

JEFFERSONIAN AMERICA
Jan Ellen Lewis, Peter S. Onuf, *and*
Andrew O'Shaughnessy
Series Editors

STATE AND CITIZEN

*British America and the
Early United States*

Edited by
Peter Thompson
and
Peter S. Onuf

UNIVERSITY OF VIRGINIA PRESS
Charlottesville and London

UNIVERSITY OF VIRGINIA PRESS
© 2013 by the Rector and Visitors of the University of Virginia
All rights reserved
Printed in the United States of America on acid-free paper

First published 2013

1 3 5 7 9 8 6 4 2

Library of Congress Cataloging-in-Publication Data
State and citizen : British America and the early United States / edited by Peter Thompson
and Peter S. Onuf.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-8139-3349-8 (cloth : alk. paper) — ISBN 978-0-8139-3350-4 (e-book)

1. Citizenship—United States—History. 2. Political rights—United States—
History. 3. State, The. I. Thompson, Peter, 1960– II. Onuf, Peter S.

JK1759.S68 2013

323.60973'09033—dc23

2012030743

CONTENTS

Preface	vii
Introduction	
<i>State and Citizen in British America and the Early United States</i>	1
PETER S. ONUF	
Subjects by Allegiance to the King?	
<i>Debating Status and Power for Subjects—and Slaves— through the Religious Debates of the Early British Atlantic</i>	25
HOLLY BREWER	
The Laws of War and Peace:	
<i>Legitimizing Slavery in the Age of the American Revolution</i>	52
ELIGA H. GOULD	
“The Great Field of Human Concerns”:	
<i>The States, the Union, and the Problem of Citizenship in the Era of the American Revolution</i>	77
DOUGLAS BRADBURN	
Bringing the State System Back In:	
<i>The Significance of the Union in Early American History, 1763–1865</i>	113
DAVID C. HENDRICKSON	
“A Mongrel Kind of Government”:	
<i>The U.S. Constitution, the Federal Union, and the Origins of the American State</i>	150
MAX M. EDLING	
Patriarchal Magistrates, Associated Improvers, and Monitoring Militias:	
<i>Visions of Self-Government in the Early American Republic, 1760–1840</i>	178
JOHN L. BROOKE	



SUBJECTS BY ALLEGIANCE TO THE KING?

*Debating Status and Power for Subjects—and Slaves—through
the Religious Debates of the Early British Atlantic*

HOLLY BREWER

“NO SOONER HAD the news of the changes in England [the Glorious Revolution] arrived than it was in the mouths of all the mobile that there was no King in England and so no Government here.” So Nicholas Spencer, Secretary and Councilor in Virginia, wrote to the Privy Council of the new king and queen in April of 1689. He then repeated himself: “It was feared that the difficulties of maintaining order would have remained insuperable until we received the news of the happy accession of the Prince and Princess of Orange, which has been widely and solemnly proclaimed to remove the former cause of tumult, viz., that there being no King in England, there was no Government here.”¹ Spencer’s repetitive thinking reveals a conceptual universe: the “mobile,” the common people in Virginia, thought that without a king legitimate authority was dissolved. Both legal authorities and popular perceptions agreed that the people’s status as subjects hinged on their allegiance to their king, a link that the revolution in England had broken. Without a king, they were freed of the constraints (and privileges) of government. This connection between sovereign and subject portrayed not only the raw power of the king via the institutional organization of the English empire. It also infused, culturally and ideologically, the way the English perceived their place in the empire and their debates about the just nature of power.

This perception was promoted by the reigning law and teaching of the Anglican church, which conjoined church and state, as it had since 1535 under Henry VIII. Only by making sense of these arguments can we understand the debates over power and status, including that of slaves, in the early modern Atlantic world. Questions of sovereignty, in other words, enveloped everyone, from slave and subject to king, in a discourse of place and privilege.²

These questions were compelling in the colonies, despite their distance

from England. The colonies were all technically under the control of the king, who could dictate the shape of their governments as well as most positions of power, from governor and council to proprietor, surveyor, collector of customs, militia officer, and justice of the peace. The king also controlled the convoys that carried goods back and forth to England and the navies that made trade safe and protected throughout the empire.³ The “changes in England” that Spencer referred to was the Glorious Revolution of 1688. The colonies were deeply interested in that revolution, as James II had shifted power to the Royal Governors and Appointed Councils in all his colonies. (In many cases he had wholly dissolved the elected legislatures.) With his defeat, the way was opened for rebellions in America. In most colonies, from Massachusetts to Maryland, the people overthrew James II’s royal governors and councils and/or the proprietary governments that former kings had appointed and supported. In Virginia the news of William and Mary’s accession was proclaimed far and wide, and quickly, in order to restore order; providing a new king reinstated the principles of all government.

This essay focuses on how the religious debates circumscribed the legal relations between sovereign and subject and master and slave. I am particularly interested in debates about baptizing slaves in the seventeenth century; how those connected to larger issues of sovereignty, and especially, as the reader will see, with a proposal by John Locke that the children of “negroes” in Virginia be “baptized, catechized, and bred Christians.” A conceptual sphere shaped by religious tensions framed their principles of justice, much more overtly than today. Religious arguments could make the king divine—or the people; they could sanctify oaths of loyalty—or justify breaking them. They could define who was subject and who was slave; who had claims to many rights, or to little but obedience. Varying principles of sin and obligation led to different constellations of power and inclusion. The status of everyone in society, from slaves to governors—their claims to rights and privileges, the extent to which they felt bound by the laws—depended at least in part on how these ideological debates became legally enshrined. Uncovering them means stepping into the boundaries between subjects and aliens, Christians and heathens, freemen and slaves, governors and kings.

Suffrages of Allegiance?

American historiography has tended to emphasize the differences between a colonial period, where subjects of the British kingdom could claim few rights, and a postrevolutionary period when newborn citizens of states gained the capacity to hold many rights and to become the locus of authority. Other

scholars have emphasized that the claims of Revolutionary era colonists to the “rights of Englishmen” had been established from the beginning of colonization and that they had many of the characteristics of the later rights of citizens. Recent scholarship traces the evolution of ideas about the rights of subjects, linking the emergence of ideas about citizenship (and the emergence of the rights of freemen) to the growth of cities and commerce, which encouraged both trade and ideas. Others have traced such principles to Italian city-states or to England’s two revolutions.⁴

In this essay I hope to resolve some of the tensions between interpretations of subjecthood and citizenship and also to link these debates about subjects to the emergence of slavery. Within the empire, and defined partly by the struggles over sovereignty that framed England’s two seventeenth-century revolutions, debates about the status and rights of subjects were vigorous and shaped early American law and culture on many levels. These debates were precipitated by revolutions that gripped the larger British Empire and impacted the structures of power in the governments in the New World.

While we have explored questions of religion and the power of the state in northern colonies such as Massachusetts, we tend largely to ignore the religious dimensions of these debates in colonies such as Virginia because they are more difficult to access. Yet, just as in England and in the broader European and Atlantic world, religious interpretation helped to shape the struggles over power. These religious debates over sovereignty reveal a Virginia that was more similar to the cultural and legal construct of Spanish America than it was to New England, especially in the seventeenth century, but even afterward. Arguably this was initially due to the influence of the Stuart kings and how their colonial empire fit into their visions of their own power and into larger early modern debates about the character of monarchical sovereignty.

The boundaries of temporal and spiritual kingdoms merged in the Anglican *Book of Common Prayer*, a set of liturgies to be used throughout the year. Consider the following selection from the 1662 version, which was used everywhere the church reached. It introduced a new service, an annual day of Thanksgiving to celebrate the restoration of Charles II to the throne, and Virginia law made it a holiday as well and required church attendance. The service contained an oath of obedience that blended the political with the religious in passages recited in turn by minister and people.

- [*Priest.*] In the *suffrages* after the Creed, these shall be inserted and used for the King.
Priest. O Lord, save the King.
People. Who putteth his trust in thee.

Priest. Send him help from thy holy place.
People. And evermore mightily defend him.
Priest. . . . Thy miraculous providence hast delivered us out of our late miserable confusions, by restoring to us our dread Sovereign Lord, thy Servant, King Charles; We are now here before thee with all due thankfulness to acknowledge thine unspeakable goodness this day showed unto us . . . vowing all holy obedience in thought, word, and work unto thy divine Majesty and promising thee, and for thee, all loyal and dutiful allegiance to thine Anointed servant, and to his heirs after him . . . Amen.⁵

Note that the people's vocal response was called their "suffrages" (a word we usually associate with the act of voting) and that they were performing a binding oath of political obedience in a church, swearing their allegiance to their king. The "people's" political and religious identities were thereby merged.

Suffrage had long been used as a word for prayer (as early as the fourteenth century) and, starting with the Reformation, began to be used for liturgical response. By the seventeenth century it was also used to describe oral voting in political elections. (All votes were oral then.) In this case it was both: prayer and vote. Both the response in church and the oral polling were a kind of performance and a political ratification of the principles of "loyal and dutiful allegiance to thine Anointed servant, and to his heirs after him." The echo of "annointed son" (Christ) is purposeful and powerful. The ways in which hereditary status makes Charles II both God's servant and a "dread Sovereign Lord" himself would have been repeated in many religious services. That repetition to create obligation and to encourage the intertwining of political and religious faith was clearly part of the purpose of this new holy day.⁶

Suffrage—in terms of political voting—was also linked to the church in colonies such as Virginia. When the governor called elections—occasionally and unpredictably—the coming election was announced only in church. This was not a theocracy, to be sure, and yet the Anglican church determined who even knew about the election.⁷ And elections generally were less important, as the most powerful positions were all appointed. The infrequent elections and meetings made the elected Burgesses a much less important political body than the appointed council. As Locke summarized the situation after his interrogation of Virginians in 1698: "Often when a Governor is not well with [unhappy with] the Country for many Years together, he calls noe General Assembly."⁸

The Anglican church also encouraged the obedience of subjects via catechizing. The oral catechism was taught not only to children but also to slaves and converts. To use Charles II's words from his directions to the governor of

Barbados concerning the conversion of Africans, the catechism was to be used to instruct "slaves . . . [in] the Christian faith and making them capable of being baptized thereto."⁹ The catechism focused on the Ten Commandments, a seemingly straightforward list. However, reading through the catechism one is struck by how it was meant to inspire and also to inculcate political obedience. Children in Virginia and Barbados were supposed to be taught parts of the catechism by their ministers every Sunday until they were old enough to recite the whole by heart. Note the word is "recite." Children were to memorize the catechism. One can only imagine how well thumbed those few pages in the ministers' text would become, with the set questions and response, until children were finally old enough (and well-versed enough) to recite the whole. This ritual of performance must have been something to hear. Boring, yet probably soothing, with well-worn phrases and verses that make such a catechism comforting. While literally millions of copies of catechisms—with thousands of variations—were printed and handwritten in the sixteenth and seventeenth centuries, none was more popular than the standard contained in the *Book of Common Prayer*.¹⁰

The *Book of Common Prayer* interpreted the fifth commandment as encouraging obedience to all superiors but especially to the king. It emphasized obedience to the sovereign. The catechist was taught: "To honour and obey the King and all that are put in authority under him. To submit myself to all my governours, teachers, spiritual pastors and masters. To order myself lowly and reverently to all my betters." The responder was also bidden "to love, honour, and succour my Mother and Father." They then were instructed "to learn and labour truly to get mine own living, and to do my duty in that state of life, unto which it shall please God to call me."¹¹ Imagine, for a moment then, the Sunday scene, the rote response. This educative performance encouraged obedience to and acceptance of political authority, not simply religious. It emphasized the connections between subjects of church and state.

Subjects through Baptism? The Problem of Allegiance

The Atlantic world was encompassed by the conceptual links between church and state. The divine authority of kings (mediated through the Catholic church in the case of Spain and Portugal) and their grants of authority in the New World rested on spiritual claims. The papal bull that gave the Spanish and Portuguese claims to territory in the New World granted them *dominium*. But claiming it required conversion—forced, if necessary—of the native subjects into Christians, to make them subjects of Spain or Portugal with allegiance to their respective kings. Thus Louis XIV, for example, cousin to Charles II and

James II of England, wrote to his governor in New France encouraging the conversion of Indians. Once converted, he wrote, they became "his subjects" and could engage in trade and profit the kingdom. Likewise Charles II, shortly after the Restoration, urged that all residents of his plantations in America, even the African servants, should be baptized and catechized.¹²

Those not Christian who were resident within England or Spain were deprived of many rights that subjects would otherwise have—to own land, to hold office, or to testify, among others. This kind of thinking had a strange career in early modern Spain, where during the Inquisition many argued that *conversos* (Jewish converts to Christianity) and *mariscos* (Muslims converts) retained a hereditary heathen blood and so continued to deny them certain privileges. Such concerns originated in the fifteenth century but were contested, and such laws were often reversed. These arguments had broader adherence in the Spanish empire. As Elena Martinez has traced, "limpieza de sangre," or purity of blood, was a crucial concept shaping Spanish law in Mexico throughout the seventeenth century, defining who had claims to the rights of subjects and who could be enslaved.¹³

In early modern England, likewise, English jurists argued that only Christians could be subjects. Jews and others were denied many basic privileges—they could not become "denizens" (residents with limited rights)—except by grant from the king. After Robert Calvin's case of 1608, the legal argument was that one was born with the obligation of obedience to one's king, and only that obligation (which implicitly required Christian belief) made one a subject with rights. As Sir Edward Coke summarized in his published report of the case: "The ligeance [allegiance] of the subject is only due unto the King." It required Christian belief because the oath that formed the bond of allegiance required such belief. The ability to take the oath of loyalty was in the background, shaping the conceptual framework: "You shall swear, that from this day forward, you shall be true and faithfull to our Sovereign Lord King James; and his heires, and truth and faith shall bear of life and member, and terrene honour, and you shall neither know nor hear of any ill or damage intended unto him, that you shall not defend. So help you, Almighty God." While Coke acknowledged that most subjects did not actually take the oath but were only presumed to do so (he wrote before the 1662 oath-taking service was introduced), most jurists argued that the language of the oath required Christian faith in order to be binding. This birth into subjectship (with the oath normally presumed, just as birth entitled one to church membership) was what entitled one to the privileges of subjects, such as the ability to inherit or convey lands. Thus Scottish residents born with loyalty to King James, who ruled both kingdoms, had the same rights as English subjects. This widely reprinted case served as the basis

for many colonists' claims to "the rights of Englishmen" in the eighteenth century, but it came with these undercurrents of religious exclusion.¹⁴

Many argued that baptism was crucial for creating subjects, whether English or Indian. In New England, for complex reasons related to the terms of their founding and how their origins intersected with those of the English Civil War, this equation was fragile. In Virginia, from the beginning, and with increased intensity after the Restoration of Charles II in 1660, proper baptism and catechizing were seen as a crucial route to strengthening the king's sovereignty and the power of his governor. Regular attendance at church was also mandated. While of course these laws were imperfectly implemented, they influenced the culture and legal claims profoundly: for example, during Bacon's rebellion in Virginia in 1676, both sides emphasized their allegiance to Charles II in his divine majesty. But there was one crucial difference: Nathaniel Bacon added a claim that Governor Sir William Berkeley had committed treason against the people of Virginia, a claim that implied that some sovereignty vested in the people. This was the same charge levied against Charles I in his trial in 1649. Given that the charge of treason usually meant threatening the king's majesty, charging the king himself with treason against the people in 1649 was an inversion. Resting sovereignty in the people and not the king was the basis of both his trial and execution and foreshadowed arguments of the American Revolution more than a century later. Bacon charged that Berkeley had committed treason against the people of Virginia by betraying the king's "loyal subjects to the barbarous heathen." Bacon thus tried to balance the different kinds of sovereignty, to contrast "loyal subjects" with "barbarous heathen" but at the same time to conflate the sovereignty of the people with that of the king. His defeat (militarily as well as ideologically) meant that such arguments about the people's sovereignty could no longer be seen so openly in Virginia, at least until after the Glorious Revolution and really not until well into the eighteenth century.¹⁵ But such arguments no doubt continued to influence popular culture.

The larger debate in the English Civil War about the origins of sovereignty—whether it derived from the king or the people—shaped Virginia's popular culture as well. Indeed, one of the other leaders of Bacon's rebellion, Richard Lawrence, might have been a general under Cromwell—at least he bore the same name. If this was not the same man, we might wonder if he assumed the name consciously.

Berkeley's royalist views, however, had more influence in framing Virginia's laws. Royalists argued that baptism and catechistical instruction were oaths of loyalty to the king that could not be broken. Consider, for example, a royalist pamphlet from 1647 entitled (purposely ironically) *Parliament's New and Perfect Catechisme* for the "loyall subject." It argued that members of Parliament

had broken their oath to the king to obey him, as had all subjects of the realm who did not defend him, and that "those, that thus imprison, and enthrall the King, captive and enslave the Kingdome," would move on to the "usurpation and controlement of fellow subjects." The only remedy was to "referre all to his Sacred Majestie, offer him innocent and spotlesse hearts . . . and . . . most chearfully submit to him."¹⁶

While it is not clear that anyone in early America read this particular pamphlet, it did reflect a common principle of royalists. William Berkeley, the governor of Virginia, who in 1647 was fighting at Charles I's side, undoubtedly agreed with that principle. However, we have no such pamphlet from Virginia, as he despised the printing press. In 1671 he gloated about Virginia's lack of a press: "I thank God, there are no free schools, nor printing; and I hope we shall not have, these hundred years; for learning has brought disobedience, and heresy, and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both."¹⁷

Part of the reason we have been less able to see the extent of royalist patterns of thought in Virginia, particularly among the elite and how such patterns structured their laws, is thus the absence of a press there until the 1730s. Even in 1693, then Governor Andros quashed an attempt to found one, indicating the highest opposition to freedom of the press (no rights here for the subjects in Virginia). If we read what Virginians consumed (or heard and recited) regularly, documents like the *Book of Common Prayer* and the catechism, we can see the efforts to enforce a royalist perspective about the status of subjects, one that sought to regulate obedience and that granted few rights, including a limited notion of suffrage.

This royalist perspective included an emphasis on birth status not only for religious status but civil status as well. Just as a child was born a member of a church or not, so were people born subjects or slaves of princes. In a 1644 Stephen Marshall defended the high Anglican position:

As it is in other kingdomes, corporations and families; the children of all subjects born in a kingdom, are born that prince's subjects; where the father is a free-man, the childe is not born a slave: where any are bought to be servants, their children born in their master's house are born his servants. Thus it is by the Lawes of almost all nations, and thus hath the lord Ordained it shall be in his kingdome [i.e. in the church].

A child, Marshall argued, inherits the status of the parent as a church member just as a child inherits the status of the father as a subject, freeman, slave, or servant. In 1662 (after Charles II's restoration) England passed the Act of Uni-

formity, which required that all ministers subscribe to the 39 articles, which included accepting infant baptism, as a kind of hereditary status, one with obligation of obedience to the king as head of the church.¹⁸

The Church of England's teaching that one is born to obey those in authority (and their heirs) was key to Charles II's thinking about slavery and about hereditary status. For him, justifying slavery meant bringing slaves not only to Christianity but especially to his version of Christianity, which taught obedience. So Charles II at least was willing to bring slaves in as subjects though at the lowest status (comparable to feudal villeins in the old law books). Still, in doing so, Charles II was potentially opening the door to justifications of freedom. As early as the mid-sixteenth century in Spain, Francisco de Vitoria, an influential Catholic priest, had argued that, with respect to the Indians in America, it was legal to enslave heathens but not Christians, a claim that was repeated among the English by Alberico Gentili while he was a professor at Oxford and judge of the Admiralty Court in England (which adhered to the civil law) in the 1590s: Christians could enslave only heathens.¹⁹

The first common law case to establish that "negroes" could be treated as simple property under the law of England *Butts v. Penny* (1677) did so on the grounds that Africans were "the subjects of infidel prince," thus marking them as aliens and denying them the protections of subjects.²⁰ Debates over slavery in the colonies of Virginia and Barbados in the late seventeenth century show this issue of religious status to be central to the broader questions of power. Scholars have long noticed that many of the early laws about slavery concerned issues of baptism. In 1667 (only shortly after the 1662 law that made slavery hereditary) a Virginia law reversed earlier court decisions by stating that a slave would not be freed by baptism.²¹

In 1682 Virginians sought to make connection between slavery and non-Christians even more watertight, by defining as slaves all those with non-Christian ancestry or "parentage":

All servants . . . brought or imported into this country, either by sea or land, whether Negroes, Moors, Molattoes or Indians, *who and whose parentage and native country are not christian* [my italics] at the time of their first purchase of such servant by some Christian, although afterwards, and before such their importation and bringing into this country, they shall be converted to the christian faith; and all Indians, which shall be sold by our neighboring Indians, or any other trafficking with us for slaves, are hereby adjudged, deemed and taken . . . to be slaves to all intents and purposes.²²

Before 1682 Africans converted at sea and Indians had to be sold “here for noe longer time then the English or other christians are to serve”—so baptism had freed them. But this law of 1682 sought to make “heathenish” ancestry hereditary, to thereby mark the descendents of heathens as not capable of the rights of subjects, in short, aliens.

The origins of this way of thinking were in Spanish arguments that allowed the status of church members and subjects only to those who descended from Christians. As early as 1612, some Spanish theologians invoked the Biblical story of Ham, claiming that Africans were his descendants, inheritors of a curse, somehow as a consequence barred from many of the privileges of *vecinos* (the Spanish word for full subject). Morgan Godwyn, an Anglican minister who traveled in Barbados and Virginia in the 1660s and 1670s, traced the justification he heard for excluding Africans from becoming fellow Christians and subjects. The theories were that Africans descended from a lineage of men who predated Adam. More commonly he heard arguments that they descended from Cain, Adam’s son who had killed his brother, or that they were the descendents of Ham, the son of Noah, who had laughed at his father naked and was thereby cursed (along with his progeny).²³

While the latter two stories especially have links to the broadly held Christian belief that all humans since Adam were stained by his sin, which was hereditary, these theories were variations that singled out Africans as different. It was not skin color but bloodline that mattered in these stories. The similarity to the English legal concept of attainder, whereby the person who commits a serious crime corrupts his blood and that of his descendents, so that they are unable to inherit any property, is intriguing. “And this corruption of blood is so high,” wrote Coke in 1628, that “it cannot absolutely be salved and restored but by act of parliament.”²⁴ The fascination with and reliance upon this story of Ham in particular, which had a long career in American history, persisting and growing into the nineteenth century, show the importance of the idea of hereditary sin to arguments about slavery. For it is a bizarre tale, no justification of status for us today even if true. Why should one person’s looking on his father naked and laughing condemn all his descendents to bondage? It is a story that has power to condemn only in a world where birth status was a pervasive concern.

Morgan Godwyn explicitly condemned all of these theories, offering instead a theory of human origins that emphasized the equality of blacks and whites and their common humanity. He mocked the claim that black skin was less beautiful than white or that God cared about complexions: “God looks not upon the Countenance, but God looks upon the heart.” Likewise their very status as slaves or servants did not devalue their souls. By this logic in their

hierarchical world, he maintained, “so all Subjects and subordinate governors would be Men but in part; but yet by so much the more, by how much they approached nearer to Absoluteness,” that is, to the power of the king. The last sentence, in particular, challenged absolutist ideas of government as well as slavery. For is the king the only man with a soul, entire? The answer for Godwyn was obviously no. Indeed, Godwyn’s lengthy text subtly criticized slavery and monarchy in the same passages. He offered half-mocking injunctions that masters who were worried that they would have to treat their slaves better if they baptized them should do so regardless, as they were fellow humans, like them born of a mother and destined for the grave, just as was any monarch. People of all nations have a common father in God and share the same blood. “God had made of one Blood all Nations of Men, for to dwell on all the face of the Earth, Acts 17.26.”²⁵ As we will see, it was exactly this argument that would be used to include “negroes” as subjects with rights.

Revolutionary Reforms?

With James II’s accession to the throne in 1685, his open Catholic faith compromised his claims to the leadership of the Anglican church and to the oaths of loyalty that occurred within the sphere of the Anglican rituals. Like his brother, Charles, James II encouraged religious teachings—in this case a particular strain of Jesuit thought that (like the Anglican church) emphasized the divine rights of kings. But unlike his brother, James II alienated many powerful Anglicans in England.²⁶ In Virginia, James II’s maneuvering with respect to the Anglican church was less obvious, and the elite remained largely loyal to him, with prominent members of the council especially believing him still to be the legitimate king even in 1693.²⁷ At the same time many commoners used James II’s faith and the news of the revolution in England to spread rumors of an alliance between James II’s appointed government in Virginia and Catholic France (including native Indians allied with France), rumors that helped fuel the “mob” described at the beginning of this paper.

In the wake of the Glorious Revolution, William and Mary gradually began to change imperial policy, challenging in the process ideas about divine right and the passive obedience of subjects, along some of the same lines indicated by Godwyn’s arguments. One important example of such changes occurred in 1698, when John Locke, a majority voice on William III’s new Board of Trade, which had oversight over colonial policy, wrote a plan to reform Virginia’s laws to minimize the hierarchical structure set in place by the Stuarts.²⁸ It is a sketch: thoughtful yet incomplete, encompassing an arc of Virginia laws and constitution, from the nature of power to questions of education and rights.

Organized around a central problem, that Virginia lacked enough people who would be willing to defend it, Locke's proposal wandered into many other areas that revealed the extent to which he wanted to alter the constitution of Virginia that the Stuarts had fostered, to shift sovereignty more toward the people and away from the king, to broaden access to rights and to include more of Virginia's people, including—arguably—"negroes" as subjects.

Locke sought to limit the power of the "great men," to make Virginia more "democratical" with more power vested in the elected assembly (the Burgesses), even the power to choose the upper house, the council. He wanted annual elections of the Burgesses and to give them the right to directly petition and report to the king. He sought to put an end to the practice of councilors holding multiple offices and to confiscate the largest estates when the owners did not cultivate them or refused to pay their back taxes. He wanted to change the land system so that all those who came should get land. He thought that William should encourage the immigration of Protestant refugees from Europe, of "native Irish" (Catholic) and of the English poor, whereupon the king should naturalize them and give them the rights of English subjects. "By every forraigner that Settles in the English Plantations, the King gains a new Subject without any loss."²⁹

Locke sought to include Indians as potential subjects but at the same time recognized that they had their own "nations." Therefore, he urged that some of the children of Indians be educated at the new college (William and Mary) and taught Christianity. "That as many Indian children be educated at the Colledge as may be; and these well instructed in the Christain Faith (but with all keeping their own language) and made fit to evangelize others of their nation and language." His aim was to open avenues of communication but to allow them to choose their allegiance. His use of the word "nation" to describe Indian tribes was significant given the natural law discourse of the seventeenth century, which gave rights to people of different nations, recognizing them as corporate bodies. He clearly meant to include them too (at least those converted) as subjects if they choose. While he did not endorse forced emigration from Africa or the slave trade, he recognized that "negro servants" were already living in Virginia. Simply stopping the immigration would not solve the problem. For the present, he wrote, the children of "negroes" should be "baptized, catechized, and bred Christians."³⁰

Given Locke's influential arguments for religious toleration, wherein he had asserted in 1689 that "nobody is born a member of any Church," a position that opposed infant baptism on the grounds that people should be able to choose their church membership, this sentence is puzzling.³¹ Why focus on "negro" children? Locke was here intervening in a longstanding debate about whether

baptism entitles someone to the rights of subjects. Baptism was not simply about Christian faith but also about who could be a subject and what rights subjects and aliens—people of other nations (particularly non-Christian "infidels" or "heathens")—have. His suggestion was pragmatic—one that improved the prospects for the Africans and especially their children in Virginia at the same time as he sought to broaden the bundle of rights to which subjects had access.

Near the beginning of his plan for Virginia, Locke urged that people of "all nations" should have "equal privileges" under the law. "As people of different perswasions enjoy Lybertie of Conscience, so let people of all Nations be naturalized, and enjoy equal privileges with the other English inhabitants residing there." His linking of the two topics might be confusing, except that it had contemporary echoes not only in Godwyn's *Negro's and Indians Advocate* (1680) but also in sermons by George Fox, the founder of Quakerism, in the 1650s, and in a pamphlet that Samuel Sewall published against slavery in Massachusetts in 1700. All of them argued that men of "all nations" being of "one blood" no man was naturally liable to enslavement.³² They might have been reading each other—many books and pamphlets appeared during the previous fifty years that invoked those words to challenge principles of bloodlines generally, though during the English civil war the sentiment more commonly challenged aristocratic bloodlines. But of course the source was the King James Version of the Bible. "[God] hath made of one blood all nations of men for to dwell on all the face of the earth." The next verse emphasised that their common blood is for purposes of conversion: "That they should seek the Lord, if haply they might feel after him, and find him, though he be not far from every one of us . . . For in him we live, and move, and have our being; . . . For we are also his offspring."³³ The sequence of thought is common to all four thinkers and to this section of the Bible, a section that de-emphasized lineage, talked about "one blood" and promised equality before God. While Locke did not use the entire passage, his reference would have been perfectly clear to contemporaries. Indeed, Locke himself had quoted the passage from Acts five times in his published writing of the previous three years.³⁴

Locke was part of a much broader conversation linking this passage to more radical critiques of hierarchy. It not only engaged one of his mentors at Oxford, John Owen, who discussed this principle in his own writings and who, owing to his critique of Anglican/royalist thought, lost his position as dean of Christ Church College at Oxford (also Locke's college) with Charles II's restoration. It also inspired, as we have seen, Godwyn, who just after Owen's dismissal in 1661 arrived at Christ Church College, where Locke became his tutor. All these authors were engaged in a public debate that partially went un-

derground between 1660 and 1688. After I started to see this pattern, I did an association word search in EEBO (Early English Books Online—about ten percent of which have been transcribed and are text searchable) and immediately found 67 records that used the phrase to critique hierarchy, most published either between 1650 and 1660 or between 1690 and 1700 (before or after the reigns of Charles II and James II).

The passage was used to argue not only against slavery but against nobility as well. Consider this text by Henry Haggar, published during the interregnum, when such ideas could be more publically expressed: “I shall easily prove that, all the men in the world are of the Royal blood, and so have all right to be Kings and Princes, one as well as another . . . Noble blood comes not by Generation: for God hath made of one blood all nations of men to dwell upon the face of the earth.” Or this by minister Thomas Manton, published only after the Glorious Revolution (though written earlier): “But the Blood that runneth in the Veins of the Poor, is of the same Colour with yours that are Nobly descended: By Nature you are equal, for he has made all Nations of one Blood, Acts 17:26.”³⁵

That these arguments about the rights of subjects were also used to challenge early slavery, to inscribe broadly the circle of who had such rights, should make us think. They are linked by a challenge to the divine right of kings. Another crucial Biblical phrase that many of these authors invoked to critique hierarchy was the emphasis on “do unto others as you would have them do unto you,” which plays a prominent role in Locke’s (and Fox’s and many others’) religious and political arguments.³⁶ From thence, in Locke’s plan, proceeded the argument that people of all nations should have equal privileges under the law with English subjects; they should become denizens.

For Locke then, baptizing the children of Africans allowed them to be included as subjects. Once that step was taken, they could more securely lay claim to the “equal privileges” under the law, including freedom of conscience, which Locke sought for “all nations of men” in Virginia. To baptize them so they could have freedom of conscience seems a contradiction. Yet it was a pragmatic solution to a difficult situation, one that engaged the political and legal realities of England. Just as Locke and his contemporaries could not pragmatically reject principles of kingdoms and kings (especially when they agreed to work for and through those kings) they had to reckon with the legal and philosophical debates and the many legal precedents about Christians and subjects. Locke sought not only to include most people, even the children of “Negroes” as naturalized subjects but also to broaden their claims to rights, to rest sovereignty to a great degree with the people. At the same time he did not deny the sovereignty of the king, William III.

The broader questions of who was a subject and what rights that entailed

were interwoven with questions of religious identity. We can point to early Massachusetts, which limited voting in colony-wide elections to full church members until 1664, when Charles II forced them to change the law because it excluded Anglicans. We can point to test acts in England itself and in most colonies (after they were initially passed in England in 1673) by which all who sought political office had to adhere to key Anglican principles. The connections also go deeper. Political membership (in the kingdom) and membership in the Anglican church were often conflated.

While we tend to emphasize the transition from subjects to citizens, these seventeenth-century debates about the rights of subjects raised many of the same questions as did citizenship after the American Revolution. James Kettner’s work on citizenship implies that the term and concept only became popular in the wake of the American Revolution, that before then most people were either subjects, born to limited rights and status, or “denizens,” who were granted with a kingly wave some or all of those rights. This transition from subjects to citizens was marked by a move away from emphasizing birth status and toward increased sovereignty in the people. After the American Revolution, citizens embody the sovereignty of the state. Citizens are made partly by birth but mostly by choice. Citizens have many rights which can be enumerated and guaranteed. As Phil Withington has shown, the term *citizen* was often applied to the residents of towns during the seventeenth century, and arguably the origins of thinking about broader political participation, and the conversations that enable that participation, originated in early modern towns and cities.³⁷ Withington is no doubt partly right, and yet the notions of citizenship originating in towns did not necessarily spread naturally and easily throughout the English polity. Institutional policies made a big difference. When one looks closely, it is clear that, in the difference between Stuart policy and that of William and Locke, this contest over principles was vibrant in the seventeenth century, occurring largely without the word (*citizens*) that would be so important later, but with the concepts (subjects with rights and sovereignty). They occurred within a partially religious context that limited the debate and melted, almost indistinguishably, into those about slavery.

The question then becomes: in endorsing baptism and catechism for Africans, did Locke mean to include them within this catechistical rubric that emphasized the divine rights of kings, as Charles II had advocated? I don’t think so. While there is no doubt that Locke was familiar with Morgan Godwyn’s *Negroes and Indians Advocate* of 1680 (he owned a copy and its sequel), he did not even bow to the principle, as Godwyn did, that making them Christian would make them more obedient.³⁸ Locke’s arguments against this kind of thinking about obligation appear throughout his writings. Locke recognized

that in order for them to be baptized and “naturalized” or made subjects, they had to be catechized according to the ritual of baptism mandated by the Anglican church’s prayer book of 1662, just as Godwyn had done in Virginia and Barbados. Catechism opened a door to inclusion. But it came with a price. It was a compromise. No wonder then that Locke began his paragraph on this subject with this passage: “The Conversion, and Instruction of Negroes and Indians is a work of such importance and difficulty that it would require a Treatise of itself. At present I should advise, 1. That all Negroes be brought to Church on Sundays-2. That a Law be made, that all Negroes Children be baptized, catechized, and bred Christians.”³⁹

Locke’s meditations on the connections between church membership and the status of subjects in a kingdom did not stop there: his final writings, published during the last year of his life in 1704, were comments on St Paul’s epistles, wherein he explored in hundreds of pages questions of membership in Christ’s kingdom as opposed to a temporal kingdom, and the nature of membership in a political community that is implied by Biblical exegesis. Through these texts Locke was continuing his thinking about the nature of political membership that he explored in his *Two Treatises of Government* from two decades earlier. His careful critique of Paul’s injunctions that conversion could not change one’s civil status as a bondman or freedman is especially interesting. His exegesis ends with this provocative sentence: “yet it is certain, it was lawful for them as well as others to change, where it was lawful for them to change, without being Christians.”⁴⁰

Locke also had a different notion of “suffrage” from that espoused in the *Book of Common Prayer* described above and supported a more inclusive franchise. For him, political choice was not a mere blind promise but a reasoned choice. Much of Locke’s work about conscience is about choice in all matters, including political and religious obligation. And when he was directly involved in 1691 in an effort to rewrite England’s rules about voting, he sought to make them much more inclusive, allowing all to vote who paid the tithes to the poor, a very low property requirement. He also sought to protect voters from intimidation and force.⁴¹

The Rights of Subjects

Charles II and high Anglican ideals sought baptism for slaves and inclusion of subjects because they thought that subjects were entitled to few rights. It was a way of fostering and promoting obedience as well as salvation. The suffrages after the creed were a promise and a vow in lieu of (or for freeholders, in addition to) actual viva voce political voting, one that was to bind upon the

promise of faith. For Locke and for many of those who used the passage about Africans being of “one blood,” on the other hand, the baptism of the children of “negro servants” was a step toward including them as subjects on different terms, with “equal privileges” under the law in common with the English, privileges that were broadly distributed, with the majority of the sovereignty in the body elected by the people (though shared, still, with the sovereign king).

Locke’s suggestion for choosing the upper house from the lower would have followed the example set in the charter William and Mary had granted to Massachusetts in 1692. Indeed, it seems that Locke had Massachusetts as a model for political reform in Virginia. In New England, the subject was much more of a citizen, with greater rights and more local government. Locke’s repeated insistence throughout the Virginia plan on encouraging the growth of towns with diverse opportunities and possibilities for interaction implies that he thought towns were crucial to the development of representative government on the model of New England. “No care was taken in the beginning to seat that Country in Townships as in New England etc. By which means they are deprived of the Company of Citizens and Tradesmen that are in other Countrys.”⁴² In fact the only place that Locke used the word “citizen” was to describe the residents of towns; otherwise he invoked language about “subjects,” “inhabitants,” or—by far his preference—simply “people.” Here he was part of a broad pattern of associating citizens and freemen and political discussion with cities.⁴³

So what did the English and the Virginians actually do? Some suggestions, such as that of encouraging Protestant immigrants and granting them the rights of subjects, became the policy of William III and of many English kings after him, a policy that supported wave upon wave of Protestant immigration during the eighteenth century.⁴⁴ While quite a few of the reforms that Locke suggested did get implemented over the next few years, his resignation from the Board of Trade in 1700 (he died in 1704), and especially William’s death in 1702/3, which meant a fundamental change in who held power, slowed the momentum of change. The Virginians who held power after 1703 ignored many of the suggestions in the plan and in Locke’s and the Board of Trade’s instructions to the new Governor Nicholson; indeed, they succeeded in removing him from power shortly after Anne became queen.

It was the efforts of elite Virginians to *place Africans outside this rubric of subjects* that justified slavery in Virginia, especially after 1706, when Edmund Jenings, a protégé of James II’s, became acting governor. The logic here caught up others, at least at first, in the process of exclusion and legal silencing. By a Virginia law of 1706, for example, all those who were not Protestants became unable to testify, for any reason, in a court of law, including specifically “negroes,

mulattoes, and Indian servants, and others, not being Christians," and "popish recusants" (Catholics who did not attend Anglican service).⁴⁵ Over the long run this law led to the norm that slaves could not testify against freemen and blacks could not testify against whites.⁴⁶ But it began, as did much other slave law, in the logic of the opposition Christian/heathen; that heathens could not be bound by an oath and thus could not be believed.⁴⁷

That logic was key to the disputes about subject/alien. We can see vividly why baptism and basic catechistical instruction for the children of Africans would help to insure them basic rights (to testify, for example) in the eyes of many. Thus, while Charles II (and following him in the eighteenth century in Virginia, many high church members of the Society for the Propagation of the Gospel) sought to baptize Africans (which gave them the status of subjects), many of Charles II's officials in Virginia, who themselves were beginning to buy and own Africans, had strong reservations, even with the technical protection of the law, which made heathen status hereditary.⁴⁸ Such inclusion as subjects through baptism challenged the primary justification for separate status and enslavement. Once Christian, they might have claims to various rights, including owning land, holding office, testifying, and trial by jury. The laws after 1706 sought specifically to restrict such claims. The laws that made slaves "real estate" and allowed them to be entailed (so that they and their progeny were inheritable with parcels of land), and the law that allowed masters to be compensated for the value of their executed slaves passed the same year.⁴⁹ Generally the thrust of these laws denied those of African descent the status of subjects on the grounds of their heathenism, with one exception: allowing them to be entailed and attached to land made them more like feudal villeins, a separate type of subject with fewer claims to rights. These laws became a hallmark of American slavery. At the same time the Virginia council sought to limit the rights of white Christians, vetoing in 1705 a law protecting English liberties that sought to ensure habeas corpus. Thus they supported hierarchy on many levels.

The rights and status of subjects were intertwined with religious debates in the early modern Anglo Atlantic world. By disentangling these controversies we can better understand how this empire developed over time: who had what status within it, and how power was justified, rejustified, and restructured. These connections were especially intertwined in the English empire, where church and state were combined in the figure of the king. Including Africans as subjects, as we have seen, was not necessarily empowering if the subject himself/herself was held to be charged only with the obligations, and not the privileges, of membership.

The terrain of the subject was contested during this period largely on reli-

gious grounds. Paying attention to the religious context enables us to see the world through their eyes and to visualize how different it was at the same time as we can recognize commonalities. Even the most radical thinkers of this period were constrained—pragmatically—by religious conventions in the arena of justice, particularly as those related to the liberties of subjects. Only by taking that religious context seriously can we unravel the thinking that framed their arguments and laws. These debates over the rights of subjects make clear that the very meanings of suffrage and indeed slavery were part of the struggle over power.

One measure of their encompassing power is that the question of slave baptism provides a doorway into contemporary debates over the rights of subjects. For including slaves within the Church of England became a way to make them subjects, with either primarily duties of obedience (as Charles II would have it) or primarily rights (as Locke would have it). Excluding them from baptism and membership in the church (as many elite Virginians would have it) was a means of wholly denying them rights as subjects. Other elite Virginians—and I think many poorer Virginians—did not necessarily oppose baptizing blacks or including them as subjects and did not see them as terminally unfree. They probably did, however, see them as part of a hierarchical society, with different disabilities and privileges. In the eighteenth century, Virginians continued to reprint high Anglican sermons from the seventeenth century that emphasized passive obedience (the duties but not the rights of subjects)—such as Richard Allestree's, reprinted in 1749. In the same year in Maryland, a *Sermon for Slaves* appeared, which used the doctrines of a subject's obedience to kings to preach to slaves about their obligations to their masters. One can almost take Allestree's sermons from the 1660s and replace "king" with "master": it was absolutism transferred.

A smaller proportion of Virginia society would have been attached to some of the same ideas about the rights of subjects that Locke had, ideas embodied in the radical strands in England's two seventeenth-century revolutions and indeed partly in Bacon's Rebellion. The reforms that Locke sought to institute in Virginia against the wishes of the Stuart-appointed elite who still dominated the council illuminate the struggle over the rights of subjects and sovereignty in the late seventeenth century, struggle that in some respects foreshadows the American Revolution. Locke was presented with an interesting conundrum in trying to make Virginia's constitution more democratic, to rest sovereignty much more in the people—and that a diverse lot—by empowering the governor to make such changes and vetoing other laws that favored the council at the level of the Board of Trade. This was an especially difficult problem, as Locke was acting as an agent of the king and through the governor. Likewise

the position of governor was modeled on that of the king, and Locke did not want him simply to nullify earlier laws, a practice for which James II (and Effingham, his governor in Virginia) had been vilified.

All of these issues would emerge more powerfully in the wake of the American Revolution, in ways I cannot sketch here. For the moment I note only that part of the American Revolution's rejection of hereditary status included abolishing the principle of attainder, whereby the blood of those who commit high crimes was considered corrupted, thereby rejecting the principle of hereditary sinfulness. Article III, section 3 of the U.S. Constitution states: "no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."⁵⁰ This provision had earlier precedents in arguments such as Locke's (in his *Two Treatises*, against hereditary sins and status) and in the broader debates sketched here.⁵¹ Such refusal to brand the children with the sins of their fathers—undermined the arguments about hereditary blood status that had logically justified the slave code by excluding Africans from the status and rights of subjects. It opened again—despite the separation between church and state that came with the First Amendment—questions of whether baptism created subjects, and of whether birth created citizens; of who was an alien, and whether aliens could be utterly deprived of rights.

Highlighting, as I do here, these continuities in argument does not mean that the practices of the colonial period were similar to those after the American Revolution. Broad changes in the rights of citizens did accompany that revolution in most states, and in the new nation, in terms of suffrage, freedom of the press and religion, trial by jury, and others. They moved further than Locke could, however, because they both lodged sovereignty in the people (and not the king) and they separated church from state. In separating the rights of subjects from those of Christians and rejecting a king altogether by lodging sovereignty itself in the people, the American revolutionaries were able to articulate rights of citizens that went further than anything Locke could have proposed, at least in his guise of imperial politician.

Notes

1. [Nicholas Spencer], report dated April 29, 1689, in *Calendar of State Papers, Colonial Series, America and the West Indies 1689–1692*, ed. J. W. Fortescue (London: His Majesty's Stationary Office, 1901), 88. The governor of Virginia, Effingham, was in England, so Spencer was the senior official able to report; see *Executive Journals of the Council of Colonial Virginia*, ed. H. R. McIlwaine. 6 vols. (Richmond: Virginia State Library, 1925–66) 1:521. Richard Lee made a similar report: "Whereas many mutinous and Seditious persons were gathered together in the upper parts of Rapp[ahanock], about the beginning of Aprill, and

drawing themselves into Armes . . . saying their was neither King, Laws nor Government" in McIlwaine, ed., *Executive Journals*, 1:105. Lee had assigned Spencer to conduct an investigation and examine the supposed rebels "that they may not escape their rewards due for Such mutinous and Rebellious proceedings."

2. While recent work has suggested that colonists in New England during the eighteenth century were attached to their king because they saw him as the preserver of their liberties, the answer is more complicated and connected to fundamental debates about the nature of power throughout the Atlantic world. See Brendan McConville, *The King's Three Faces: The Rise and Fall of Royal America, 1688–1776* (Chapel Hill: University of North Carolina Press, 2006).

3. On the convoy system, see Arthur Pierce Middleton, "The Chesapeake Convoy System, 1662–1763," *William and Mary Quarterly*, 3 (1946): 182–207. On the power of the English navy and its role in enabling trade, see especially John Brewer, *The Sinews of Power: War, Money, and the English State, 1688–1783* (New York: Knopf, 1989). Also see Douglas Bradburn, "The Visible Fist: The Chesapeake Tobacco Trade in War and the Purpose of Empire, 1690–1715," *William and Mary Quarterly* 68 (2011): 361–86. The convoy system operated routinely even earlier as well.

4. The most important book to trace the Revolutionary transition between subjects and citizens is James H. Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill: University of North Carolina Press, 1978). Kettner's framework is challenged in Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774–1804* (Charlottesville: University of Virginia Press, 2009) and Bradburn, "'The Great Field of Human Concerns': The States, the Union, and the Problem of Citizenship in the American Revolutionary Era," in this volume. On English liberties, see John Phillip Reid, *The Concept of Liberty in the Age of the American Revolution* (Chicago: University of Chicago Press, 1988). For fascinating work on the connections between cities, freemen and citizens in seventeenth-century England, see Phil Withington, *The Politics of Commonwealth: Citizens and Freemen in Early Modern England* (Cambridge: Cambridge University Press, 2005). On republicanism, see Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2005), introduction. My own interpretation of these debates is that they have not paid enough attention to issues of consent versus birth status and often strangely exclude Locke, following J. G. A. Pocock's lead, from the republican pantheon. Whichever word one chooses to use—*republican* or *Whig* or *liberal* or *democratic*—many serious thinkers were engaged in challenging the principles of the divine and hereditary rights of kings in England (and elsewhere) in the seventeenth century. Where those challenges come from is part of what fascinates me.

5. "King Charles Birth and Return," *The Book of Common Prayer and Administration of the Sacraments and Other Rites and Ceremonies* (London: His Maties, 1662), 77.

6. This was created a holy day, with church attendance expected, in Virginia in 1661 to celebrate Charles II returning to "the throne of his royall ancestors." *The Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature in the Year 1619*, ed. William Waller Hening. 13 vols. (Charlottesville: University of Virginia Press, 1969), 2:24, 49.

7. [Election law enacted 1705], *Statutes at Large*, ed. Hening, 3:237. The governor was to call the election, the secretary was to send out the writ to the sheriff in each county or

city, and the sheriff would bring the writ to the minister, who was supposed to read it every Sunday after church until the day appointed for the election (possibly only once): "after such publication [reading], the minister or reader shall return the said copy to the sheriff."

8. The full text of the document by Locke is published in Michael Kammen, "Virginia at the Close of the Seventeenth Century: An Appraisal by James Blair and John Locke," *Virginia Magazine of History and Biography* 74 (1966): 164.

9. Charles II's instructions are cited in Hening, ed., *Statutes at Large*, 2:47 (1662) and enjoined that the catechism from the *Book of Common Prayer* be the only one used. It appeared directly after laws requiring strict adherence to the Anglican liturgy and were followed by laws about church attendance, etc.

10. The version of the *Book of Common Prayer* most widely used in Barbados and Virginia before 1689 was that published in 1662. Later editions, while changing other sections, retained the catechism in the same form. See Ian Greene, *The Christian's ABC: Catechisms and Catechizing in England, c. 1530–1740* (Oxford: Clarendon Press, 1996). It is interesting to note that after Henry Compton was made Bishop of London in 1675, in his capacity of overseeing the diocese of Virginia he sent (mostly ministers of Huguenot or Scottish background to preach to Virginia. Some of them, such as James Blair, had refused to take the oath of loyalty administered in 1682 recognizing James II as king. Compton, whose protest against James II's so-called "toleration" proposal of 1688 helped spark the Glorious Revolution, might have encouraged alternative catechistical teaching.

11. *Book of Common Prayer* (1662) in which the separate ceremony for adult baptisms makes recitation of the catechism a required condition.

12. Louis XIV, cited in Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France, c. 1500–c. 1800* (New Haven: Yale University Press, 1995), 34. Charles II, cited in *Calendar of State Papers, America and the West Indies, 1661–1665*, ed. W. Noel Sainsbury, (London: Her Majesty's Stationary Office, 1880), 5:7. Charles's instruction read: "All religious exercises according to the profession of the Church of England to be enjoined and practised, and learned and orthodox ministers encouraged to come among them, it being to the shame of a rich and flourishing people to be without a ministry proportional to their numbers and condition, necessary not only for themselves, but for the winning such as are purchased by them as slaves to the Christian faith and making them capable of being baptized thereinto." Charles had a similar letter prepared for Virginia.

13. For England see Kettner, *American Citizenship*, esp. chapters 1 and 4. On Spain and its empire see Stuart B. Schwartz, *All Can Be Saved: Religious Tolerance and Salvation in the Iberian Atlantic World* (New Haven: Yale University Press, 2008); Maria Elena Martinez, *Genealogical Fictions: Limpieza de Sangre, Religion and Gender in Colonial Mexico* (Palo Alto: Stanford University Press, 2008); also see Tamar Herzog, *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America* (New Haven: Yale University Press 2003), esp. 26–27, on non-Catholics and citizenship/subjectship in Spain. I spoke with Tamar Herzog in 2009 about whether "subject" might have been a better translation of "vicino" from the Spanish, and she agreed it might have. It's a complex issue of meaning in the Iberian versus British worlds.

14. *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard. 3 vols. (Indianapolis: Liberty Fund, 2003) 1:180; the Calvin case, Eng.R. 64, (1572–1616) 7 Co.Rep. 1a, 77 E.R. 37, is also known as the *Case of the Postnati*; Mary Sarah Bilder, *The Transatlantic*

Constitution: Colonial Legal Culture and the Empire (Cambridge: Harvard University Press, 2004).

15. On the point that both sides during Bacon's Rebellion reiterated their loyalty to Charles II in religious terms, see Carla Pestana, *Protestant Empire: Religion and the Making of the British Atlantic World* (Philadelphia: University of Pennsylvania Press, 2009), 183. Also see "Declaration of Nathaniel Bacon in the Name of the People of Virginia, July 30, 1676," *Massachusetts Historical Society Collections*, 4th ser., 9 (1871): 184–87. Geoffrey Robertson, *The Tyrannicide Brief: The Story of the Man Who Sent Charles I to the Scaffold* (London: Vintage Books, 2006), analyzes the charge against Charles I in detail. As Robertson points out, charging the king with treason against his people was a novel invention.

16. *The Parliament's New and Perfect Catechisme: Fit and Necessary to Be known and Practiced by Every Old Christian and Loyall Subject* (London, 1647).

17. Warren M. Billings has argued, on the basis of a play written by Berkeley in 1637, that Berkeley was implicitly critical of Charles I; see Billings, *Sir William Berkeley and the Forging of Colonial Virginia* (Baton Rouge: Louisiana State University Press, 2004), 18–19. However Berkeley's loyalties were revealed clearly in his actions, such as returning to England to fight at Charles I's side, and the laws he promoted in Virginia.

18. Stephen Marshall, *A Sermon of the Baptizing of Infants: Preached in the Abbey Church at Westminster at the Morning Lecture, Appointed by the Honourable House of Commons* (London, 1644), 7, 8, 14–15. Marshall was a key compromise player in the religious disputes of the 1640s, appointed by the House of Lords in 1641, for example, to a committee to reconcile Presbyterians to the Anglican church. While he distanced himself from the Anglican church's episcopal hierarchy as the 1640s progressed, he adhered to the Anglican position in many other ways.

19. Francisco de Vitoria, "On the Indians or on the Law of War Made by the Spaniards on the Barbarians" (1539), in [Francisco de Vitoria], *De Indis et De Iure Belli Relectiones*, ed. Ernest Nys, trans. John Pawley Bate (Washington, D.C.: Carnegie Institution, 1917), 155, 156, 181. Alberico Gentili, *De Iure Belli*, Libri III (Hanover: Excudebat Guilielmus Antonius, 1598), 329. Gentili added commentaries on the Ephesians, from the same texts that later obsessed Locke and so many others and opened up the possibility that in fact Christians could also be enslaved. "The Apostle [Paul] allows Christians to be made slaves, and that too by other Christians," argued Gentile citing Ephesians ch. 6 and Philippians. He noted that some have held that "a baptized person may remain the slave of a Jew, and with still more justice, of a Christian"; Gentili, *De Iure Belli*, 328, 332. For discussions of natural law theory see Chris Tomlins, ch. 9.

20. "Butts v. Penny" 2. Lev. 201, in 83 Eng. Rep. 518. It is relatively rare for this case to be mentioned in the modern historiography, and when it is, the part that is usually emphasized is from the one report that mentions that conversions might enfranchise. At least one modern critic did note that the main point of this case was to establish property rights in slaves, though he did not realize that this case marked a turning point in justifying and creating slavery in the English empire. See William M. Wiecek, "Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World," *University of Chicago Law Review* 42 (1974), 86–146, esp. 89. Elaborating the importance and impact of this case is crucial to my current book project, tentatively titled "Inheritable Blood."

21. Early cases had allowed some of those born as servants/slaves to be freed as a result of

baptism, most notably the Elizabeth Key case of 1656, a ruling that implied that her conversion had made her a subject. "Whereas some doubts have arisen whether children that are slaves by birth . . . should by virtue of their baptism be made free, it is enacted that baptism does not alter the condition to the person as to his bondage or freedom; masters freed from this doubt may more carefully propagate Christianity by permitting slaves to be admitted to that sacrament," Hening, *Statutes at Large*, 2:260. Also see Anthony Parent, *Foul Means: The Formation of a Slave Society in Virginia, 1660–1740* (Chapel Hill: University of North Carolina Press, 2003), 236–64; Warren Billings, "The Law of Servants and Slaves in Seventeenth-Century Virginia," *Virginia Magazine of History and Biography* 49 (1991): 45–62.

22. Hening, *Statutes at Large*, 2: 491–92.

23. Morgan Godwyn, *The Negro's and Indians Advocate* (London, n.p.: 1680), 14–19, 173. On the Curse of Ham in early New Spain, see Maria Elena Martinez, "The Black Blood of New Spain: Limpieza de Sangre, Racial Violence, and Gendered Power in Early Colonial Mexico," *William and Mary Quarterly* 61 (2004): 475–520. Also see Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550–1812* (Chapel Hill: University of North Carolina Press, 1968), esp. 54; Benjamin Braude, "The Sons of Noah and the Construction of Ethnic and Geographical Identities in the Medieval and Early Modern Periods," *William and Mary Quarterly* 54 (1997): 103–42. See also Stephen R. Haynes, *Noah's Curse: The Biblical Justification for American Slavery* (New York: Oxford University Press, 2002).

24. Sir Edward Coke, *The first part of the Institutes of the lawes of England. Or, A commentarie vpon Littleton, not the name of a lawyer onely, but of the law it selfe* (London: Printed [by Adam Islip] for the Societie of Stationers, 1628), vol. 1, 8a. This text was commonly referred to by contemporaries as "Coke upon Littleton."

25. Godwyn, *The Negro's and Indians Advocate*, 18, 26–7, 72, 124 (mispaginated as 108), 137. Godwyn dismissed slave traders as "a few greedy Epicures and Mammonists," 76.

26. Tim Harris, *Revolution: The Great Crisis of the British Monarchy, 1685–1720* (London: Penguin, 2007). James II's alliance with a particular strand of Jesuit thought regarding the divine rights of kings (also favored by Louis XIV) is explored in Steve Pincus, *1688: The First Modern Revolution* (New Haven: Yale University Press, 2009).

27. Their allegiance becomes the crucial issue in the trial of William Fitzhugh in 1693, which is discussed in the article under revise and resubmit for the American Historical Review. See note 28.

28. Mary died in 1694. In 1696, William, under pressure from Parliament to reform the colonies—or it would take control over them—restructured colonial administration to form a new and more powerful Board of Trade, one staffed mostly by the radicals who had helped him plan and justify the revolution in Holland in the mid-1680s. This essay has generally been ignored by the scholarship because it was not clear where it fit and it was assumed that Locke would not know so much about Virginia. In a forthcoming article, "Slavery and 'Inheritable Blood' in the Wake of the Glorious Revolution: The Struggle over Locke's Virginia Plan of 1698," I situate this piece—Locke's own—among the extensive records of the Board of Trade. I show how Locke became interested in Virginia; how the board investigated its situation by interviewing many Virginians in London; how Locke wrote this plan (probably in the spring of 1698); how the plan in turn influenced the official instructions to the new governor of Virginia, Francis Nicholson, in August 1698, which Locke helped to frame; and then how Locke himself monitored its implementation, making comments on the summary reports

of Nicholson's letters. The original is at the Bodleian. The notebooks and correspondence of the Board of Trade are all at the United Kingdom National Archives. See especially: CO 5/1359 (instructions to Nicholson, various drafts); CO 5/1309 (major correspondence to and from Board of Trade, beginning in 1696, including interviews with Virginians in response to Board of Trade queries (in letter form, first stage), also CO 5/1310, which continued the correspondence from 1699. Locke's plan (without the supplementary documents) was published by Kammen as "Virginia at the Close of the Seventeenth Century." Kammen (following Peter Laslett's lead) attributed the document to Blair. See Laslett, "John Locke, the Great Recoinage, and the Origins of the Board of Trade: 1695–1698" *William and Mary Quarterly* 3rd Ser., 14 (1957): 370–402, esp. 400. When the full investigations of the Board of Trade are put in their proper context, it is clear that the plan for law reform cannot have been written by him; he nowhere shows such breadth of interest. It was certainly written by a member of that board, one of the five who helped to write the new instructions for Governor Nicholson and who signed those instructions. It was almost certainly by Locke himself, and all the supplementary materials found with it in Locke's desk are his notes (from the board's investigation), which helped frame the plan itself.

29. Locke, "An Appraisal," 155.

30. *Ibid.*, 167.

31. On infant baptism see, John Locke, "A Letter Concerning Religious Toleration," in *John Locke: Political Writings*, ed., David Wootton (Cambridge: Cambridge University Press, 2003), 396.

32. Locke, "Some of the Chief Greivances of the Present Constitution of Virginia, with an Essay towards the Remedies Thereof" reprinted in Kammen, ed., "Virginia at the Close," 159. George Fox, *The Works of George Fox* 6:85 [1657] (Philadelphia, 1831); [Samuel Sewall], *The Selling of Joseph: A Memorial* (Boston: n.p., 1700). Locke's Virginia plan was divided into seven parts. "Negroes" are mentioned explicitly only in part 6 (in connection with the passage "baptized, catechized," etc., which appears in part 1). It might be objected, therefore, that Locke did not mean this passage about "all nations" to apply to them. For more on this question, see my article cited above. The original at the Bodleian library is Ms Locke e. 9. Also see Mark Peterson, "The Selling of Joseph: Bostonians, Antislavery, and the Protestant International, 1689–1733," *Massachusetts Historical Review* 4 (2002), 1–23, accessed via history cooperative. See Acts ch 17, verse 26: "And [God] hath made of one blood all nations of men for to dwell on all the face of the earth." Sewall refuted the Ham and Cain stories pointedly in *The Selling of Joseph*, 2.

33. Acts 17.

34. Locke quoted Acts four times in his *Common-Place Book to the Holy Bible* (London: E. Jones, 1697) and once in his *Reasonableness of Christianity* (London: Awnsham and John Churchill, 1695). Locke, *Common-Place Book*, 10, 90, 258, 288, in the context that everyone should have the ability to seek salvation.

35. The phrase was invoked by Richard Baxter and John Owen to make similar arguments to the above. Hagger, *No King but Jesus, or The Walls of Tyrannie Razed* (London: Giles Calvert, 1652); See also Thomas Manton, *Sermons* (London: J.D., 1693). Manton lived 1620–1677, so they were originally published earlier, in 1068.

36. Indeed, my interpretation here fits closely with that of Jeremy Waldron, who, somewhat to his surprise, found himself arguing in his book *God, Locke, and Equality* that Locke's

principles of equality were embedded in the religious arguments of the seventeenth century. Waldron does not single out the passage above but the principle of "do unto others," which is critical to Locke's *Two Treatises* (London: A. Churchill, 1690). However, he argued that the context for the political debates about power and equality in the seventeenth century is religious. Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of Locke's Political Thought* (New York: Cambridge University Press, 2002).

37. Withington, *The Politics of Commonwealth*; Kettner, *American Citizenship*; Brewer, *By Birth or Consent*.

38. In addition to Godwyn, see Richard Ashcraft, *John Locke: Critical Assessments* (London: Routledge, 1991), 1:685n11.

39. [Locke], "An Appraisal," in Kammen, ed., "Virginia at the Close," 167.

40. Locke, *A Paraphrase and Notes on the Epistles of St. Paul to the Galatians, First and Second Corinthians, Romans and Ephesians* [1704] (Boston, 1832), 116.

41. For Locke's work on suffrage reform see Mark Knights, "John Locke and Post-Revolutionary Politics: Electoral Reform and the Franchise," *Past and Present* 213 (2011): 41–86. On Locke's position on choice and suffrage, see his *Essay Concerning Human Understanding*, in particular. This is an issue I considered in *By Birth or Consent: Children, Law, and the Anglo-America Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2005), esp. chaps. 2 and 3.

42. Locke, "An Appraisal," in Kammen, ed., "Virginia at the Close" 155.

43. Locke's use of the word "citizen" fits with Withington's interpretation in *Politics of Commonwealth*.

44. For a discussion of naturalization laws that allowed Protestants full privileges, see Kettner, *American Citizenship*.

45. Hening, ed., *Statutes at Large*, 3:298. Note that Hening dated these laws all 1705 when they were actually passed in April-May 1706, as is clear from the records of the Burgesses and council. Quakers were permitted to give a "solemn affirmation." This law stated "that popish recusants convict, negroes, mulattoes and Indian servants and others, not being Christians, shall be deemed and taken to be persons incapable in law, to be witnesses in any cases whatsoever."

46. It is clear from the digests of American case law in the nineteenth century that Virginia's norms against testimony evolved into a much broader race-based exclusion of nonwhites testifying against whites, even to barring Chinese Americans' testimony against whites. See Brewer, *By Birth or Consent*, chapter 4.

47. Even Locke set atheists apart in his *A Letter Concerning Toleration: Humbly Submitted, &c.* (London: A. Churchill, 1689) on the grounds that "promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist." Notably such logic offered only a narrow exclusion in Locke's case; it was here applied more broadly by the Virginians.

48. In fact few Africans were baptized until the first Great Awakening in the 1730s. See Parent, *Foul Means*, 276–84.

49. Hening, ed., *Statutes at Large*, 3:333 (real estate); 3:461. The first law to deprive Africans of trial by jury was passed in 1691.

50. For Coke, see Lord de la Warre's Case, 11 Coke Rept. 1a, 77 *Eng. Rept.* 1145 (1597);

Harris, "The Politics of Christianity" discusses Locke on corruption of blood and Adam's sin: "every one's sin is charged upon himself only." *Locke's Philosophy, Content and Context*, ed. G. A. J. Rogers (Oxford: Clarendon, 1994). Also see Jeremy Waldron, *God, Locke, and Equality*, 193n12.

51. See, e.g., Robertson, *The Tyrannicide Brief*.