

DREW ADDISON SWANSON

Fighting over Fencing

Agricultural Reform and Antebellum Efforts to Close the Virginia Open Range

Before I built a wall I'd ask to know
What I was walling in or walling out . . .
Robert Frost, *Mending Wall* (1914)

In October of 1850, a Virginia farmer from Sussex County wrote to the agricultural journal *Southern Planter* with a political grievance. Arguing for immediate action, he declared, “it is time for the farmers to make a decided stand; refuse to support at the polls men who will not faithfully, unflinchingly represent the interests of agriculture.”¹ Rather than lamenting over traditional grievances, such as taxes or militia service, this disgruntled farmer and other Tidewater planters were complaining about the burdens of fencing their fields to keep roaming livestock out of their crops. Although the old proverb states, “good fences make good neighbors,” many nineteenth-century Virginians believed there were too many good fences in the eastern portion of the commonwealth. These individuals lobbied for the elimination of the Virginia law that required the fencing of all cropland and advocated replacing it with legislation dictating that livestock be fenced in pastures.² Instead of basing their arguments on class conflict or labor control, these lobbyists used economic and agricultural justifications for closing the southern open range. As agricultural reformers, they were motivated largely by a desire to maximize efficiency and to increase their control over the land within the borders of their own farms.

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Historians have written very little about such efforts to change the antebellum fence laws. Those who have addressed the issue have treated it cursorily as an attempt by owners of large plantations to control the labor and movement of free blacks and poor whites. As one historian described it, the struggle over antebellum fence laws was a conflict largely between “‘haves’ and ‘have nots.’”³ Instead, there is a large body of literature on the postbellum closing of the southern common range. Scholars, such as Stephen Hahn and others, have focused on the closures in the 1880s and 1890s as a part of the process of limiting and controlling the large number of freedpeople in the region. They have also noted that battles against such changes represent examples of pre-industrial small farmers struggling to preserve what was left of their autonomy outside the market.⁴ Although the “Hahn school” has its opponents, most notably Shawn Kantor and J. Morgan Kousser, the idea that stock fence laws were developed as a tool to consolidate white planter power remains a dominant one in southern historiography.⁵ This existing fence-law literature needs rethinking, however, because the debate over closing the southern common lands was not strictly postbellum. In portions of eastern Virginia, planters had argued the merits of closing the open range for more than three decades by the time the Civil War began.



An examination of the struggles over commonwealth fence laws requires a look at the origin and development of Virginia’s laws of enclosure. Although a law about proper fences hardly seems like a pressing matter for a new colony, Virginia’s lawmakers determined the need for some sort of law governing fencing during the first decades following the settlement of Jamestown in 1607. Though the earliest planters in the colony worried more about Indian raids, wolves, and sheer survival than about voracious hogs, by the 1630s the colonial government saw a need to define legally the relationship between open range, wandering livestock, and cultivated fields. As Virginia DeJohn Anderson has pointed out, the first Chesapeake crop fence laws were an implicit rejection of English-style husbandry, in which herds- men typically supervised groups of domestic animals, and the stock’s manure was used to fertilize a town’s fields. Virginians’ turn to unsupervised stock

raising reflected an abundance of land and a shortage of labor and favored more self-sufficient animals, such as cattle and hogs, over sheep and goats.⁶

Passed in 1631, the first fence law was vague. It simply declared that “Every man shall enclose his ground with sufficient fences uppon their owne perill.”⁷ Because by implication the act allowed animals legal access to any land not protected by a barrier, this fence law clearly favored the production of essential livestock over the cultivation of crops (and favored white over native patterns of agriculture, as a field without a fence was no longer a legal field at all). The burden of fencing and its attendant costs fell on planters rather than on herdsmen and stockowners. It is important to note that livestock did not regularly consume tobacco, and thus the fence law was of little concern to cultivators primarily focused on that staple (as were most powerful planters). Changes to the law over the remainder of the seventeenth century focused on specifying what constituted a legal fence, how to assess damages if animals breached the fence, and on the legality of killing intruding stock. A 1642 act clarified that without a sufficient fence planters could claim no damages to their crops by wandering “hoggs, goats or cattle.” If the offended planter without a good fence killed the marauding hog, he was responsible to “satisfie double the value” of the animal.⁸ The 1646 modifications to the law finally gave frustrated farmers some specifics as to just exactly what the burgesses meant by the phrase “a sufficient fence.” The new act stated that a legal fence must be at least four and a half feet high and “substantiall close downe to the bottome.” If an animal breached this fence, a farmer could claim damages against its owner after “two honest men” chosen by the county commissioner deemed the fence legal.⁹ Although the language of this statute was far from technical, the involvement of neighbors in settling fence disputes ameliorated some of the vagaries. Thus the law became a community standard; if one’s neighbors believed a fence was legal, then it was legal under the law.

From the mid-1600s until the early nineteenth century, the legislature continued to refine the definition of a legal fence. A 1670 act stated that a fence had to be close enough to the ground so that hogs, goats, and cattle could not “creep through.” The act also provided more elaborate remedies for damage caused by particularly persistent and unruly stock.¹⁰ In a 1748 act, the House of Burgesses increased the height of a legal fence from four

and a half to five feet. It also listed specific details about fencing alternatives, such as live hedges and ditch/fence combinations, and damages for repeat intrusions of unruly livestock. The justice of the peace also now had to locate “three honest house-keepers of the neighbourhood” to testify about the condition of the fence.¹¹ The fence law then remained static into the 1830s, with the 1834 law of enclosure in essence the same as the 1748 law, tracing its roots directly to the enclosure regulations of the 1630s and 1640s.¹² Although the crop fence law benefited livestock raisers by ensuring continued access to any land not enclosed by a fence, it also guaranteed that farmers had legal recourse if they followed the fencing guidelines. When the importance of raising livestock and growing crops was roughly equal, the crop fence law was equitable. When the balance shifted toward intensive cultivation of corn and wheat in increasing preference to tobacco farming in southeastern Virginia following the American Revolution, planters began a strong push for laws more conducive to their new form of agriculture.

No Virginia planter pushed harder for fence law reform than did Edmund Ruffin of Prince George County. Born in 1794 to a wealthy agricultural family, Ruffin grew up in a community that included many of the commonwealth’s most influential families, such as the Eppes, Harrisons, Carters, and Braxtons.¹³ As a young planter, he faced a truth that all eastern Virginia farmers encountered; the soils of the Tidewater region were relatively poor and depleted because of natural acidity and poor farming practices. It was Ruffin’s effort to improve these conditions on his own property that led to the most ambitious antebellum attempt to reform and improve southern agricultural practices.

A voracious reader of regional history, chemistry, and agronomy, Ruffin found his reform inspiration in the pages of books. The first writer to have a major influence on him was John Taylor of Caroline County. Taylor—a lawyer, Revolutionary officer, nephew of Edmund Pendleton, member of the Virginia House of Delegates, and a United States senator—was one of the first systematic American agronomists.¹⁴ His 1813 book, *Arator*, called for manuring with vegetable matter, excluding animals from croplands, and producing feed specifically for penned livestock. Claiming that “our country is nearly ruined,” Taylor envisioned a land made wealthy and fat if farmers would only deign to follow his reforms. These steps only worked if farm-

lands were enclosed, thus allowing farmers to manage carefully every step of cultivation and husbandry. Through these methods, he wrote, “the inclosing system provides the most food for the earth, and of course enables the earth to supply most food to man.”¹⁵ Ruffin also found inspiration in the English agronomist Humphry Davy’s *Elements of Agricultural Chemistry* (1812), in which Davy argued that the acidity of soil was the most important factor in a land’s fertility.¹⁶ Davy (and later agronomists, most notably the German chemist Justus von Liebig, father of modern nitrogen-phosphorus-potassium synthetic fertilizers) believed that soil fertility could be measured and controlled through chemical processes and additions; the key to healthy soils resided in proper chemical combinations rather than a holistic organic approach.

Combining Taylor’s and Davy’s ideas, Ruffin sought a way to enrich land effectively by adjusting the level of acidity in soil. In the 1820s, he discovered that applying marl (fossilized seashells), plaster, or lime to exhausted fields decreased levels of acidity. Lower acidity allowed bacteria associated with the roots of leguminous plants to pull atmospheric nitrogen more efficiently from the air and convert it into ammonia (a process also known as “fixing” nitrogen), a compound crops can readily use.¹⁷ With more plant-produced nitrogen in the soil, each cartload of stable manure enriched a greater amount of land for a longer period of time. Although Ruffin often misunderstood the natural processes taking place—for a time he believed marl was itself a fertilizing agent—he had hit upon an important method of boosting soil fertility. After much experimentation, these methods dramatically improved production on Ruffin’s plantation. His success, coupled with a desire to spread his message of agricultural reform throughout the South, resulted in the publication in 1832 of his influential *An Essay on Calcareous Manures*. Along with marling, Ruffin’s reform programs also advocated deep contour plowing, crop rotation, diversification, and, importantly, a stock law to alleviate the economic burden of fencing cropland.

In essence, Ruffin tentatively sought to recreate the convertible husbandry of England and New England in the South, to move closer to the old relationships between stock and land that the colonial common range rejected. In convertible husbandry, livestock are penned or pastured, manure is hoarded and worked back into the land, and a good portion of a farmer’s

energy goes into the production of high-quality hay, around which the entire system revolves.¹⁸ Convertible husbandry is farming at its most intensive, requiring heavy labor and a balance between farm inputs and outputs. As Steven Stoll has ably illustrated, although Ruffin well understood the strictures of convertible husbandry and the need to modify planters' behavior in order to create a sustainable southern agriculture, his focus on marling and later guano relied heavily on external rather than internal sources to restore soil fertility. Essentially, Ruffin wanted to bridge the gap between convertible husbandry and planting.¹⁹

Even though he ultimately waffled in his dedication to preach true convertible husbandry, Ruffin strongly believed that southern farmers needed to adopt more intensive agricultural methods. He and his adherents were dedicated to fence law reform because it was one of the few ways to use the power of the law to promote agricultural improvement. Laws governing space are a product of the fact that property lines are biologically porous, with animals, people, insects, water, and diseases moving freely across the borders of a farm. At their most basic, fences are barriers controlling the movement of animals and people, dividing two plots of land with different uses; they are a way of bringing complex, disorderly landscapes under greater human control.²⁰ Fences cannot keep weeds, insects, or persistent neighbors out of one's cornfield, but they can bring domestic animals back into the sphere of the farm, under the control of the farmer, thus promoting one of the key elements of convertible husbandry. A fence law, therefore, was a legal means to an ideological end.

As a key part of Ruffin's agricultural reform movement, he founded a journal at Shellbanks, his Prince George County farm, in 1833. Despite the high subscription cost of five dollars, the *Farmer's Register* had 1,118 Virginia and 197 out-of-state subscribers by the end of its first year.²¹ Ruffin used the journal as a platform to preach modernized farming, relentlessly advocating marling, manuring, and politics that favored southern agricultural interests. Calls for Virginia fence law reform were the cornerstone of his political agenda, and at the peak of circulation around 1837, Ruffin's message reached roughly 4,000 relatively wealthy agriculturalists throughout the upper South.²² Though the fencing reform movement inspired by John Taylor and Edmund Ruffin failed to bring about wholesale changes to the law before the

Civil War, it did presage the postwar efforts to close the southern open range. As Kantor and Kousser have shown, the economic and agricultural arguments for a stock law reappeared in the 1870s and 1880s. A desire to promulgate convertible husbandry lay at the heart of these efforts, and the durability and persistence of these arguments indicates that they were legitimate concerns for a number of farmers. In regions of the country where the population was dense, farmers focused on growing crops for the market, and with relatively scarce timber resources, stock laws made economic sense for the majority.

Perhaps the first task in delineating the economic differences between the crop fence law and a prospective stock fence law is determining which system actually required more fencing. On this issue, both opponents and advocates of the crop fence law agreed that fencing in fields to protect them from roaming livestock used more fence than did the alternatives, though they differed concerning the exact disparity. Arguing for modification of the fence law in the 1830s, Ruffin claimed that fencing livestock would require only one-fourth as much fence as that needed for the protection of fields and gardens.²³ Writing more than ten years later, “R. W. W.” of Goochland County was slightly less pessimistic about contemporary fencing demands, though he too claimed that the current law required three times the timber that a stock law would.²⁴ Although farmers opposed to changes in the crop fence law generally admitted that the system demanded more fence than did the alternatives, they argued that reformers exaggerated the savings that might come with altering or abolishing the law. Writing to the *Farmer’s Register* in 1835, “Fencemore” stated that reformers, such as Ruffin, failed to understand the fencing required to keep various types of stock in pastures. He portrayed the estimates of reformers as naïvely optimistic.²⁵

Farmers who failed to offer specific estimates of the difference in fencing demands under various systems made other bold claims. They often stated that farmers spent much more on fencing than they earned from the poor stock the open range produced.²⁶ As Ruffin phrased it, some Virginia agricultural reformers believed that “the expense of the fencing in lower and middle Virginia which is required . . . to guard against depredations of the stock of other people, must consume nearly half the average clear profit (or fair rent) of the land.”²⁷ In an 1842 report to the State Board of Agriculture,

he declared that “the cost of useless fences to each farmer, on the general average, is fully twice as much as the amount of all the taxes he pays directly to the treasury of the commonwealth.”²⁸ Drawing on political language, Ruffin attempted to portray the fence law as an unfair tax directed at agricultural interests that provided no real benefit to Virginia.

Opponents of the crop fence law claimed that one simple change to the statute would drastically diminish the timber demands of fencing. Requiring farmers to fence in their hogs in pens or pastures would mean that fence rails could be spaced farther apart, resulting in less expensive fences that used less wood. Basing his estimates on an 1842 Pennsylvania report of state fencing costs, Ruffin claimed that Virginia farmers cut and used twice as many rails as their northern brethren because southerners had to build hog-proof fences.²⁹ During the 1850s, various county farmers’ clubs joined the argument against free-ranging hogs, declaring that excluding swine from the current statutes would reduce the cost of fencing by as much as half.³⁰ Landless stockowners had a legitimate reason to resist potential changes to the fence law. As Jack Temple Kirby has shown, Prince George County in 1850 probably had two hogs for every person, and significant wealth existed in free-ranging hogs subsisting on private lands.³¹ Kirby’s contention that landless southerners had much at stake in the fight over fencing is valid and well considered, but his argument that the fight over the common range was a struggle over basic democratic citizenship and economic liberty was not the line utilized by reformers. Reformers could have appealed with great sympathy to the inviolability of rights in personal property, a time-honored American convention, but instead they chose to stress the importance of firm property lines to improved agriculture. Although impossible to prove beyond a shadow of a doubt, this appears to have been a genuine belief rather than a calculated move to destroy stockowners.

One of the most common, and most legitimate, arguments made by antebellum farmers in favor of a stock fence law dealt with a growing shortage of timber suitable for fencing in eastern Virginia. By the first half of the nineteenth century, planters had cleared vast portions of Tidewater Virginia’s forests in favor of intensive corn, wheat, and tobacco production. Although many older fields had lost fertility and had reverted to piney forest, broad swaths of land remained under cultivation. The majority of farmers who



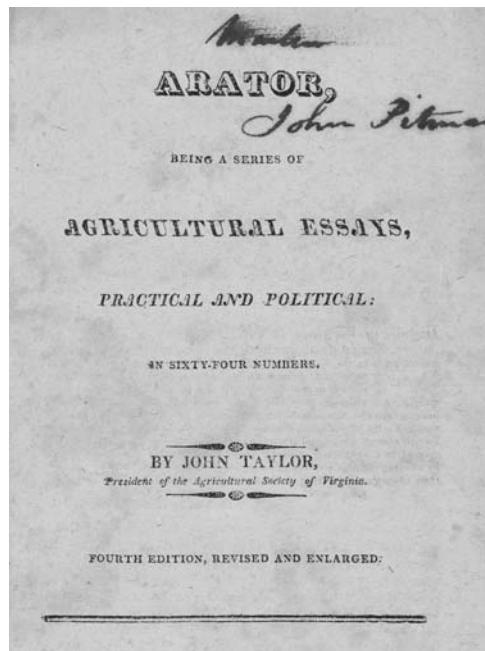
(Above) This mid-nineteenth-century painting of the York River countryside illustrates the degree to which fences bounded almost all Virginia farmland. Farmers typically enclosed each field and lined all public and private roads with barriers to protect against free-ranging livestock. (Below) Tidewater planters experimented with various forms of fencing during the antebellum period, including live hedges of such thorny plants as Osage-orange, but in general they found alternative fences expensive and impractical. (Above: *Rippon Hall, York River, Virginia*, by Lefevre J. Cranstone, *Virginia Historical Society*; below: *Virginia Scene*, by Richard Norris Brooks, *Virginia Historical Society*, *Lora Robins Collection of Virginia Art*)



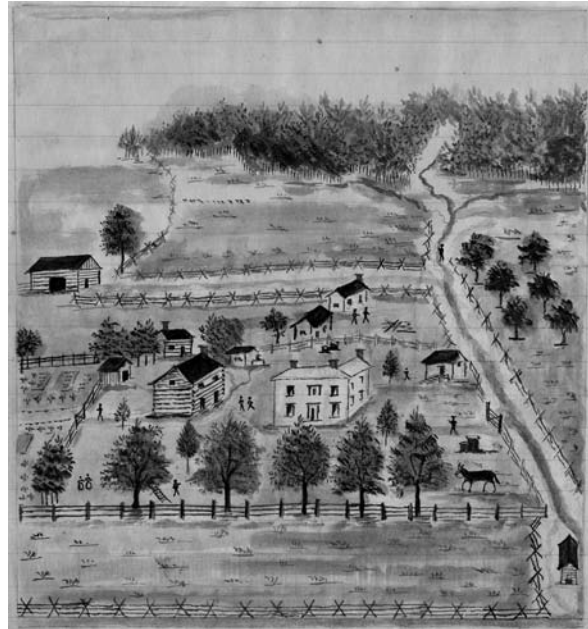


John Taylor (1753–1824) of Caroline County was a Virginia statesman and agronomist who influenced a later generation of commonwealth agricultural reformers. (*Virginia Historical Society*)

Taylor's *Arator* (1813) was one of the South's first agricultural reform texts. In the book, he called for intensive husbandry, including the penning of livestock. (*Virginia Historical Society*)



The typical antebellum agricultural landscape was a forest of fences. This sketch by Lewis Miller shows fences lining roads, surrounding fields, protecting house yards, and encircling gardens. (Drawing Book of Lewis Miller, *Virginia Historical Society*)



The passage of river fence laws beginning in the 1830s freed some Virginia farmers from the burden of fencing along major waterways. (*Irish Log Huts near Wheeling*, by Lefevre J. Cranstone, *Virginia Historical Society*)

wrote to the region's agricultural journals and newspapers concerning the crop fence law acknowledged that the law made sense in the early stages of the colony, when fields were scattered and isolated, stock was extremely valuable to most citizens, and timber was abundant. Most went on to point out that conditions in eastern Virginia had changed dramatically over the course of two hundred years, and they claimed that the commonwealth's new system of agriculture required new fencing laws more amenable to intensive crop-based agriculture.³² This was as much an environmental as a social argument.

Certain tree species produced durable wood more suitable for fencing purposes than did others. Farmers particularly coveted oak, hickory, chestnut, locust, and yellow pine for building sturdy, long-lasting fences.³³ By the 1830s, Virginia planters lamented the disappearance of these desirable trees and contemplated fencing alternatives. In 1833, C. W. Gooch of Henrico County observed that the large forested expanses of the Tidewater were gone and that "Woodlands adapted to tobacco have now become scarce."³⁴ A farmer from James City County noted that the region's fencing needs had depleted the countryside of its quality oak, chestnut, and locust.³⁵ Yet another anonymous writer declared in 1850 that, "It is utterly impossible to get oak, cedar or chestnut, sufficient to enclose one tenth part of our arable land."³⁶ Progressive farmers also needed larger amounts of quality timber than traditional agriculturalists did for smaller fields that they rotated frequently. A farmer from King William County complained in 1858 that the intensive agriculture he and his neighbors wanted to pursue was "getting nearly incompatible with the limited amount of timber" in the region.³⁷

The description of eastern Virginia's forests painted by agricultural reformers was decidedly grim. In *An Essay on Calcareous Manures*, Ruffin regretted that poor farming practices caused erosion, which resulted in "gullies several feet in depth," which succession later covered over with an undesirable "unmixed growth of pine."³⁸ Writing to the *Farmer's Register* in 1834, "Anti-fence" described the Tidewater's forestland as "a sand barren, [with] the pine tops waving over the fields, and the worn out and exhausted fields continually presenting themselves to the travellers' view."³⁹ The timber situation, as described in an 1853 report to the Brunswick County Agricultural Society, appeared little better. The committee charged with

examining the current fence law observed that the “wide forest has well nigh yielded to the destroyer’s axe, leaving . . . large tracts of land with but little, if any, durable material of enclosure.”⁴⁰ Agricultural reformers were convinced that under the crop fence law there was little chance that the Tidewater could produce enough quality timber to meet its fencing needs.

Competition over good timber also drove up the price of solid fence rails. W. Timberlake of Nottoway County pointed out that growth and improvement in the Tidewater also required a dependable supply of high quality hardwood. Timberlake asserted that there was an “immense demand for lumber in our cities, towns and villages, and for plank and railroads, canals and bridges, and for farm buildings.” These needs placed heavy demands “upon all the best oak of all kinds, and chestnut for barrel timber.”⁴¹ These urban and infrastructural demands coupled with a continued need for fencing lumber fueled high timber costs. Timberlake noted that from 1848 to 1852 timberland of all kinds in Nottoway County had increased in value by 300 percent, and he declared that the economics of timber scarcity would necessitate a change in the current crop fence law in the near future.⁴² Kantor and Kousser found that these same arguments about a dearth of serviceable timber carried over into 1880s Georgia, where postbellum farmers still complained that the high cost of timber “takes away most of the profit of farming.”⁴³

Historians concerned with antebellum woodland conditions in Virginia have debated the extent of the commonwealth’s deforestation. Early scholars, such as Avery Craven, believed that farmers cleared the majority of arable land, while more recent revisionists, such as Jack Temple Kirby, have argued that the state’s forest cover remained largely intact before the Civil War.⁴⁴ A careful look at the language of reformers and farmers reveals that debates over forest *cover* miss the point; it was forest composition and age that were critical to antebellum farmers. Reformers complained about a lack of hardwoods and mature trees, which made the best fencing material, and they seemed to disregard the notion that secondary growths of pines in abandoned fields constituted real forest. As geographer A. T. Grove and botanist Oliver Rackham have convincingly demonstrated, “forest” as a defining term is extremely problematic because the word is subjective.⁴⁵ Does brush land or scrub become forest when it is a meter high? Three meters? Should a stand

of ten-year-old pines be considered a forest when situated on a piece of land that formerly grew oaks and hickories before a farmer cleared it to plant tobacco? Look again at the language contemporary accounts used to describe land that grew trees: they spoke of “woodlands adapted to tobacco,” of land lacking “durable materials,” and piney old fields that are “barren.” All of this land grew trees of some sort, but for these farmers, a forest was something more. To antebellum Virginia reformers, the term “forest” seems to have been a synecdoche for mature forest yielding certain commodities, namely durable fence rails.

Facing a shortage of high-quality fencing material, farmers turned to less desirable woods to meet their needs. In 1833, Edmund Ruffin noted that by necessity many farmers had resorted to using old-field pines—primarily loblollies in the eastern Tidewater, with scrub pines mixed in nearer the fall line—for fence rails, even though these species were remarkable “for rapidity in rotting, when used for fencing timber.”⁴⁶ Indeed, one farmer claimed that it was almost impossible to maintain a legal fence because of the shoddy quality of the pine rails he used, which in typical conditions required replacing as often as every twelve months.⁴⁷ Another lamented, “old field pine, tough, knotty, and twisted—is very hard to maul, and lasts very few years.”⁴⁸ By the 1840s a few farmers resorted to timber management on their properties to ensure a future supply of quality fence material, allowing a portion of their old fields to grow up in oaks, despite their desire to rotate crops on their land.⁴⁹ The only other way to procure timber was to import rails from the western part of the commonwealth or from outside Virginia entirely, an activity that most smaller farmers felt was cost prohibitive. Because of this, Ruffin declared that in good agricultural districts “the expense of fencing is increased greatly more than in proportion to the increased extent of enclosures.”⁵⁰

Many farmers proposed alternatives to the traditional Virginia split-rail fence to reduce timber usage while still meeting the requirements of the law. Quite a few innovative agriculturalists advocated the use of longer-lasting post-and-rail fences over split-rail, despite the higher initial costs.⁵¹ More exotic plans called for fences made of stone, moveable wooden panels that attached to iron bars, woven plank fences, ditches, or live hedges of such thorny plants as Osage-orange.⁵² All of these proposals met with limited suc-

cess because of their impractical nature, steep initial costs, or a combination of the two. In addition, for reformers intent on a more intensive agriculture, improved fences under the old law made little sense, because the best hedge around crop fields did little to bring manure-producing stock into pens and pastures.

Virginia reformers were not alone in their complaints about the timber demands of the crop fence law. Arthur R. Hall has shown that a shortage of timber in the South Carolina Piedmont in the 1840s and 1850s stimulated cursory attempts to close the common range there as well. Using arguments similar to Edmund Ruffin and his compatriots, and perhaps inspired by them, South Carolina planters argued that some Piedmont farmers abandoned their land because of a lack of timber for enclosure rather than because of soil exhaustion. Planter Oscar Lieber pointed out that, despite the region's relatively short time under intense cultivation, woodlands sold for twice as much as arable land, and he believed only a stock law could rapidly improve the situation.⁵³

Opponents of the crop fence law, perhaps as a less sincere but nevertheless effective tactic, argued that ending the open range would actually benefit rather than harm poorer livestock producers. Confined stock produced valuable manure, and reformers claimed that penned and pastured stock were less likely to be lost, killed, or stolen. They also grew faster and fatter than animals forced to forage for themselves. Elaborating that the poor who opposed a stock law really did not understand their own interests, one farmer claimed that a cow or pig fenced in and cared for would produce twice as much meat or milk as one turned out in the commons.⁵⁴ According to reformers, the present law had "failed to secure the ends which we may reasonably suppose its framers designed."⁵⁵ The evidence was in the poor quality of the commonwealth's livestock. These arguments resurfaced in the debates over postbellum changes to the fencing law fifty years later.⁵⁶

Farmers who pointed to the improvement of livestock as the impetus to change the crop fence law focused especially on the benefit to hog raisers. They stated that eastern Virginia actually imported pork from the western part of the state and the Ohio River Valley; this, they declared, was an obvious indicator that the common range was a failure at meeting the region's needs.⁵⁷ Exaggerating in his response to a contributor advocating passage of

a stock law, Ruffin remarked that “The whole management of hogs in Virginia yields no nett profit, and but an inconsiderable gross income, to the community, notwithstanding all the enormous costs incurred.”⁵⁸ Another hog producer in the Tidewater expressed similar sentiments in 1841. “We consider beyond a doubt, that to attempt the raising of hogs, out of a pen, except upon the richest pasture range or the finest mast, is to throw away pretty much the whole cost of the animal. Any man had certainly better buy his pork than attempt any such system.”⁵⁹ According to reformers, penned hogs could be fed such high quality fodder as red clover and corn, refuse, or even mast gathered from the woods and thus would grow fat without destroying the gardens and fields of the community or rooting and eroding productive agricultural land.⁶⁰ These arguments were direct reflections of John Taylor’s calls for livestock reform in *Arator*.⁶¹ Left unsaid was the need for marling and manuring in order to produce red clover and other high-quality forage (the ideal feed in the minds of reformers)—creating a loop in which farmers penned hogs to produce manure to grow clover to feed penned hogs.

Opponents of the law also complained that the legislation discouraged modern farming practices vital to improving the state of Virginia’s agriculture. Under the crop fence law, farmers who wanted to pasture their own livestock to produce better milk and meat still had to fence out their neighbor’s animals. This double fencing burden was cost prohibitive for all but the largest and wealthiest planters. And, as a Nottoway farmer questioned, what incentive did a landowner have to marl or fertilize his property when someone else’s cattle reaped the benefits?⁶² For improved farming to work, valuable forage crops needed protection from roaming livestock. A Goochland County farmer complained that fencing needs prevented the improvement of his land because time spent fixing fences could not be used to gather and compost vegetable manure or spread marl, plaster, and guano.⁶³ Repeating the same complaint, a King William planter declared that “It takes us nearly all the winter to do our fencing, which time could be much more profitably employed in improving our lands if we had only to enclose our own stock.”⁶⁴ Another Tidewater farmer lamented that the money he spent on fence labor in 1850 would have purchased enough guano to enrich his entire farm.⁶⁵ “R. W. W.” claimed that changing the fence law

was necessary to initiate widespread agricultural improvement; it would be the first step in the right direction “since our fathers made old fields and gullies and cut the woods down.”⁶⁶ Whether envisioning improvement from internal or external sources (such as guano), advocates of reform portrayed the crop fence law as an obstacle that prevented the improvement of both stock and soil.

According to reformers, it was not just marling and fertilizing that suffered from the time spent fencing cropland. Some farmers were reluctant to plant along fertile river and creek bottoms because fences rotted much faster in the waterlogged soil, and spring freshets frequently washed away large stretches of their enclosures.⁶⁷ The inconvenient boundaries created by fencing around every field also meant that farmers were less likely to experiment with field consolidation and new crop rotations if they had to take down and move fences.⁶⁸ These impediments to modern farming methods convinced Edmund Ruffin to list fencing laws ahead of improperly drained swampland and unhealthy stagnant millponds as the number one obstacle to improving agriculture in Virginia.⁶⁹ Members of the Nottoway County Farmers’ Club were even more adamant about the benefits of changing the fence law. In an 1852 meeting, they asserted that if the law was changed “railroads and rivers would groan under their accumulated burdens, and in the greatly increased prosperity of the farmer all other professions and trades would share.” Then Virginia, they continued, “with her great natural advantages . . . would quickly regain her lost preeminence in wealth and population.”⁷⁰ This encapsulated the dream of successful convertible husbandry, all initiated by fencing in hogs, cattle, and sheep.

There was, of course, a darker side to some of the arguments for closing the commons. Although the majority of farmers who wrote to agricultural journals on the subject of fence laws relied on economic or agronomic arguments, a few employed social or even racial lines of logic. There were three main types of these arguments. Writers claimed that crop fence laws violated personal property rights, benefited undeserving free blacks and vagrant whites, or injured poor landowners the most.

By far the most common social argument was that crop fence laws violated private property rights. Why should one man’s stock be allowed to fatten on another man’s resources?⁷¹ Or, as one Nottoway County farmer

phrased it, “Why should there be inducements held out by law for those who have not land, to prey upon him who has, or to compel him to labor at immense expense to secure to himself his crops, which the law should secure to him?”⁷² Along these lines, Ruffin declared that “the whole land of our country is, in effect, deprived of this protection against trespassers and wrongdoers.”⁷³

A hog producer somewhat confusedly claimed that the crop fence law reversed the logic of the law. He complained that the law “leaves the burthen of proof, in case of trespass, on the party trespassed on, and such proof is required as every practical man knows can never be had.”⁷⁴ The Nottoway Farmers’ Club, while arguing that the law prevented similar injustices, asked, “If a man has a right to subsist his cattle on another’s land without leave or compensation, why has he not a right to subsist his negroes?”⁷⁵ Carrying these complaints to the extreme, a farmer from Garysville inquired “What is this but socialism, Fourierism, in the plainest, broadest sense?”⁷⁶

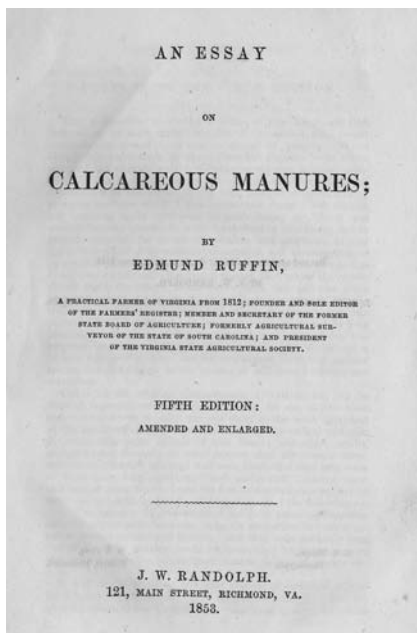
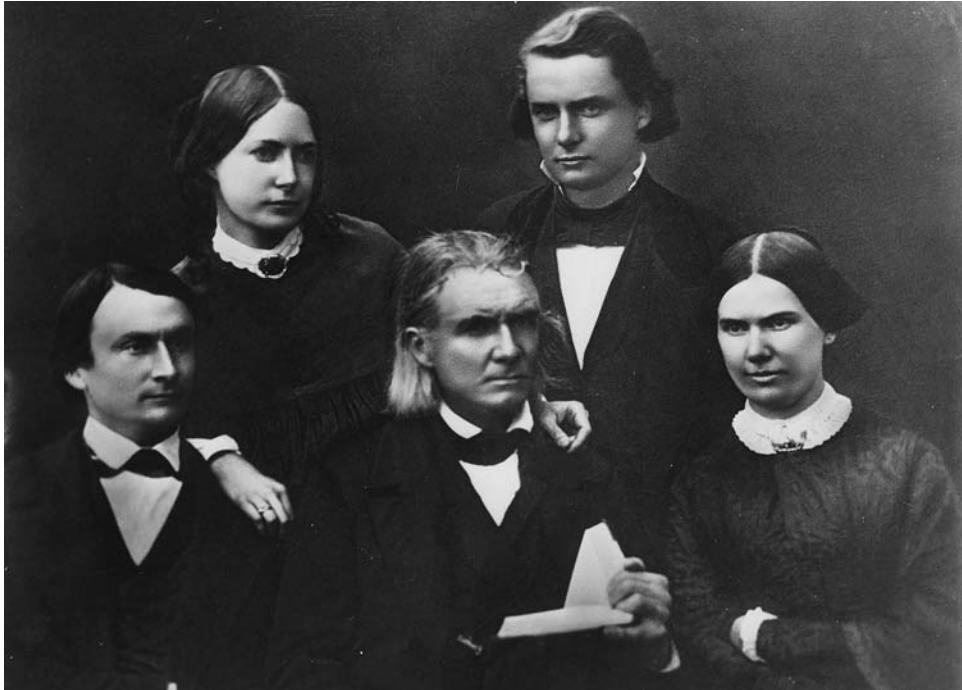
A few writers, while admitting that the current fence law did help a few individuals, argued that those who profited the most were the undeserving poor: free blacks and vagrant whites. A farmer from Goochland County complained in 1847 that his fields were endlessly damaged by starved stock “belonging possibly to some thriftless free negro, or equally thriftless white man.”⁷⁷ According to a James City County farmer, he was “infested by a set of white people infinitely worse than free negroes,” who let their stock range free and who damaged his fences to give their animals access to his fields. He also lamented that “This county is filled with free negroes and a class of whites that are not as good.”⁷⁸ Other farmers complained that local “night-walking negroes” took advantage of the laws and intentionally damaged fences to give their stock access to crops.⁷⁹ Many landowners also declared that it was unfair for those without land to run large herds of livestock at the public’s expense.⁸⁰

Contrary to the assumptions of the postbellum literature, farmers opposed to the prewar fence law also argued that it placed a disproportionate burden on the small landowner and the renter. “Waqua” asserted in the *Farmer’s Register* that the crop fence law harmed poor farmers because those with small holdings would average fewer acres of woodland, have a greater need to clear and cultivate all of their holdings, and have less labor than larg-

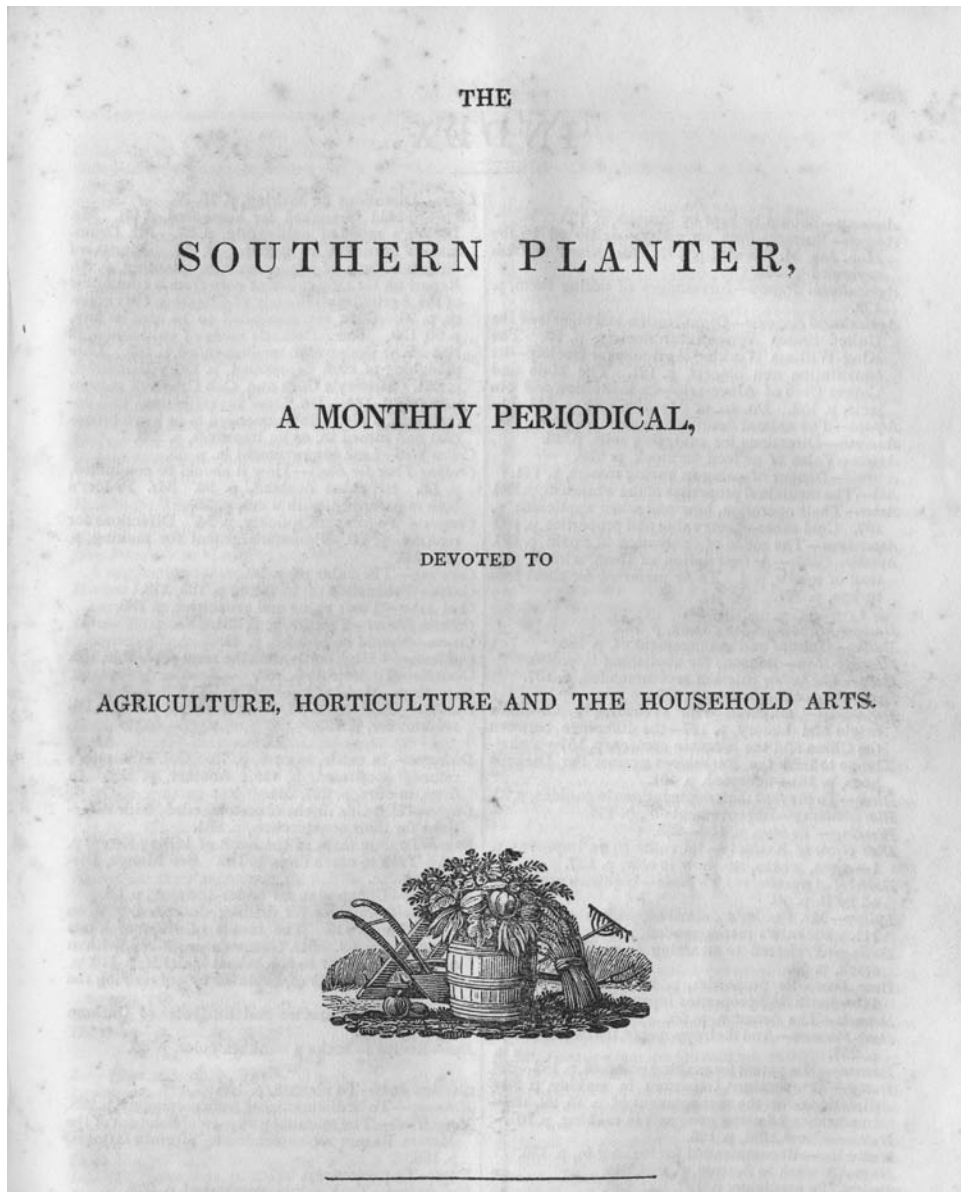
er planters.⁸¹ W. Timberlake supported this argument, declaring that in Nottoway County the fence law placed a heavy tax burden on those least capable of bearing it.⁸² Most writers who claimed that the fence law hurt poor landowners more than the wealthy based their assertions on calculations of the disproportionate amount of fencing required by a small farm. An 1852 statement released by the Nottoway Farmer's Club used its members' calculations of fencing costs to emphasize the burden of the crop fence law. The farmers' club estimated that under the current law a 100-acre farm required more than 200 days of labor for one man to fence, assuming sufficient timber resources existed on the property. If the land was already fenced, maintaining the soundness of the enclosure still occupied around forty days per year. According to the report, these figures applied to an exterior fence around a perfectly square farm, which required the simplest and shortest fencing lines.⁸³ In an 1849 issue of the *Southern Planter*, "Joel Hoecake" figured—again based on a square property—that it took one mile of fence to enclose a forty-acre farm, yet only four miles of fence to enclose a 640-acre farm. Thus the larger proprietor could encircle sixteen times as much land as the smaller with only four times the length of fence.⁸⁴ Although it is obvious that few farms in eastern Virginia were perfect squares, or any other regular geometric shape for that matter, the same principle of proportions applied to irregularly shaped tracts of land.

A few agricultural reformers also claimed impoverished laborers would have a better chance to rent or buy land if they did not have to bear the expense of fencing it.⁸⁵ Keeping up miles of wooden fence was a tough proposition for poorer farmers with only family labor upon which to rely. As one Tidewater farmer put it in 1842, "This, I assure you, sir, falls very heavily upon the farmer, more especially if he be a laboring man, having no negroes of his own, or if he has to hire a part or all the labor of his plantation."⁸⁶

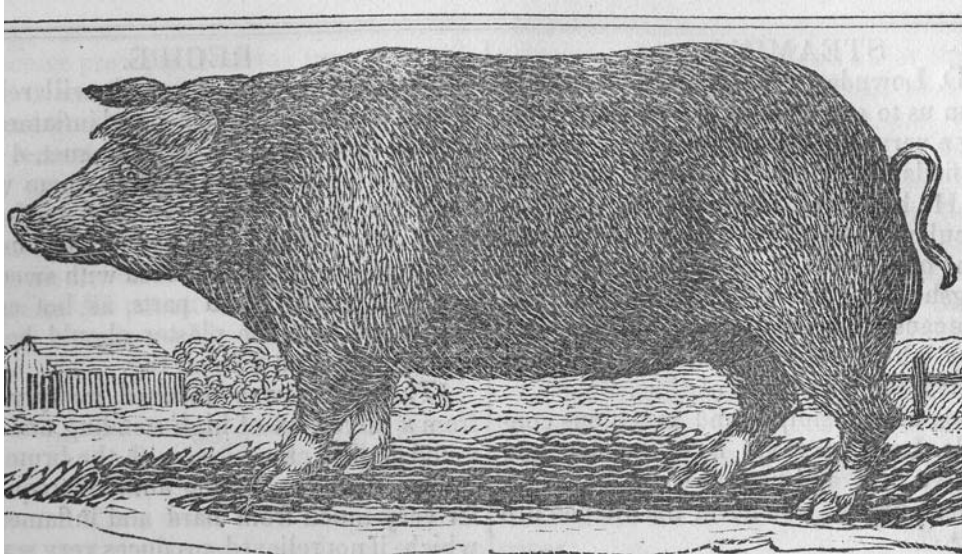
Reformers also blamed the crop fence law for decreasing land values in the Tidewater. Small tracts, they said, often failed to sell or went for ridiculously low prices because potential buyers winced at the cost of enclosing the land or repairing old fences. A farmer from Garysville cited the example of a widow who could not afford to replace the fencing around her tract. She tried to sell the land but was unable to do so because her neighbors knew



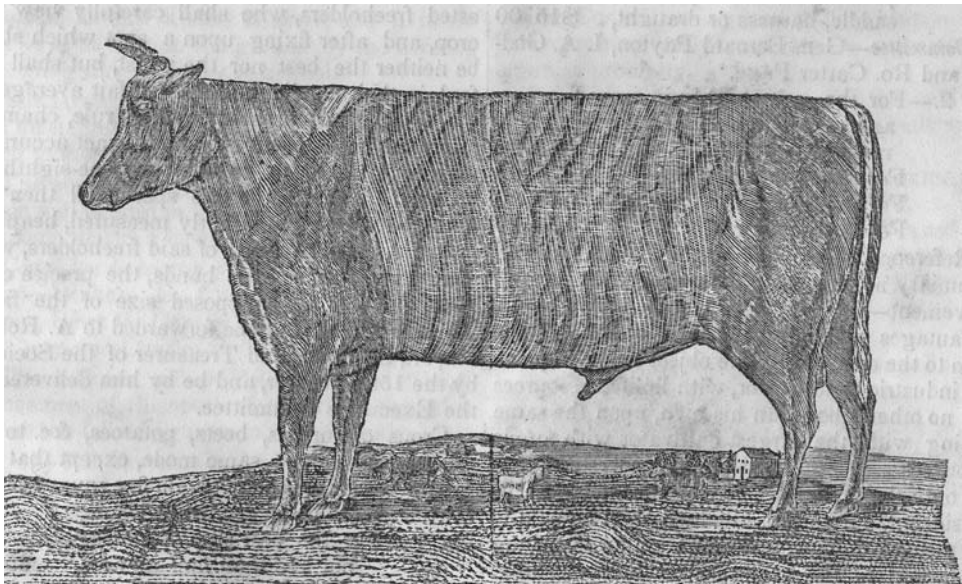
Edmund Ruffin (above center) was one of the most influential agricultural reformer of the nineteenth century. His concern that the open range limited southern farmers' ability to intensify and modernize their farms largely motivated his support for fence laws. Ruffin's most famous publication was *An Essay on Calcareous Manures* (1832), in which he advocated soil amendment and scientific farm management. (Both: *Virginia Historical Society*)



Along with the *Farmer's Register*, the *Southern Planter* was a major organ of agricultural reform in antebellum Virginia. The *Southern Planter* published a number of articles calling for changes in the fence law, but its editor, C. T. Botts, advocated a patient approach to closing the common range. (*Virginia Historical Society*)



Hogs and cattle, as depicted here in images of breeding stock taken from the pages of the *Southern Planter*, came to symbolize the agrarian ideal. However, the potential for damage caused by farm animals ranging among planted fields lay at the root of the antebellum debate about fence laws in the South. Reformers touted improved livestock as a major benefit of replacing Virginia's original crop fence laws with a stock fence law. (Both: *Virginia Historical Society*)



their stock could graze on it for free.⁸⁷ Reporting on the fence law to the Virginia Farmers' Assembly of 1858, a committee of agriculturalists stated that the burdens of fencing often caused "small landed estates, the property of widows and orphans," to go unsold and that landowners had a difficult time renting land with poor fences.⁸⁸ According to agricultural reformers, low property values, failure to properly fertilize poor soil, and the cost of fencing all contributed to the westward emigration of Virginia's sons and daughters.

Obviously there was some well-reasoned opposition to the claims of stock law advocates. Although the vast majority of contributors to agricultural journals decried the crop fence law, a few supported it as the best system for the commonwealth. Writing to the *Farmer's Register* in 1834, "Fencemore" of Prince George County made an elaborate and reasoned appeal to retain the current law. He argued that it did not actually favor stockmen over "tillers" and that stock laws only made sense in areas where people raised few animals for profit. In addition, stock laws would require more timber and labor than reformers wanted to acknowledge. Farmers would need to keep cattle, hogs, and sheep in separate pastures, each with its own specific fencing demands. The writer condemned fencing reform attempts "on the part of the legislature as gratuitous and uncalled for; and as oppressive in the extreme to the whole body of small farmers who constitute so large a portion of the agricultural community."⁸⁹ It was only the largest landowners focused on raising wheat, tobacco, and corn for the market who would benefit from a change in the law. Intensive agriculture held little appeal for people who raised stock separate from crops, especially in areas where producing quality forage was difficult.

Responding to "Fencemore," Edmund Ruffin replied that "The law is perpetually operating to starve out, deprive of their little freeholds, and to banish from Virginia, the valuable class of small farmers who it is averred the system protects. It is as much the operation of the fence law to accumulate many small tracts in few hands, as it is of the law of descents . . . to divide these accumulations." Ruffin drew from the above arguments about the effects of the crop fence law on the poor when he argued that "Fencemore" failed to understand the law's more insidious results.⁹⁰

“Fencemore” responded to Ruffin in a subsequent article. Pointing out that Tidewater planters had to look outside the region to meet their livestock needs, “Fencemore” inverted the reformers’ arguments by asserting that closing the open range would only make the situation worse. He also argued that emigration from Virginia and the increasing size of the state’s farms was a natural economic process, not a simple result of the fence law. According to “Fencemore,” it was the law of descents and “that wherever land is cheap and labor dear, individual interest dictates the adoption of that hard and destructive system of cultivation which so very generally prevails in all new countries, particularly where the products of agriculture have borne enormous premiums.”⁹¹ Thus, he claimed that Virginia’s agricultural woes were the natural outcome of a maturing region.

It was not only small farmers and stock owners who argued against changing the fence law. In 1842 the editor of the *Southern Planter*, C. T. Botts, stated that Virginia was not ready for fencing reform. Although his periodical printed far more pieces supporting a stock law than the current crop fence law, he denied that a stock law would benefit the majority of the population. “There is too much open land, which affords fine summer grazing, even in Eastern Virginia, to make such a law by any means desirable to a majority.” Botts implored larger landowners to bear the crop fence law “for the sake of the common good” because they had the resources to cope with the various issues of fencing their lands.⁹² For supporters of the crop fence law, old fields were more than just symbols of an agricultural system gone awry—they were also sources of forage and even wealth.

Perhaps the most surprising element of antebellum debates over the commons is how little written opposition existed to the entreaties of agricultural reformers to end Virginia’s crop fence law. The commonwealth’s prominent agricultural journals catered to larger farmers and thus naturally published more pieces in favor of the stock fence law. Also, advocates of the existing law tended to avoid open debate over the issue, as indicated by the general lack of any discussion in regional newspapers following the passage of local changes in fence law in 1835 and 1858. The most likely explanation seems to be that the threat of wholesale changes to the fence law was so minor during the antebellum period that it generated little in the way of fervent opposition.⁹³

With this light opposition, the agitation of agricultural reformers, such as Edmund Ruffin, produced gradual changes in the fence law beginning in the mid-1830s. Farmers had long complained that constructing fences along large bodies of water, such as the James River, was a losing proposition. In 1834, Ruffin published a petition in the *Farmer's Register* calling for changes along the tidal stretches of the James.⁹⁴ Under the 1834 crop fence law, if a farmer built a fence around his field on three sides, with deep water bordering the fourth, he could not claim damages if a hog or a cow broke through his fence and consumed his grain. The legal, though unlikely, assumption was that the animal might have bypassed the fence and entered from the river.

The legislature acknowledged these complaints as legitimate and noted the dearth of serviceable timber in eastern and central Virginia on rich agricultural lands along river courses. In 1835, at the request of Ruffin and a group of James River planters, the delegates made the tidal portion of the James River, its tributaries, and tidal marshes legal fences, and extended the same law along the Willis River in Cumberland County. Farmers now had the right to receive normal damages if a neighbor's livestock broke through their fences or swam to their fields.⁹⁵ The following year, the legislature extended the same law to cover farms bordering the James River in Fluvanna and Albemarle counties and the Potomac River in Berkeley County.⁹⁶ This trend of designating eastern rivers as legal fences continued throughout the 1840s and 1850s.⁹⁷

Ruffin and others praised the passage of these laws and their practical results. In 1835, he wrote that the new river fence laws benefited all waterfront planters, "and still more so, as steps, advancing slowly but surely, to the general adoption of the same system of justice and good policy" in the remainder of the state.⁹⁸ By 1842, Ruffin continued to praise these modifications of the crop fence law as some of the most successful portions of his agricultural reform campaign. He argued that these changes saved farmers money and used this claim as evidence of the pecuniary benefits of further reform.⁹⁹ There seems to have been little public reaction to these changes. The *Richmond Whig and Public Advertiser* commented on the passage of the 1835 act but passed no judgment, and over the next three months no readers wrote in with complaints or praise for the new law.¹⁰⁰

Despite reformers' assertions, the river fence modifications were in certain places obvious legal fictions. For example, in 1850 the Henrico County Farmers' Club acknowledged that even though the Chickahominy River was a legal fence, hogs could easily ford it at many places during the drier times of year.¹⁰¹ Jesse Hargrave, a "small farmer" from Sussex County, also praised the changes to the law but quipped that many of the designated water fences "would not swim a pig or float a catfish" during dry spells.¹⁰² These admissions seem to indicate that the legislature modified the crop fence law merely to placate the demands of agricultural reformers and agitators. The changes did not reflect a true understanding of the situation farmers faced.

The year 1858 marked the most significant change to the fence law brought about by agricultural reformers. As early as 1830, Edmund Ruffin began lobbying for voluntary community associations that would agree to erect an outer (or ring) fence around their district and then do away with all internal fencing except that needed for pasturage. The provision that each community would vote on whether it wanted a ring fence was extremely important to Ruffin, as he believed this democratic method would provoke less resistance to changing the law than would other more authoritarian methods.¹⁰³ Ruffin's calls for ring fences won some popular support among eastern farmers, and by the 1850s they began to write to agricultural journals in support of the measure.¹⁰⁴

In 1857, a group of Prince George County planters decided to petition the state legislature for legal permission to form a ring fence association. Ruffin worked closely with them—writing out the petition, sending the papers to the county's representative, and testifying before the senate as to the beneficial nature of the bill.¹⁰⁵ The bill, passed in early 1858, permitted Prince George County farmers to form associations south of the James River. The act declared that association farmers legally needed no fences other than the external enclosure, that adjoining farmers could petition to be included in the association, and that the same ring fence privilege extended to any other group of county landowners willing to sign a document of consent at the county courthouse.¹⁰⁶

Ruffin and other reformers rejoiced at the act's passage. He exclaimed, "This will be the commencement of a reform & revolution in this heretofore fixed policy of Va, & which, by other means, I have been laboring to

produce, for 20 years.” He envisioned similar associations spreading over the entire commonwealth. Ruffin boasted, “I have effected almost as great a benefit for the agricultural interests of Virginia, as I had before rendered in any other way.”¹⁰⁷ The editor of the *Southern Planter* seconded these sentiments. He regarded the ring fence law “as one of the most important acts for the benefit of the Agricultural class which has been passed for a good while,” and he called for eastern Virginia residents to demand the extension of this law for their counties.¹⁰⁸

All of the farmers who wrote to agricultural journals and newspapers regarding the ring fence law commented favorably, but who actually benefited from the legislation? Who were these agriculturalists who complained about a lack of timber, the heavy time and labor burdens of fencing, and the damaging effects of the crop fence law on improving agriculture? One hint lies in the text of the ring fence law itself. The act lists twenty-nine farmers who formed the outer boundary of the association, and twenty-six of these individuals appear in the 1860 census records for Prince George County.¹⁰⁹ From these data, we can make some general statements about those who benefited directly from the change to the law.

One of the most immediately evident trends is that a majority of the landowners were wealthy slaveholders. For example, Nathaniel Cocke owned thirty-six slaves in 1860, Edward Marks thirty-eight, Harrison Cocke seventy-one, James Cocke sixty-seven, Edmund Ruffin, Jr., ninety-five, Peter Birchett seventy-eight, and Peter Marks twenty-eight. The mean slaveholding among the twenty-six farmers listed in the census was slightly more than twenty-two, thus placing the average association landowner in the planter class. In addition, only two of the individuals owned no slaves—and these two were sandwiched between prosperous planters and likely depended on the patronage and good will of their neighbors—while eleven owned more than twenty. Most of these planters possessed a great deal of land and other personal property as well. The average association member was worth \$33,785. Nine of them held real and personal estates valued at more than \$40,000 in 1860, with Ruffin’s son, Edmund Ruffin, Jr., topping the list at \$233,000.¹¹⁰

During the first two years of the association, Ruffin, Sr., came to view it as a mixed success rather than as the tremendous boon to Virginia agricul-

ture he had envisioned. He noted that the legislature had extended the right to form ring fence associations to parts of nearby Lunenburg and Nottoway counties, and in 1860 he gratefully recorded in his diary that he received a letter of thanks from association members along the Appomattox River.¹¹¹ These positives, however, were counterbalanced by Ruffin's frustration with farmers who resisted the association. In 1859, he complained "there has been much difficulty in this neighborhood [northern Prince George] about carrying into full effect the law I obtained in 1858 to sanction general enclosures" primarily because of "the obstinate resistance thereto of one person . . . J. B. Cocke."¹¹² Thus, it seems that not all wealthy planters were entirely convinced that a ring fence association was a good idea.

The tide of war that swept over eastern Virginia in 1861 temporarily pushed aside all thoughts of fencing reform. Four years later, disconsolate over the South's defeat, Edmund Ruffin made his final statement on the importance of the southern system of slavery by committing suicide with a musket. In 1866, the Virginia legislature transferred the power of enforcing the 1858 ring fence law from the courts to the new office of county commissioner. Ruffin's son, Edmund, Jr., protested that county commissioners were ineffectual and undid all the benefits of the law. His primary complaint was that they were "either colored men or men of none or so little property and intelligence" as to make little difference.¹¹³

In the end, the antebellum movement to reform the crop fence law that Ruffin, Sr., had spearheaded made few lasting changes. Eastern rivers remained legal fences and many counties had begun to develop the district-level mechanism to vote on modifying the law, but few locales actually adopted any form of stock law. Following Ruffin's death and the destruction of hundreds of thousands of hogs and cattle by both the Union and Confederate armies, the issue dwindled in the years after the war. Not until the twentieth century would the commonwealth adopt a statewide stock law.¹¹⁴ Despite the apparent failure of antebellum fence law reform, agriculturalists realized the success of some of their more modest goals by the outbreak of the Civil War. Farming in Virginia improved as some planters diversified and began to practice modernized manuring and agronomic cultivation, emigration west slowed slightly, and farmers produced more grain and tobacco than they ever had before.¹¹⁵ Unrelated to the efforts of reform-

ers, in the struggling Southside a new crop, bright leaf tobacco, promised good profits from land previously unsuitable for sustained agriculture.¹¹⁶ Farmers would face tough times following the war, but for a brief period they seemed to be emerging into an era of moderate prosperity.



The struggle over fence law in antebellum Virginia demonstrates two important points. First, it shows that the debate over closing the open range had its roots in the prewar period and was not strictly a product of the New South, as many historians have implied. Before the war, numerous contributors to agricultural journals, including Edmund Ruffin, argued over what to do with the common range and whether it benefited farmers to enclose crops or stock. Second, the Virginia debates before the war over stock fence versus crop fence laws highlight the importance of economic and agronomic arguments about fencing reform rather than point to labor or race control as the primary goal of antebellum fence law reform. Eastern Virginia had a glut of labor, especially slave labor, from the 1830s until the outbreak of the war. It is doubtful that planters, who were selling slaves as fast as possible to cotton plantations in the southwest, would simultaneously be searching for a legal means to contain and control that labor.

These two major points call for a renewed look at the language used in postbellum southern debates. Did postwar reformers across the South rely on the same arguments that fueled these earlier debates in the commonwealth? The same complaints about timber shortage, the high cost of fencing in every field, and the inefficient nature of open range livestock production reappear too frequently and over too great a time span to ignore. As historian Arthur Hall has shown, they were not just a Virginia phenomenon in the antebellum South.¹¹⁷ In a growing and changing region, efforts to close the open range appear to have been the outcome of an enlarging population, an increased focus on crop production over livestock raising, concerns about timber and soil resources, and a desire to create an efficient southern version of sustainable husbandry.

Obviously the entreaties of agricultural reformers, such as Edmund Ruffin, regarding the fence law must be taken with at least a small grain of

salt. Virginia farmers harbored mixed feelings about closing the common range, which is revealed quite clearly in the length and depth of the arguments over fence law and in the fact that the commons remained open for years after the Civil War. It also seems quite apparent that, for the small percentage of landless Virginians who relied on free-ranging stock for their livelihood, closing the commons was an unmitigated disaster. Although the results of closing the range are obvious in some ways, a key question surrounding the struggles over enclosure has been one of intent. Did Ruffin and his compatriots want to close the open range in order to improve southern agriculture or to further dominate it? If we take the reformers at their word, and I think we should at least contemplate doing so, it was the former intent that guided their actions. Ultimately, it may be impossible to ferret out the motivation of fence law reformers, but a closer look at the language of the antebellum debates raises a number of fascinating questions for scholars of the postwar period, questions that may shed more light on a period of cataclysmic agricultural and social transition in the rural South.



NOTES

1. Burden Bearer, "The Law of Enclosure," *Southern Planter* (hereafter cited as *SP*) 10 (1850): 90.
2. Although it was not illegal to have unfenced cropland during the antebellum period, landowners who did not enclose their fields gave up the right to claim damages against their property. Many at the time used the term "fence law" or "law of enclosure" to describe the legislation requiring farmers to fence in their cropland if they sought legal protection from roaming stock. Most historians have chosen to use both "fence law" and "stock law" when referring to legislation that closed the open range. Throughout this article I use the more specific term "crop fence law" to denote the original legislation and "stock law" to describe fenced pasturage.
3. J. Crawford King, Jr., "The Closing of the Southern Range: An Exploratory Study," *Journal of Southern History* (hereafter cited as *JSH*) 48 (1982): 68.

4. Steven Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry, 1850–1890* (New York, 1983). See also Forrest McDonald and Grady McWhiney, “The South from Self-Sufficiency to Peonage: An Interpretation,” *American Historical Review* 85 (1980): 1105–6.
5. Hahn, Kantor, and Kousser engaged in a lively exchange via academic journals in the early 1990s over the nature of postbellum fence laws. Essentially, Kantor and Kousser argued that Hahn’s explanation of common range closure was overly complicated—they saw the legal changes as a natural result of changing demographics and agricultural practices, declaring that stock laws are inevitable whenever populations reach a certain density. For Hahn’s arguments, see Hahn, “A Response: Common Cents or Historical Sense?” *JSH* 59 (1993): 243–58 and his earlier “Hunting, Fishing, and Foraging: Common Rights and Class Relations in the Postbellum South,” *Radical History Review* 26 (1982): 37–64. For Kantor and Kousser’s claims, see Kantor and Kousser, “Common Sense or Commonwealth? The Fence Law and Institutional Change in the Postbellum South,” *JSH* 59 (1993): 201–42; Kantor, *Politics and Property Rights: The Closing of the Open Range in the Postbellum South* (Chicago, 1998); and Kantor, “Razorbacks, Ticky Cows, and the Closing of the Georgia Open Range: The Dynamics of Institutional Change Uncovered,” *Journal of Economic History* (hereafter cited as *JEH*) 51 (1991): 861–86.
6. Virginia DeJohn Anderson, *Creatures of Empire: How Domestic Animals Transformed Early America* (New York, 2004), pp. 112–14. Anderson points out, as Alfred Crosby and others have done before her, that in many cases domestic animals played an important role in colonization, both by helping convert colonial forests into farmland and by affecting the relationship between European colonists and native people (*ibid.*, pp. 4–6).
7. William W. Hening, comp., *The Statutes at Large, being a Collection of All the Laws of Virginia . . .* (13 vols.; New York and Philadelphia, 1809–23), 1:176. In 1632 the House of Burgesses passed another fence law that repeated the same language.
8. *Ibid.*, 1:244–45.
9. *Ibid.*, 1:332. It was at the offended party’s discretion to kill either the intruding animals or claim triple damages for a third offense.
10. *Ibid.*, 2:279.
11. *Ibid.*, 6:38–40 (quotation on p. 39). South Carolina passed a similar law in 1694, calling for “three neighboring freeholders” selected by the justice of the peace to certify the soundness of the fence. Georgia and North Carolina also passed antebellum crop fence laws of a similar nature. These laws also included stipulations concerning what constituted a legal fence, the assessment of fences by three neighbors, and the awarding of triple damages for repeat offenses. These other laws seem to have been modeled on the Virginia statutes (see Thomas Cooper and David James McCord, eds., *Statutes at Large of South Carolina* [2 vols.; Columbia, S.C., 1837], 2:81–82; Kantor, “Razorbacks, Ticky Cows, and the Closing of the Georgia Open Range,” pp. 862–63; and Timothy Silver, *A New Face on the Countryside: Indians, Colonists, and Slaves in South Atlantic Forests, 1500–1800* [New York, 1990], p. 131). My thanks to Hayden Smith for providing the South Carolina reference.
12. Edmund Ruffin, “The Law of Inclosures,” *Farmer’s Register* (hereafter cited as *FR*) 2 (1834): 345–46.

13. Jack Temple Kirby, *Poquosin: A Study of Rural Landscape and Society* (Chapel Hill, 1995), p. 61 and William M. Mathew, *Edmund Ruffin and the Crisis of Slavery in the Old South: The Failure of Agricultural Reform* (Athens, Ga., 1988), pp. 18–19.
14. Kirby, *Poquosin*, pp. 65–67.
15. John Taylor, *Arator; Being a Series of Agricultural Essays, Practical and Political: In Sixty-Four Numbers* (1818; repr., Indianapolis, 1977), pp. 133–34. Taylor uses the term “inclosing” as a synonym for fencing in stock and utilizing vegetable manures. Although extremely influential on agriculturalists, such as Edmund Ruffin, most of Taylor’s assumptions regarding soil fertility were incorrect. He asserted that vegetable matter alone was capable of restoring fertility if left on cropland. Some of Taylor’s methods did benefit soil fertility, though he rarely understood the science behind the results. For example, *Arator* called for farmers to raise more clover. However, no one then knew that it was the bacteria attracted to the roots of nitrogen-fixing legumes like clover that transformed atmospheric nitrogen into a usable form and allowed other plants to pull more of the element from the ground. Taylor drew many of his ideas from such eighteenth-century English agriculturalists as Jethro Tull and Charles Townshend. Tull advocated deep plowing in order to pulverize vegetable matter and release nutrients, while Townshend preached the benefits of the four-field crop rotation.
16. Kirby, *Poquosin*, p. 69.
17. *Ibid.*, pp. 70–71.
18. For a New England example, see Brian Donahue, *The Great Meadow: Farmers and the Land in Colonial Concord* (New Haven, 2004).
19. Steven Stoll, *Larding the Lean Earth: Soil and Society in Nineteenth-Century America* (New York, 2002), chap. 2, esp. pp. 153–55.
20. For one of the most revealing looks at the difficulties of policing the borders of a farm and a keen analysis of the difficulties of implementing agricultural reform in Virginia, see Lynn A. Nelson, *Pharsalia: An Environmental Biography of a Southern Plantation, 1780–1880* (Athens, Ga., 2007).
21. Avery Craven, *Edmund Ruffin, Southerner: A Study in Secession* (New York, 1932), p. 61.
22. Edmund Ruffin, *Incidents of My Life: Edmund Ruffin’s Autobiographical Essays*, ed. David F. Allmendinger, Jr. (Charlottesville, 1990), pp. 54–57.
23. Suum Cuique, “On the Law of Enclosures,” *FR* 1 (1833): 398.
24. R. W. W., “Fence Law,” *SP* 7 (1847): 272.
25. Fencemore, “The Policy of the Law of Enclosures Defended,” *FR* 3 (1835): 47.
26. For example, see Calx, “The Oppression of the Fence Law of Virginia,” *SP* 10 (1850): 216–17.
27. Edmund Ruffin, “Extracts from Private Correspondence,” *FR* 1 (1833): 185.
28. Edmund Ruffin, “Report to the State Board of Agriculture of Virginia,” *FR* 10 (1842): 514.
29. Edmund Ruffin, “Fences,” *FR* 10 (1842): 502 and Ruffin, “Report to the State Board,” pp. 514–15. Pennsylvania allowed cattle, sheep, and goats to roam free but required owners to pen their hogs. For another call to end free-ranging of swine, see A Pork Raiser, “Law of Enclosures,” *SP* 7

(1847): 52.

30. “Chickahominy Farmer’s Club,” *SP* 10 (1850): 163; Calx, “Oppression of the Fence Law,” p. 217; and Edmund Ruffin, Jr., William M. Tate, and Richard Irby, “Report to the Farmers’ Assembly on the Law of Enclosures,” *SP* 18 (1858): 173–74.

31. Jack Temple Kirby, *Mockingbird Song: Ecological Landscapes of the South* (Chapel Hill, 2006), pp. 113–14, 121.

32. For representative articles, see C. W. Gooch, “Prize Essay on Agriculture in Virginia,” *Richmond Enquirer*, 2 July 1833, p. 4; Suum Cuique, “On the Law of Enclosures,” pp. 396–98; Ruffin, “Report to the State Board,” p. 513; “The Chief Tax in Virginia,” *SP* 7 (1847): 345; Burden Bearer, “The Law of Enclosure,” p. 90; H. B. Worsham, J. Ravenscroft Jones, and William B. Price, “Report on the Fence Law, Read before the Brunswick Agricultural Society,” *SP* 13 (1853): 182; and Ruffin, Jr., Tate, and Irby, “Report to the Farmers’ Assembly,” pp. 170–74.

33. Farmers were never specific about what species “yellow pine” was, but usage seems to indicate that it was a general term for any mature pine that contained a wide center of hard wood or “heart pine.”

34. Gooch, “Prize Essay on Agriculture,” p. 4. Dark tobacco was so reliant on fresh land that “woodlands” and “tobacco lands” served as synonyms.

35. “The Chief Tax in Virginia,” p. 346.

36. A Farmer, “Law of Enclosure,” *SP* 10 (1850): 141.

37. L., “Fencing and Stock Running at Large,” *SP* 18 (1858): 174.

38. Edmund Ruffin, *An Essay on Calcareous Manures*, ed. J. Carlyle Sitterson (Cambridge, 1961), p. 16.

39. Anti-fence, “Prejudices Against Marl, and the Great Love of Fences Entertained by Farmers of Virginia,” *FR* 1 (1834): 753.

40. Worsham, Jones, and Price, “Report on the Fence Law,” p. 182.

41. W. Timberlake, “Fencing, &c.,” *SP* 12 (1852): 137–38.

42. *Ibid.*, p. 138.

43. “Carrollton,” *Carroll Free Press*, 15 May 1885, in Kantor and Kousser, “Common Sense or Commonwealth?” p. 211. The same arguments were present in postwar Virginia newspapers as well (see, for example, “About Fences,” *Pittsylvania Tribune*, 23 May 1879, p. 4).

44. Avery Odelle Craven, *Soil Exhaustion as a Factor in the Agricultural History of Virginia and Maryland, 1606–1860* (1926; repr., Gloucester, Mass., 1965), p. 32 and Kirby, *Mockingbird Song*, p. 133. Kirby argues that deforestation of the South did not accelerate rapidly until after the turn of the twentieth century.

45. A. T. Grove and Oliver Rackham, *The Nature of Mediterranean Europe: An Ecological History* (New Haven, 2001). Rackham also made this point in his earlier study, *The History of the Countryside* (London, 1986), chaps. 5 and 6.

46. Suum Cuique, “On the Law of Enclosures,” p. 397.

47. R. N., “A Commentary on the Law of Enclosures of Virginia,” *FR* 2 (1834): 346. Many plans

for post-and-rail fences called for treating the bottoms of the posts with pitch to prevent rotting, but this simply added expense to a method of fencing many farmers already believed was cost prohibitive.

48. "Farming in Virginia," *Massachusetts Ploughman and New England Journal of Agriculture* 6 (July 3, 1847): 1.
49. "Fence Laws—Dyes and Muffins," *SP* 6 (1846): 74.
50. Suum Cuique, "On the Law of Enclosures," p. 397.
51. These appeals are especially common in the *Southern Planter*. For a good example, see H., "Fencing," *SP* 1 (1841): 20–21. Modern farm economists have claimed that a shift to post-and-rail or live fencing might have saved farmers money in the long run but that the initial expenses would have been prohibitively high (see Martin L. Primack, "Farm Fencing in the Nineteenth Century," *JEH* 29 [1969]: 287).
52. An Old Farmer, "Fences," *SP* 3 (1843): 85–87; "Chickahominy Farmers' Club," p. 164; M. C., "Fencing," *SP* 12 (1852): 35; and C., "Improved Fence of Cheap Plank," *SP* 17 (1857): 357–58.
53. Arthur R. Hall, *The Story of Soil Conservation in the South Carolina Piedmont 1800–1860* (Washington, D.C., 1940), pp. 5, 12. Ruffin conducted an agricultural and geological survey of the state of South Carolina in 1843. In that survey he made many of the same suggestions for agricultural improvement that he circulated in Virginia.
54. "Fence Laws—Dyes and Muffins," p. 74. The improvement of stock would remain a prominent argument for closing the open range after the Civil War.
55. Ruffin, Jr., Tate, and Irby, "Report to the Farmers' Assembly," p. 170.
56. Kantor and Kousser, "Common Sense or Commonwealth?" pp. 213–14.
57. A Pork Raiser, "Law of Enclosures," p. 52 and Philander, "Enormous Losses Caused by the Fence Law of Virginia," *FR* 1 (1834): 635.
58. Philander, "Enormous Losses," p. 635.
59. "Hogs," *SP* 1 (1841): 64.
60. Jeremiah, "The Right of Grazing in Common," *FR* 1 (1834): 490 and Gooch, "Prize Essay on Agriculture," p. 4.
61. Taylor was most concerned with the affect hogs would have on cultivated lands (see Taylor, *Arator*, pp. 260–63).
62. Suum Cuique, "On the Law of Enclosures," p. 397 and W. J. D., "On the Law of Enclosures in Virginia," *FR* 1 (1834): 451.
63. R. W. W., "Fence Law," p. 271.
64. L., "Fencing and Stock Running at Large," p. 175.
65. A Farmer, "Law of Enclosure," p. 141.
66. R. W. W., "Fence Law," p. 273.
67. Philander, "Enormous Losses," p. 633.

68. W. R. Bland, G. A. Cralle, and T. F. Epes, "Enclosure System of Virginia: Address of the Farmer's Club of Nottoway to the Farmers of Virginia," *SP* 12 (1852): 233. In a way, these promises of prosperity were a response to Ruffin's Malthusian warnings about the costs of failing to enact agricultural reform. Ruffin claimed that without change "Births would diminish, and deaths would increase—and hunger and disease would keep down population" (Ruffin, *An Essay on Calcareous Manure*, p. 19).
69. Ruffin, "Report to the State Board," p. 513.
70. Bland, Cralle, and Epes, "Enclosure System of Virginia," pp. 234–35.
71. Fence Less, "A Word to 'Fencemore,'" *FR* 3 (1835): 259.
72. W. J. D., "On the Law of Enclosures," p. 452.
73. Suum Cuique, "On the Law of Enclosures," p. 396 (quotation). In his "Report to the State Board," Ruffin argued that "each individual should be compelled to refrain from trespassing injuriously on the property, or otherwise doing wrong, either directly, or through others under his control [i.e. livestock], to any other person under the protection of the laws." He declared that the fence law made a mockery of this, saying, "each individual shall guard and protect his property from depredators, and every person is permitted to consume or destroy all that may not be well guarded" (Ruffin, "Report to the State Board," p. 513).
74. A Pork Raiser, "Law of Enclosures," p. 52.
75. Bland, Cralle, and Epes, "Enclosure System of Virginia," p. 234.
76. Anti-Fence, "The Fence Law," *SP* 10 (1850): 112.
77. R. W. W., "Fence Law," p. 271.
78. "The Chief Tax in Virginia," p. 347.
79. R. N., "A Commentary on the Law of Enclosures," p. 346.
80. W. J. D., "On the Law of Enclosures," p. 451.
81. Waqua, "Operation of the Fence Law on the Poor," *FR* 3 (1835): 32–33.
82. Timberlake, "Fencing, &c.," p. 138.
83. Bland, Cralle, and Epes, "Enclosure System of Virginia," pp. 231–32. See also Philander, "Enormous Losses," p. 634.
84. Joel Hoecake, "Fence Law," *SP* 9 (1849): 38; Calx, "Oppression of the Fence Law of Virginia," p. 217; and Bland, Cralle, and Epes, "Enclosure System of Virginia," pp. 233–34.
85. For examples of this reasoning, see Waqua, "Operation of the Fence Law," pp. 32–33; Calx, "Oppression of the Fence Law of Virginia," pp. 217–18; and Worsham, Jones, and Price, "Report on the Fence Law," p. 183.
86. M., "For the Southern Planter—Fencing," *SP* 2 (1842): 185.
87. Anti-Fence, "The Fence Law," p. 111.
88. Ruffin, Jr., Tate, and Irby, "Report to the Farmers' Assembly," p. 172.
89. Fencemore, "The Policy of the Law of Enclosures Defended," pp. 47–50 (quotation on p. 48).

90. Ibid., p. 50.
91. Fencemore, “Fence Less’ and the Editor of the Register,” *FR* 3 (1835): 456–58 (quotation on p. 458).
92. M., “For the Southern Planter—Fencing,” p. 185. For a debate among members of the Henrico County Farmers’ Club over the importance of changing the law, see “The Farmers’ Club: Meeting in Henrico,” *SP* 10 (1850): 152.
93. In my survey of regional newspapers, I looked at issues of the *Richmond Dispatch*, *Richmond Whig and Advertiser*, and *Richmond Enquirer* that were published over a three-month period following the passage of both a river fence law in 1835 and a ring fence association law in 1858. Although the papers noted the passage of these laws, the few printed articles generally supported the measures.
94. Edmund Ruffin, “Petition for an Amendment of the Law Respecting Enclosures on Margins of the Navigable Tide Waters of James River,” *FR* 2 (1834): 450.
95. *Acts of the General Assembly of Virginia, Passed at the Session of 1834–1835 . . .* (Richmond, 1835), pp. 53–55. For the appeal of the James River planters, see “To the Legislature of Virginia,” *Richmond Enquirer*, 29 Aug. 1834, p. 3.
96. *Acts of the General Assembly of Virginia, Passed at the Session of 1835–36* (Richmond, 1836), p. 52.
97. See, for example, *Acts of the General Assembly of Virginia, Passed in 1855–6* (Richmond, 1856), p. 273 and *Acts of the General Assembly of Virginia, Passed in 1857–8* (Richmond, 1858), pp. 264–65. These various acts declared the North Anna, Nottoway, Rivanna, Meherrin, Kanawha, and Chickahominy rivers to be legal fences.
98. Edmund Ruffin, “The Recent Enactments of the Legislature of Virginia, Affecting the Interests of Agriculture,” *FR* 2 (1835): 711.
99. Ruffin, “Report to the State Board,” p. 515.
100. “House of Delegates,” *Richmond Whig and Public Advertiser*, 13 Mar. 1835, p. 2.
101. “The Farmers’ Club,” p. 152.
102. Jesse Hargrave, “The Fence Law—and the Bearing of the Maine Liquor Law upon Production,” *SP* 13 (1853): 326.
103. Suum Cuique, “On the Law of Enclosures,” p. 397; Ruffin, “Recent Enactments of the Legislature of Virginia,” p. 711; and Ruffin, “Report to the State Board,” p. 514. Ruffin’s plan called for a three-fourths majority to approve the ring fence.
104. For example, see “Chickahominy Farmers’ Club,” pp. 163–64 and Calx, “Oppression of the Fence Law,” p. 217.
105. Edmund Ruffin, *The Diary of Edmund Ruffin*, ed. William K. Scarborough (3 vols.; Baton Rouge, 1972–89), 1:136–38.
106. *Acts of the General Assembly of Virginia, 1857–8*, pp. 263–64. Participating farmers were still required to ensure the legality of the external fence in order to claim damages from marauding stock, and they had to provide a gate and a daytime gatekeeper for public roads that passed through the enclosed district.

107. Ruffin, *Diary of Edmund Ruffin*, 1:150.
108. “An Important Amendment in the Law of Enclosures,” *SP* 18 (1858): 169.
109. Two of the farmers listed in the ring fence legislation died before the 1860 census, and one, known as “John Smith,” could not be matched to the census records with any degree of certainty.
110. U.S. Census Bureau, Eighth Census, 1860, Prince George County, Va., and U.S. Census Bureau, Eighth Census, 1860, Slave Schedules, Prince George County, Va. By 1860, Ruffin had moved to a new plantation in Hanover County, though he kept close tabs on the agricultural situation in his former county.
111. Ruffin, Jr., Tate, and Irby, “Report to the Farmers’ Assembly,” p. 173 and Ruffin, *Diary of Edmund Ruffin*, 1: 398–99. The Appomattox River association was an extension of the original 1858 Prince George association.
112. Ruffin, *Diary of Edmund Ruffin*, 1:357–58. In all likelihood, this was the James Cocke listed in the 1858 act.
113. Kirby, *Poquosin*, p. 78.
114. For a discussion of the devastation of the war on commonwealth livestock, see G. Terry Sharrer, *A Kind of Fate: Agricultural Change in Virginia, 1861–1920* (Ames, Iowa, 2000), pp. 3–36.
115. Mathew, *Edmund Ruffin and the Crisis of Slavery*, pp. 110–26. See also, Sharrer, *A Kind of Fate*.
116. Nannie May Tilley, *The Bright Tobacco Industry, 1860–1929* (Chapel Hill, 1948), pp. 3–27 and Frederick F. Siegel, *The Roots of Southern Distinctiveness: Tobacco and Society in Danville, Virginia, 1780–1865* (Chapel Hill, 1987), p. 102.
117. Hall, *Story of Soil Conservation*, p. 5.

