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## John Hemings' Monticello and Poplar Forest

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## John Hemings' Monticello and Poplar Forest

### Cover Page Footnote

J.D. Candidate, 2021, University of Georgia School of Law. He dedicates this and all future work to his wife, Katie, without whom none of it would be possible.

## **JOHN HEMINGS' MONTICELLO AND POPLAR FOREST**

*J. Wesley Giglio\**

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\* J.D. Candidate, 2021, University of Georgia School of Law. He dedicates this and all future work to his wife, Katie, without whom none of it would be possible.

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JOHN HEMINGS' MONTICELLO

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“...[T]hankfully, they were not masters and mistresses across all space and time, and there is more to the world than law.”

- ANNETTE GORDON-REED,  
*The Hemingses of Monticello: An American Family*

## I. INTRODUCTION

Thomas Jefferson, author of the Declaration of Independence and the Statute of Virginia for religious freedom, former Governor, father of the University of Virginia, the first U.S. Secretary of State, and the third President of the United States, died on July 4th, 1826, at Monticello, his magnificent plantation home in central Virginia.<sup>1</sup> He died on the fiftieth Anniversary of the signing of the Declaration of Independence in 1776, the authorship of which was his crowning achievement and the guarantee of his historical immortality.<sup>2</sup> Jefferson's death on the Fourth of July (within hours of the death of John Adams, whose friendship and rivalry with Jefferson informed the first fifty years of American democracy to a remarkable extent<sup>3</sup>) was understood nationally as a kind of divine coda to the revolutionary generation he represented.<sup>4</sup> President Adams *filis* wrote that the two deaths were “visible and palpable remarks of Divine Favor, for which I would humble myself in grateful and silent adoration before the Ruler of the Universe.”<sup>5</sup>

However, at Monticello, the “little mountain”<sup>6</sup> where Jefferson made his home for most of his eighty-three years, Jefferson's death was nothing less than a profound and rending tragedy.<sup>7</sup> This was true for his legitimated white family, who would now face the reality of Jefferson's profligate spending and enormous debt (which Jefferson himself evaded), including the threat of losing their home and genuine poverty.<sup>8</sup> It was true for his unacknowledged black family, including the four children he bore with the enslaved woman Sally Hemings, two of whom were surreptitiously freed prior to his death, and two of whom were freed in his will, but whose mother remained the property of Jefferson's official heirs.<sup>9</sup> But it was most true for the more than 130 enslaved people who lived and worked at

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<sup>1</sup> Annette Gordon-Reed, *THE HEMINGSSES OF MONTICELLO: AN AMERICAN FAMILY* 651 (2008).

<sup>2</sup> GORDON-REED, *supra* note 1, at 131.

<sup>3</sup> JON MEACHAM, *THOMAS JEFFERSON: THE ART OF POWER* 312-22 (2012).

<sup>4</sup> *Id.* at 496.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 13.

<sup>7</sup> GORDON-REED, *supra* note 1, at 653.

<sup>8</sup> *Id.* at 652.

<sup>9</sup> *Id.* at 657.

Monticello.<sup>10</sup> A majority of these enslaved people would have their families, memories, and connections to their lifelong home sundered on the auction block to settle the staggering debts of their deceased master.<sup>11</sup>

Aside from the two youngest of Jefferson's unacknowledged black children (who were, unlike their older siblings, still enslaved at Monticello at the time of Jefferson's death), only three other enslaved people were granted their freedom in Jefferson's final will.<sup>12</sup> Each of these men had done Jefferson a great service. Joseph Fossett was a very talented blacksmith who had profitably run Jefferson's on-site nail factory.<sup>13</sup> Burwell Colbert was a great favorite of Jefferson and was essentially running the plantation by the time of the President's death;<sup>14</sup> even after Jefferson's death, Colbert kept the keys to the house and continued to clean it.<sup>15</sup> Finally, Jefferson freed John Hemings.<sup>16</sup>

The story of John Hemings at Monticello is among the most remarkable and well-documented of any enslaved person in the 18th and 19th centuries. John Hemings was a gifted carpenter who ran the joinery at Monticello.<sup>17</sup> Under his direction, the joinery produced every kind of furniture, particularly desks, chairs, and tables (Jefferson was fond of French and of his own designs); farm implements, a landau, dozens of Jefferson's mechanical inventions, and, eventually, Jefferson's coffin.<sup>18</sup> Hemings was also chiefly responsible for "realiz[ing] [Jefferson's] vision for the look of Monticello"<sup>19</sup> and for the carpentry work on Jefferson's octagonal second home, Poplar Forest, built between 1806 and 1809.<sup>20</sup> According to Edmund Bacon, Jefferson's overseer at Monticello, Hemings was "a first-rate workman—a very extra workman. He could make anything that was wanted in woodwork."<sup>21</sup>

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<sup>10</sup> *Id.* at 655.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 647.

<sup>13</sup> Thomas Jefferson Encyclopedia: Joseph Fossett, MONTICELLO

<https://www.monticello.org/site/research-and-collections/joseph-fossett> (last visited Oct. 26, 2020).

<sup>14</sup> Thomas Jefferson Encyclopedia: Burwell Colbert, MONTICELLO,

<https://www.monticello.org/site/researchandcollections/burwell-colbert> (last visited Oct. 26, 2020).

<sup>15</sup> GORDON-REED, *supra* note 1, at 660.

<sup>16</sup> *Id.* at 647.

<sup>17</sup> Thomas Jefferson Encyclopedia: John Hemmings, MONTICELLO,

<https://www.monticello.org/site/research-and-collections/john-hemmings> (last visited Oct. 26, 2020).

<sup>18</sup> GORDON-REED, *supra* note 1, at 610, 612.

<sup>19</sup> *Id.* at 26.

<sup>20</sup> *Id.* at 637.

<sup>21</sup> JACK MCLAUGHLIN, JEFFERSON AND MONTICELLO: THE BIOGRAPHY OF A BUILDER 122 (1st ed. 1988).

At Monticello, artisans who could bring Jefferson's architectural and mechanical ideas to life were prized above all other workers and enslaved people.<sup>22</sup> Jefferson's chief pleasure, rivaled only by reading, was in "putting up and pulling down" with "his mechanics."<sup>23</sup> The first version of Monticello had already been built when John Hemings was born in 1776<sup>24</sup> (leveling of the site began in 1768, the first bricks were made and construction started in 1769, and Jefferson was living there by 1770),<sup>25</sup> but John, working under the direction of a gifted carpenter named James Dinsmore, bore much of the responsibility for expanding and remodeling the house into what it is today;<sup>26</sup> the remodeling process began in 1796 and continued with vigor until 1809, slowly petering out in Jefferson's retirement.<sup>27</sup> Hemings's contributions to Poplar Forest, Jefferson's second home, construction of which began in 1806 and continued until 1809, were enormous.<sup>28</sup> After the completion of the basic final structure of Monticello (Jefferson never stopped remodeling and improving, but the main building, less certain architectural details, was essentially completed by 1809),<sup>29</sup> John Hemings was largely, and some Hemings family historians say solely, responsible for filling the great house with fine furniture.<sup>30</sup> Prior to working on either building, Hemings honed his craft building slave dwellings along and around Monticello's infamous Mulberry Row.<sup>31</sup>

In the late 18th and early 19th centuries, the relationship between architects and master craftsmen was not the same as it is today.<sup>32</sup> While there can be no doubt that Jefferson was the sole architect of both Monticello and Poplar Forest, in terms of their schematic design, building was a far more collaborative and artistic process in that age than it is today.<sup>33</sup> In an age without uniform tools and materials, without prefabricated structures, and without blueprints that went beyond hand-drawn designs, a truly talented master builder was absolutely essential.<sup>34</sup> The secrets of the twin crafts of carpentry and joining were jealously protected by their practitioners, forcing would-be architects to rely on their

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<sup>22</sup> GORDON-REED, *supra* note 1, at 637.

<sup>23</sup> *Id.* at 96.

<sup>24</sup> Thomas Jefferson Encyclopedia: John Hemmings, *supra* note 17.

<sup>25</sup> House FAQs, MONTICELLO, <https://www.monticello.org/house-gardens/the-house/house-faqs/#when> (last visited Oct. 26, 2020).

<sup>26</sup> MCLAUGHLIN, *supra* note 21, at 122.

<sup>27</sup> House FAQs, *supra* note 25.

<sup>28</sup> MCLAUGHLIN, *supra* note 21, at 121-124.

<sup>29</sup> *Id.* at 331.

<sup>30</sup> *Id.* at 122.

<sup>31</sup> Thomas Jefferson Encyclopedia: John Hemmings, *supra* note 17.

<sup>32</sup> MCLAUGHLIN, *supra* note 21, at 36.

<sup>33</sup> *Id.* at 36, 86-88.

<sup>34</sup> *Id.*

judgment and skill to an enormous degree.<sup>35</sup> In Jefferson's case, his near-constant absence from both Monticello and Poplar Forest between 1779 (the beginning of his governorship) and 1809 (the end of his presidency) forced him to rely on his builders to an even greater extent than was typical. During this period, Jefferson was living variously in Richmond, Paris, Philadelphia, and Washington, D.C., with only brief returns to the little mountain.<sup>36</sup>

Jefferson's long absences from the mountain, and the difficulty in getting white master builders to stay on-site for long periods of time (Jefferson also had problems keeping them sober), made Hemings even more essential.<sup>37</sup> From the day of his birth in 1776 to the day the home was sold in 1831, five years after Jefferson's death, Hemings never left Monticello except to work at Poplar Forest.<sup>38</sup> He was the living memory of all the various stages of construction, and the rarest of all things in antebellum Virginia: an enslaved black man who could both read and write.<sup>39</sup> This skill allowed Hemings to communicate effectively with suppliers and other craftsmen, to make and keep inventories, and to communicate with Jefferson himself, which he regularly did.<sup>40</sup>

The goal of this Note is to show the significant and vital contributions John Hemings made to the completed buildings of Monticello, Mulberry Row, and Poplar Forest. In other words, Hemings can justly be seen as the co-author of those buildings, along with Jefferson (and possibly other enslaved people, tragically lost to history). In so doing, this Note hopes to make the case for Hemings, and his descendants, that Hemings is entitled to *droits moral* (moral rights) vis-a-vis these structures. Mulberry Row has not survived, but is now being re-created; Poplar Forest is undergoing a meticulous restoration; and Monticello can be seen today in pristine, fully-restored condition.<sup>41</sup> Jefferson, who was both a lawyer and an inventor, as well as the American ambassador to France, would have been very aware of the concept of moral rights.

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<sup>35</sup> *Id.* at 35.

<sup>36</sup> GORDON-REED, *supra* note 1, at 11.

<sup>37</sup> MCLAUGHLIN, *supra* note 21, at 66-67.

<sup>38</sup> GORDON-REED, *supra* note 1, at 11, 660.

<sup>39</sup> *Id.* at 405.

<sup>40</sup> *Id.* at 403.

<sup>41</sup> See *Landscape of Slavery, Mulberry Row at Monticello*, MONTICELLO, <https://www.monticello.org/mulberry-row/gallery/01-introduction> (last visited Dec. 15, 2020); *Thomas Jefferson's Poplar Forest*, THOMAS JEFFERSON'S POPLAR FOREST, <https://www.poplarforest.org/learn/architectural-restoration/restoration-process/restoration-reconstruction/> (last visited Dec. 15, 2020); *Thomas Jefferson Foundation: An Overview*, MONTICELLO, <https://www.monticello.org/thomas-jefferson-foundation/thomas-jefferson-foundation-an-overview/> (last visited Dec. 15, 2020).

## II. BACKGROUND

## A. MORAL RIGHTS

The concept of moral rights, a European idea, predates the founding of the United States.<sup>42</sup> Moral rights embody the concept that authorial rights go beyond simple economic protection and enfold something more fundamental.<sup>43</sup> Copyrightable works, under the concept of moral rights, are “not merely a product that can be bought or sold but, rather, is a direct embodiment of the author’s personality, identity, and even her ‘creative soul.’”<sup>44</sup> The concept was codified at the Berne Convention in 1886, in Paris, where Belgium, France, Germany, Great Britain, Haiti, Italy, Liberia, Spain, Switzerland, and Tunisia all agreed to abide by a common set of moral rights protections.<sup>45</sup> These protections included special rights of attribution and integrity.<sup>46</sup> The right of attribution includes the right to be known as the author of a particular work and to prevent others from taking false credit as such.<sup>47</sup> The right of integrity protects authors from any “distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.”<sup>48</sup> In the wake of the Berne Convention, several European countries, most notably Germany, have gone even farther in protecting the author’s moral rights, making the rights part of their constitution.<sup>49</sup> In Germany, as well as other countries in Europe, the rights of attribution and integrity are deathless; in other words, they survive indefinitely, even after the death of the author.<sup>50</sup> The United States, in contrast, only protects the rights of attribution and integrity via the Visual Artists Rights Act (VARA)

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<sup>42</sup> See Peter Burger, *The Berne Convention: Its History and Its Key Role in the Future*, 3 J.L. & TECH. 1,6 (1988) (explaining that the concept first appeared in 1774).

<sup>43</sup> Aaron D. White, *The Copyright Tree: Using German Moral Rights as the Roots for Enhanced Authorship Protection in the United States*, 9 LOY. L. & TECH. ANN. 30, 34-35 (2010).

<sup>44</sup> Robert C. Bird & Lucille M. Ponte, *Protecting Moral Rights in the United States and the United Kingdom: Challenges and Opportunities Under the U.K.’s New Performances Regulations*, 24 B.U. INT’L L.J. 213, 217-18 (2006).

<sup>45</sup> WIPO-Administered Treaties, Contracting Parties > Berne Convention, WIPO IP PORTAL, [https://wipo.int/en/treaties/ShowResults?start\\_year=ANY&end\\_year=ANY&search\\_what=C&code=ALL&treaty\\_id=15](https://wipo.int/en/treaties/ShowResults?start_year=ANY&end_year=ANY&search_what=C&code=ALL&treaty_id=15) (last visited Dec. 15, 2020).

<sup>46</sup> White, *supra* note 43, at 34-35.

<sup>47</sup> David Nimmer, *The Moral Imperative Against Academic Plagiarism (Without a Moral Right Against Reverse Passing Off)*, 54 DEPAUL L. REV. 1, 13, 14 (2004).

<sup>48</sup> Berne Convention for the Protection of Literary and Artistic Works art. 6bis(1), Sept. 9, 1886, 828 U.N.T.S. 221.

<sup>49</sup> White, *supra* note 43, at 38.

<sup>50</sup> *Authors, Attribution, and Integrity: Examining Moral Rights in the United States*, UNITED STATES COPYRIGHT OFFICE (Apr. 2019) <https://www.copyright.gov/policy/moralrights/full-report.pdf>, at 60.

and various conflicting state laws, which may exclude or fail to adequately protect a range of potential authors.<sup>51</sup> This difference between the way the United States and many European countries protect and promote moral rights reflects the United States' focus on "promot[ing] the Progress of Science and useful Arts,"<sup>52</sup> which are public benefits, rather than private ones. In the words of Raphael Winick, the United States seeks to benefit the public through incentivization, while many European countries with stronger *droits moral* laws seek primarily to benefit the author.<sup>53</sup> The law on moral rights in the United States suffers from a lack of uniformity, and a scattershot approach to the problem. One example of this scattershot approach, which is most applicable to the situation of John Hemings, is the passage of the Architectural Works Copyright Act (AWCPA) in 1990.<sup>54</sup>

#### B. THE ARCHITECTURAL WORKS COPYRIGHT PROTECTION ACT

The AWCPA, along with other statutes like VARA, were created after the United States finally joined the Berne Convention in the late 1980s, but found that they were likely not in compliance vis-a-vis the rights of attribution and integrity, and the protection of a wide range of authorial works (such as architecture).<sup>55</sup> While the United States is still not completely aligned with the mandates of the Berne Convention,<sup>56</sup> these statutes have helped to close the gap, and represent a promising willingness on the part of lawmakers to accept a European-style moral rights regime.

The AWCPA protects architectural works from copyright infringement, and broadly defines "architectural work":

An "architectural work" is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.<sup>57</sup>

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<sup>51</sup> *Id.* at 53.

<sup>52</sup> U.S. CONST. art. I, § 8, cl. 8.

<sup>53</sup> Raphael Winick, Note, *Copyright Protection for Architecture After the Architectural Works Copyright Protection Act of 1990*, 41 DUKE L.J. 1598, 1600, 1601 (1992).

<sup>54</sup> Pub. L. No. 101-650, §§ 701-706, 104 Stat. 5133 (1990) (codified at scattered sections of 17 U.S.C.).

<sup>55</sup> Winick, *supra* note 53, at 1602-03.

<sup>56</sup> White, *supra* note 43, at 49.

<sup>57</sup> Architectural Works Copyright Protection Act, Pub. L. No. 101-650, § 702(a), 104 Stat. 5133, 5133 (1990) (amending 17 U.S.C. § 101).

John Hemings's work on the interiors and exteriors of Monticello, Poplar Forest, and Mulberry Row, as well as his responsibility for filling each of them with the unique furniture that still sets them apart today, would seem to fit into this definition. While Hemings made no plans or drawings for the buildings (there is no dispute that the work on Monticello and Poplar Forest was principally imagined by Jefferson himself), there can be no doubt that the buildings themselves and the rich details within were created principally by John Hemings' hand.

The AWCPA requires that protected buildings be both original and not wholly functional (i.e., have some artistic merit) to qualify under the statute.<sup>58</sup> However, "[t]his standard [of originality] does not include requirements of novelty, ingenuity, or aesthetic merit."<sup>59</sup> Furthermore, "interior architecture may be protected."<sup>60</sup>

The AWCPA, while generous in defining architectural works and groundbreaking in extending authorial rights to architects in the United States, severely limits those moral rights in comparison to statutes like VARA.<sup>61</sup> Principally, the AWCPA allows the owners of a building which is protected by copyright to destroy or alter the building without the permission of the architect.<sup>62</sup> This is seen as a practical necessity.<sup>63</sup>

Furthermore, the AWCPA, which was passed in 1990, does not protect the authorship of any building constructed before that date<sup>64</sup>, a category of buildings into which Monticello and Poplar Forest certainly fall. The AWCPA relies on local and state laws protecting and preserving historic and aesthetically important buildings<sup>65</sup>, a category into which Monticello and Poplar Forest also fall. This Note will explore the question of whether, considering the value and number of such historically and artistically important buildings, the protections afforded by the AWCPA should stretch into the past beyond the 1990 cut-off date, protecting the interests in a uniform way that the current local system of preservation laws may not adequately do.

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<sup>58</sup> Winick, *supra* note 53, at 1616.

<sup>59</sup> H.R. REP. NO. 735 (1990) *reprinted in* 1990 U.S.C.C.A.N. 6935, 6950-51.

<sup>60</sup> *Id.*

<sup>61</sup> Winick, *supra* note 53, at 1623.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 1622.

<sup>64</sup> *Id.* at 1601, 1608-09.

<sup>65</sup> *Id.* at 1624.

## III. ANALYSIS

## A. CAN ENSLAVED PERSONS HOLD MORAL RIGHTS, OR COPYRIGHTS, ON CREATIONS MADE AT THE BEHEST OF THEIR MASTERS?

The current legal landscape vis-a-vis the copyrightability of various works of art, including architecture, are frustrated or otherwise fail to address the issue of enslaved labor, prison labor, and other labor done under duress, such as during the Holocaust. A common feature of copyright law, both in the United States and elsewhere, is that work done explicitly “for hire” is often not protected.<sup>66</sup> This doctrine cannot apply to cases in which laborers were enslaved, of course, as their labor was not “for hire”; to argue otherwise would be deeply perverse, and attempts by museums to do so (as in the case of Dina Gottliebova Babbit, an artist who was forced by Josef Mengele to paint watercolors while enslaved at Auschwitz-Birkenau<sup>67</sup>, but whose claims to her own paintings were denied by the Auschwitz-Birkenau State Museum which displayed them) have been exposed to withering criticism.<sup>68</sup>

It is a mistake, when considering the stolen intellectual property of the enslaved, to be seduced by legalism, a solution will not be found within extant law. Instead, as Holocaust scholar Stuart Eizenstat said at the 1998 Washington Conference on Nazi-looted art:

“[T]his [is] a moral matter—we should not apply the ordinary rules designed for commercial transactions of societies that operate under the rule of law to people whose property and very lives were taken by one of the most profoundly illegal regimes the world has ever known.”<sup>69</sup>

The result of that conference was a set of principles, the Washington Principles, which call on nations addressing the issue of Nazi-looted art to do so with justice and fairness.<sup>70</sup> However, neither justice nor fairness are therein

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<sup>66</sup> *Authors, Attribution, and Integrity: Examining Moral Rights in the United States*, UNITED STATES COPYRIGHT OFFICE (Apr. 2019) <https://www.copyright.gov/policy/moralrights/full-report.pdf>, at 60.

<sup>67</sup> Jennifer Anglim Kreder, *The Holocaust, Museum Ethics and Legalism*, 18 S. CAL. REV. L. & SOC. JUST. 1, 21 (2008).

<sup>68</sup> *Id.* at 29.

<sup>69</sup> *Id.* at 5.

<sup>70</sup> Off. of the Special Envoy for Holocaust Issues, *Washington Conference Principles on Nazi-Confiscated Art*, U.S. DEPT OF STATE (Dec. 3, 1998), <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>.

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defined, and exactly how countries should achieve those results is completely ignored.<sup>71</sup>

It will be difficult for the United States to deal with the issue of art looted from enslaved persons. The reasons are both practical and political. Practically, at the time of the passage of the 13th Amendment in 1865 the African-American community in the United States had had no wealth to plunder; incidences of permanent artistic work for hire, such as paintings, would have been vanishingly rare; the passage of VARA and the AWCPA were a century from contemplation. Politically, as the recent controversies over confederate monuments and slavery-focused plantation tours have shown,<sup>72</sup> not all Americans are ready for such a reckoning.

Therefore, any holding recognizing the intellectual property of enslaved persons in the United States must rest not on the law, but on public policy. Public policy in the United States, if it rejects the monstrous argument put forth by various museums that work done by enslaved people is “work for hire,” is likely to point towards recognition and, when possible, restitution on behalf of enslaved persons. Such cases will of course be vanishingly rare, as the distance of history and the extremely poor record keeping done during the institution of slavery unfortunately dictate.

#### B. JOHN HEMINGS AND THE ARCHITECTURAL WORKS COPYRIGHT PROTECTION ACT

It is a close question whether the work done by John Hemings on Monticello and Poplar Forest represent the requisite originality needed for the AWCPA to apply. Although Hemings' work on Monticello adhered closely to a master plan executed by Jefferson, Jefferson was absent from the construction site for nearly 20 years. Additionally, Hemings could be considered among the authors of both buildings considering the completely different relationship between architect and builder in the 18th century versus today.

The principal obstacle to the application of the provisions of the Architectural Works Copyright Protection Act to John Hemings' work at Monticello and Poplar Forest is the time bar enshrined within the Act. The AWCPA does not apply to or protect buildings constructed before 1990, the year of the AWCPA's passage.<sup>73</sup> Buildings that were constructed before that date have often been protected by local historic preservation laws, societies, and

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<sup>71</sup> *Id.*

<sup>72</sup> Hannah Knowles, *As Plantations Talk More Honestly About Slavery, Some Visitors are Pushing Back*, WASH. POST: RETROPOLIS (Sept. 8, 2019), <https://www.washingtonpost.com/history/2019/09/08/plantations-are-talking-more-about-slavery-grappling-with-visitors-who-talk-back/>.

<sup>73</sup> Winick, *supra* note 53, at 1601, 1608-09.

organizations, and the authors of the AWCPA have implicitly relied on those protections by fixing the cutoff date at 1990.<sup>74</sup>

Both Monticello and the less popular Poplar Forest are protected by such non-profit organizations.<sup>75</sup> Still, that fact should not and does not validate the denial of AWCPA protections to buildings constructed before 1990.

That is because, while it is true the physical structures of Monticello and Poplar Forest have been protected from demolition,<sup>76</sup> the authors of the building (including Thomas Jefferson) have not been made secure in their authorship. While no one will ever question Jefferson's hand in the design of Monticello, that "protection" is historical, not legal. John Hemings, meanwhile, receives neither the historical nor the legal protections his work deserves. The AWCPA does not currently give protection even to historically significant works of architecture constructed before 1990:<sup>77</sup> that feature of the law must be remedied if John Hemings is ever to receive his proper due. The chances of such a remedy ever coming to pass are extremely low.

#### IV. CONCLUSION

While Hemings cannot be seen as the sole or chief architect (at least as the word "architect" is used today) of either Monticello or Poplar Forest, his extensive creative work, creative freedom, and the collaborative building style of the 18th century merit recognition of his unique contribution. This recognition should include, at the least, the deathless rights of attribution and integrity. These European-style moral rights would be a just, restorative, and potentially reparational remedy for Hemings and his heirs.

The accomplishment of such a recognition would require the amendment of the AWCPA and the common law of copyright, both for overwhelmingly compelling public policy reasons. Such a change is highly unlikely but would undoubtedly bend the universe's moral arc just a bit closer towards justice. Let justice be done, though the heavens fall.

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<sup>74</sup> *Id.* at 1624.

<sup>75</sup> See Knowles, *supra* note 71 (Identifying the Thomas Jefferson Foundation as the non-profit protecting Monticello).

<sup>76</sup> *Id.*

<sup>77</sup> Winick, *supra* note 53, at 1601, 1608-09.