White Europeans supplanted Native Americans as the region's most numerous human occupants. With this accomplished, the open range that had characterized animal

⁷ Virginia DeJohn Anderson, *Creatures of Empire: How Domestic Animals Transformed Early America* (New York: Oxford University Press, 2004).

⁸ Abraham H. Gibson, *Feral Animals in the American South: An Evolutionary History* (New York: Cambridge University Press, 2016), 33.

⁹ Andrea L. Smalley, *Wild by Nature: North American Animals Confront Colonization* (Baltimore: Johns Hopkins University Press, 2017), 98.

husbandry in the South was no longer necessary or beneficial to private landowners, and so it was replaced by fenced enclosures and stables. The literature on the closing of the open range is extensive and focuses mostly on changes to fence laws after the Civil War. Scholars like Stephen Hahn argue that the replacement of laws requiring that crops be fenced with laws requiring that animals be constrained represented the victory of wealthy landowners over freedpeople and poor Whites, limiting their movement and enabling the wealthy to control the labor of the poor.¹⁰ More recently, scholars, including Drew Addison Swanson, have evaluated earlier, antebellum attempts to limit open-range animal agriculture, concluding that while reformers like Edmund Ruffin advocated for the fencing of livestock because they believed that the closing of the open range would improve Southern agriculture, he and his contemporaries may have hoped to further dominate the South through their reforms.¹¹

And elsewhere, scholars have produced an impressive body of work on discontent and upheaval in the Chesapeake colonies in the seventeenth century. Although debate persists among scholars over the origins and significance of Bacon's Rebellion, most historians agree that the conflagration reveals fault lines among Virginia's seventeenth-century Whites.¹² Similarly, T. H. Breen argues that Virginia's political history of Virginia between 1660 and 1710 cannot be understood without evaluating tensions between poor, White laborers and wealthy planters.¹³ And historians of Maryland like Antoinette Sutto argue that divisions within the colony, often concerning religion, led to a series of conflicts in the

¹⁰ Steven Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850-1890* (New York: Oxford University Press, 1983); Steven Hahn, "A Response: Common Cents or Historical Sense?," *The Journal of Southern History* 59, no. 2 (1993): 243-257; J. Crawford King, Jr., "The Closing of the Southern Range: An Explanatory Study," *The Journal of Southern History* 48, no. 1 (1982): 53-70.

¹¹ Drew Addison Swanson, "Fighting over Fencing: Agricultural Reform and Antebellum Efforts to Close the Virginia Open Range," *The Virginia Magazine of History and Biography* 117, no. 2: 104-139.

¹² James D. Rice, "Bacon's Rebellion in Indian Country," *The Journal of American History* 101, no. 3 (2014): 726-750; Brent Tarter, "Bacon's Rebellion, the Grievances of the People, and the Political Culture of Seventeenth-Century Virginia," *The Virginia Magazine of History and Biography* 119, no. 1 (2011): 3-41. Both articles offer overviews of the historiography of Bacon's Rebellion.

¹³ T.H. Breen, "A Changing Labor Force and Race Relations in Virginia, 1660-1710," *Journal of Social History* 7, no. 1 (1973): 3-25.

seventeenth century that, by the beginning of the eighteenth, had created a hierarchical society in which most, including poor Whites, had only limited wealth and opportunity.¹⁴

This paper, then, evaluates limitations placed on the ability of Chesapeake colonists to raise horses on the open range, extending debates over fencing laws further back in time than most historians of the subject have. Thus, it becomes evident that horse-control measures were an important tool of the elite, wealthy landowners in their contests for power with their colonies' poor Whites. Feral horses were not a small part of the story of colonial animal husbandry, and they were more than a difficult-to-control tool of the undifferentiated mass of European settlers. The animals were a valuable resource for nonlandowning Whites—but because the wealthy made the laws, they were able to legislate horses away from their poorer neighbors, giving themselves an advantage in the contests for power that shook the Chesapeake.

Horses Come to Virginia: The General Assembly and the Beginnings of Horse Control

Virginia's House of Burgesses has long been celebrated as “the first democratically-elected legislative body in the British American colonies,” but from its beginning, the body represented the interests of the colony's elite.¹⁵ The General Assembly was founded as a unicameral body in 1619 to manage the colony, at that point owned by the Virginia Company, and consisted of the governor, his councilors (together the Council of Virginia), and the burgesses.¹⁶ Prior to the foundation of the General Assembly, the governor and his councilors had comprised a Council of State. The earliest councilors were highborn Englishmen, but, even by the end of the 1610s, few wealthy Britons were accepting appointments in Virginia, and councilors were increasingly drawn from the colony's most successful planters—the *nouveau riche* of the English Atlantic.¹⁷ The first burgesses also came from the colony's leading settlers and, according to Paul Musselwhite, were likely selected by corporate leadership in each

¹⁴ Antoinette Sutto, *Loyal Protestants and Dangerous Papists: Maryland and the Politics of Religion in the English Atlantic, 1630-1690* (Charlottesville: University of Virginia Press, 2015).

¹⁵ Maria Kimberley, “House of Burgesses,” Digital Encyclopedia, George Washington's Mount Vernon, accessed April 17, 2021, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/house-of-burgesses/>.

¹⁶ Warren M. Billings, *Sir William Berkeley and the Forging of Colonial Virginia* (Baton Rouge: Louisiana State University Press, 2004), 52.

¹⁷ Billings, *Sir William Berkeley*, 52.

of Virginia's boroughs to establish political and commercial order in the colony.¹⁸ After the Company's dissolution in 1624, Virginia became a royal colony. The General Assembly, although it had no official status under the king, continued operations, and in 1639, Charles I recognized the body as the legislature of Virginia.

During this 15-year period, the General Assembly's functions had evolved. Under the Virginia Company, the General Assembly had been a managerial branch of the corporation, but in the late 1620s and 1630s, it took on legislative responsibilities, gradually replacing authorities in England as the colony's chief lawmaker. It wrote, debated, and passed into law bills from every realm of colonial life, including those related to taxation, trade, and agriculture. By the 1640s, Virginia's General Assembly was a sophisticated legislature, not unlike the English Parliament in its duties and operations.¹⁹ But there were no requirements for election to the House, and, from the 1620s and on, factions within the lower house competed for power.²⁰ However, the arrival of horses to the colony in significant numbers in the middle decades of the century, coupled with an increasingly refined legislative process, gave wealthy burgesses an opportunity to consolidate their interests and authority through horse-control statutes.

Prior to the concerted effort begun by the Virginia legislature in the late 1650s to increase the number of horses in the colony, there were few equids in the Chesapeake and therefore little to no debate over how to manage those that roamed freely. Virginians imported horses irregularly in small numbers beginning in 1609, and as late as 1649, there were only about 250 of the animals in the colony.²¹ It was only after the success of a series of laws passed in the 1650s and 1660s designed to raise Virginia's horse population that the legislature decided to impose limits on the movement of horses in the region.²² In 1668, the General Assembly lifted an earlier ban on the exportation of horses and mares; the next year,

¹⁸ Paul Musselwhite, *Urban Dreams, Rural Commonwealth: The Rise of Plantation Society in the Chesapeake* (Chicago: The University of Chicago Press, 2019), 37, 41.

¹⁹ Billings, *Sir William Berkeley*, 53.

²⁰ Billings, *Sir William Berkeley*, 54, 55.

²¹ Julie A. Campbell, *The Horse in Virginia: An Illustrated History* (Charlottesville: University of Virginia Press, 2010), 13; William Bullock, *Virginia Impartially examined* (London: John Hammond, 1649; Ann Arbor: Text Creation Partnership), 51, <http://name.umdl.umich.edu/A30076.0001.001>.

²² William Waller Hening, ed., *The Statutes at Large* (New York: R. & W. & G. Bartow, 1823), 1:463, 2:128.

the legislature prohibited the importation of the animals.²³ There is no evidence that either of these acts generated debate in the House of Burgesses or the Council of Virginia.

The earliest limitations on the open range, which came in 1670, more than three decades after its codification, proved uncontroversial among Virginia's lawmakers. That year, the General Assembly passed a law mandating that horses be restrained between the middle of July and the end of October each year.²⁴ That such a statute, compelling horse owners to keep their animals on private property for a significant portion of the year, passed in 1670 is no coincidence. In 1643, Governor William Berkeley had encouraged the burgesses of the General Assembly to sit apart from the members of the Council; they did so, and the House of Burgesses became a distinct body in a newly bicameral legislature.²⁵ The House of Burgesses, comprising members of the colony's landowning, tobacco-planting class, asserted itself over the next decades as an ally of landowners.²⁶ The laws and policies they promulgated "promoted landownership, attempted to regulate the behavior of indentured and enslaved laborers, protected commerce with English and Dutch merchants, and sought high prices for the leaf tobacco that was the principal source of income for them all."²⁷ And in 1670, the General Assembly passed a law limiting suffrage to men owning taxable real estate.²⁸ After 1670, the governance of Virginia and horse ownership in the colony were both accessible only to those with at least some land.

And it was the interests of landowners that the 1670 act "Concerning ffences" was designed to protect. In 1670, horses were not yet in wide use either for agriculture or transportation. Although horses had become far more common than they were two decades prior, the animals were a luxury item rather than a practical necessity, and horse ownership was limited to the wealthiest strata of Virginia society. "Concerning ffences" required the owners of horses known to be unruly to "take some effectuall course for restrayning them from trespassing their neighbors, from the twentyth of July till the last of October in

²³ Hening, *The Statutes at Large*, 2:267, 2:271.

²⁴ Hening, *The Statutes at Large*, 2:279.

²⁵ Billings, *Sir William Berkeley*, 91; Tarter, "Bacon's Rebellion," 9.

²⁶ Tarter, "Bacon's Rebellion," 9.

²⁷ Tarter, "Bacon's Rebellion," 9-10.

²⁸ Tarter, "Bacon's Rebellion," 10.

every year.”²⁹ It may appear that this act, which notes that the General Assembly believed it to be more appropriate for “rich men who have the benefitt of such horses” to “provide for their restraint” than it was for “the poore” to erect impossibly “high fences,” prioritized Virginia’s less wealthy Whites over the colony’s horse-owning elite.³⁰ But in actuality, Virginia’s truly poor received no benefits from this law. Poor landowners were still landowners, and many had enough private property on which to restrain horses between July and October should they acquire any. Nonlandowners, however, lost the right to possess horses should the opportunity present itself. After all, those who did not own land did not have the space in which to fence horses. Therefore, they could not meet the law’s requirements that unruly horses be fenced for a portion of the year. Further, the mandatory erection of fences shrank the commons and limited the movement of other, more common livestock animals, such as pigs and cattle, which were more likely to be owned by non-planters.

Restricting Necessitates: Horse Control in Virginia from the 1680s Onward

Horses were not to remain a luxury for long. By the middle of the 1680s, the Virginia legislature had embraced the value that horses could provide to the colony. Since the beginning of English settlement in Virginia, planters had grown tobacco without the use of animal labor, but horses were well-suited for that kind of work.³¹ Further, although most European settlements in the colony were along navigable waterways, making it possible for colonists to get from one plantation to another with canoes, horses made transportation easier and more reliable.³² Horses could also be used in warfare, providing mounted soldiers with an advantage over unmounted foes. The General Assembly evidently had all these uses in mind in 1686, when it passed an “act for the better improveing the breed of Horses.” The law, which passed with no recorded debate, prohibited the loosing of sexually intact male horses at least two years

²⁹ Hening, *The Statutes at Large*, 2:279.

³⁰ Hening, *The Statutes at Large*, 2:279.

³¹ Anderson, *Creatures of Empire*, 111.

³² Anderson, *Creatures of Empire*, 111.

old and under thirteen and a half hands high on Virginia's open range.³³ The legislators hoped that these measures would reduce the number of breeding mares impregnated by undersized stallions, thus improving the stock of horses and making them more useful to colonists. It also ensured that nonlandowners with small horses would have no place to keep their animals for the portion of the year during which the open range was closed per the 1670 law. Virginia's planter class, through its representatives in the General Assembly, was slowly building for itself a monopoly on access to horses.

The Council of Virginia did not allow this process to progress unchallenged. Council members fought against the closure of the open range for reasons not always related to the interests of poor, unlanded Whites. For instance, in 1690, two decades after horse owners were first required to constrain their animals, the Council heard testimony that, without their express authority, Philip Ludwell was acting as an agent of recently deceased former governor Thomas Culpeper, enacting ordinances and creating offices in Culpeper's lands on the Northern Neck. One of the offices established by Ludwell was that of "Ranger General," whose holder could impress livestock, including horses, on the peninsula. The Council described this office as "strange," unheard of," and "unusuall" (although their neighbors in Maryland would not have been surprised that Ludwell had created such a position, for by the 1680s, Maryland's Provincial Council had begun issuing commissions to rangers to kill or capture free-ranging, unmarked livestock, including horses) and asked the governor to curtail Ludwell.³⁴ But the Council's objections to Ludwell's behavior turned more on his subversion of their authority than it did on the interests of the horse owners whose animals his ranger might have captured.

Sometimes the Council and the House of Burgesses directly fought over legislative horse control measures. A 1691 bill originating in the House of Burgesses would have required the full-time enclosure of all Virginia's horses, imperiling the ability of nonlandowners to own the animals, but before the

³³ Hening, *The Statutes at Large*, 35; H.R. McIlwaine, ed., *Journals of the House of Burgesses of Virginia* (Richmond: Virginia State Library, 1905-1915), 2:279; H.R. McIlwaine, *Legislative Journals of the Council of Colonial Virginia* (Richmond: The Colonial Press, 1918-1919), 118.

³⁴ H.R. McIlwaine, ed., *Executive Journals of the Council of Colonial Virginia* (Richmond: Virginia State Library, 1925-1966), 1:132.

Council would grant its assent, it requested that a proviso be added to the bill noting that only horses notorious for eating the bark of fruit trees would be subject to restraint.³⁵ Again, however, although the Council's objection benefitted Virginia's non-planter class, its objection to the original bill turned on another matter. In this case, the Council pushed back against the original bill over questions of security; evidently, the Council feared that by removing the animals from Virginia's countryside, fewer horses would be available for conscription in times of conflict. According to the colony's commissioners, Nathaniel Bacon and his co-conspirators had obtained many of the horses employed in their insurrection 15 years earlier from the woods.³⁶ The Council may have wished to be able to follow this example should the need arise.

It is unclear, however, from whom the Council feared they would have to protect Virginia. The threat did not come from Virginia's Indians, who had been largely killed or displaced by the mid-1680s.³⁷ And Virginia's poorer Whites had last engaged in large-scale social unrest in 1682's tobacco-burning riots; T. H. Breen writes of "landless and indebted persons" that, "by the mid-1680s, no one seems to have regarded them as a serious threat to Virginia's internal security."³⁸ Indeed, the Council and the House seem to have been more interested in securing political and economic power than they were with securing military power. Some scholars have argued that Virginia's political elite, including William Berkeley, viewed Bacon as an aberration; his "demise undid the revolt" because of the strength of his personality.³⁹ Without Bacon, there was no more cause to fear open warfare. Further, military power belonged ultimately to the crown. In the fifteen years following Bacon's Rebellion, there was a "Stuart crackdown on colonial governments" across the Americas.⁴⁰ Leaving military power to agents of the crown, leading colonists continued to consolidate economic and social power. Virginians did not ignore the possibility of violence, however. The Council may have opposed the 1691 bill because it was

³⁵ McIlwaine, *Legislative Journals of the Council*, 1:141; Hening, *The Statutes at Large*, 3:70.

³⁶ Gibson, *Feral Animals*, 35.

³⁷ Breen, "Labor Force and Race Relations," 15.

³⁸ Breen, "Labor Force and Race Relations," 15.

³⁹ Billings, *Sir William Berkeley*, 247.

⁴⁰ Tarter, *Bacon's Rebellion*, 36.

concerned that enslaved Black laborers would rise against their enslavers, a fear that emerged as concerns about Indians and White labor unrest were declining.⁴¹

This answer seems the most likely. The 1691 law reflects the “sense of [White] race solidarity at the expense of [B]lacks” that Breen argues was formulating around this time.⁴² Where the General Assembly had aligned itself with planters, wealthy and poor alike, at the expense of nonlandowners in 1670, the Council in its objections to the original language of the bill positioned itself as supportive of both the rights of horse owners and fruit growers. Understanding that all horse owners would have to pay for all their horses’ diets year-round if the bill were adopted as written, the Council sought to limit its reach. On the other hand, they agreed to heavy penalties against horse owners whose animals destroyed fenced fruit trees, even if those horses were not previously known to have a penchant for eating bark. The law was designed to appease both those Whites wealthy enough to own horses and those who were not.

This was not the only victory the Council won against the House in the battle over who could own horses. As the decade progressed, the efforts of the House of Burgesses to limit horse ownership proved less successful, and the General Assembly grew less likely to support restraints on free-ranging horses. In 1695, the Council voted against a bill passed by the House that would have empowered the county courts of Accomack and Northampton on the Eastern Shore to make their own laws for the restraint of unruly horses.⁴³ Perhaps, as with the Ludwell incident, the Council resented local authorities taking on powers that the Council regarded as its prerogative. The next year, the Burgesses of those counties introduced a bill to better restrain horses; they had apparently abandoned their hope of being allowed to enact local ordinances for that end.⁴⁴ The bill, which called for the creation of “Pounds,” passed the House, but the Council would not support the measure unless it was weakened.⁴⁵ The House was unwilling to support the amended bill, and it died.

⁴¹ Breen, “Labor Force and Race Relations,” 17.

⁴² Breen, “Labor Force and Race Relations,” 18.

⁴³ McIlwaine, *Journals of the House*, 3:25; McIlwaine, *Legislative Journals of the Council*, 1:219.

⁴⁴ McIlwaine, *Journals of the House*, 3:83, 85-6; McIlwaine, *Legislative Journals of the Council*, 1:240.

⁴⁵ McIlwaine, *Journals of the House*, 3:86.

Virginia's legislature, which in the 1670s had placed the rights of planters before those of nonlandowners and in the early 1690s had tried to balance the concerns of those two parties, was now firmly aligned with the interests of unlanded horse owners. That same session, another bill for the restraint of horses across the colony was rejected by the House, which also denied the request of the Burgesses of Northumberland and Essex counties, on the Northern Neck and the Middle Peninsula, respectively, to present a bill similar to the second brought by their colleagues from Northampton and Accomack.⁴⁶ While regional resistance to horse constraint in parts of Virginia that had not yet been transformed to more closely resemble Europe might be explained by the desire of legislators to have horses complete "wilderness work," the incidental clearing of brush and fertilizing of fields that occurred when large herbivores were allowed to roam free, that the General Assembly resisted horse constraint even in parts of the colony long settled by Whites suggests that their aims were more than environmental.⁴⁷

But this new status quo was short-lived. In 1704, legislators from Charles City proposed that the 1686 "act for the better improveing the breed of Horses" be revived; the measure passed with little debate.⁴⁸ The next year, a new fence law passed. Like its predecessors, this law made horse owners responsible for the damages their animals did to properly fenced fields and orchards.⁴⁹ And by the first years of the 1710s, Virginia's planter class was firmly in control of the battle over who should have access to the animals. As horses became cheaper and more available to the nonelite, wealthy horse owners began to advocate for stricter limits on the open range. These efforts were initially stymied. In 1710, the House rejected a bill that would have limited horse ownership.⁵⁰ The next year, a similar bill passed the House, but the Council insisted on adding some amendments that the House could not agree to, and the bill died.⁵¹ However, in 1713, an "act to restrain the keeping too great a number of Horses and Mares, and

⁴⁶ McIlwaine, *Journals of the House*, 3:82, 83.

⁴⁷ Smalley, *Wild by Nature*, 89.

⁴⁸ Hening, *The Statutes at Large*, 3:225; McIlwaine, *Journals of the House*, 4:54-77.

⁴⁹ Hening, *The Statutes at Large*, 3:279-82.

⁵⁰ McIlwaine, *Journals of the House*, 4:260, 267.

⁵¹ McIlwaine, *Journals of the House*, 4:312, 321, 327.

for amending the breed” became law. This act described the open-range animal agriculture that had been practiced in Virginia for decades as a societal ill and disqualified the unlanded and smallholders, named as those responsible for the injurious proliferation of unconstrained horses on the landscape, from owning sexually intact horses.⁵² The commons, at least in parts of Virginia that had been transformed by a century of English settlement, were no longer open to the less-than-wealthy horse owners the Council had sided with in previous decades.

Those who led the push for limitations on horse ownership in the early years of the eighteenth century had no more need for the open range. The transition to an enslaved work force provided planters with cheap labor, the lack of which was one of the factors that led to the development of open-range agriculture.⁵³ And rising grain prices meant that many planters were transitioning from growing tobacco to cultivating wheat and corn. While planters had not fertilized their tobacco fields with manure because smokers claimed they could taste the dung, there were no such concerns regarding grain.⁵⁴ To use the dung of their horses, planters had to keep the animals nearby, limiting the usefulness of the open range. And where these planters had before let much of their acreage lie fallow each year, they now planted more of their lands, meaning that there were more crops for horses to spoil.⁵⁵ Free-roaming horses were an annoyance, not a convenience, and the planters who wanted to see their numbers culled had the political heft to do so.

A Complicated Contest: Horses and Maryland Politics, Beginnings to 1682

Where Virginia was established as a corporate entity, Maryland was chartered as a proprietary colony owned by Cecil Calvert, the second Lord Baltimore, in 1632. The colony’s legislative history began three years later, when a group of freemen assembled in St. Mary’s City and drafted a set of laws

⁵² Hening, *The Statutes at Large*, 4:46-9.

⁵³ Virginia DeJohn Anderson, “Animals into the Wilderness: The Development of Livestock Husbandry in the Seventeenth-Century Chesapeake,” *The William & Mary Quarterly* 59, no. 2: 408.

⁵⁴ Anderson, *Creatures of Empire*, 115.

⁵⁵ Anderson, *Creatures of Empire*, 114; Anderson, “Animals into the Wilderness,” 408.

which were accepted by Calvert only after a protracted debate.⁵⁶ This body, which came to be known as the General Assembly, met for the second time in 1638, presided over by the colony's lieutenant general (or governor), Leonard Calvert, brother of Cecil and his representative in Maryland.⁵⁷ In addition to Calvert, this Assembly consisted of his council and a number of freemen and proxies of freemen; most in these last categories were landowning planters.⁵⁸ Already, the White inhabitants of Maryland were governed by their wealthiest neighbors, although in Maryland in the middle decades of the seventeenth century, class lines were not the most significant division among settlers. For Calvert was Catholic, and the English Civil War soon drew stark lines between Maryland's Catholic elite and the Protestant freeman who made up most of the colony's White population. But while religions division were important early in the colony's history, after the fires of war died out, in Maryland as in Virginia, wealthy planters found that they could use horse-control measures to order society and consolidate their power.

In the 1640s, Maryland's settlers were wanting for horses, so in 1647, Thomas Greene, governor of the colony and Leonard Calvert's successor, prohibited the exportation of horses from Maryland.⁵⁹ He reasoned that horses provided benefits in both war and peace and threatened severe punishment on those who violated the order.⁶⁰ However, by 1654, planters in Maryland had found that free-ranging horses could prove injurious to their crops. That year, the colony's General Assembly, which had become a bicameral body in 1650, passed a law mandating that the owners of horses that entered fields growing "Corne or any other Comodity" were responsible for any damages their animals incurred.⁶¹

This law did not defer entirely to planters in disputes that arose between them and horse owners. If anyone killed another's horse, even if that horse had trespassed on a sufficiently fenced field, the killer

⁵⁶ Herbert C. Smith and John T. Willis, *Maryland Politics and Government: Democratic Dominance* (Lincoln: University of Nebraska Press, 2012), 19.

⁵⁷ Carl N. Everstine, "The Establishment of Legislative Power in Maryland," *Maryland Law Review* 12, no. 2 (1951), 108.

⁵⁸ Everstine, "Legislative Power in Maryland," 109.

⁵⁹ *Archives of Maryland*, 3:194.

⁶⁰ *Archives of Maryland*, 3:195.

⁶¹ Smith and Willis, *Maryland Politics and Government*, 19; *Archives of Maryland*, 1:344.

was obligated to pay the owner the value of the dead animal.⁶² However, the statute did not adequately reduce incursions by free-ranging horses into fenced fields, and seven years later, a slightly modified version of the earlier measure was passed. The 1661 act mandated that planters increase the height of the fences around their corn fields, making no mention of the “other Comodit[ies]” also required to be fenced in the 1654 law.⁶³ Maryland’s legislators had learned which crops were most likely to be destroyed by horses; by mandating only that corn fields be fenced, the legislature reduced the costs of both planting and horse ownership. Planters were not required to fence, for instance, tobacco fields, and if a free-ranging horse did damage a non-corn crop, the animal’s owner was not liable for the damages. Where the 1654 statute required only that horse killers “make Satisfaction to the owner” of the animal, the later law required that the owner be paid in tobacco.⁶⁴

Although Maryland’s colonial officials mandated that English planters fence their fields, they viewed the ability to erect fences to prevent horses and other free-ranging livestock animals from destroying crops as a privilege they could confer on the colony’s Indians. In 1662, the General Assembly granted permission to a group of Natives to live at Chaptico in St. Mary’s County within fenced grounds.⁶⁵ Had they not allowed Papimmun, Pacckadehunt, and Antvick to fence their property, the assembly knew that the horses and cattle belonging to the White colonists who disputed the Indians’ claim to the land could, with or without the intention of their owners, prevent the Indians from growing crops for consumption and sale, making their continued residence at Chaptico untenable. Whether they intentionally deployed them in this manner, English settlers understood that horses and other animals could serve as collaborators in colonization.

Of course, Papimmun, Pacckadehunt, and Antvick only needed the protection fences provided because Natives had been displaced and their traditional agricultural practices rendered unsustainable by, in part, the animals introduced to the Chesapeake earlier in the century by White settlers. Destructive

⁶² *Archives of Maryland*, 1:344.

⁶³ *Archives of Maryland*, 1:413-14.

⁶⁴ *Archives of Maryland*, 1:344, 414.

⁶⁵ *Archives of Maryland*, 1:431.

horses and cattle provided justification to Maryland's General Assembly for dictating how Maryland's Natives were to live. The colonists had created a problem and then insisted that they held a monopoly on its solution, that is, the right to fence one's lands. The presence of free-ranging horses and other livestock in Maryland allowed the colony's leaders to compel Indians to adopt English understandings of property and English agricultural practices under the guise of generosity.

Like the General Assembly of Virginia, Maryland's legislature sought to use horse-control measures to control poor Whites, not just Indians. But where the interests of Virginia's House of Burgesses were clearly aligned with the colony's wealthy, tobacco-planting elite from whom the burgesses were elected, the allegiances of Maryland's lawmakers were more complicated. From the colony's founding to its transition to a royal colony in 1689 (and with the exception of a period during the English Civil War when Puritans gained control of the colony and Catholics were prohibited from voting), Maryland's Upper House comprised members appointed by either the colony's Catholic Lord Proprietor or his governor.⁶⁶ These men "enjoy[ed] patronage appointments and prime real estate" and often clashed with the members of the Lower House (which became a directly elected body in 1658), who tended to be Protestant smallholders.⁶⁷ Therefore, although members of both houses were generally landowners, religious divisions complicated class allegiance among Maryland's legislators.

However, in 1669, Charles Calvert limited suffrage to freemen who owned at least fifty acres or personal property of similar worth.⁶⁸ At the same time, Calvert invoked a section of the charter which allowed him to call a limited number of Lower House delegates to meetings of the General Assembly.⁶⁹ These measures encouraged the election to and participation in the Lower House of wealthy landowners whose interests aligned more closely with the elite Upper House than did the interests of Maryland's Whites at large. Although the Lower House may have been friendly earlier in the century to unlanded Whites keeping horses on the open range, its allegiance thereafter was to its class. Both houses used

⁶⁶ Smith and Willis, *Maryland Politics*, 19.

⁶⁷ Smith and Willis, *Maryland Politics*, 19.

⁶⁸ Matthew Page Andrews, *History of Maryland: Province and State* (New York: Doubleday, 1929), 155.

⁶⁹ Andrews, *History of Maryland*, 156.

horse-control measures to limit the property that nonlandowning Whites could own, thereby constraining their economic power. Indeed, after 1669, the Lower House often proved even less supportive of the rights of the poor than the Upper House, which had previously been the strongest ally of the rich.

For instance, in 1671, Maryland's General Assembly prohibited for three years the importation of all horses, geldings, mares, and colts into the colony.⁷⁰ The legislature's Upper House had attempted to temper the law, seeking amendments that would have allowed the importation of horses 15 hands high or larger and allowances for people of neighboring colonies who were moving to Maryland, but proponents of the stricter act won out.⁷¹ The lawmakers claimed to fear that the introduction of more horses to Maryland's countryside, which was already home to enough of the animals to warrant the previous decades' fencing laws, would create a population large enough to seriously imperil the colony's agricultural interests.⁷² This law, then, was partially prophylactic. Free-ranging horses were annoying, but they were not an existential threat to Maryland's stability, suggesting that the damage they did to corn fields in the 1650s and 1660s was limited.

More significantly, even without the concessions sought by the Upper House, the ban on the importation of horses was not absolute. Those found to have violated the statute had to either surrender all the illegally imported animals or pay a fine equal to the value of the horses, half to the proprietor and half to the person who informed Maryland's authorities about the importation.⁷³ Therefore, the colony's wealthy inhabitants could import horses at their leisure, so long as they were willing to pay for the animals twice. Rather than preventing the introduction of horses born outside of Maryland to the colony, this law made it the prerogative of the rich to do so. The law could also be circumvented through petitioning the General Assembly. For instance, in 1674, wealthy landowner Captain Hugh O'Neale

⁷⁰ *Archives of Maryland*, 2:281.

⁷¹ *Archives of Maryland*, 2:255.

⁷² *Archives of Maryland*, 2:281.

⁷³ *Archives of Maryland*, 2:281.

received approval from the General Assembly to import 98 horses from New York.⁷⁴ Concerns about the potential damage done by horses were less important than protecting the interests of wealthy settlers.

Wealthy colonists also benefited from Maryland's laws regarding the hunting of horses that were not owned by others. In 1677, the governor of Maryland prohibited anyone without a license from his office from ranging for unmarked horses and other livestock in the colony.⁷⁵ However, landowners could still capture wild livestock on their property, giving wealthier colonists an avenue to increase their holdings that their poorer neighbors lacked.

Maryland's legislature proved reluctant in the 1680s to undertake stricter horse-control measures, with debates over proposed laws generally centering around the societal impacts of such proposals, not just their relative efficiency in limiting horse populations. In 1682, the Upper House of Maryland's General Assembly proposed limiting the ownership of sexually intact male horses to those with land, ostensibly to prevent small, free-ranging horses from impregnating breeding mares and reducing the average size of the colony's horses.⁷⁶ The Lower House, however, did not support this legislation for reasons besides its anticipated efficacy in reducing horse populations.

Legislators argued that abridging the rights of Maryland's unlanded residents during a time of conflict with the region's Indians could lead to further unrest, dividing the colony's White population when unity was needed to suppress the threat presented by the Natives. Further, since horses were useful in wartime, depleting their numbers could present a military disadvantage. In a message to the Upper House, the Lower House wrote that, after a long debate over the bill, they could not "Concurr thereunto...Because it might not be safe to Abridge the Freemen of this Province of their Accustomed Liberty of keeping Horses until such time as the Peace of the Province might be Sufficiently Secured from the Indians."⁷⁷ The Lower House also objected to the practicality of the bill, arguing that "it would

⁷⁴ *Archives of Maryland*, 2:383.

⁷⁵ *Archives of Maryland*, 15:155.

⁷⁶ *Archives of Maryland*, 7:302.

⁷⁷ *Archives of Maryland*, 7:302.

in no wise lessen the Number of Horses within the Province.”⁷⁸ Although the Lower House’s chief objections to the bill were because of the societal impacts they foresaw, they also sought to justify their opposition to horse control by arguing that the measure would be ineffective.

The members of the Upper House were not swayed by either approach. Frustrated by this response, they sent a message to their colleagues arguing that the objections of the Lower House to the bill did not sufficiently account for the damages done by small, free-ranging, sexually intact male horses, which the Upper House hoped to remove from the countryside.⁷⁹ In this conflict between the Upper House, eager to reduce the rights of the colony’s less wealthy residents, and the Lower House, which hoped to preserve the rights of unlanded, White Marylanders to own horses and keep them on the open range, the Lower House won the day. The two houses could not find common ground on the issue during the April and May 1682 legislative session, and the issue was delayed to future assemblies.⁸⁰

Significantly, the Lower House only sought White unity in the face of a threat to their hegemony. Here, they demonstrated their view that poor Whites could be used to protect the interests of wealthy landowners. Together, rich and poor Whites could fend off Indian insurgency. The rights of the nonelite were important only in this context. It was not out of a belief in the importance of personal property or because of altruism that the Lower House fought to allow unlanded Marylanders to own sexually intact male horses. Rather, legislators acted uncharacteristically because the alternative—potentially ceding power to Native Americans—was less desirable than preserving the rights of poor Whites.

The Unlanded Lose Their Horses: Maryland Horse-Control Measures after 1682

If Calvert’s 1669 limitation of suffrage to landowners had been a legal turning point in Maryland’s political contest for power, 1683 proved to be a practical one. By that year, the war with the Indians had been resolved, and with the conflict’s end, the grounds for the Lower House’s objections to

⁷⁸ *Archives of Maryland*, 7:302.

⁷⁹ *Archives of Maryland*, 7:302.

⁸⁰ *Archives of Maryland*, 7:338, 341.

limiting horse ownership to those with the land on which to keep the animals disappeared.⁸¹ So in 1683, a committee of the Lower House of Maryland's General Assembly created a bill titled, "An Act for Lessening the Number and Bettering the Breed of Horses in this Province."⁸² Although the text of the bill does not survive, from the objections of the Upper House, it seems that it would have restructured the tax system for horses and transferred the ownership of some horses away from certain owners.⁸³

The bill passed the Lower House easily, but the Upper House did not think the bill was strict enough.⁸⁴ Legislators argued that, as written, the act would do little to reduce the number of horses in Maryland or improve the quality of the colony's equids.⁸⁵ However, the Upper House did not believe that these provisions would actually reduce the overall number of horses in Maryland or sufficiently discourage unlanded colonists from owning horses, still their primary goal.⁸⁶ Therefore, they proposed a series of alternative horse-control propositions. Some of these measures would have transferred power over horse reproduction to the state. The Upper House suggested that each county open several stud farms, where mare-owners could have their animals copulate with a stallion for a fee of 18 pence.⁸⁷ Further, anyone who brought the testicles of a horse before a county official would receive a set reduction in their taxes for each pair presented.⁸⁸ The Upper House also suggested that it be made unlawful for sexually intact male horses under 15 hands in height to range freely, and that such horses might be killed without special permission.⁸⁹

Most of these measures would have benefited wealthier horse owners more than their poorer neighbors. Horse owners who had free-ranging stallions under 15 hands but lacked the land on which to keep them would have been forced to castrate their animals and would therefore have to pay the studding

⁸¹ *Archives of Maryland*, 7:338.

⁸² *Archives of Maryland*, 7:564, 482.

⁸³ *Archives of Maryland*, 7:482.

⁸⁴ *Archives of Maryland*, 7:564, 482.

⁸⁵ *Archives of Maryland*, 7:482.

⁸⁶ *Archives of Maryland*, 7:482.

⁸⁷ *Archives of Maryland*, 7:482.

⁸⁸ *Archives of Maryland*, 7:482.

⁸⁹ *Archives of Maryland*, 7:482.

fee each time they hoped to increase their stock, if they also happened to own a breeding mare.

Meanwhile, those who had the property on which to keep large stallions would not have had to castrate their animals nor pay the proposed studding fee. These landowners, who could create a steady supply of new horses for no additional cost beyond the baseline of horse-ownership, would therefore also have had access to a regular supply of young, male horses to castrate, allowing them to receive a significant reduction in the taxes they owed.

The members of the Lower House, to whom these proposals were sent, understood them as a rejection of their bill and asked the Upper House to draft a measure more to their liking.⁹⁰ However, it was not until 1692 that new legislation addressing free-ranging horses was passed.⁹¹ The provisions of “An Act for the restraining of the unreasonable encrease of Horses in this Province” for controlling Maryland’s free-ranging horse population were comprehensive. The law offered a reward to anyone who captured a free-ranging, sexually intact male horse and required that the owners of such horses below 14 hands high either stable them full-time or castrate them before turning them back onto the open range.⁹² All male horses “whatsoever” born in the three years after the act was passed, including those born in captivity, were to be castrated “within one year after such Colt is foaled”—that is, before they reached sexual maturity. Those that were not could be killed at will.⁹³ At the insistence of the Upper House, the law prohibited the importation of new horses to the colony, upon penalty of forfeiture to the state: this time, wealthy importers could not pay a fine and keep their animals.⁹⁴

This provision may have been less friendly to the colony’s wealthy horse owners than earlier horse-control measures had been. But one of the law’s most significant clauses finally accomplished the disenfranchisement of unlanded colonists that the Upper House of the General Assembly had sought nearly ten years prior: freeman not owning land in the county in which they lived could own no horses

⁹⁰ *Archives of Maryland*, 7:484, 570.

⁹¹ *Archives of Maryland*, 13:549.

⁹² *Archives of Maryland*, 13:549.

⁹³ *Archives of Maryland*, 13:549-50.

⁹⁴ *Archives of Maryland*, 13:341.

beyond a single gelding.⁹⁵ The Upper House was also responsible for a clause of the law that banned the killing of unmarked, free-ranging horses by all those except licensed rangers.⁹⁶ The reaffirmation of the need for a license to range in the woods for horses, coupled with hefty fines for those who did so without approval, ensured that only those with connections to governor could do so. Access to the open range had been limited to those elite colonists with wealth and influence.⁹⁷

Some of Maryland's officials tried to use the multiplicity of free-ranging horses in Maryland for the common good, even if access to the animals themselves was limited, but these attempts failed. In 1695, the governor recommended to Maryland's Lower House (by this point known as the House of Delegates or the House of Burgesses) that that unowned horses be captured and sold, with proceeds being used to benefit Maryland's poor.⁹⁸ The House did not respond to the recommendation, and the next year, the governor again suggested the measure.⁹⁹ This time, a majority of the house determined that the colony's existing law for dealing with free-ranging horses (probably 1694's "Act to prevent the great Evill occasioned by the Multiplicity of horses within this Province," the text of which does not survive) was sufficient, and the bill did not pass.¹⁰⁰ Although the Lower House had in the preceding decades proven friendlier to the idea more of the colony's residents should have access to the open range and be able to enjoy the benefits of horse ownership, by the mid-1690s, they no longer believed that horses should belong to or assist the colony's poor.

Changing attitudes towards Maryland's free-ranging horses may have been influenced by the fact that free-ranging horses were becoming less common in the colony as its White population increased and the landscape became increasingly Anglicized. Horse-control measures became rarer as the seventeenth century passed into the eighteenth, and the General Assembly became less interested in legislating issues related to the open range. For instance, in 1698, the Lower House voted against reviving 1694's "Act to

⁹⁵ *Archives of Maryland*, 13:550.

⁹⁶ *Archives of Maryland*, 13:307.

⁹⁷ *Archives of Maryland*, 13:550.

⁹⁸ *Archives of Maryland*, 19:150.

⁹⁹ *Archives of Maryland*, 19:339.

¹⁰⁰ *Archives of Maryland*, 19:89, 339.

prevent the great Evill occasioned by the Multiplicity of horses within this Province.”¹⁰¹ But horse control did not disappear entirely from the General Assembly’s docket. As long as there were horses living on the colony’s landscape, the General Assembly could pass laws ostensibly about limiting damages done by the animals but that really served as avenues for enriching Maryland’s elite and further disenfranchising its poor.

Unlanded Marylanders did not accede to these control measures without a fight, however. According to a 1699 law, those found guilty of purposefully destroying fences owed triple damages to their owners, suggesting that a contingent of the colony’s settlers had turned to vandalism to push against the world of fences and fields that had developed in Maryland.¹⁰² That same law also allowed landowners to kill any horse the third time it trespassed on a sufficiently fenced field.¹⁰³ Here, the General Assembly made evident that it believed the property rights of those with land to be more important than those without. Unlanded freeman could keep a single gelding on the landscape; undoubtedly, at least some of the horses that frequently trespassed on corn fields and prompted the 1699 law were such geldings. Without the private property on which to keep them, and in a colony increasingly divided among private landowners, the owners of these geldings had no choice but let them live on the open range, and therefore risk entering fenced fields, an offense for which the animals might be killed. The security of a fenced field was more important in the eyes of the colony’s legislators than the ability of the poor to practice open-range animal husbandry.

And in 1704, the General Assembly ruled that all horses had to be enclosed between May and November.¹⁰⁴ No longer could unlanded freeman keep even one gelding on the open range for most of the year. Horses could belong only to landowners or to those wealthy enough to pay stabling fees during the summer and fall. The General Assembly, despite earlier support of the rights of the less wealthy to enjoy

¹⁰¹ *Archives of Maryland*, 22:261.

¹⁰² *Archives of Maryland*, 22:477-78.

¹⁰³ *Archives of Maryland*, 22:478.

¹⁰⁴ *Archives of Maryland*, 26:309.

horse ownership, was now firmly on the side of Maryland's wealthy inhabitants regarding free-ranging horses, a trend also seen in seventeenth-century Virginia and eighteenth-century North Carolina.

Epilogue: Horse Control Beyond the Chesapeake

Certainly, placing limits on the ability of nonlandowners to own horses and enjoy the use of the open range was not the only method employed by wealthy, land-owning, tobacco-planting legislators of Maryland and Virginia to consolidate their control over Chesapeake society. But it was an effective one, and the closing of the open range to the horses of nonlandowners was a process repeated by legislatures in newer English colonies over the eighteenth century. North Carolina is a prime example; the legislative history of horse-control measures there closely mirrored what had occurred in the Chesapeake in the latter half of the seventeenth century.

On a surveying trip he made to North Carolina in 1728, William Byrd II noted the open-range animal agriculture practiced by settlers in the colony, describing their practices as "bad husbandry."¹⁰⁵ In fact, despite Byrd's criticism of his southern neighbors, the open range codified by North Carolina's legislature in the early years of the eighteenth century was more restrictive than Virginia's had been in the middle decades of the seventeenth. The 1715 law that set the minimum requirements for a sufficient fence also established that any horse found to have trespassed on sufficiently enclosed grounds would be thereafter banned from the commons between March and November each year.¹⁰⁶ Also in 1715, the general assembly passed a law giving owners of horses, cattle, and hogs two years to brand or mark their animals with a registered symbol.¹⁰⁷ After April 1717, any unmarked livestock could be collected by rangers; if a colonist wanted to claim the animal, he had to demonstrate to a magistrate that the animal was rightfully his and then pay a fee to the ranger who had found it.¹⁰⁸ Of course, fees were more burdensome on poorer North Carolinians.

¹⁰⁵ Byrd, *History of the Dividing Line*, 16.

¹⁰⁶ Clark, *Colonial and State Records*, 23:61.

¹⁰⁷ Clark, *Colonial and State Records*, 23:57.

¹⁰⁸ Clark, *Colonial and State Records*, 23:57.

North Carolina's legislators were also quick to adopt many of the same horse control measures that had been developed over the preceding decades in Virginia. In 1723, the legislature banned the ownership of sexually intact male horses by unlanded residents of the colony, just as Virginia's general assembly had done ten years prior.¹⁰⁹ The law also prohibited mature horses under 13 hands from roaming freely, provisions similar to those found in Virginia's 1686 "An act for the better improveing the breed of Horses."¹¹⁰ As in Virginia, these laws targeted poor Whites, ensuring that they lacked access to the wealth generation and mobility offered by horses.

But as such laws stratified Whites, they also enforced racial lines. Horse-control legislation made it easier to prevent Native Americans from hunting free-ranging horses, cattle, and hogs. If all livestock animals occupying the landscape could be assumed to belong to an English settler, than any Indians seen pursuing an English beast were therefore violating the property rights of a White North Carolinian. Free-ranging livestock did not belong to the landscape, but to whichever settler whose mark they bore. This perspective is reflected in a 1715 law titled, "An Act for Restraining the Indiyans from molesting or Injuring the Inhabitants of this Government and for Secureing to the Indiyans the right and property of their own lands," which gave colonists the authority to apprehend and take before a commissioner or magistrate for judgement and punishment any Natives found hunting European animals.¹¹¹ Maryland's colonists may have feared that if English livestock could be transformed into New World creatures, they might be transformed into Indians, at least in the imaginations of their brethren in England.¹¹² By codifying the Englishness of animals like horses and limiting access to even those that resided on the open range, North Carolina's legislature made clear early that the colony's White inhabitants were not, and never could be, Indians. Wealthy planters in North Carolina, as in Maryland, aligned themselves with poorer Whites over Native Americans, even as used their control of colonial legislatures to disenfranchise nonlandowning Whites and secure their dominion over the colony.

¹⁰⁹ Clark, *Colonial and State Records*, 23:109.

¹¹⁰ Clark, *Colonial and State Records*, 23:109; Hening, *Statutes at Large*, 3:35.

¹¹¹ Clark, *Colonial and State Records*, 23:88.

¹¹² Anderson, *Creatures of Empire*, 138.

The horses, for their part, did not disappear from the landscape because of these statutes. A 1741 act noted that it was not uncommon for “Wicked Men” to alter the marks and brands of horses living in the woods.¹¹³ And a series of act passed in the 1760s and 1770s banning hunting by firelight did so because hunters often mistook horses for deer at night, suggesting that horses still lived among North Carolina’s indigenous, wild animals.¹¹⁴ And the equids that inhabited the North Carolina’s landscape on the eve of the Revolution were larger than their ancestors had been. In 1766, the colony’s legislature amended the 1723 act that prohibited horses under 13 hands from roaming freely; now, horses over two years of age could not enjoy the open range unless they were at least 14 hands tall.¹¹⁵ North Carolina’s horse breed had been improved—and the real goal of these laws, the consolidation of authority with the planter elite, was secured.

¹¹³ Clark, *Colonial and State Records*, 23: 165.

¹¹⁴ Clark, *Colonial and State Records*, 23:656, 801, 916, 956.

¹¹⁵ Clark, *Colonial and State Records*, 23:769.

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