
Slavery, Sovereignty, and “Inheritable Blood”: Reconsidering John Locke and the Origins of American Slavery

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RESPONDING TO A 1699 REPORT that Virginia governor Francis Nicholson had “made an order against taking up land for the importation of negroes,” John Locke wrote: “Well done.” The spindly marks of Locke’s quill—small marks among voluminous reports of imperial administration—were the culmination of his efforts to implement his forty-page plan for law reform in Virginia—a plan found rolled up in a cubbyhole in his desk when his papers were given to the Bodleian Library after World War II.¹ When put in their broader context, they reveal Locke’s animosity toward slavery in many forms, an animosity he developed in reaction to royal support for absolutism and slavery. Imperial power structures were crucial for the development of slavery, and once established were difficult to dismantle.

Locke’s scratchings from three centuries ago remain relevant, not only because they illuminate his struggle to change a royal policy that promoted slavery, but also because they show how imperial power mattered to slavery’s development in the British Empire. Slavery was not a single iconic status; it was the product of many laws and policies. Locke’s actions are relevant because of his influence on the American revolutionaries, and in turn because those ideas have shaped how historians and political scientists define historiographical and philosophical debates about democracy,

Many scholars have read and given me feedback on this article over the past nine years. Indeed, it was assigned in at least seven graduate courses before publication and cited by dozens of scholars as a manuscript and presented in many venues, including the McNeil Center for Early American Studies in two different versions almost a decade apart, the Huntington Library’s Early Modern Studies Seminar, Yale’s British Studies Colloquium, and the Rothermere American Institute at Oxford. I especially want to thank John Dunn, Peter Wood, Peter Thompson, and Steve Pincus. Two scholars whose criticism helped me to reexamine and tighten my arguments were Carole Shammas and John Marshall. Thanks also to David Konig, Bruce Mann, Jack Rakove, and Chris Tomlins and the eight (!) anonymous peer reviewers who read the article for the *American Historical Review*. I owe many other debts, both critical and not, to those who have read this piece. I would like to dedicate this article to my graduate school mentors in political theory and intellectual history at UCLA long ago: Richard Ashcraft, Carole Pateman, and Joyce Appleby. This article emerges from my larger book manuscript, entitled “‘Inheritable Blood’: Slavery and Sovereignty in Early America and the British Empire.”

¹ The acquisition of Locke’s manuscripts is recounted in P. Long, *A Summary Catalogue of the Lovelace Collection of the Papers of John Locke in the Bodleian Library* (Oxford, 1959), and is mentioned by Peter Laslett in the foreword to John Locke, *Two Treatises of Government*, ed. Peter Laslett, Critical Edition (2nd ed., 1967; repr., Cambridge, 1988).

the Enlightenment, liberal capitalism, American and English exceptionalism, and slavery. Widely read in his own time, Locke was cited more than any other thinker in American newspapers of the revolutionary era, and he continues to be widely taught as the foundational thinker about democracy not only in American high schools and universities but also around the world.²

The relationship between Locke and slavery is not simply an abstraction of political philosophy, but rather a driving question behind rivers of philosophical and historical research. Arguments about Locke and slavery intensified during the Cold War, when scholars in many fields and in many countries debated the central tenets of political and economic liberalism, for which they viewed Locke's philosophy as the foundation. The principles of Locke's political liberalism, with their focus on rights and consent, appear contradictory to slavery. One work that continues to influence political philosophers as well as historians is C. B. Macpherson's *The Political Theory of Possessive Individualism* (1962). Macpherson voiced the now-accepted interpretation that Locke supported slavery because he supported property above all else, even property in people. Edmund Morgan and other historians drew explicitly upon Macpherson's interpretation of Locke when raising fundamental questions about the history of slavery and American democracy.³

Historians' approaches are still influenced by the Cold War determination that America was attached to distinctive English freedoms from the beginning, if only for whites. England's empire emerged within a liberal Lockean context with elected assemblies that made colonial law, including slave law. British America never partook of the "feudal" or absolutist principles that preceded Locke's liberalism in Karl Marx's theory of economic development.⁴ Slavery developed by popular consent of

² On citations of Locke and other European writers in newspapers during the era of the American Revolution, see Donald S. Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," *American Political Science Review* 78, no. 1 (1984): 189–197. In the 1760s and 1770s, most references were to Locke; by the 1780s, they were to Montesquieu; and by the 1790s, they were to William Blackstone, the compiler of England's common law. A crucial work for American historians and political theorists was Louis Hartz, *The Liberal Tradition in America* (New York, 1955), which has received extensive commentary and criticism. A search of Google Scholar on October 9, 2016, found 74,200 academic books and articles that mentioned both Locke and slavery in English. Substantial non-English scholarship as well as innumerable non-academic articles must be added to that count; modern editions of Locke's writings appear in many different languages.

³ On the Enlightenment, see, e.g., Jonathan Israel, *A Revolution of the Mind: Radical Enlightenment and the Intellectual Origins of Modern Democracy* (Princeton, N.J., 2009), which builds on the current claim that Locke promoted slavery; C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford, 1962), especially chaps. 2–3. Despite many unproven and unsupported generalizations, Macpherson was probably the key scholar to argue that Locke's philosophy supported slavery and capitalism. For example, he claims that Locke's theories "erased the moral disability with which unlimited capitalist appropriation had hitherto been handicapped" (221), with a citation only to Locke's work. Quite aside from Locke's own arguments, through which he slides, Macpherson makes an ahistorical and inaccurate statement that the trade in people was so accepted that Locke must have meant to include slaves as property when he spoke of property. With historians relying in turn upon Macpherson, we have been caught in a tautological circle. On the movement to equate political and economic liberalism in the 1960s, see contemporary articles such as Lewis E. Hill, "On Laissez-Faire Capitalism and 'Liberalism,'" *American Journal of Economics and Sociology* 23, no. 4 (1964): 393–396.

⁴ While many scholars have challenged the argument that early America was liberal in other respects, they have neglected slavery. See, e.g., François Furstenberg, "Beyond Freedom and Slavery: Autonomy, Virtue, and Resistance in Early American Political Discourse," *Journal of American History* 89, no. 4 (2003): 1295–1330. As he notes, "In this respect—perhaps only in this respect—the Hartzian paradigm still reigns. Although historians have long since dismantled Louis Hartz's argument that the United States was dominated by a Lockean view that all men are by their nature free and equal, many

the white colonists within each colony, driven both by inherent racism and by capitalist desires to accumulate. Winthrop Jordan's 1968 assessment that slavery was an "unthinking decision" based in deep racism and economic aspiration helped to undergird the interpretation of David Brion Davis: racism was so ingrained that one had rather to explain freedom than slavery for blacks. Over the past fifty years, most of the books on American slavery have focused on how laws and practices developed in each colony separately, as though they were in truth self-governed. Even studies that consider slavery more broadly within England's empire describe how colonies developed their own "customs" of slavery, as though they all occurred without an imperial power structure.⁵

Even as American historians have expanded our view to encompass empire, and even as historians of other empires have situated the emergence of slavery within hierarchical ideas about lordship, historians have been stuck in a narrative that equality for whites came only at the expense of inequality for blacks. It has been a fruitful frame, in many ways, but also a limited one. It hides complexity and conflict and reinforces American exceptionalism. Such an argument was most clearly stated by Edmund Morgan in his paradigmatic *American Slavery, American Freedom* (1975). American freedom literally depended on American slavery: "This is not to say that a belief in republican equality had to rest on slavery, but only that in Virginia . . . it did." By extension, America was always liberal and racist—a starting point that has profoundly shaped the debate about American slavery over the past half-century.⁶

persist in viewing slavery and the South much as Hartz viewed them: a curious anomaly, abnormality, or aberration of American political culture" (1308). See also David Armitage, *The Ideological Origins of the British Empire* (Cambridge, 2002); Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago, 1999), especially chap. 1. Both represent Lockean liberalism as coeval with imperialism. Mehta holds that Locke's liberalism turns all "others" into children who cannot reason. Liberalism can be twisted in that way, but such rationalization was not intrinsic to Locke's thought. See Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill, N.C., 2005), especially chap. 3 and the Conclusion.

⁵ Winthrop D. Jordan, *White over Black: American Attitudes toward the Negro, 1550–1812* (Chapel Hill, N.C., 1968), quote from 44; David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York, 2006); Michael Guasco, *Slaves and Englishmen: Human Bondage in the Early Modern Atlantic World* (Philadelphia, 2014). Guasco traces a familiar narrative of the acceptance of slavery with huge gaps in between cases and evidence; everything is a march toward slavery, which is defined as though everyone knew automatically what it would become. I cannot fully challenge the "custom" argument here, but would note in passing that power structures in the early empire mattered, and that the legal elements of slavery mattered, too—before 1660, legal practices were confined by English law. In Barbados in 1636, for example, the governor, Henry Hawley (appointed by Barbados's proprietor, the Earl of Carlisle), made an awkward effort to apply feudal law to Africans and Indians. I address this topic in depth in chap. 1 of my book in progress, currently entitled "'Inheritable Blood': Slavery and Sovereignty in Early America and the British Empire."

⁶ See, e.g., Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1975), 381, which has shaped the interpretation of America's paradox most profoundly. Works that situate the emergence of New World slavery in the colonies of other European countries include Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France, c. 1500–c. 1800* (New Haven, Conn., 1998)—which carefully singles out England's empire as different based on the view that Locke and English liberalism accepted slavery. A wide range of studies have sought elusive justification for slavery in Locke's writings and practice. See Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492–1800* (London, 1997), especially 263–265; Alan Galloway, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670–1717* (New Haven, Conn., 2003); David Armitage, "John Locke, Carolina, and the *Two Treatises of Government*," *Political Theory* 32, no. 5 (2004): 602–627; Israel, *A Revolution of the Mind*, 93. See also Wayne Glausser, "Three Approaches to Locke and the Slave Trade," *Journal of the History of Ideas* 51, no. 2 (1990): 199–216;

The consensus draws, often implicitly, upon Marx’s theories of political and economic development, which maintain that political liberalism and capitalism emerged hand in hand, but only after feudalism disappeared. Whether explicit or not, it influences recent work by Abigail Swingen and William Pettigrew, who have expanded Morgan’s thesis to a seventeenth-century imperial context. They argue that liberalism (whether from Cromwell or the Whigs) led to freedoms for whites, including especially their ability to have “free trade” in slaves. Lorena Walsh and Wendy Warren likewise emphasize that slavery was capitalist—merchants, even in New England, traded people for profit, and planters cared about little else. Indeed, we historians are in the midst of a veritable flood of books, from scholars such as Walter Johnson and Sven Beckert, that emphasize that slavery was capitalism, and not the kindly feudal paternalism (also inspired by Marx) of Eugene Genovese’s later work. We now know the details about human beings whose body parts were marketed in American slave auctions and how much profit greedy slave owners made as they expanded plantations west during the nineteenth century. These books build on markers set down by Macpherson, Morgan, and others. Slavery was capitalist. Therefore, if capitalism and political liberalism are intertwined, slavery created modernity, both political and economic. Although in Marx’s theory slavery preceded both feudalism and capitalism—a nicety that is quietly ignored—our net verdict is that American slavery was part of a liberal-capitalist, modern order.⁷

Robert Bernasconi and Anika Maaza Mann, “The Contradictions of Racism: Locke, Slavery and the *Two Treatises*,” in Andrew Valls, ed., *Race and Racism in Modern Philosophy* (Ithaca, N.Y., 2005), 89–107, especially 103.

The literature on Iberian slavery is too vast to cite fully, but I recommend two books on the impact of Spanish ideas about blood and lineage on slavery in the Spanish New World: María Elena Martínez, *Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico* (Stanford, Calif., 2011); and Michelle A. McKinley, *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600–1700* (Cambridge, 2016).

⁷ Even Christopher Tomlins’s magisterial study of the creation of colonial slave codes from America’s founding to the Civil War, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge, 2010), continues to try to fit the emergence of slavery within a largely liberal political order, maintaining Morgan’s paradigm. Abigail L. Swingen, *Competing Visions of Empire: Labor, Slavery, and the Origins of the British Atlantic System* (New Haven, Conn., 2016). William A. Pettigrew, in *Freedom’s Debt: The Royal African Company and the Politics of the Atlantic Slave Trade, 1672–1752* (Chapel Hill, N.C., 2014), is so attached to Morgan’s paradigm that he claims that arguments for “free trade” in African servants and slaves during the 1690s show that economic liberalism trumped political liberalism; he implies that most supporters of such arguments were Whigs, and, in his original article, that Locke supported the 1698 African Company Act. But in fact Pettigrew never shows that Whigs supported such arguments. It was mostly Tories—their opponents—who sought to use some of the arguments of the Revolution about freedom to oppose the Royal African Company’s monopoly. Regardless, “free trade” was never unregulated and unprotected trade. Pettigrew, “Free to Enslave: Politics and the Escalation of Britain’s Transatlantic Slave Trade, 1688–1714,” *William and Mary Quarterly*, 3rd ser., 64, no. 1 (2007): 3–38. For more on Pettigrew, see below at note 112.

Eric Williams, in *Capitalism and Slavery* (Chapel Hill, N.C., 1944), does not link early slavery to liberalism; indeed, he is more in tune with my own thinking about its having emerged from what liberalism was arguing against. More recent volumes draw on this longer scholarship of liberalism and its contradictions to challenge Eugene Genovese’s argument that slavery was part of a paternalist, pre-capitalist order. See, e.g., Elizabeth Fox-Genovese and Eugene D. Genovese, *The Mind of the Master Class: History and Faith in the Southern Slaveholders’ Worldview* (Cambridge, 2005). Among many others, see Lorena S. Walsh, *Motives of Honor, Pleasure, and Profit: Plantation Management in the Colonial Chesapeake, 1607–1763* (Chapel Hill, N.C., 2010); Wendy Warren, *New England Bound: Slavery and Colonization in Early America* (New York, 2016); Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge, Mass., 1999); Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York, 2014); Sven Beckert, *Empire of Cotton: A Global History* (New York, 2014);

Ira Berlin, Peter Wood, Philip Morgan, Christopher Tomlins, Simon Newman, and Anthony Parent are among those who have complicated Edmund Morgan's narrative, pointing to stages in slavery's development and the degree to which it was a "terrible transformation." So too have historians of gender like Jennifer Morgan and Kathleen Brown, who see slavery developing in a more patriarchal environment, with women's debasement a marker for larger inequalities.⁸

By situating the emergence of slavery within controversies over imperial principles and practices in the seventeenth century in which Locke was directly involved, it is possible to step outside the old paradigm and gain precision regarding the origin and political meaning not only of Locke's ideas, but also of slavery. Slavery did not emerge *within* a liberal paradox. English kings of the Stuart dynasty—James I and his son Charles I and grandsons Charles II and James II and great-granddaughter Anne—justified their divine and hereditary status with the same principles they used to justify slavery. For the Stuarts, race was subsumed within a larger rationale celebrating hereditary status. One was born a slave, just as one was born a prince.⁹ Legally and ideo-

and more recently, the result of a 2012 conference, Sven Beckert and Seth Rockman, *Slavery's Capitalism: A New History of American Economic Development* (Philadelphia, 2016). Beckert in particular elides the "liberal" question, referring to the early period of slavery as "war capitalism" and ignoring the matter of state power. His book, like Baptist's, focuses mostly on the nineteenth century.

⁸ The term "terrible transformation" was coined by Peter Wood in *Strange New Land: Africans in Colonial America* (Oxford, 2003), based in part on Anthony S. Parent's *Foul Means: The Formation of a Slave Society in Virginia, 1660–1740* (Chapel Hill, N.C., 2003). A few works connect political ideas to slavery in England's colonies in ways that fit with my interpretation. Robert Olwell, in *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Low Country, 1740–1790* (Ithaca, N.Y., 1998), makes the mental worlds of the masters come alive as part of a hierarchical order with the king at the top in eighteenth-century South Carolina. Likewise, Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill, N.C., 1998), and Parent, *Foul Means*, show how patriarchal arguments helped masters to justify their position in society in the eighteenth century. Kathleen M. Brown, in *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill, N.C., 1996), implies a political dimension in her argument that patriarchy required slavery; making the connection to the broader political debates, however, is not her concern. My argument here fits well with the social development of slavery described in T. H. Breen and Stephen Innes, *"Myne Owne Ground": Race and Freedom on Virginia's Eastern Shore, 1640–1676* (1980; 25th Anniversary Edition, New York, 2005); Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, Mass., 2009); Peter Wood, *Black Majority: Negroes in Colonial South Carolina, from 1670 through the Stono Rebellion* (New York, 1974); and Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia, 2011). See also Simon P. Newman, *A New World of Labor: The Development of Plantation Slavery in the British Atlantic* (Philadelphia, 2016); and Swingen, *Competing Visions of Empire*, though Swingen sees slavery as emerging from Cromwell's Western Design, which I find to be deeply problematic, not least because Cromwell's troops freed Spanish slaves.

⁹ Locke responded mainly to Sir Robert Filmer, who represented the Stuart argument. For Filmer, primogeniture was the ideal source of all authority. He repeated phrases such as "God . . . re-established the ancient and prime right of lineal succession to paternal government," "next heirs," "the right of the father descended to the true heir," "by succeeding a king," and "escheat for want of an heir." The knowledge of God's true heir by primogeniture should always be known by its subjects: "It is but the negligence or ignorance of the people to lose the knowledge of the true heir, for an heir there always is." Just so the complicated tables of descents that accompanied the law books on inheritance focused on finding true heirs. Filmer, *Patriarcha and Other Writings*, ed. Johann P. Sommerville (Cambridge, 1991), e.g., 9–11, quotes from 9, 10.

Even when colonists did not read Filmer directly, these principles of hereditary status were expressed in both legal and High Anglican thought, transmitted in basic legal texts such as Sir Edward Coke's *Institutes of the Laws of England* and the *Book of Common Prayer* and such popular sermons as Richard Allestree's *The Whole Duty of Man*. See Brewer, *By Birth or Consent*, 304–305. One of the few scholars to take Filmer's influence seriously is Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (New York, 1996), 59–60, 98–100, 296–297, for which

logically, slavery was anchored in hierarchical and feudal principles that connected property in land to property in people, principles that were bent to new forms in England and its empire by Stuart kings. By the late 1670s, it was distinguished in the West Indies by a separate legal system that stripped people of their rights, and that had many components (such as slaves’ inability to testify against masters). Slavery was created in bits and pieces. Liberalism emerged in reaction to such principles—and not simply in the writings of Locke, though his writings provide a convenient window into that conflict. Liberalism emerged in opposition to slavery and absolutism.

Moreover, trade in people and political liberalism were and are fundamentally at odds. There is no such thing as “free trade” in forced labor—forced labor requires the power of the state, and its navies and armies and militias and slave patrols and county court judges. Political liberalism began by rejecting such force, except as punishment for a crime. Capitalism, however, takes many forms, and some are more compatible with political liberalism than others. It is not enough to see “slavery” and “capitalism” as unitary concepts; they should be viewed as multifaceted, shaped by debates over the fine points of laws of justice.

Locke could never have written *Two Treatises of Government*, and could never have challenged the Stuarts, had he not first cooperated with them. Cooperation gave him the knowledge and ability to protest effectively. Locke accepted the Restoration of Charles II in 1660 and worked for him between 1669 and 1674. But in 1674, Locke’s mentor the first Earl of Shaftesbury and a new Whig opposition challenged principles of monarchical absolutism and slavery. Within that movement, Locke developed a philosophical argument against both hereditary hierarchy and property in people. Whig resistance culminated in the Glorious Revolution against James II in 1688, a revolution that Locke justified in *Two Treatises of Government* (a book widely read then and still viewed as foundational to democratic theory). William III appointed Locke and his allies to oversee colonial policy to fulfill the promises of the Glorious Revolution.¹⁰ These men then tried to undo Stuart imperial policies pertaining to large estates, bound labor, and oligarchy. Such policies, they argued, subjected everyone to degrees of slavery. But shifting the course of empire required redirecting powerful currents.

Locke was born in 1632, and his childhood was shaped by a terrible contest over the basis of government: Do kings have absolute power by divine sanction, or should the people, via their representatives in Parliament, be consulted? During his youth,

she was revealingly criticized by Edmund S. Morgan in “Subject Women,” *New York Review of Books*, October 31, 1996, <http://www.nybooks.com/articles/1996/10/31/subject-women/>.

My first attempt to connect slavery and the ideology of the Stuarts was in Holly Brewer, “Power and Authority in the Colonial South: The English Legacy and Its Contradictions,” in Joseph P. Ward, ed., *Britain and the American South: From Colonialism to Rock and Roll* (Jackson, Miss., 2003), 27–51.

¹⁰ Many scholars, following in the wake of J. G. A. Pocock’s *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, N.J., 1975), differentiate between Locke’s ideas and broader “republican” thought. However, Pocock’s view of Locke was shaped by Peter Laslett and Macpherson’s narrow definition of Locke’s liberalism, which in turn paved the way for a somewhat bizarre bifurcation of ideas between liberalism and republicanism in the historiography during the 1980s and 1990s. Locke was the leading proponent of ideas about equality and consent—ideas shared by others whom contemporaries would have described as “Democratically” or “Republican” or “Whig.” His were also sometimes called “levelling” ideas, reflecting their origins during the English Civil War. Others whose work was remarkably similar to Locke’s are Algernon Sidney and James Harrington.

his father fought for Parliament in a civil war that killed one-tenth of England's men. In January 1649, when Parliament tried Charles I for treason against his people and then executed him, Locke was attending school within sight and sound of that trial and execution. In 1653, he published odes to Cromwell's victory over the Dutch.¹¹

But in January 1660, Locke wrote to his father in despair over the anarchy in the former Commonwealth. The remnants of elected government in England were in ruins. Locke could not "thinke to enter upon a steady course of life whilst the whole nation is reeleing." London mobs and rival parliamentary armies were readying to fight each other. "In this time when there is noe other security against mens passion and reveng but what strength and steell yeelds I have a long time thought the safest condition to bee in armes could I be but resolvd . . . for whome to imploy them, or could be but securd that I should not spend my bloud to swell the tide of other mens fortune or make myself a c[ar]kas for their ambition." He would fight, if only he knew for whom. "Tis the great misery of this shatterd and giddy nation that warrs have procd noething but warrs and the sword cut out worke for the sword."¹²

Amidst such anarchy, two parliamentary leaders, Anthony Ashley Cooper—later Locke's mentor, and most commonly known today by his later title, Shaftesbury—and George Monck, shifted their support to Charles Stuart. In a speech to Parliament, Shaftesbury's conservatism is evident: he worried that even if England avoided anarchy, uneducated servants would rule the country. A return to the principles of lordship was his only solution.¹³ Therefore, he and Monck, who led the largest army, negotiated compromises with Charles at Breda to restore him as King Charles II, with great hope and celebration.

During the fifteen years following the Restoration, those who sympathized with Commonwealth principles witnessed a crackdown on the king's opponents and renewed enforcement of the king's divine right. With the new Cavalier Parliament's support, Charles II abandoned the pardon he had promised at Breda and prosecuted everyone who had participated in his father's trial.¹⁴ He oversaw the dismissal of two thousand ministers from the Church of England and approved laws to punish those

¹¹ As H. R. Fox Bourne points out, as a student at Westminster School, Locke was an arm's length from the execution; he probably saw it, if not the trial. Bourne reprints the full text of the odes. Bourne, *The Life of John Locke*, 2 vols. (New York, 1876), 1: 25, 51–52; *Two Treatises of Government*, ed. Laslett, 17–20.

¹² Locke to John Locke, Sen., ca. January 9, 1660, in E. S. de Beer, ed., *The Correspondence of John Locke*, 8 vols. (Oxford, 1976), 1: 136–137, letter 91. See also his "First Tract on Government (1660)," in John Locke, *Locke: Political Essays*, ed. Mark Goldie (Cambridge, 1997), 3–53.

¹³ W. D. Christie, *A Life of Anthony Ashley Cooper, First Earl of Shaftesbury*, 2 vols. (New York, 1871), 1: appendix 4. Cooper was not made Earl of Shaftesbury until 1672, but for consistency's sake, I use his well-known later title.

¹⁴ Charles II's proclamation from Breda read: "And to the End that the Fear of Punishment may not engage any . . . We do grant a free and general Pardon, which We are ready upon Demand to pass under our Great Seal of England, to all Our Subjects, of what Degree or Quality soever, who, within Forty Days after the Publishing hereof, shall lay Hold upon this Our Grace and Favour, and shall by any Public Act declare their doing so; and that they return to the Loyalty and Obedience of good Subjects (excepting only such Persons as shall hereafter be excepted by Parliament)." "The King's Declaration," May 1, 1660, in *Journal of the House of Lords*, vol. 11: 1660–1666, 6–9, British History Online, <http://www.british-history.ac.uk/lords-jrnl/vol11/pp6-9#h3-0009>. While some scholars think that Charles II always meant to exclude those involved in his father's trial from the pardon, contemporaries did not agree. John Cook, the prosecutor of Charles I, decided not to flee England on the basis of Charles II's promise. See Geoffrey Robertson, *The Tyrannicide Brief: The Story of the Man Who Sent Charles I to the Scaffold* (New York, 2008).

who attended “dissenting” churches. The *Book of Common Prayer* added a new holy day (holiday) and religious service in 1662 to commemorate the Restoration. Every year on May 29—a holiday even in Virginia—the people were supposed to swear to obey Charles II and his heirs: God alone could judge the king. The people’s rote responses in church were called their “suffrages” or votes, whereby they swore an oath before God acknowledging the king’s divine right to rule over them: “humbly beseeching thee to accept this our unfeigned, though unworthy oblation of ourselves; vowing all holy obedience in thought, word, and work unto thy divine Majesty; and promising in thee, and for thee all loyal and dutiful allegiance to thine Anointed servant, and to his heirs after him.” The king, as head of the Church of England, ruled as God’s representative on earth. As God’s “Anointed servant,” he was “dread Sovereign Lord” over his people.¹⁵

Such ideas about the divine and hereditary power of kings and the duties of subjects emerged earlier, but foretold later justifications of slavery. As Charles II’s grandfather James I wrote in 1598: “The duty and alleageance, which the people sweareth to their prince, is not only bound to themselves, but likewise to their . . . lawfull heires and posterity, [to] the lineal succession of crowns . . . [N]o objection . . . may free the people from their oath-giving to their king, and his succession.” Kings inherit the right to rule; subjects inherit the obligation to obey: and so did slaves inherit the obligation to obey masters. Principles of hereditary obligation were propagated by politicians, preached in sermons, and recited in catechisms.¹⁶

Stuart plans for colonial development drew on such principles: in proprietary charters, Charles I granted some of his own “Regall Authority” and “absolute” power to lesser lords. In his grant of the Caribbean to the Earl of Carlisle, King Charles I wrote: “we do create and ordaine [him] *absolute Lord*.”¹⁷ Legal concepts of dominion or lordship justified both monarchy and proprietary power. Charles I and later Charles II granted proprietors not only the land but also the right to govern the inhabitants of colonies such as Barbados, Carolina, and New York. Despite notable exceptions in New England and Pennsylvania, in most cases Stuart kings chose men who shared such principles—whether as royal governors, appointed officials, or great proprietors.

In practice, the legal concept of dominion took the form of headrights, which encouraged lordship, large estates, and bound labor. Barbados’s first proprietor, the Earl of Carlisle, gave men ten acres of land for each servant they owned. By royal proclamation, Charles I and Charles II promised “headrights” of fifty acres of land in Virginia to anyone who bought a servant, whether white or black. Charles II instructed Governor Thomas Culpeper that “every person that shall transport or carry

¹⁵ *Book of Common Prayer*, 1662 edition, service for May 29.

¹⁶ James I, *The Trew Law of Free Monarchies*, in *The Workes of the Most High and Mightie Prince, Iames: By the Grace of God, King of Great Britaine, France and Ireland, Defender of the Faith, &c.* (London, 1616), 209. See also Robert Filmer, *The Free-Holders Grand Inquest Touching Our Sovereigne Lord the King and His Parliament* (London, 1648), in Sommerville, *Patriarcha and Other Writings*, 69–130, especially 69–80. Hereditary obligations are the main point of both books.

¹⁷ Charles I’s charter to Lord Carlisle for Barbados reads: “This of our *Regall Authority* is given and granted to him, his Heirs and Assigns,” and later: “And the same Earl of Carlisle his Heirs and assignes of the aforeseaid Rigion we do create and ordaine *absolute Lord* as he to whom the property doth belong.” “Barbados Charter,” The National Archives, Kew, UK [hereafter TNA], Records of the Colonial Office, CO 29/1, 1–3.

servants thither shall, for every servant soe carried and transported, have set out to him, upon the Landing and Imployment of such servant, Fifty acres of land, To have and to hold to him the said Master, his heirs and assigns for ever." Between 1635 and 1699, Virginians claimed four million acres for importing 82,000 white and black "servants." In August 1664, Charles II likewise agreed to "granting away the first million acres alloweing thirty acres per head to [to masters who import] men women and Children white or blacke, for the latter further the Plantation as much and Doe asmuch produce the goods that shall pay Custome and fill shipp[s]." Note here the claim that "blacke" laborers were even better than white at producing crops to be taxed in England. The king even permitted respectable Englishmen who "have good Estates, & doe ingage to bring on more people" to claim the headrights that would accord with their plans to import that many people. A prosperous man who planned to import "an hundred hands" could claim thirty acres for every person he planned to buy, and therefore the king would reward him with a contiguous estate of three thousand acres.¹⁸ Masters thus assembled large plantations with bound labor under royal aegis.¹⁹

By encouraging mass production of staple crops that were heavily taxed, royal headright policy dramatically increased crown revenue. Even in 1636, Virginia tobacco generated £42,000 in net crown revenue for Charles I. After 1660, Parliament granted Charles II higher taxes on tobacco and sugar imported into England, and rates increased again in 1685 at James II's request. By 1687, gross crown receipts from tobacco taxes were £725,648 out of net crown income of just over £2,000,000.

¹⁸ At first the king promised in the official instructions for new governor Thomas Modyford of Jamaica in February 1664 to allow thirty acres to the master/father for importing every servant and family member and then thirty acres for the freed servants. "Notes on Royal Instructions to Modyford for Jamaica," February 18, 1664, TNA, CO 1/18, no. 26. Then Modyford (already a planter in Barbados) recommended that the king cease to promise land to freed servants, and that "black" servants be counted as giving land to those who buy them. Modyford advised the king that to get rich in customs, he should follow the model of Barbados: "1. That his Majestie bee prodigall in granting away the first million acres alloweing thirty acres per head to men women and Children white or blacke, for the latter further the Plantation as much and Doe asmuch produce the goods that shall pay Custome and fill shipp[s].] 2. That the authority at Jamayca may allow over and above the Thirty Acres per head what they shall think fitt to such As have good estates and doe engage to bringe on more people then they doe at first present for perhapps hee that meanes to bringe an hundred hands will at first send but 20 to plant provisions against the [rest arriving]." Sir Thos. Modyford to Sec. Sir Henry Bennet [Lord Arlington], Barbadoes, May 10, 1664, TNA, CO 1/18, nos. 65, 65 I., II., III., IV., V., VI., VII. King Charles II agreed to these propositions in August 1664 with his Privy Council: "That the Authority at Jamaica may allow Over & above the 30 Acres the head what they shall thinke fit, after the proportion of 30 Acres per head & no more according to the First proposition & not other ways, to such as have good Estates, & doe ingage to bring on more people than they doe at first present; for perchance he that means to bring an hundred hands will at first send but twenty to plant provisions against the rest . . . In which Case, if such a One should be allowed after the rate of twenty, the Land about that art may be taken up before the rest come, & then he may seeke two or 3 perhaps 4 miles from the rest, Which would be highly mischievous." "Report of the Committee of the Privy Council for the affairs of Jamaica on the above-mentioned nine articles of proposals by Governor Sir Thos. Modyford," Minutes of the Committee for the Affairs of Jamaica, August 10, 1664, CO 1/18, nos. 90–91.

¹⁹ Tony Parent calls this period the great "landgrab" because so many masters obtained large estates via headrights. Parent, *Foul Means*; Wesley Frank Craven, *White, Red, and Black: The Seventeenth-Century Virginian* (Charlottesville, Va., 1971), 10–20; Morgan, *American Slavery, American Freedom*, 49; Edmund S. Morgan, "Headrights and Head Counts: A Review Article," *Virginia Magazine of History and Biography* 80, no. 3, pt. 1 (1972): 361–371; John C. Coombs, "The Phases of Conversion: A New Chronology for the Rise of Slavery in Early Virginia," *William and Mary Quarterly* 68, no. 3 (2011): 332–360 (though he also uses wills); "Entries Relating to Virginia," TNA, CO 5/1355, 347.

Tobacco customs paid the national debt and paid for James II's custom collectors, navy, and standing army of 40,000 men.²⁰

After the Restoration, principles of hereditary status, especially hereditary servitude, complemented crown revenue. Hereditary servitude thus became an organizing principle behind the king's empire. Charles II's first step was to establish the Company of Royal Adventurers Trading into Africa, later the Royal African Company (RAC), under the leadership of his brother James, Duke of York, and with most of the royal family as members. Promising his governors to supply the colonies with "conditional [English] servants and blacks," Charles II coordinated colonial policy with the African trade by promoting RAC factors, or salesmen, to powerful colonial posts, such as Thomas Modyford to the governorship of Jamaica in 1664.²¹

One motive for Charles II's marriage in 1662 to Catherine de Braganza, princess of Portugal, was her dowry, which included the legal right to Portugal's castles on the African coast that the Dutch "illegally" occupied, according to a secret part of Charles II's marriage treaty. Between 1661 and 1675, Charles and James allied with the Portuguese to fight Dutch control of over a dozen castles off the African coast. Once conquered, such castles provided a base of operations for the RAC trade in Africans. As admiral of the fleet as well as director of the Royal African Company, James, Duke of York—with an open license from his brother to attack where he wished—directed the war toward Africa. The new castles created alliances with African princes, who sold their enemies to the English as servants, prevented other European ships from landing, provided prisons for human cargo, and served as sites of exchange. James governed the company for twenty-eight years, during which time it sent more than 100,000 souls from Africa to the New World. After 1685, he was also king of England.²²

²⁰ For official estimates of crown revenues from tobacco in 1636, see "Notes, by Sec. Windebank, of the proceedings of a Committee for Trade," June 11, 1636, in vol. 326, "June 10–19, 1636," in *Calendar of State Papers, Domestic: Charles I*, vol. 9: 1635–1636, ed. John Bruce (London, 1866), 551, item 6; and George Louis Beer, *The Origins of the British Colonial System, 1578–1660* (1908; repr., Gloucester, Mass., 1959), 171.

Tobacco and sugar taxes together made up at most a third of total crown revenue. For 1687, see TNA, Treasury Records, T 48/7, 1–3, which specifies that the amount recorded is the "gross" revenue from the 3 pennies per pound new impost on tobacco. An additional 2 pennies per pound was collected under the old customs granted to Charles II. Thus the amount stated, £435,389, is just three-fifths of the total collected for tobacco. Note, however, that this amount is gross, not net, which I use because tallies (also called debentures) for crown debt (annuities), many salaries, and shipbuilding and other costs were charged to the account before net proceeds were deposited into the treasury. Total net crown revenue was just over 2 million pounds that year. For net revenue only, see C. D. Chandaman, *The English Public Revenue, 1660–1688* (Oxford, 1975), 361. Pay for customs collectors and enforcement was subtracted from the gross amounts, so is not listed as part of the budget. Stephen Saunders Webb notes that members of Parliament realized in 1685 that these new taxes would bring in so much revenue that James II could support a new army. Webb, *Lord Churchill's Coup: The Anglo-American Empire and the Glorious Revolution Reconsidered* (Syracuse, N.Y., 1998), 104.

²¹ George Frederick Zook, *The Company of Royal Adventurers Trading into Africa* (1919; repr., New York, 1969), chap. 4. For a letter to Barbados regarding Charles II's requests, see "Minutes of the Council for Foreign Plantations," February 11, 1661, in *Calendar of State Papers, Colonial Series: America and West Indies*, vol. 5: 1661–1668, ed. W. Noel Sainsbury (London, 1880), 6–7, item 24. Among other things, the letter directed the governor and the Council of Barbados "[t]o give a conjectural account of the number of inhabitants and their increase or decrease for the last seven years; the number of freeholders, conditional servants, and blacks; also the number necessary by way of yearly supply to the use of the island" (7). See also, e.g., "Petition of Sir William Berkeley, His Majesty's Governor of Virginia, to Lords of the Council for Foreign Plantations," July ?, 1662, TNA, CO 1/16, no. 78.

²² The comments on the secret part of the marriage treaty are based upon my research with help from Mitch Fraas in 2012. See especially "Treaty between Great Britain and Portugal, of Marriage be-

Likewise, only with the restoration of hereditary monarchy in 1660 did colonies pass laws enshrining hereditary slavery: Barbados in 1661, Virginia in 1662, Jamaica and Maryland in 1664. These laws were a response to Charles II's explicit requests to his governors in 1661 to support the RAC and to codify their laws. William Berkeley of Virginia, like other governors, had to obtain the approval of Charles II and his Council of Foreign Plantations for all laws.²³

BEFORE 1660, COLONIAL LAWS TREATED "SERVANTS"—as both whites and blacks were usually called—similarly, if badly. English subjects became servants when they "indentured" themselves to a ship captain to pay the costs of passage. Their indentures, or contracts, allowed them to be bought and sold. Others were kidnapped and sold without contracts, as were most Africans sold to English colonists by privateers who raided Portuguese and Spanish settlements. African servants, like English, had jury trials, could witness (if they could swear an oath), could be manumitted, and could own land and servants themselves when freed. But in some colonies, courts began to treat Africans as more permanent, and even hereditary, servants, with arguments that those who were not Christian and not subjects had fewer rights, with little legal certainty. Slavery was not an abstraction, but a gradual process of policymaking that stripped particular people of the rights of subjects and fostered a hierarchical social order.²⁴

tween His Majesty Charles the Second and the Princess Catherine, Infanta, Signed at Whitehall, 23rd June, 1661 (Translation)," in *British and Foreign State Papers*, vol. 1, pt. 1: 1812–1814 (London, 1841), 494–501, here clause XIV (498). Charles II gave his brother a commission at the beginning of the war with the Dutch in 1664 that allowed him to attack wherever he liked; James chose the Dutch-occupied forts off the coast of Africa. See Bodleian Library, Oxford, MS Rawlinson A55, 19, "General Instructions to his Royall Highnesse going to sea March 22nd 1664/5": "I give unto you the sole & entire Command of that our fleet, assuring ourselfe of all happy successe under the blessing of Almighty God & from your Wisdome valour: & conduct & reposing entire confidence in your affection & duty, . . . [to act] in such manner as to the best of your Judgement shall seeme fit, taking advice therein of such a Councill of War as you yourselfe shall thinke fit to call." More generally, see Zook, *The Company of Royal Adventurers Trading into Africa*; K. G. Davies, *The Royal African Company* (London, 1957); and the Trans-Atlantic Slave Trade Database, <http://www.slavevoyages.org/>.

²³ Christopher Tomlins agrees. He cites a manuscript version of this article in *Freedom Bound*, 420. See also Edward B. Rugemer, "The Development of Mastery and Race in the Comprehensive Slave Codes of the Greater Caribbean during the Seventeenth Century," *William and Mary Quarterly* 70, no. 3 (2013): 429–458, who wrote in response to my findings after reading an earlier version of this article at a Yale symposium in 2009. The Company of Royal Adventurers Trading into Africa was formally renamed to its earlier common appellation, the Royal African Company, in 1672.

²⁴ While Africans were kept in servitude in English colonies before 1660, no formal laws stabilized their situation or governed their status in the manifold ways that would come to characterize the rigidity of slavery in the Anglo-American world by the middle of the next century. Two of the most important examples of colonies that kept Africans in servitude in large numbers before 1660 are Providence Island and Barbados. Although Providence Island's English sponsors were Puritans, few settlers supported those principles. See Karen Ordahl Kupperman, *Providence Island, 1630–1641: The Other Puritan Colony* (Cambridge, 1993). In Barbados, the forcible employment of African labor was becoming widespread by the mid-1650s, and there is evidence that Barbadians considered their status hereditary as well. Still, the legal structure of slavery was weak until the Restoration in 1660. One could argue that after 1649 Barbados was a royalist stronghold due to the council's confiscation of the land of all those who supported the Commonwealth, and that Barbadian elites' allegiance to principles of hierarchy influenced their treatment of African laborers during the 1650s. In the 1650s, Barbados was controlled by royalists, with most

Only after the 1660s did elements of slavery emerge, and only after 1705 did full slavery emerge in Virginia, if one measures slavery by the legal structure that made it both a powerful and a viable institution.

Virginia’s post-1660 laws about bond slavery followed royal ideals that emphasized heredity.²⁵ The 1662 law creating a holiday celebrating Charles II’s restoration “to the throne of his royall ancestors” was followed by the law making bond slavery hereditary: “All children borne in this country shalbe held bond or free only according to the condition of the mother.”²⁶ Its language mimicked the thirteenth-century feudal law of Henri de Bracton: “He is born a bondsman who is procreated of an unmarried neif [female villein] though of a free father, for he follows the condition of his mother.” In mid-seventeenth-century England, royalists idealized Bracton’s “feudalism” as the source of ancient legal principles and reprinted his legal treatise.²⁷ Though influenced by Spanish and Portuguese practices, which like Bracton had roots in Roman law, the Restoration’s celebration of divine and hereditary right shaped Virginia law.²⁸

Charles II not only pledged his body and his sword to slavery; he pledged the coin of the realm. His new golden guinea displayed the elephant and castle, the symbols of

parliamentary supporters expelled (and their land confiscated) in 1650. While Barbadians swore temporary allegiance to Parliament in 1651, it did not last (in contrast to Virginia). See Gary Puckrein, *Little England: Plantation Society and Anglo-Barbadian Politics, 1627–1700* (New York, 1984), 113, which describes the confiscations and banishments.

On blacks in Virginia before 1660, see, e.g., A. Leon Higginbotham Jr., *In the Matter of Color: Race and the American Legal Process—The Colonial Period* (New York, 1978), especially chap. 2, “Virginia: The Leader”; Breen and Innes, “Myne Owne Ground”; Tomlins, *Freedom Bound*; Newman, *A New World of Labor*.

²⁵ William Waller Hening, ed., *Statutes at Large: Being a Collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*, 13 vols. (New York, 1823), 2: 24–25 (March 1661), 2: 49 (March 1662), 2: 86 (March 1662).

²⁶ *Ibid.*, quotes from 2: 49, 2: 170.

²⁷ *Ibid.*, 2: 163–171 or 177–179 (on slavery). Henricus de Bracton [Henry of Bratton], *De legibus et consuetudinibus Angliae* [*On the Laws and Customs of England*] (1268), trans. Samuel E. Thorne, 2 vols. (Cambridge, Mass., 1968), 2: 30, accessible online at <http://bracton.law.harvard.edu/>. Latin editions appeared in London in 1533 and 1569, followed by two editions in 1640 at the beginning of the struggle over power that became England’s Civil War. For Justinian, see Thomas Collett Sandars, ed. and trans., *The Institutes of Justinian*, 7th ed. (London, 1910), 15. On the discovery of medieval feudalism in the seventeenth century (and how that fits into broader controversies over the shape of power in England), see J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge, 1957). My interpretation differs somewhat from that of Kathleen Brown in *Good Wives, Nasty Wenches, and Anxious Patriarchs*, in that I find a common-law precedent for something she saw as *de novo*. Early modern common-law texts on the hereditary status of villeins sometimes differed on whether the mother or the father passed on the status. In Coke, for example, descent was through the father. *Coke upon Littleton*, vol. 1 of *Coke’s Institutes of the Laws of England*, 11th ed. (London, 1719), 123a. Warren Billings also noted common-law precedents for this first slave law in Virginia in Henry Swinburne’s *A Treatise of Testaments and Last Wills* (London, 1677), 52; see Billings, *Sir William Berkeley and the Forging of Colonial Virginia* (Baton Rouge, La., 2004), 177, as well as his “The Law of Servants and Slaves in Seventeenth-Century Virginia,” *Virginia Magazine of History and Biography* 99, no. 1 (1991): 45–62. However in the 1590 edition, pp. 44–45, Swinburne’s statement of the common law is more similar to Coke’s (the child follows the condition of the father), even though Swinburne cites Bracton. The similarity in language between Bracton and the 1662 Virginia law indicates that someone who was learned in Latin and the common law crafted it from Bracton.

²⁸ The Spanish and Portuguese civil laws followed Roman practice to trace status to the mother. Bracton was influenced by the thirteenth-century revival of interest in Roman law.



FIGURE 1: Three coins connecting the king to the slave trade. Top: Charles II 1678 guinea (circulated and worn). First minted in 1663, the guinea got its name from the Guinea Coast, the slave-trading center of West Africa and the headquarters of the Royal African Company, which also exported gold. While few of Charles II's subjects ever saw him in person, almost everyone saw his face on the coin of the realm. Because it bore the king's own image, to forge or clip such a piece made a person guilty of the high crime of treason against the king. Note the inscription "Carolus II: Dei Gratia," which means "Charles II by the Grace of God." The inscription, the face, and the symbols linked the slave trade to Charles II's own authority from God. Reproduced by permission of SarmatijaGBcoins. Bottom left: James II 1686 gold half-guinea (circulated and worn; smoothed from extensive handling). James remained governor of the Royal African Company even after he became king of England in 1685. Reproduced by permission of SarmatijaGBcoins. Bottom right: The elephant and castle of the slave trade also appeared on silver coins, such as this 1681 silver half-crown (worth 2 shillings sixpence, or 1/8 of a pound or about 1/10 of a guinea). A half-crown would have been in constant circulation, viewed by many. From Greg Reynolds, "Rare 1681 Silver Halfcrown of King Charles II, with Mark of the Royal African Company," *Coin-Week*, September 3, 2014, <http://www.coinweek.com/featured-news/the-1681-royal-african-company-halfcrown-of-king-charles-ii/>. Reproduced by permission of Scott Purvis.

the Royal African Company, under his own profile. Minted with gold from Guinea in Africa, such coins were the only way many subjects would see his face and connected the phrase "Dei Gratia," "by the grace of God," not only to his crown but to the slave trade.²⁹ (See Figure 1.) Likewise, the seal of the Royal African Company read "By Royal Patronage Trade Flourishes." It contained James's ducal crest, a crown, and

²⁹ Indeed, Charles II's marriage to Catherine de Braganza of Portugal was no doubt influenced by her riches and her connections to the slave trade. Though the Portuguese had recently (very recently, even during the marriage negotiations) lost some of the major forts, including Elmina, to the Dutch, the Portuguese had numerous connections to many forts, which Charles II may have hoped to capitalize on from the beginning of the marriage negotiations. Even in 1660, as the ships were crossing with Catherine, she was described in pamphlet verse as "with store of Indian treasure" that would enable pensions to be paid to the former cavalier soldiers. *Here Is Some Comfort for Poor Cavaleeres; or, The Duke of Yorks Speech to the Parliament of England, Concerning His Fathers Old Souldiers* (London, [1660]), 1 sheet. For her impact on English fashions, especially in terms of the taste for goods (not clothes), including tea and spices, see Gertrude Z. Thomas, *Richer than Spices: How a Royal Bride's Dowry Introduced Cane, Lacer, Cottons, Tea, and Porcelain to England* (New York, 1965).



FIGURE 2: Top portion of a 1672 proclamation offering to supply colonists with “negroes” at set prices, from H.R.H. James, Duke of York, and the Royal African Company (which had a monopoly on the slave trade) “to all His Majesties subjects, and especially to those Inhabiting the Plantations in AMERICA.” The seal of the Royal African Company (in Latin) reads “By Royal Patronage Trade Flourishes, by Trade the Realm.” Note the prominence of the name of the king’s brother, later James II, as well as how his own ducal crest is incorporated into the center of the seal, along with the anchor of the navy (James was also admiral of the fleet). The National Archives, Kew, UK, Colonial State Papers, CO 1/29, no. 60. Reproduced by permission.

the admiralty anchor, supported by two Africans and the elephant and castle.³⁰ (See Figure 2.)

The Stuarts not only legitimated the formal enslavement of Africans, they supported what Shaftesbury and Locke called political slavery—by suppressing representative government and appointing local oligarchs to rule. In 1674, when James became governor of New York, he allowed no legislature. In Virginia, Charles II’s navy suppressed Bacon’s Rebellion against Governor Berkeley in 1677 with more than a thousand troops, enforcing imperial control at the point of a sword. Afterward, Charles II limited the authority of the elected burgesses in Virginia. He removed their judicial power, for example, making Virginia’s councilors, who held their seats at the discretion of the royal governor, the highest court as well as the most powerful legislative body, with the royal governor at the epicenter of power.³¹ In 1684, Charles II and

³⁰ Charles II directed that his face be on the reverse of the Royal African Company seal. See especially “Warrant to prepare a bill for the King’s signature, containing a grant to the Royal African Company,” January 10, 1663, in Sainsbury, *America and West Indies*, 5: 120–122, item 408.

³¹ “Henry Hartwell and others to William Popple,” October 20, 1697, in *Calendar of State Papers, Colonial Series: America and West Indies*, vol. 15: 1696–1697, ed. J. W. Fortescue (London, 1904), 641–666, item 1,396. In testimony to the Board of Trade about the condition of Virginia, Henry Hartwell, James Blair, and Edward Chilton pointed out that “[t]he General Assembly was a great restraint upon both Governor and Council until 1680, up to which time an appeal lay from the General Court (that is, the Governor and Council) to the General Assembly. Moreover there was always a joint Committee of private causes, wherein the Burgesses were three to one of the Council, to hear appeals from the General Court” (650). Charles II and his Privy Council removed this ability upon Culpeper’s appeal. Under James II, Governor Effingham began to choose the clerk to the burgesses, someone who could serve him by spying on their deliberations and who could shape what was recorded to be sent back to England as Virginia’s official legislative proceedings as well as a patronage reward that gave him more allies. As Hartwell reported to the Board of Trade a decade later, the clerkship was “a very profitable place by the Governor’s gift” (650). By the 1690s, thus, the burgesses could not directly petition the king and the Board of Trade.

James II suspended charters, abolished legislatures, and imposed royal governors and appointed councils in five northern colonies stretching from Massachusetts to New York when they created the Dominion of New England, an experiment in absolutist government.³² James II planned to turn the southern and Caribbean colonies into a parallel Southern Dominion under the control of a royal governor and appointed council.³³

SCHOLARSHIP ON LOCKE AND SLAVERY has been shaped by two pieces of historical evidence that align him with the Stuarts: he drafted the plan of government for Carolina, the Fundamental Constitutions, in 1669, which supported both slavery and aristocracy; and he purchased stock in the Royal African Company in 1672. But Locke's support for slavery was weaker than his critics have implied. First, he wrote Carolina's constitution as a lawyer writes a will.³⁴ He was paid to revise it and to make copies, and key principles of the document preceded his involvement. They were foreshadowed in the king's charter and earlier proclamations from the proprietors that granted colonists, for example, headrights of fifty acres of land per "slave." Locke drafted the final version of Carolina's constitution for the eight proprietors who signed it. Six of the eight—all except Shaftesbury and Monck—had royalist principles, having fought for Charles I in England's civil wars. As "the lords and proprietors of the province" of Carolina, they desired "that the government of this province may be made most agreeable to the monarchy under which we live." They sought to "avoid erecting a numerous democracy."³⁵

³² Among many sources, see Webb, *Lord Churchill's Coup*, especially 101–104.

³³ Viola Florence Barnes, *The Dominion of New England: A Study in British Colonial Policy* (New Haven, Conn., 1923), 35–36. Swingen, *Competing Visions of Empire*, 124–125, illuminates James II's plans for a similar dominion in the West Indies.

³⁴ The first published attribution to Locke of the authorship of the Fundamental Constitutions was in "The Fundamental Constitutions of Carolina," in Pierre des Maizeaux, ed., *A Collection of Several Pieces of Mr. John Locke* (London, 1720), 1–53. Des Maizeaux attributes the work solely to Locke, claiming that the proprietors somehow wanted Lord Ashley to draw up the laws, as he was the wisest of them, and he in turn chose Locke. The Fundamental Constitutions of Carolina of 1669, completed while he was secretary to Shaftesbury, were in fact written for eight men, the original Lords Proprietors of Carolina. The proprietors had received Carolina from a grateful Charles II for their help in restoring him to the throne of England in 1660. Most were outspoken royalists (like the Berkeley brothers), while George Monck, first Earl of Albemarle, went back and forth in his support. Shaftesbury, while radical before—and after, when he was the main agitator in the Exclusion Crisis of 1679–1681—was in 1669 serving Charles II as his lord chancellor. On Locke's increasing radicalism, see Richard Ashcraft's discussion in *Revolutionary Politics and Locke's "Two Treatises of Government"* (Princeton, N.J., 1986).

The best discussion of how the Fundamental Constitutions should shape how we think about Locke's thought on slavery is James Farr, "'So Vile and Miserable an Estate': The Problem of Slavery in Locke's Political Thought," *Political Theory* 14, no. 2 (1986): 263–289, as well as his more recent article "Locke, Natural Law, and New World Slavery," *Political Theory* 36, no. 4 (2008): 495–522, which elaborates the same conclusions and connects them to how antebellum southerners read Locke. Farr makes a strong argument that Locke did not try to apply his notions of "just war" to Indian enslavement in Carolina (e.g., 508). Alan Gallay makes much the same point about Locke's involvement in policymaking in South Carolina in the 1670s in *The Indian Slave Trade*. See also Armitage, "John Locke, Carolina, and the *Two Treatises of Government*"; Glausser, "Three Approaches to Locke and the Slave Trade"; James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge, 1993); Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford, 1996).

³⁵ "The Fundamental Constitutions of Carolina" (1669), in John Locke, *Political Writings*, ed. David Wootton (Indianapolis, 2003), 210–232, here 211. In fact, des Maizeaux is wrong. Key elements of Carolina's Fundamental Constitutions preceded Locke's involvement. See, for example, Charles II's charter

While Locke continued to be involved with Carolina, the political chasm that emerged between Shaftesbury and the remaining proprietors undermined his influence. By 1682 Monck was dead, and Charles II had put Shaftesbury—whose one-eighth share of Carolina Locke was representing—on trial for treason.³⁶

Likewise, Locke's involvement in the RAC was of limited duration. He served as secretary to the Council of Trade and Foreign Plantations 1672–1674, a subcommittee of Charles II's Privy Council with oversight over colonial affairs, over which Shaftesbury presided. In lieu of direct pay—Charles II was so broke in 1672 that he froze crown payments—both Locke and Shaftesbury were paid in Royal African Company stock.³⁷ Both cooperated with Charles II in part to push for reforms in colonial gov-

to the proprietors in 1663, which allowed them to grant titles of nobility so long as they were not already used in England, and named the eight proprietors "the true and absolute Lords and Proprietors of the said Province." "The first charter granted by King Chas. II," Westminster, March 24, 1663, in Sainsbury, *America and West Indies*, 5: 125–126, item 427, along with letters to John Yeamans, the first governor appointed by the proprietors in 1665, who had owned a plantation in Barbados and had orders to replicate its policies; e.g., "Commission from the Lords Proprietors of Carolina to Sir Jno. Yeamans, Governor of the County of Clarendon, &c., and his Council," Jan ?, 1665, *ibid.*, 270, item 913. See also the proprietors' call for settlers, which outlined the form of government and headright policies including explicitly granting headrights to masters of one hundred acres for each "man servant" and "for every woman servant and slave 50 acres," principles later laid out more fully in the Fundamental Constitutions: "New Plantation at Cape Florida, Carolina," late 1666 or early 1667 (it made these promises of land only to those who arrived there before June 1667, so was made substantially in advance), TNA, Domestic Records of the Public Record Office, PRO 30/24/48, no. 83, also in *Calendar of State Papers, Colonial Series: America and West Indies*, vol. 9: 1675–1676 and *Addenda 1574–1674*, ed. W. Noel Sainsbury (London, 1893), 144, item 377. Locke met Shaftesbury in late 1666 when he treated him for an illness, but became his personal physician and secretary only in the summer of 1667, well after this proclamation. On Locke's pay, see "Two Ledgers containing John Locke's accounts, 1671–1704," Bodleian Library, MS. Locke c. 1: Locke's ledger, 1671–1702, fols. 16–17, which are solely the amounts he was reimbursed for writing, copying onto vellum, posting, and his own travel, all related to the Carolina Constitutions; they total more than £20.

³⁶ Armitage, "John Locke, Carolina, and the *Two Treatises of Government*," argues that Locke's continuing involvement with the Fundamental Constitutions and his failure to excise the passages about slavery during revisions in 1682 show that he strongly supported real slavery. However, note that the other identified reviser, Peter Colleton, son of John Colleton, a strong royalist and the original proprietor, to whom Charles II had granted a baronetcy as well, had "corresponded regularly and intimately [with Locke] until Shaftesbury's fall from grace with Charles II in 1674" (614), which is when the political chasm began to emerge. By 1682, as Charles II repeatedly leveled criminal charges against Shaftesbury, that chasm became a canyon. On Shaftesbury's arrest and prosecution, see, e.g., K. H. D. Haley, *The First Earl of Shaftesbury* (Oxford, 1958), chap. 28, "Under Threat of Death."

To see Colleton and Locke as working amicably in 1682 ignores political divisions so fierce that they precipitated a revolution within the decade. Indeed, Locke's comments indicate that he, on Shaftesbury's behalf, was responding to the suggestions of Colleton and an unknown third writer with compromises and concessions such as "Agreed that the Proprietors Deputys are not to be turned out." Armitage, "John Locke, Carolina, and the *Two Treatises of Government*," 614–615. Since these comments were incorporated into the revised constitution, they were already the result of compromise. Other suggestions, such as the support of regular elections and limiting prorogation of the elected house, also emerged from such compromises. But Shaftesbury's hand was weak at this point, not just literally (he died within the year), but politically and economically as well: he was imprisoned and charged with treason by the king, and he had mortgaged his share of Carolina. While I agree with Armitage that Locke's involvement in the Fundamental Constitutions influenced the *Two Treatises*, I think Locke's *Two Treatises* emerged not in harmony with but in reaction to the Fundamental Constitutions.

³⁷ Shaftesbury also owned half of a sugar plantation of 205 acres in Barbados between 1646 and 1655, which had twenty-one white servants and nine black servants when he sold his share in 1655. Haley, *The First Earl of Shaftesbury*, 64, 230–231. Locke's Royal African Company shares appear in the published incorporation act in 1673, but they were actually transferred from one John Portman out of the former Company of Royal Adventurers. Locke promised £400. See "Minute Book of the Generall Court of the Royal African Company of England" [hereafter RAC Minute Book], TNA, T 70/100, 150, and

ernments such as Barbados.³⁸ But in June 1675, Locke and Shaftesbury sold their shares.³⁹

LOCKE AND SHAFTESBURY BROKE WITH the Stuarts over their absolutist vision. In 1675, they co-authored a tract condemning Charles II's increasing absolutism as the enslavement of all subjects, a tract that was burned as "seditious" by the common hangman. In July, Locke fled to France for his "health"; within the year, Shaftesbury was arrested and imprisoned in the Tower.⁴⁰ Locke came back to England in 1679 during the Exclusion Crisis (when the Whig Parliament, led by Shaftesbury, tried to exclude James II from the throne), but he fled again to Holland with Shaftesbury in 1683, where he stayed, despite Charles II's efforts to have him extradited on charges of sedition. In Holland, Locke and other English political refugees helped to plan the Glorious Revolution. His thinking about absolute monarchy and slavery culminated in his *Two Treatises of Government*, which challenged both. After its publication in 1689, it became the rationale for the Glorious Revolution.

The revolution was necessary, Locke wrote, because the principles of "an Advocate for Slavery" had become "the Currant Divinity of the Times."⁴¹ By implication—even in 1689 he dared not name the former king—James II had advocated principles that enshrined hereditary hierarchy and absolute obedience for everyone. James II's

Bodleian Library, MS. Locke c. 1, especially fols. 15, 78–79. Both date the initial transfer to February 6, 1671/1672. Locke paid in installments out of money due him from the Treasury during the stop on the Exchequer during 1673 and into early 1674; see, e.g., fols. 50–51. Note that through 1675, all the meetings of the Royal African Company were at the Royal Palace at Whitehall, in the same room where the Council of Foreign Plantations met, showing that the Royal African Company was an arm of the king.

³⁸ See, e.g., "Commissions, Instructions, Board of Trade Correspondence, etc. [Barbados]," December 19, 1673, TNA, CO 29/1, 153, "John Locke" written in margin, acting in his capacity as secretary to the Council of Foreign Plantations, over which Shaftesbury (also on Charles II's Privy Council at that point) was then presiding, drafting a revision of the instructions to the Barbados governor that limited his ability to dismiss councilors at pleasure, required the assent of an assembly to all laws, and oversaw other changes. See also Haley, *The First Earl of Shaftesbury*, 185.

³⁹ Locke sold those shares on June 18, 1675. "MG paid me for my stock and all went," according to his account book in the Bodleian Library, MS. Locke c. 1, fols. 15, 22–23, and the records of the Royal African Company at the National Archives, RAC Minute Book, 8, for Shaftesbury's subscription of £1200. Shaftesbury also was assistant governor or sub-governor of the RAC between 1665 and January 1674, when he ceased attending all meetings. James, Duke of York, attended many throughout his tenure as its governor between 1663 and 1688. Shaftesbury had more trouble divesting himself of his RAC shares than Locke; after repeated attempts that began in June 1675, he was able to divest completely only in February 1677. See RAC Minute Book, 120–131. June 1675 marks both the emergence of the Whig Party, which Shaftesbury and Locke led, and also the shift of the Royal African Company toward greater trade in people. See www.slavevoyages.org. The RAC brought 27,084 slaves into British colonies between 1675 and 1680, and even more between 1680 and 1684 (almost all to the Caribbean). On the earlier trade in many other African goods, see Davies, *The Royal African Company*.

⁴⁰ See *A Letter from a Person of Quality to His Friend in the Country* (London, 1675), by Shaftesbury and Locke but published anonymously. See also Locke's *Correspondence* for 1675–1679, e.g., letters 306, 307, 309, 311, and 312 in de Beer, *The Correspondence of John Locke*, 1: 433–448. In *A Letter from a Person of Quality*, the two men published the proceedings of the House of Lords that criticized a law that sought oaths of absolute obedience to the king even by members of Parliament. On Shaftesbury's imprisonment in the tower and his denied appeal for *habeas corpus*, see Haley, *The First Earl of Shaftesbury*, especially 399–440.

⁴¹ *Two Treatises of Government*, ed. Laslett, 155, 156, preface of original edition. All subsequent citations will be to this edition, to book (first or second treatise) and paragraph, since that is standard notation in Locke scholarship and one can locate passages regardless of edition.

efforts to strip his subjects of rights grew from his absolutism, which made all subjects into slaves; such slavery was part of a continuum that ended in slavery in the Americas. Locke's *First Treatise* opens with the words "Slavery is so vile and miserable an estate of man."

Despite such words, most scholars, including C. B. Macpherson, argue that Locke supported real slavery in theory and practice. Orlando Patterson epitomizes the reigning interpretation: "Few writers have more bluntly stated this nearly universal way of rationalizing and symbolically expressing the condition of slavery than Locke: 'having, by his own fault, forfeited his own Life, by some Act that deserves Death; he, to whom he has forfeited it, may (when he has him in his Power) delay to take it, and make use of him to his own Service, and he does him no injury by it.'"⁴²

But the phrase "he does him no injury by it" meant that if a man started an unjust war, he committed a crime so great that his life was forfeit. Slavery could do "no injury" greater than death, because in lieu of execution, the criminal could agree to serve another as his slave in reparation for damage he had caused. In this "just war" theory, Locke followed natural law thinkers such as Hugo Grotius and English legal tradition back to Bracton in the thirteenth century.⁴³ Slavery was justifiable only as punishment for such a crime.

For Locke, however, such slavery was temporary. The righteous conqueror who had repelled an unjust invasion could not take the invader's property: that belonged to his family. The conqueror also had no right to the life or labor of the invader's children: slavery, like subjectship, was not hereditary. "The absolute power of the conqueror reaches no farther than the persons of the men that were subdued by him, and dies with them: and should he govern them as slaves, subjected to his absolute arbitrary power, he has no such right of dominion over their children . . . He has no lawfull authority, whilst force, and not choice, compels them to submission."⁴⁴

Locke particularly opposed the Stuarts' reliance on the common-law principle of dominion: that kings and lords inherited not only land but also "rule and power" over those who lived on it, and that the right of dominion was inheritable, transmitted from father to son, from time immemorial and forever. Not only was such a principle a myth, Locke contended, but it made a nation into slaves. Under James II, who claimed he owned all the land and thereby all the power to govern, "the Nation . . . was on the very brink of Slavery and Ruine."⁴⁵ Conquest does not create a nation of subjects who must slavishly obey their conqueror and his eldest son *ad infinitum*. Monarchs and their descendants do not have a right to rule on the basis of conces-

⁴² Orlando Patterson, *Freedom in the Making of Western Culture* (New York, 1991), 10.

⁴³ Bracton, *On the Laws and Customs of England*, 2: 30: "Free men are made bond by capture." On this issue in natural law theory, see, e.g., Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1979), 3, 56, 75.

⁴⁴ See Locke, "On Conquest," in *Two Treatises of Government*, 2: §§183–184, 189. For the context of Patterson's quote, see the short section entitled "On Slavery," 2: §§22 and 23. The first words of *Two Treatises*, 1: §1, are an indictment of slavery: "Slavery is so vile and miserable an Estate of Man, and so directly opposite to the generous Temper and Courage of our Nation; that 'tis hardly to be conceived, that an Englishman, much less a Gentleman, should plead for't. And truly, I should have taken Sr. Rot: Filmer's Patriarcha as any other Treatise, which would perswade all Men, that they are Slaves, and out to be so, for [an] exercise of wit." This launches his attack on Sir Robert Filmer's (aka James II's) political opinions. See also Tuck, *Natural Rights Theories*.

⁴⁵ *Two Treatises of Government*, quotes from 1: §§91–92 and p. 137, preface of original edition.

sions granted by those they conquered under duress. Such coerced consent does not bind them, and most of all, it does not bind their descendants.

Locke disputed the claims of masters in the West Indies to rule over servants/slaves on the same grounds on which he critiqued James II's right to rule: neither masters nor kings could claim perpetual and permanent hereditary power from Adam. It was a myth.

Those who were rich in the *Patriarchs Days*, as in the *West-Indies* now, bought Men and Maid Servants, and by their increase as well as purchasing of new, came to have large and numerous Families, . . . can it be thought the Power they had over them was an Inheritance descended from *Adam*, when 'twas the Purchase of their Money? A Mans Riding in an expedition against an Enemy, his Horse bought in a Fair, would be as good a Proof that the owner *enjoyed the Lordship which Adam by command had over the whole World by Right descending to him*, . . . since the Title to the Power, the master had in both Cases, whether over Slaves or Horses, was only from his purchase; and the getting a Dominion over any thing by Bargain and Money, is a new way of proving one had it by Descent and Inheritance.⁴⁶

Claims to power over slaves in the West Indies were therefore as flimsy as the Stuarts' claims of lordship or dominion, both based upon fraud. Neither monarchy nor lordship over servants was hereditary back to Adam. "Men and maid servants," which he here also called "slaves," were bought—not inherited. Such purchase could not legitimate the dominion of one man over another.

Locke was challenging not only Caribbean masters' claims but also the high court in England that reified such mythology, legitimating their claims. Stuart court decisions in England and the colonies confirmed masters' ownership of "negro servants"—invoking feudal law and its language of perpetual and hereditary status as well as introducing legal innovations that turned people into simple property. A 1677 high court of King's Bench case in which Charles II was indirectly involved, *Butts v. Penny*, cited feudal law to argue that "negroes" were hereditary villeins, forever owned and attached to the land, while also asserting for the first time that powerful legal mechanisms that protected the ownership of things could be used to protect the ownership of people. This passage from Locke directly challenges both the court's use of feudal law and the myth that people are things.⁴⁷

Locke then challenged the intellectual link in feudal law between hereditary property ownership and hereditary power. Landownership granted no sovereignty: "How will it appear that propriety in land gives a man power over the life of another?"⁴⁸ Even though land could be inherited, all children had an equal claim. Moreover,

⁴⁶ *Ibid.*, 1: §129.

⁴⁷ See especially Macpherson, *The Political Theory of Possessive Individualism*. Edmund Morgan's interpretation in *American Slavery, American Freedom* that slavery and hierarchy were supported by Locke's thought was shaped by that perspective. I explore this case in depth in my book manuscript "Inheritable Blood": Slavery and Sovereignty in Early America and the British Empire." For contemporary reports of the case, see 2. Lev. 201, 83 English Reports 518, and 3 Keble 785, 84 English Reports 1011. Locke might not have heard immediately about *Butts v. Penny*, but he was certainly following what was going on with the Kings Bench during this period, even in France. See, for example, de Beer, *The Correspondence of John Locke*, 1: 446–447, letter 312, wherein his assistant Thomas Stringer reported that the former chief justice, Mathew Hale, had stepped down, and the new one, Richard Rainsford, was "sworne chief justice in his roome" in 1676. The following year, Rainsford presided over *Butts v. Penny*.

⁴⁸ *Two Treatises of Government*, 1: §§41 and 87, 95, 123.

one's title was secure only when there was "enough and as good left." The main foundation for property derived from mixing one's labor with the land: "As much Land as a Man Tills, Plants, Improves, Cultivates and can use the Product of, so much is his Property." These arguments had profoundly destabilizing implications. They implied that great estates should be divided. While colonists might then use such arguments to justify taking Native Indian land in the Americas, such arguments could also justify the reverse if Indians were starving and colonial estates were uncultivated. Such arguments preceded Locke, and could justify the rights of squatters such as those who built houses in the king's forests during the English Civil War. Locke's concept of property denied the Stuarts' principle of dominion over others.⁴⁹ Instead, the most important principle of property was one's ownership of one's own life and liberty: "man" was "proprietor of his own person."⁵⁰

John Dunn and James Farr agree that Locke opposed slavery, but they condemn his inaction. Dunn described Locke's failure to act against slavery as "immoral evasion." Farr went further: on the question of slavery, he wrote, "Locke remained inert, frozen, speechless."⁵¹ But he was not. After the Glorious Revolution that dethroned James II, Locke and others took steps to challenge Stuart slave policies.

At first, the new king and queen, William and Mary, focused on domestic stability and war with France. They retained many of James II's imperial authorities, from Ed-

⁴⁹ *Ibid.*, 2: chap. 5, "Of Property." See especially 2: §33: "Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough and as good left, and more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his enclosure for himself. For he that leaves as much as another can make use of, does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst. And the case of land and water, where there is enough of both, is perfectly the same." See also see 2: §32. He emphasizes repeatedly that labor gives property rights: "'tis labour indeed that puts the difference of value on everything" (2: §40). Note how Locke specifies that in America, particularly before trade was extensive, people would produce only so much as benefited their family—though he acknowledges that with the invention of money, people could gain more property than they could use (leading to "unequal Possession of the earth" [2: §50]). He ends the chapter with this passage about property (created from labor) in the state of nature: "it was useless as well as dishonest to carve himself too much, or take more than he needed" (par. 51). On predecessors to Locke, see, e.g., Christopher Hill's discussion of the Diggers (a radical group during the English Civil War) in Hill, ed., *Winstanley: 'The Law of Freedom' and Other Writings* (Cambridge, 2006), 24.

⁵⁰ *Two Treatises of Government*, e.g., 2: §§44, 87, 95, 123. "Man being born, as has been proved, with a title to perfect freedom, and an uncontrouled enjoyment of all the rights and privileges of the law of nature, equally with any other man . . . hath by nature a power, not only to preserve his property, that is, his life, liberty and estate" (§87). Note that the first and most important kind of property that one has is in one's own person. It is, moreover, a right that one cannot give away. It is on this point that Dunn, Farr, and Ashcraft most strongly challenge Macpherson. While I agree with Macpherson that Locke condones hierarchy when he allows the landless to work for employers who then receive the credit for and benefit of their labor, Macpherson points only toward the general acceptance of a "market in labor," which would include slavery. This is not good history, or indeed precise philosophy. Locke cares about "consent" to labor. Macpherson contends that consent is irrelevant if the landless have no other way to survive. But consensual labor is different, still, than forced *and owned* labor; it is a huge issue, and one that deserves to be treated with the precision that such differences in legal and economic status have for real people. See Macpherson, *The Political Theory of Possessive Individualism*, e.g., 215.

⁵¹ John Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the "Two Treatises of Government"* (Cambridge, 1969), 175 n. 4; Farr, "'So Vile and Miserable an Estate,'" 281. Farr defends his conclusions in "Locke, Natural Law, and New World Slavery." In order to reconcile Locke's ideas with his supposedly problematic actions, Farr separates Locke's ideas about political and economic slavery and uses evidence of how later defenders of slavery drew on Locke's authorship of the Fundamental Constitutions to justify it. He concludes that Locke was complicit: "he partook of the madness of American slavery" (516).

mund Andros to William Blathwayt and Edward Randolph, although they shifted appointments, restored elected legislatures, and dismantled the Dominion of New England. William inherited James II's former place as governor of the RAC, but he did nothing to support it, which meant that official trade with Africa disappeared virtually overnight.⁵² Although unofficial trade in Africans, outside the monopoly of the RAC, gradually increased, it did not match the levels of the 1680s. England's ownership of RAC castles in Africa was in jeopardy.

Governor Andros and his council in Virginia tried to protect slavery in the face of William and Mary's indifference. After the lower House of Burgesses crafted a bill about runaways, "for suppressing outlying slaves," the unelected council, a legacy of James II's reign, changed the law dramatically, adding clauses to strengthen the slave code. First, they prohibited manumission—which made slavery permanent. Second, they forced longer servitude on illegitimate "Mulattos." While all bastards, orphans, and poor children (even whites) already faced servitude for twenty-one years, the amendment forced "Mulatto" children born to free white mothers to be apprenticed for thirty-one years. These amendments to deny manumission and extend servitude for "Mulattos" came from the appointed council—and were neither returned to the elected burgesses for approval nor sent to William III (sole monarch after Queen Mary's death in 1694) for his. In 1692, Virginians established separate courts for heathens (read: slaves), which denied them trial by jury, copying earlier laws that Charles I had approved in Barbados.⁵³

The two Virginia legislators who did the most to shape the slave code grew up in Restoration England and benefited from Stuart patronage. William Fitzhugh and Edmund Jenings moved to Virginia in 1673 and 1680, respectively, when each was just twenty-one years of age. Jenings arrived with a letter to Governor Culpeper from James, Duke of York, explaining that Jenings should be favored for "his father's sake," as his father, a Member of Parliament, had supported James during the Exclusion Crisis. Culpeper responded with alacrity, appointing Jenings attorney general of Virginia and clerk and sheriff for two counties surrounding the capital.⁵⁴ Jenings and Fitzhugh gained estates by buying people and claiming headrights. In 1689 alone, Jenings received 6,500 acres for importing 131 servants, 23 of them "negroes." By 1700, he had 20,000 acres and Fitzhugh 50,000.⁵⁵ Both thereby accepted the principle that sovereignty over people equated to sovereignty over land.

Fitzhugh based his ideas for Virginia's slave code partly on feudal law, as "out of the old fields must come the new corn."⁵⁶ "The reason must be sought for in old

⁵² On James II's resignation, see Davies, *The Royal African Company*. For the decline in the African trade after 1690, see www.slavevoyages.org.

⁵³ "An Act for suppressing outlying Slaves," in Hening, *Statutes at Large*, 3: 86–88 (1691), and "An Act for the more speedy prosecution of slaves committing Capitall Crimes," *ibid.*, 3: 102–103 (1692). On the council's modification of the bill "for suppressing outlying slaves," see the council records for May 19, 1691, in H. R. McIlwaine, ed., *Legislative Journals of the Council of Colonial Virginia*, 3 vols. (Richmond, Va., 1918–1919), 1: 149.

⁵⁴ Culpeper was from a strong royalist family. Warren Billings, ed., *The Papers of Francis Howard, Baron Howard of Effingham, 1643–1695* (Richmond, Va., 1989), 35, 209, 216, 265. See also Thomas Daniel Knight, "'That Mean Sycophant Colonel Heartless, a Worm Fit Only to Be Trod Upon': Edmund Jenings Examined" (undergraduate honors thesis, Washington and Lee University, 1992).

⁵⁵ Richard Beale Davis, ed., *William Fitzhugh and His Chesapeake World, 1676–1701: The Fitzhugh Letters and Other Documents* (Chapel Hill, N.C., 1963), Introduction and 174–175.

⁵⁶ "Governor Sir Edward Andros to Council of Trade and Plantations," heard March 14, 1698 (sent April 24, 1697), in *Calendar of State Papers, Colonial Series: America and West Indies*, vol. 16: 1697–1698,

Authors . . . In Bracton, Britton, & Fleta . . . the blood of the father & of the mother are one inheritable blood, & both are necessary to the preservation of an heir."⁵⁷ Bracton sanctified not only primogeniture, which dictated who should inherit a kingdom and an estate, but also hereditary villenage with a parallel logic.⁵⁸ When Fitzhugh wrote about "negroes" on his own estate, he emphasized their hereditary status: "& the negroes increase being all young, & a considerable parcel of breeders, will keep that Stock good for ever."⁵⁹

Fitzhugh retained such principles even in the face of revolution: he remained loyal to James II and his lineage even when confronted by mobs who shouted, "there being no King in England, there was no Government here." In 1693 he toasted James II's son as the next rightful king.⁶⁰ After Marylanders reported Fitzhugh to the Privy Council for treason, the Virginia Council reluctantly put him on trial. Fitzhugh did not deny his loyalties; instead he implicated the councilors in his treason, insinuating "that Sr Edmd Andros himselfe ye Govr of Virginia, did Freely & openly talk of the same, amongst his Council, who also did the same without the least Notice taken."⁶¹

WILLIAM III TURNED HIS ATTENTION to the empire in 1696. Several factors shifted his and Parliament's attention: the waning of war; the 1695 elections, which returned a radical Whig majority to the House of Commons; and the Jacobite assassination attempt against William in February. Although the Whig Party held only a slim majority in Parliament, their leaders (the so-called "Whig Junto") pressured William to reform

ed. J. W. Fortescue (London, 1905), 133, item 291. In 1695 Andros appointed three members of the council to assemble the laws: Secretary Wormeley, William Byrd, and Edmund Jenings. See H. R. McIlwaine, ed., *The Executive Journals of the Council of Colonial Virginia*, vols. 1–4 (Richmond, Va., 1925–1930), 1: 332 (March 6, 1694/1695).

⁵⁷ Davis, *William Fitzhugh and His Chesapeake World*, 68–69.

⁵⁸ As Fitzhugh wrote in 1679 to Richard Lee II (a councilor), "precipitate judgment may be given upon any Statute, without understanding the common Law . . . which is the only guide, & which is only to be learn'd out of antient Authors (for out of the old fields must come the new Corn)." Fitzhugh to Major Richard Lee, May 15, 1679 (his first surviving letter), in Davis, *William Fitzhugh and His Chesapeake World*, 65–66. His letters are full of citations to "antient Authors": for two examples of discussions where he cited Coke's *Institutes*, see *ibid.*, 72 and 98. Littleton's text, for example, held that when land was sold or forfeit, the villeins went with the land. They were called "regardant to a manor." *Coke upon Littleton*, 121b, 122a. Another critical player in the law reform was Robert Carter, who also owned Bracton's, Coke's, and Sir Robert Filmer's writings. On Robert Carter's library, see Louis B. Wright, *The First Gentlemen of Virginia: Intellectual Qualities of the Early Colonial Ruling Class* (Charlottesville, Va., 1940), 261–283.

⁵⁹ Davis, *William Fitzhugh and His Chesapeake World*, 175–176, quote from 176.

⁶⁰ "Nicholas Spencer to Lords of Board and Plantations," April 29, 1689, in *Calendar of State Papers, Colonial Series: America and West Indies*, vol. 13: 1689–1692, ed. J. W. Fortescue (London, 1901), 33, item 93. 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." McIlwaine, *The Executive Journals of the Council of Colonial Virginia*, 1: 105 (April 26, 1689) and 1: 302 (October 25, 1693), quote from 1: 302.

⁶¹ The initial charges were brought against Fitzhugh in a letter from the "Governor and Council of Maryland" to the Governor of Virginia. McIlwaine, *The Executive Journals of the Council of Colonial Virginia*, 1: 285 (April 29, 1693) and 1: 302 (October 25, 1693). Davis, *William Fitzhugh and His Chesapeake World*, especially letter to "George Luke," Jamestown, October 27, 1690, 287. See also "Nicholas Spencer to Lords of Board and Plantations," report dated April 29, 1689, in Fortescue, *America and West Indies*, 13: 33, item 93.

the empire, which was under his jurisdiction.⁶² Whig leaders, especially John Somers, threatened to shift governance of the colonies away from the king—and to themselves in Parliament—if he did not immediately institute reforms. The assassination attempt forced William to dismiss many Tories from the Privy Council, men who in turn had protected former colonial appointees. Likewise, after the attempted coup, he enforced loyalty oaths on all officials, even in the colonies, which led to shifts in colonial governance.

In this maelstrom of change, William created a new “Board of Trade,” which he packed with reforming Whigs. Its powers were similar to those of the former Council of Foreign Plantations, for which Locke had been secretary in the early 1670s: it reviewed colonial legislation, issued instructions to governors, approved appointments, and served as an appeals court, subject to the king’s final approval. William III chose its members with guidance from the Whig Junto led by John Somers. The board included Somers himself. Both William III and Somers begged Locke to assume a seat on the new board, probably due to Locke’s role in legitimating the Glorious Revolution and his former colonial experience.⁶³ Three members were more conservative and had served as colonial agents under James II: William Trumbull, Charles Montague, and William Blathwayte, former surveyor of customs. But William III favored radical Englishmen he had known in Holland before the revolution. Three board members were former suspects in the Rye House Plot (a scheme to assassinate Charles II and his brother James in 1683) and Monmouth’s uprising against James II (Locke, Somers, and Ford Grey, Earl of Tankerville). The last member, John Methuen, was a commoner “of no position or wealth.”⁶⁴

Despite the continuing conservative members, the new Board of Trade sought to limit the influence of Tory officials like Edmund Andros and to reverse many Stuart policies.⁶⁵ With oversight over all colonies, they paid particular attention to Virginia. The first colony, and the largest, it had many problems. In October 1696, they interviewed Edward Randolph, William’s surveyor of customs, who reported that Virginia’s elite were in arrears on their quitrents and claimed large estates when other men had none. Such engrossment of lands made Virginia vulnerable. “Considering what vast quantities of servants and others have yearly been transported thither,” the colony of Virginia should be able to defend itself. However, “servants are not so willing to go there as formerly because the members of Council and others who make an interest in the Government have from time to time procured grants of very large tracts of land, so that for many years there has been no waste land.” Former servants “are forced to hire and pay rent for lands or to go to the utmost bounds of the Colony for land exposed to danger, and often the occasion of war with the Indians.”⁶⁶

⁶² Parliament threatened to shift oversight of the colonies to Parliament if he did not take action. Bourne, *The Life of John Locke*, 2: 347–350; Peter Laslett, “John Locke, the Great Recoinage, and the Origins of the Board of Trade, 1695–1698,” *William and Mary Quarterly* 14, no. 3 (1957): 370–402, especially 387–389.

⁶³ Locke to Somers, January 7, 1697, in Bourne, *The Life of John Locke*, 2: 360–361.

⁶⁴ A. D. Francis, “John Methuen and the Anglo-Portuguese Treaties of 1703,” *Historical Journal* 3, no. 2 (1960): 103–124, here 105.

⁶⁵ See Stephen Saunders Webb, “William Blathwayt, Imperial Fixer: Muddling Through to Empire, 1689–1717,” *William and Mary Quarterly* 26, no. 3 (1969): 373–415, especially 399.

⁶⁶ “Representation of Edward Randolph as to Virginia,” received August 31, 1696, read October 6, in Fortescue, *America and West Indies*, 15: 88–90, item 176, quotes from 88, 89. On Randolph, see Mi-

The board, led by Locke, then quizzed Randolph and others about headright policy, particularly about whether Virginia's large estates had accrued from the importation of "negro servants." Locke's protégé and the clerk, William Popple, queried Randolph: "Are Negro Servants Understood to be Included or not, in the Number of persons that give a Right to any Portion of Lands, to those who Import them?" Randolph responded: "All Negro Servants, Men, Women, & Children give a Right to those who Import them, who thereupon, take up Land, contrary to the true Intentions of Seating that Country, but it being generally practised, to the advantage of some persons, No Notice is taken."⁶⁷ Locke continued the investigation by drafting "Queries to be put to Coll. Henry Hartwell or any other discreet person that knows the Constitution of Virginia," which the board then used to interview Hartwell and James Blair (both members of the Virginia Council) and Edward Chilton.⁶⁸

Locke was working so hard on such board business that he became seriously ill and was forced to leave London: "Business kept me in town longer than was convenient for my health: all the day from my rising was commonly spent in that, and when I came home at night my shortness of breath and panting for want of it made me ordinarily so uneasy, that I had no heart to do any thing." In December 1697, he retreated to Oates, twenty miles away from London's "stifling air." Though relieved from "the constant oppression of my lungs," he remained weak.⁶⁹ During Locke's illness, between January and May 1698, his secretary carried materials back and forth between London and Oates.⁷⁰

The evidence that Locke wrote "Some of the Cheif Greivances of the present Constitution of Virginia, With an Essay towards the Remedies thereof" at Oates is compelling. It begins in his hand and finishes in that of his personal secretary, Sylvanus Brounover.⁷¹ Drafts of the queries with notations in Locke's hand, an evaluation of the various responses, and proposed corrections to Virginia's laws and constitution were rolled up together for centuries in Locke's desk. Bound together, they remain among Locke's papers at the Bodleian Library.⁷² Not a formal committee report, the

chael Garibaldi Hall, *Edward Randolph and the American Colonies, 1676–1703* (Chapel Hill, N.C., 1960). Randolph had much more influence than Blair on Locke's Virginia plan.

⁶⁷ See "William Popple to Edward Randolph," October 6, 1696, in Fortescue, *America and West Indies*, 15: 172, item 300, and "A series of questions put to Edward Randolph by the Council of Trade and Plantations, with his answers," October, *ibid.*, 188, item 354. For originals of the queries in Locke's handwriting, see Bodleian Library, MS. Locke c. 30: Papers relating to trade and colonies, 1671–1702, fols. 59r–60r. Note that the published version in the *Calendar of State Papers* abbreviates Randolph's extremely interesting answers on this question. For his full response, see the original: "Queries Proposed by the Rt Honorable The Coms for Trade to Edward Randolph Surveyor General of his Majestys customs &c in Relacion to the Lands in the Colony of Virginia, together with his Answers thereto," TNA, CO 5/1309, 85.

⁶⁸ These queries are among Locke's loose papers at the Bodleian. See MS. Locke e. 9: "Trade Virginia 97."

⁶⁹ Locke to William Molyneux, January 10, 1698, in de Beer, *The Correspondence of John Locke*, 6: 292–293, letter 2376.

⁷⁰ On March 19, 1698, Locke wrote to Edward Clarke: "The weather I thank god is now become warmer . . . [though] I have not breath enough yet to walke." *Ibid.*, 6: 351, letter 2408.

⁷¹ Bodleian Library, MS. Locke e. 9, fols. 1r–39r. When it was first catalogued in 1941, the Bodleian archivist assumed that it was by Locke, as did the few scholars who discovered it in the next twenty years, including Jack P. Greene in *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689–1776* (Chapel Hill, N.C., 1963). See Long, *A Summary Catalogue of the Lovelace Collection*, 40.

⁷² David Thomas König traces the continuing struggle over land policy in "Virginia and the Imperial State: Law, Enlightenment, and 'the Crooked Cord of Discretion,'" in David Lemmings, ed., *The British and Their Laws in the Eighteenth Century* (New York, 2005), 206–229.

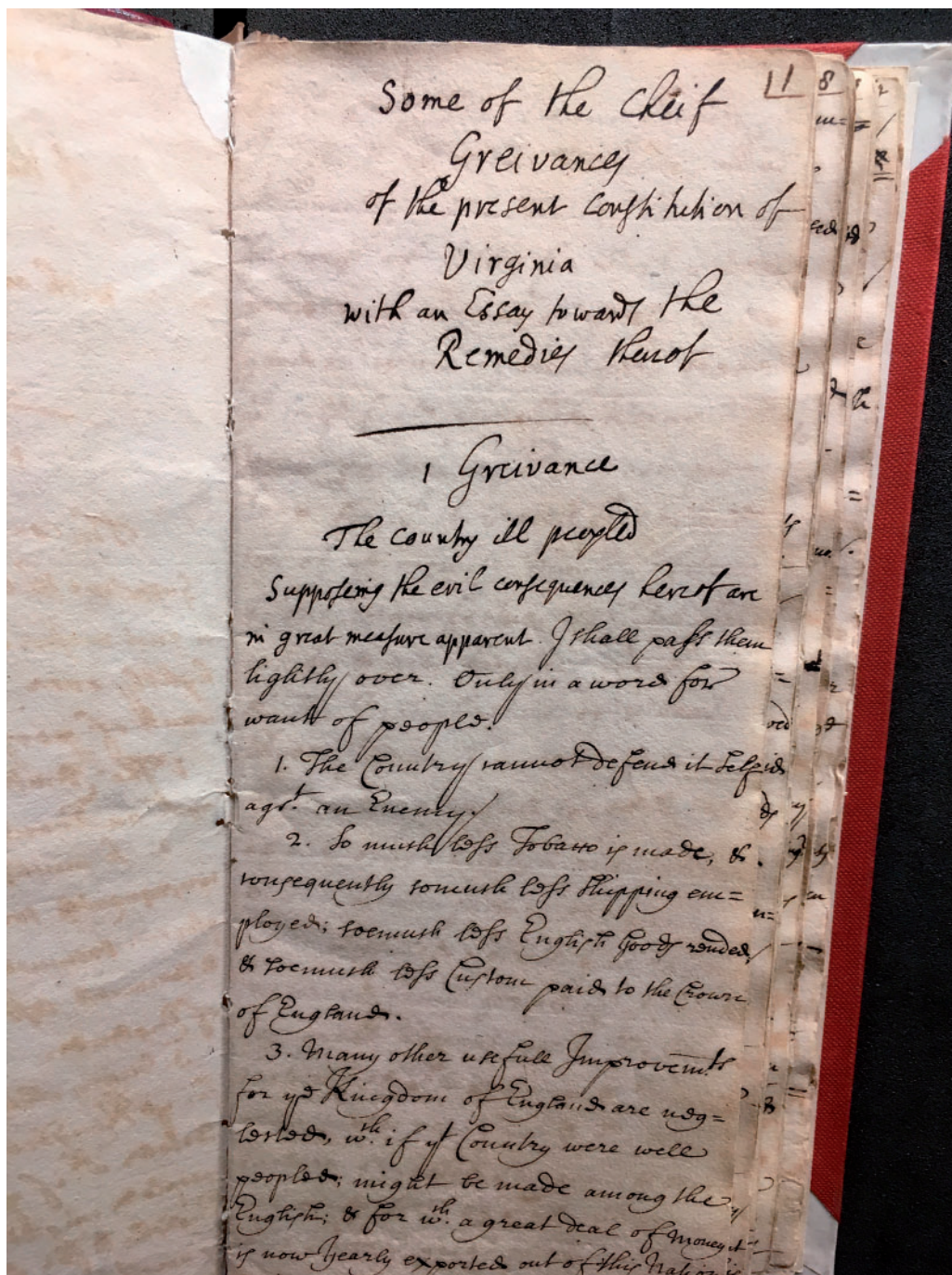


FIGURE 3: The first page of Locke's forty-page plan for revising Virginia's laws in 1698. "Some of the Chief Greivances of the present Constitution of Virginia, With an Essay towards the Remedies thereof," MS. Locke e. 9, fol. 1r, Bodleian Libraries, University of Oxford. Reproduced by permission of the Keeper.

Virginia essay is written in the first person. Still, it is methodical, as Locke's meditations often were. "The Conversion, and Instruction of Negroes and Indians is a work of Such importance and difficulty that it would require a Treatise of it Self. At present I should advise . . ." ⁷³ It covers the many issues raised with different informants over the board's long investigation into Virginia. The "remedies" correspond to the principles of Locke's *Two Treatises of Government*.

Though the sketch was in Locke's desk when the Bodleian acquired his papers, and though the cataloguer attributed it to Locke, Peter Laslett, who helped to shape the modern Locke canon, later insisted that he could not have written it. ⁷⁴ Laslett was so inspired by Edmund Burke—whom he quoted frequently—on both Locke and the Glorious Revolution that it likely influenced his decision to exclude the Virginia plan. ⁷⁵ Laslett even portrayed Locke as an aristocrat, on a Board of Trade of noblemen, elaborately dressed and coifed—ignoring paintings of Locke in the 1690s, in which he is dressed simply, like a tradesman. ⁷⁶ (See Figure 4.)

Laslett's decision to exclude the text from Locke's corpus led later scholars of Locke to ignore it. When Michael Kammen published the Virginia plan in the *Virginia Magazine of History and Biography* in 1966, he followed Laslett in speculating that Virginia minister James Blair dictated the sketch to Locke: "They may very well have collaborated in Locke's rooms in Mr. Pawling's house in Little Lincoln's Inn Fields [London], as Peter Laslett has picturesquely suggested." ⁷⁷ In *American Slavery, American*

⁷³ Laslett reported finding the whole set of Virginia papers in a cubbyhole in Locke's desk, which Locke had left to his nephew Peter King. Laslett helped Oxford acquire these papers. See Laslett, "John Locke, the Great Recoinage, and the Origins of the Board of Trade," 399. Quote from Michael G. Kammen, ed., "Virginia at the Close of the Seventeenth Century: An Appraisal by James Blair and John Locke," *Virginia Magazine of History and Biography* 74, no. 2 (1966): 141–169, here 167. The capitalization in the original (MS. Locke e. 9, fol. 32r), which was edited out by Kammen, is retained here.

⁷⁴ After Kammen's article, Richard Ashcraft, who stumbled across the sketch among Locke's papers in 1969, attributed it to Locke. Ashcraft argued that it showed just how radical Locke was, and pointed out its similarities to the *Two Treatises*. But he provided no context for the sketch. His argument has been ignored by Locke scholars. Ashcraft, "Political Theory and Political Reform: John Locke's Essay on Virginia," *Western Political Science Quarterly* 22, no. 4 (1969): 742–758. See also Farr, "So Vile and Miserable an Estate," 268, which discusses it briefly.

⁷⁵ In *Locke: Political Essays*, Goldie includes "The Fundamental Constitutions of Carolina" among Locke's "major essays," while not including his plan for Virginia even among the lesser writings.

⁷⁶ Peter Laslett describes the Board of Trade members as all aristocrats, the image of lordly continuity and an impotent revolution: "We must imagine ten Stuart noblemen and gentlemen sitting in their silken knee breeches in front of pewter sandboxes and goose quill pens." Laslett, "John Locke, the Great Recoinage, and the Origins of the Board of Trade," 370. In fact, we have real portraits of most members painted by the prolific artist Sir Godfrey Kneller. Some do fit Laslett's image. But Kneller's painting of Locke is different. Locke is not wearing a wig, and his clothes are simple, rumpled and worn, like those worn by Kneller's engraver (John Smith), whom Kneller painted the same year. Like Laslett, Armitage tries to portray Locke as an aristocrat, and stresses that he was appointed a landgrave in Carolina and kept the parchment with the grant. See Armitage, "John Locke, Carolina, and *Two Treatises of Government*." However, Locke never used the title. He signed all documents simply "Mr. Locke." Or "Locke." Or "John Locke." Those who used titles, such as his mentor Anthony Ashley Cooper, first Earl of Shaftesbury, signed themselves by their title, in his case "Shaftesbury."

⁷⁷ Bodleian Library, MS. Locke e. 9. The manuscript was published in Kammen, "Virginia at the Close of the Seventeenth Century," quote from 148 n. 29, but Kammen attributed it almost wholly to Blair: "it has to be Blair's composition" (147). In "John Locke, the Great Recoinage, and the Origins of the Board of Trade," Laslett asserts that "he [Locke] made Blair write out for him a complete treatise entitled 'Some of the Chief Grievances . . .'" (400) without any evidence. Laslett's speculations can be found *ibid.* For Kammen's debt to Laslett, see "Virginia at the Close of the Seventeenth Century," 142 n. 3; for the reference to Locke and Blair's supposed private meeting in late August, see 148 n. 29. Kammen published only the plan for law reform, but none of the additional materials that help to provide



FIGURE 4: Two portraits by Sir Godfrey Kneller: *John Locke*, 1697, oil on canvas. State Hermitage Museum, St. Petersburg, Russia. *John Smith the Engraver*, 1696, oil on canvas. Tate Gallery, N00273.

Freedom, Edmund Morgan followed Laslett's attribution, extending it to assume that Blair even composed the other Virginia papers in Locke's handwriting (!). But the questions posed in successive drafts among Locke's papers appear in their final form among the Board of Trade papers—alongside only *answers* from Hartwell, Blair, and Chilton.⁷⁸ The location (at Oates), the handwriting, the marginalia, the power relations, the board's long investigation into Virginia, the implementation of the sketch—all point to Locke's authorship.

Blair credited Locke with the Virginia plan and the reforms it inspired. King William had appointed Blair to the Virginia Council as church representative after the revolution, from which post Governor Andros dismissed him in 1697.⁷⁹ When Blair testified before the board in October 1697, he argued that Andros had stolen ministers' salaries and the college's building funds, complaints he repeated to the archbishop in December.⁸⁰ But he never addressed headrights or the larger political and

context. Kammen argued that two documents by Blair, from 1697 and 1699, were similar to the Virginia plan; however, Blair's concerns are narrowly about the church and college.

⁷⁸ Morgan, *American Slavery, American Freedom*, 322, 381; Bodleian Library, MS. Locke c. 30, fol. 59v, dated August 30 [1697]. For Board of Trade records, see TNA, CO 5/1309, items A-35 through A-41.

⁷⁹ Blair the troublemaker appears repeatedly in the usual telling of this story. See, e.g., Blackburn, *The Making of New World Slavery*. See also Warren M. Billings, John E. Selby, and Thad W. Tate, *Colonial Virginia: A History* (White Plains, N.Y., 1986), 146–154.

⁸⁰ For transcripts of Blair's complaint against Andros and Andros's trial in absentia at Lambeth Palace on December 27, 1697, see "A Memorial Concerning Sir Edmund Andros, Governor of Virginia, by Dr. Blair," in William Stevens Perry, ed., *Historical Collections Relating to the American Colonial Church*, vol. 1: *Papers Relating to the History of the Church in Virginia, A.D. 1650–1776* (n.p., 1870), 10–29; and "A True Account of a Conference at Lambeth, Dec. 27, 1697," *ibid.*, 36–65, transcribed from the collections at Lambeth. Blair's long memorial against Andros, for example, contains two sections entitled "His Con-

social questions in Virginia.⁸¹ Indeed, he wrote to Locke at Oates in January 1698 to beg him to get well enough to resume work on Virginia reform: "I can not but flatter my self with the hopes, that God, who made you such an eminent instrument of detecting the Constitution and Government of Virginia, will likewise furnish you with health and opportunities to redress the Errours and abuses of it." Blair knew that Locke was fashioning a complex plan that required delicate negotiation: "I have not offered, since you went [from London], to stirre in any business at the Council of Trade and plantations; fearing lest in your absence I should have marred and mismenaged it, by an untimely forcing it into other hands, and other methods than you had contrived."⁸²

From Oates in late May, Locke sent a letter suggesting that Francis Nicholson become Virginia's new governor alongside the Virginia plan itself. Nicholson thanked Locke for "recommend[ing] me [as governor] to some of his most sacred majestys great ministers of state" on May 26.⁸³ Five days later, in the first evidence we have about the Board of Trade discussing the Virginia plan, Blathwayt wrote to his fellow board member George Stepney that they were "now falling on the report about Virginia."⁸⁴

The Virginia plan began by condemning the existing headright system, which granted huge estates to masters for importing servants (both white and black), as "strangly perverted," using arguments similar to those Locke expressed in *Two Treatises of Government*.

The ancient Encouragement of 50 Acres of Land per poll [person] . . . has been strangely perverted, and frustrated.

1. by granting the 50 Acres of every Servant to his Master that buys him . . .

By this trick the great men of the Country have 20, 25, or 30 thousand Acres of Land in their hands, and there is hardly any left for the poor People to take upp, except they will goe beyond the inhabitants much higher up than the Rivers are navigable, and out of the way of all business.⁸⁵

He used the same logic from his *Two Treatises*, that uncultivated land could be claimed by those who would farm it, to justify confiscating the uncultivated lands of

duct as to the Clergy and Religion" and "Sir Edmund Andros's Conduct with Relation to the College of William and Mary in Virginia." While he occasionally raised issues such as corruption in tax collection or misuse of revenue, it was only because that meant lower financial support for the church and college.

⁸¹ Blair's writings contain a few points of overlap with the Virginia plan, but they were written after the plan. In 1699, for example, Blair supported baptizing slaves. See Samuel Clyde McCulloch, "James Blair's Plan of 1699 to Reform the Clergy of Virginia," *William and Mary Quarterly*, 3rd ser., 4, no. 1 (1947): 70–86. Kammen also claims that the use of "we" in the document's list of Virginia's problems, as in "the ministers we have," must mean that it was written by a Virginian. But any official could have written the same thing.

⁸² Commissary James Blair to Locke, January 20, 1698, in de Beer, *The Correspondence of John Locke*, 6: 302–303, letter 2380. Note that the editor of Locke's *Correspondence* cites Kammen to attribute the Virginia plan to Blair.

⁸³ Blair had told Nicholson about Locke's role. See Francis Nicholson to [Locke?], May 26, 1698, *ibid.*, 6: 408–409, letter 2446.

⁸⁴ See Brounower to Locke, May 7, 1698, *ibid.*, 6: 394, letter 2434 (on Brounower's visit and help); Blathwayt to Stepney, May 31, 1698, quoted in Webb, "William Blathwayt, Imperial Fixer," 401.

⁸⁵ Kammen, "Virginia at the Close of the Seventeenth Century," 154–155; this part of Kammen's transcription is largely accurate. For the original, see MS. Locke e. 9, fols. 3r–4r.

Virginia's elite.⁸⁶ Such estates, he argued, could be confiscated legally via cultivation rules, escheats, and enforcing nonpayment of quitrents. Once confiscated, land should be redistributed in fifty-acre parcels to new migrants.⁸⁷

Locke challenged not only their 20,000-acre estates, but also the omnipotence of Virginia's "great men," who held power under the same principles he had witnessed firsthand in England under Charles II and James II—the power that accorded with the principles of "an Advocate for Slavery," as he wrote in the preface to *Two Treatises of Government*. A few men ruled Virginia as an unprincipled oligarchy. Such men must not hold multiple political appointments like councilor, militia captain, county court justice, custom collector, and member of the colony's highest court, the General Court. "It is a great Grievance that [the court] is in the hands of the Governour, and Council; Men utterly ignorant of the Law, impatient of contradiction, apt to threaten Lawyers and parties with imprisonment, if they use freedom of Speech, men that cannot be called to account for acts of injustice, Men that take noe Oath to doe Justice, Men that have made an order that they themselves shall not be arrested." They are "Men that are under strong temptations to a byass [bias] in giving their opinion by reason of the places of proffit they hold dureing the Governours pleasure."⁸⁸ This image of completely corrupt justice, with judges and councilors unaccountable and ignorant of the law, dismissed only at the whim of an irresponsible and power-hungry governor, is chilling. To rein in the council, Locke also recommended a more powerful legislature with annual elections (a huge reform), and giving that legislature a way to communicate directly with the Board of Trade. Ironically, as an employee of the king, Locke had to work through the king and the royal governor and that corrupt council to encourage reform. He also had to navigate between other powerful men—on the Privy Council and in the House of Lords, and the House of Commons—who had influence over colonial policy.

Within two months, Locke and his allies had translated the sketch into "instructions" for Virginia's new governor, Francis Nicholson, to reform Virginia, especially its land policy. Five board members (four of them Whigs) signed the instructions: Locke, John Egerton (the third Earl of Bridgewater), Sir Philip Meadows, Abraham Hill, and John Pollexfen. Egerton, a prominent Whig, was leader of the House of Lords. Meadows had been Cromwell's secretary and ambassador to Sweden and Denmark. Hill, treasurer to the Royal Society, collected scientific and social information from many colonies. Pollexfen, who had been on Charles II and James II's Councils of Trade and Plantations, was both the only Tory and the only supporter of the African trade to sign the initial instructions. He later wrote: "The Trade to *Africa* deserves all incouragement . . . it carries from us, great quantities of our *Draperies*, made of our Coursest *Wooll* . . . in return we have chiefly *Gold*, and *Elephants Teeth* brought here, and great quantities of *Negroes*."⁸⁹

⁸⁶ On the Indian land question, see especially Arneil, *John Locke and America*, chap. 6.

⁸⁷ "Instructions to Francis Nicholson as Governor of Virginia," September 13, 1698, in Fortescue, *America and West Indies*, 16: 423, item 819. This item consists of instructions to the new governor to push for a complete revision of the laws, to enforce land confiscations when quitrents are seven years or more in arrears, to report the names of persons with more than twenty thousand acres, and to set up "a new system of land-grants, founded on settlement rather than the importation of servants."

⁸⁸ Kammen, "Virginia at the Close of the Seventeenth Century," 162.

⁸⁹ John Pollexfen, *A Discourse of Trade and Coyn* (London, 1697), 132–133; TNA, CO 5/1359, 252–259 (original pagination). On Pollexfen's support of the slave trade, see *A Discourse of Trade and Coyn*, 128–129. Meadows had also been Cromwell's "Latin secretary." His two treatises were *Observations con-*

Other Tory board members disapproved of the effort to reform Virginia and never signed the instructions. Blathwayte was so opposed to the Virginia plan that he wrote angrily to Stepney: “I should think it a sin while I take the King’s money to agree to it.” Stepney worried: “tho’ abuses are certainly to be reformed, it is not decent in a Commission to censure preemptorily.” He concluded: “I am for moderation in all things, for violent changes are dangerous and difficult, and the attempt against all the officers of a plantation will certainly draw odium upon us.”⁹⁰

Before the new instructions could become legal, the Lords Justices, who ruled during the king’s absence in Holland, needed to sign them. To gain their approval, Locke and his allies explained why they were seeking the reforms, highlighting head-right policy: “we have added a new Method for taking up Land . . . the governour may also give an account to his majesty, in what manner the said Method may be introduced into practice.”⁹¹ The Lords Justices (John Churchill, Duke of Marlborough; Charles Sackville, sixth Earl of Dorset; Thomas Tenison, Archbishop of Canterbury; and Charles Montague, Chancellor of the Exchequer) accepted the new instructions, but not without alteration. They added a clause to support the African trade, particularly the new law that abolished the Royal African Company’s monopoly in exchange for a tax on goods from Africa, all except “negroes” and gold. That tax was meant to cover the RAC’s expenses to fortify and defend England’s “castles” on the African coast against other European powers. That law, which sparked the first of what would be eight such debates in Parliament over the next fifteen years, was not supported by Locke or his allies.⁹²

The struggle over the governor’s instructions with regard to land and the African trade exposes the political minefields Locke was navigating. Sometimes he despaired:

cerning the Dominion and Sovereignty of the Seas: Being an Abstract of the Marine Affairs of England ([London], 1689) and *A Brief Enquiry into Leagues and Confederacies Made betwixt Princes and Nations, with the Nature of Their Obligation* (London, 1682). In *Competing Visions of Empire*, 171, Abigail Swingen argues that the Glorious Revolution represented no shift in policy because of a single document she found at the British Library (“Copy of a Representation of ye Commissioners for Trade & Plantations Relating to ye General State of the Trade of This Kingdom,” BL ADD MS 46542), dated December 23, 1697. It recommends that “the labor of negroes” be supplied to the colonies “at the cheapest rates,” as they were good for trade. It was signed by three board members, Stepney, the Earl of Tankerville, and Blathwayt, who later refused to sign the instructions, as well as four of the five listed above who did sign them—all but Locke, who was away at Oates. The document stated nothing about the status of “the labor of negroes” and never used the word “slave,” no doubt an avoidance of the issues—“slaves” is a word that Swingen imposes on it.

⁹⁰ Blathwayt to Stepney, May 31, 1698, and Stepney to Blathwayt, written when the report was unfinished but upon news that it was in the works, January 14 and 24, 1698, quoted in Webb, “William Blathwayt, Imperial Fixer,” 401, 405.

⁹¹ “To their Excellencies the Lords Justices,” cover letter justifying the major changes these five members of the board had made in the former instructions that were given to Virginia governors, TNA, CO 5/1359, especially 256.

⁹² There are thus two versions of the instructions to Governor Nicholson, dated August 23 and September 13, 1698. The first, signed by Locke and discussed above, subtly introduced key reforms from his Virginia sketch—explaining some of the motivations and masking others. It was addressed to the Lords Justices. The second, signed by those justices, added instructions—to protect the interests of the Royal African Company and to enforce the new law of 1698, “An Act to Settle ye Trade with Africa.” TNA, CO 5/1359, especially 252–259. For some background on the first of these debates, see Pettigrew, “Free to Enslave.” While Pettigrew suggests that this means that liberalism and free trade should be equated with slavery and by implication with Locke, there is no evidence that Locke supported either free trade or the RAC. Pettigrew toned down his critique of Locke, but not of liberalism, in his subsequent book, *Freedom’s Debt*, after reading an earlier version of this article on Locke.

“The corruption of the age gives me so ill a prospect of any success in designs of this kind.” When a friend congratulated him on his appointment to the board, he responded:

Your congratulation I take as you meant, kindly and seriously, and, it may be, it is what another would rejoice in; but 'tis a preferment I shall get nothing by, and I know not whether my country will, though that I shall aim at with all my endeavours. Riches may be instrumental to so many good purposes, that it is, I think, vanity rather than religion or philosophy to pretend to contemn them. But yet they may be purchased too dear . . . I think the little I have enough, and do not desire to live higher or die richer than I am. And therefore you have reason rather to pity the folly, than congratulate the fortune, that engages me in the whirlpool.⁹³

Despite the political whirlpool and his health, Locke did try. In February 1699, Blair wrote Locke to thank him for reforming Virginia's government.

The tranquillity we begin to enjoy in this Countrey by the happy change of our Governour, and Government is so great that I who have the happines to know by whose means these blessings were procured have all the reason in the world to take all occasions of expressing my gratitude for them, and to pray to God to reward those noble publick souls that bestow so many of their thoughts, in contriving the relief of the oppressed, and the happines of mankind . . . this whole Countrey in generall and my self in particular are beholding to yow for the thoughts you was pleased to bestow on our late unhappy circumstances, and the methods you contrived to relieve us.⁹⁴

Locke responded with modesty: “if I have been any way instrumentall in procureing any good to the country you are in, I am as much pleased with it as you can be.”⁹⁵

As Nicholson reported his progress from Virginia, Locke read and responded. The difficulty of imperial change emerges starkly from their correspondence. Distances, obstructions from officials in Virginia, institutional rules and precedents, and factions on the board and Privy Council made reform slow and painful. To be able to tell this history has required analyzing thousands of documents buried in elaborately archived folders. In one letter alone, Nicholson enclosed more than seventy-five documents.⁹⁶

⁹³ Bourne, *The Life of John Locke*, 2: 360, 358–359.

⁹⁴ Commissary James Blair to Locke, February 8, 1699, in de Beer, *The Correspondence of John Locke*, 6: 560, letter 2545.

⁹⁵ Locke to Commissary James Blair, October 16, 1699, *ibid.*, 6: 706, letter 2626.

⁹⁶ Nicholson is a complex figure in this story, and certainly politically astute. Like Blair, he tends to be portrayed as an opportunist, and if anything one perhaps more sympathetic to the Stuarts. Yet throughout the documents after the Glorious Revolution, he was playing the game that the Board of Trade after 1696 wanted to see. He was briefly lieutenant governor of Virginia between 1690 and 1692, when William replaced him with Edmund Andros, apparently as a compromise with Tories in England. Later, it was Nicholson who reported that Andros did not enforce the taking of oaths to William and Mary. During his brief governorship, Nicholson had enforced such oath-taking, as is clear from the records of the House of Burgesses. Richard Lee refused to take the oath and thus did not attend council meetings for a year (until Andros became governor and stopped requiring it). Nicholson's correspondence with the Board of Trade from 1697 is also sharply critical of Andros, and he allied himself closely with Blair and Locke, advocating reforms in land policy. For the earlier interpretations of Nicholson, see particularly Stephen Saunders Webb, “The Strange Career of Francis Nicholson,” *William and Mary Quarterly*, 3rd ser., 23, no. 4 (1966): 513–548; and Kevin R. Hardwick, “Narratives of Villainy and Virtue:

In one such document, Governor Nicholson explained how he reversed the headright policy for importing "negroes." As chief justice of Virginia's General Court, a seat he held as governor, Nicholson denied the claim of William Miller for 220 acres, despite his "producing a certificate of the Importation of Severall Negroes as Rights for the said Land." Importing "negroes" no longer entitled men to fifty-acre headrights. "The said Rights are not good & Legall to qualifie the petitioner to take upp the said Land. And Ordered that it be an establish'd rule of this court not to admit of any Rights for Land [for negroes] but only for the importation of his Majesties Christian subjects into this Colony and dominion." The court ordered that from then on, the headrights should go only to freed "Christian servants" themselves, not their masters.⁹⁷

Nicholson's verdict stated that he was following his formal instructions from Locke and the Board of Trade: "His instructions did not permit such Rights to pass." The headright decision was signed by only Nicholson and three councilors: William Byrd, Edward Hill, and Jenings. The absence of the other nine councilors suggests that the verdict was unpopular. That Nicholson changed royal headright policy via Virginia's (corrupt) General Court is ironic. Locke's Virginia plan had criticized that power upon which he now relied: "by his great power, [the governor] can easily run down the barr, and sway the bench, and direct the Judgment what way he pleases."⁹⁸

Nicholson's copy of the precedent-setting case was summarized by a clerk. Next to the clerk's summary, Locke wrote: "Well done."⁹⁹ (See Figure 4.) Locke thereby applauded the reform of the "strangly perverted" headright system that had encouraged the importation of "negro servants."

Locke always used the term "servant" or "negro servant," never "slave," in Board of Trade correspondence in the 1690s, which reflected his understanding of English

Governor Francis Nicholson and the Character of the Good Ruler in Early Virginia," *Journal of Southern History* 72, no. 1 (2006): 39–74. Hardwick takes the criticisms of Nicholson more at face value, while I see them more as attempts to discredit him as a result of the reforms he was attempting to implement under the Williamite administration. After the shift in power in England, many elite Virginians seized their chance. Blair opposed Nicholson by 1704, due to his insufficient support of the church.

⁹⁷ "Instructions to Francis Nicholson as Governor of Virginia"; "At a Councill Held at James City the Fifteenth day of Aprill 1699," in McIlwaine, *The Executive Journals of the Council of Colonial Virginia*, 1: 420; Nicholson to Board of Trade, July 1, 1699, TNA, CO 5/1310, item C2, also transcribed in CO 5/1360. For the detailed case report from Nicholson, see "At a Generall Court held at James City on the fifteenth day of April in the eleventh yeare of the Reigne of Our Sovereigne Lord William the Third by the Grace of God of England, Scotland, France & Ireland" [hereafter the William Miller case], CO 5/1310, item C13, at fol. 55 (pasted into a book). Parent, *Foul Means*, 45, speculates that perhaps the great planters acceded to it in order to forestall the other reforms the Board of Trade proposed, which I would agree with, and perhaps that the elite wanted the reform, which I find much less persuasive given how adamantly the council members struggled to regain this right between then and 1706, when they finally re-secured it. Farr is the only scholar to take Locke's involvement in the Virginia law reform seriously when it comes to slavery. However, he did not have the full context to realize what was really going on in the instructions to Governor Nicholson. Farr assumes that the standard request to tally the population (including "negro servants") supported slavery and (following Laslett) that Locke wrote the clauses in the instructions to support the Royal African Company (which he did not, as shown above). Farr, "So Vile and Miserable an Estate," 268–269; *Two Treatises of Government*, 284 n. 24.

⁹⁸ William Miller case; MS. Locke e. 9, fol. 21. The fuller quote is "Men that are under strong temptations to a bypass in giving their opinion by reason of the places of proffit they hold dureing the Governours pleasure, who is always there and by his great power, can easily run down the barr, and sway the bench, and direct the Judgement what way he pleases."

⁹⁹ TNA, CO 5/1310, 8 (old pagination).

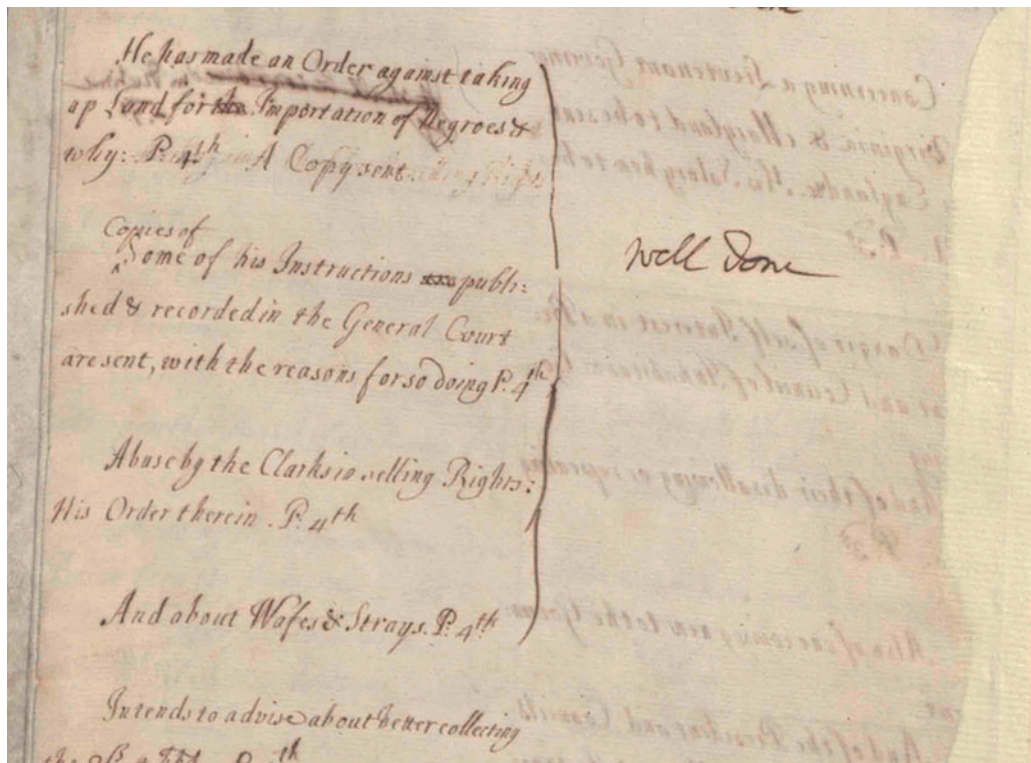


FIGURE 5: Locke's response to a report that the governor of Virginia, Francis Nicholson, had permanently reversed the fifty-acre reward of land for importing slaves. "He has made an order against taking up land for the importation of negroes," Locke wrote in the margin: "Well done." It was not, in fact, permanent, but it took a legislative act in Virginia, signed at every level including by Queen Anne, to reinstate it. The National Archives, Kew, UK, Colonial State Papers, in report to Board of Trade that summarized Nicholson's progress in implementing the changes the Board had recommended in his official instructions, CO 5/1310, 8 (old pagination). Reproduced by permission.

law.¹⁰⁰ As his comment on slavery in the West Indies in *Two Treatises of Government* indicates, he knew that it was becoming perpetual and hereditary there by 1688, a practice promoted by England's high court in *Butts v. Penny* in 1677. However, as the board began its investigation into Virginia in 1696, the high court of King's Bench overturned the earlier precedent in a shocking decision. That decision in *Chamberlain v. Harvey* invalidated the idea that people could be simple property. After freeing an enslaved man from Barbados, the King's Bench declared that no man could own another. It technically turned "slavery" into temporary servitude across the empire, since colonial law could not be "repugnant" to English common law.¹⁰¹

¹⁰⁰ Official Board of Trade documents signed by Locke refer to blacks as servants or "negro servants." They never use the word "slave" to refer to Africans who labored for English masters in the Caribbean. Some of the correspondence that Locke signed while secretary to the Council of Foreign Plantations in the early 1670s did use that word, however. See the ProQuest Colonial State Papers, a subscription database that, while huge and imperfect, is text-searchable and contains digital images of the calendar as well as some transcriptions and PDFs of some of the original documents. My conclusion comes from the many searches I have done for terms such as "Locke" and "slave" in these documents, as well as my own reading of many manuscripts in the original at the National Archives.

¹⁰¹ *Chamberlain v. Harvey*, reported widely, but see, e.g., Carthew 396, 90 English Reports 830, and 1 Ld. Raymond, 91 English Reports 994. Given Locke's closeness to his kinsman Peter King, then a law

As the English common law was turning against slavery in 1696, elite Virginians were hiding and pretending to repeal key elements of their emerging slave code. While the definition of slavery in the common law and in Barbados had rested not only on hereditary villenage but on a separate legal system for non-Christians, those elements were less developed in Virginia law. The board did most of its investigations without a copy of the colony's laws—to their great disgust. Andros finally sent a handwritten volume of Virginia laws in June 1698, after Locke finished the Virginia plan and the new Governor's Instructions, and some of the laws that we now know helped to create slavery are missing. Most importantly, the crucial 1662 law that made "bond" status hereditary was marked "repealed September, 1696." However, the law was not, in fact, fully repealed, as a careful reading of hundreds of pages reveals; rather, it was folded into the final sentence of a long law "for Punishment of Fornication."¹⁰² Only two laws mention slaves: one on runaways from 1691, "An Act for Suppressing Outlying Slaves," and another from 1667 stating that "the baptism of slaves doth not exempt them from bondage." Those pages are well-thumbed and slightly dirtier. One can imagine Locke's inky hands paging through the volume that August.¹⁰³

Repealing any of these Virginia laws was tricky. Locke could not suggest that the new governor ignore existing Virginia statutes, as that would undermine elected government. James II's "dispensing" with English law had created the political crises that led to the Glorious Revolution. The declaration by the governor under James II, Lord Effingham, that he too was above the law and could ignore Virginia statutes was equally heinous: Governor Nicholson could not do the same.¹⁰⁴

Still, Locke's Virginia plan undercut the idea of separate legal systems: he encouraged Nicholson, as the plan wrote, to give people of all nations "equal privileges" as subjects under the law. "As people of different persuasions enjoy Liberty of Conscience, so let people of all Nations be naturalized, and enjoy equal priviledges, with the other English inhabitants residing there."¹⁰⁵ Locke further suggested that the chil-

student at the Inns of Court in London, as well as his own position, it is difficult to imagine that he did not know it. The question of repugnancy is complex, but constantly invoked in Board of Trade correspondence. There will be more on its practical impact across the empire in my book in progress, "Inheritable Blood."

¹⁰² "Andros' laws," sent in late June 1698, TNA, CO 5/1378, 148–150. The volume is organized chronologically by the year in which each law was passed and in the order in which they were passed. The 1662 law that made slavery hereditary is described as "An Act for Mulatto Children being bond or free to serve according to the condition of the Mother," but is without text. Noted in the margin next to it is "repealed by 1. Act of 24 September 1696."

¹⁰³ Ibid., e.g., 107, 134. Robin Blackburn alleges that Locke approved the 1691 Virginia law that sentenced mulatto children to thirty-one years of servitude without citing any evidence. Yet Locke had no oversight over colonial laws until 1696. Blackburn, *The Making of New World Slavery*, 264–265.

¹⁰⁴ "Andros' laws," 148–150.

¹⁰⁵ Kammen, "Virginia at the Close of the Seventeenth Century," 159, and MS. Locke e. 9, fol. 13. Locke was sometimes torn between different principles, such as here between liberty of conscience and inclusion as subjects with rights. In this case he was privileging the latter as more important for the children of Africans: given that English common law maintained that subjects had to be Christian—because only Christians could take the oath of allegiance to the king that made them subjects—and that only subjects could safely claim rights, it was a delicate issue. I explore it at length in Holly Brewer, "Subjects by Allegiance to the King? Debating Status and Power for Subjects—and Slaves—through the Religious Debates of the Early British Atlantic," in Peter Thompson and Peter S. Onuf, eds., *State and Citizen: British America and the Early United States* (Charlottesville, Va., 2013), 25–51. Locke's dilemma (baptism versus toleration) was a terrible one for him, especially since many of his philosophical ideas emerged from and were part of religious debates. "Theological commitments," as Dunn noted, were integral to all

dren of blacks should be “baptized—catechized, and bred Christians.”¹⁰⁶ By encouraging baptism, he was undercutting the main justification for slavery common in England and throughout Europe. Once baptized, the former heathens could become potential subjects with rights, especially if bond status was no longer hereditary given the apparent repeal of Virginia’s 1662 law that gave every child the status of its mother.¹⁰⁷

The extent of Locke’s objection to property in people is evident in his objections even to indentured servitude: he supported bound labor *only* for criminals sentenced to hang. His question “whither several Delinquents had not better be sent to the Plantations (tho’ condemned to several years Servitude) than to be sent to Tyburne” to hang echoed his argument in *Two Treatises of Government* that slavery was better than death as punishment for a crime. Instead of servants indenting themselves to servitude to pay their passage, Locke urged the king to pay. Skilled tradesmen, the poor, “Native Irish,” and “French Protestants” should arrive without debt and receive land. He encouraged the king to diversify production on smaller farms—from crops like cotton, medicinal plants, raisins, and Indian corn to finished goods like silk, iron, and potash.¹⁰⁸

While Locke made practical concessions—to merchants and Lords Justices and William III—his plan shows a commitment to government based on the consent of the governed and equality before the law. He challenged headrights for masters and bound labor.¹⁰⁹ Such imperial reforms suggest that the Glorious Revolution was not Burke’s revolution. It was more radical, even if incomplete.¹¹⁰

Nicholson wrote the board shortly after Locke’s resignation in April 1700 to complain that few Africans were sent to Virginia: “I do not hear of any more Negroes be-

of Locke’s philosophy. See Dunn, *The Political Thought of John Locke*, xi; more comprehensively, see Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke’s Political Thought* (Cambridge, 2002), who argues that many of Locke’s central premises, including his basic principles of human equality, had religious foundations.

¹⁰⁶ Kammen, “Virginia at the Close of the Seventeenth Century,” 167; MS. Locke e. 9, fol. 32.

¹⁰⁷ See Martínez, *Genealogical Fictions*.

¹⁰⁸ Kammen, “Virginia at the Close of the Seventeenth Century,” 158. His suggestion encouraged a nascent British policy. About 50,000 people reprieved from the hangman’s rope were sent to the colonies in the eighteenth century. See, e.g., Peter Wilson Coldham, *Emigrants in Chains: A Social History of Forced Emigration to the Americas of Felons, Destitute Children, Political and Religious Non-Conformists, Vagabonds, Beggars and Other Undesirables, 1607–1776* (Baltimore, 1992).

¹⁰⁹ Locke did send suggestions to his cousin Peter King and to Edward Clarke. For King, see Bourne, *The Life of John Locke*, 2: 450–453, 501–510. For Clarke, see especially Mark Knights, “John Locke and Post-Revolutionary Politics: Electoral Reform and the Franchise,” *Past and Present* 213 (November 2011): 41–86, which uses a draft bill among Clarke’s papers to argue that Locke sought to extend the franchise in 1689 to all those who paid church tithes to support the poor, an expansion of the franchise in most boroughs.

¹¹⁰ Laslett ends “John Locke, the Great Recoinage, and the Origins of the Board of Trade” with a quotation from Edmund Burke mocking the Board of Trade. Given Burke’s power over the revisionist historiography of the Glorious Revolution, it is clear that Laslett understood what was at stake in attributing and parsing Locke’s role. For a discussion of Burke’s role in recasting the character of the Glorious Revolution to make it conservative, see Steven C. A. Pincus, ed., *England’s Glorious Revolution, 1688–1689: A Brief History with Documents* (New York, 2006), which relates the historiography through the primary sources. See especially Colley Cibber, “Memoir of the Revolution, 1740,” 48–49, and Edmund Burke, “The Significance of the Revolution of 1688–1689, 1790,” 52–54. Cibber wrote: “to the revolution only we owe the full possession of what ‘till then we never had more than a perpetually contested right to.” See also Pincus, *1688: The First Modern Revolution* (New Haven, Conn., 2011), which also focuses on the year 1696 as a period of greater reforms. Lois G. Schworer’s work on legal change after the Glorious Revolution has long acknowledged its significant reforms. See particularly her *The Declaration of Rights, 1689* (Baltimore, 1981).

ing sent in, which I am sorry for, being they would make so much more Tobaccos, which I hope would increase his Majestie’s Revenue. Therefore I wish that the African Company and others that trade thither would send in some.”¹¹¹ Nicholson’s letter suggests that the important and seemingly comprehensive list of slaves imported into the New World—the Trans-Atlantic Slave Trade Database at www.slavevoyages.org—overestimates slave imports during this period. Pettigrew follows the database to argue that slave imports increased dramatically after 1698. However, the database for this period is unreliable. It interpolates from taxes levied on other goods imported to England and its colonies from Africa to make crude approximations of slave imports. Because such taxes were explicitly *not* levied on “negroes,” we simply have no concrete numbers for the slave trade during that decade.¹¹²

THE REAL CHANGE IN SLAVE POLICY began only after William’s death from a hunting accident in March 1703. Queen Anne, who allied with high Tories, shifted policies on slavery both internally and externally, fighting to gain for England a larger share in the international slave trade. In 1697, for example, William Byrd (then Virginia’s agent in London) had begged William III’s Privy Council to acquire the Assiento, which would bring with it the right to supply the Spanish Empire with slaves. Doing so would mean a “Cheap and plentiful supply of [African] Servants.”¹¹³ While William did nothing, Queen Anne fought to gain the Assiento from France during negotiations over the Treaty of Utrecht in 1712.¹¹⁴ Robert Harley, Anne’s longtime secretary of state, played a crucial role in guiding the treaty through a reluctant Parliament. For such service, Queen Anne ennobled him and then made him director of the South Sea Company, to which she granted a monopoly on the Assiento. As a consequence of the treaty and Charles II’s earlier acquisition of the forts on the African coast, England transported more than half of the slaves sent to all of the New World by mid-century.

Queen Anne supported slavery across the empire. The old board under William III, for example, had repeatedly vetoed Virginia laws to restore headrights for importing slaves as well as the attempts led by the Virginia Council to pass a legal code for

¹¹¹ Nicholson to the Board of Trade, August 27, 1700, TNA, CO 5/1310.

¹¹² In *Freedom’s Debt*, Will Pettigrew uses the database to argue for an increase in slave imports to the colonies after 1698. But the database cites only tax records for the imports of other goods! We have no solid data for slave imports because they were not taxed. For an example of the tax records, see, e.g., TNA, T 70/350, which covers 1699–1700. The fact that the database relies on estimates can be seen in the repetition of impossibly consistent numbers of slaves imported and deceased on each ship, for many voyages during this period.

¹¹³ Byrd’s manuscript notes on the speeches he gave to the Privy Council and other official bodies (including his testimony defending Andros before the Archbishop of Canterbury) are in the R. A. Brock Collection at the Huntington Library, MSS BR 744, quotes from 13, 14. Byrd was upset that the French had confiscated a British ship involved in the slave trade. He wrote: “the most beneficial part of the Negro Trade and the main profit of the Assiento Contract will be given up if the French be suffered to carry this pretension to the apparent prejudice of Great Britain,” and that unless Britain could obtain the Assiento contract from them, the English would “suffer by ye necessity of paying Dearere for Negroes than they may have them for at this place, and ye French Colonys will flourish and inspire by a Cheap and plentiful supply of Servants—which at present is ye greatest want they have in America.” Since the next item is the vindication of Edmund Andros, it must be from late 1697.

¹¹⁴ See *Daily Courant*, London, Wednesday, December 10, 1712, issue 3483, which reprinted the full text of the Assiento that Queen Anne obtained from the French.

slaves. Edmund Jenings, who was in England on the council's behalf to lobby the Board of Trade for such Virginia laws in 1703, understood the new political climate. Via dozens of letters to Queen Anne's Board of Trade complaining about Nicholson's "corruption," Virginians first shed themselves of the governor. After Jenings became acting governor, he and the council pushed to regain headrights for masters who imported slaves.¹¹⁵ Jenings and the Virginia Council then rewrote and resubmitted headright laws that gave land to masters for "negroes" and other servants, laws that William's board had formerly vetoed.¹¹⁶

In 1706, Queen Anne's board approved a Virginia law giving bulk-bonus headrights of two hundred acres per servant/slave to masters who purchased more than five (ten new slaves earned their owner two thousand additional acres!).¹¹⁷ The board also ratified other Virginia slave laws that had been vetoed by William's board, including one that barred heathens (meaning Africans and Indians) from testifying against Christians. They signed a new Virginia law compensating masters for the value of slaves executed for crimes, enabling a harsher system of punishment.¹¹⁸ This policy would become a crucial element of later American slavery, as it made masters more willing to see their slaves executed, and was one crucial element of a separate legal system for slaves. Perhaps most telling, the board approved another law allowing plantation owners to create permanent estates over generations, with slaves and their descendants attached to these

¹¹⁵ *Journal of the Commissioners for Trade and Plantations*, vol. 1: *From April 1704 to February 1708/9* (London, 1920), especially 4, 36, 54, 89.

¹¹⁶ "In this bill the Lords Commissioners for trade were pleased to propose the following Restrictions first that no person should acquire a Right to take up land for importation, but the person imported, 2ndly that no greater quantity of Land should be allowed to any one person than 400 acres[,] 3dly that every person taking up land should plant and tend 3 acres of land for every 50 acres taken up." Such guidelines were meant to encourage more equitable landownership among a greater population. The Virginia Council refused them, responding that "to encourage a man to Settle at first with a prospect of advancing his fortune by his industry," they wanted to encourage him to buy "tithables," which is to say taxable slaves and servants. They then launched into an explanation about how tobacco wears out the land, and so each proprietor needs many acres. They conclude, "the Council are humbly of opinion that [the third condition] is impracticable and had it been put in the bill would have been equal to a prohibition to take up land for none would ever have taken up on those terms." McIlwaine, *The Executive Journals of the Council of Colonial Virginia*, vol. 3: *May 1, 1705–October 23, 1721* (Richmond, Va., 1928), 107 (June 20, 1706). For examples of the hunger of poor men for lands, see the petitions surrounding the surveying and deeding of the lands in the Pumunkey [Pamunkey] Neck in TNA, CO 5/1315, pt. 2, e.g., 179 (these are from late 1705/early 1706). Many people who were eager to have land in quantities of fifty or one hundred acres were removed from such parcels (which they had squatted on and were attempting to claim) by Major Thomas Swan, the surveyor. While tobacco did exhaust the soil, "manuring" or fertilizing as was done in contemporary Barbados and England was an easy option; those on large estates often left vast areas uncultivated.

¹¹⁷ "An Act concerning the Granting, Seating, and Planting, and for Settling the Titles and bounds of Lands; and for preventing unlawful Shooting and ranging thereupon," in Hening, *Statutes at Large*, 3: 304–329 (October 1705, but really 1706), here 304–306. The law also barred land patents of more than five hundred acres to anyone who did not own five servants or slaves—meaning quite literally that no one could have a large estate who did not own slaves. "That there shall not hereafter be granted to any person or persons not being owner or owners of five tithable servants or slaves at least, any greater quantity of land in one tract than five hundred acres. [And with regard to all those who meet such a requirement of five servants/slaves,] there shall be granted unto such person or persons over and above the said five hundred acres, the quantity of two hundred acres more for every tithable servant or slave, which he or they shall prove him or themselves to be owners of" (306).

¹¹⁸ Hening, *Statutes at Large* 3: 298 (clause 30) and 3: 461 (clause 38). Both laws are listed by Hening as originating in 1705, but really originated in 1706, as the manuscript records show. For what such reimbursements to masters for executed slaves meant in practice, see Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705–1865* (Baton Rouge, La., 1988). It enabled a draconian system of punishment.

estates like villeins. Slaves and their progeny could belong (with the land) to the lord and his heir *ad infinitum*, following feudal law of perpetual inheritance.¹¹⁹

By early 1706, then, elite Virginians and their new queen agreed on many incentives and protections for slavery. Between 1700 and 1755, the proportion of Virginians enslaved in the Tidewater leapt from less than 10 percent to a high of 66 percent, with lower proportions enslaved in the Piedmont and backcountry. These decades encompassed the "terrible transformation" from indentured servitude to African slavery in other colonies from Jamaica to South Carolina.¹²⁰

The wealthiest Virginians not only favored hereditary status and slavery but opposed laws to protect liberties such as *habeas corpus* passed by the burgesses. Slavery and racism were part of larger arguments about hereditary status and lineage. Slavery was part of a broader denial of power to many, not just to African Americans. American slavery developed as part of broader debates about justice.

THE CONTEST OVER LOCKE'S PLAN shows that slavery was embedded in larger struggles over power and empire, and also that "slavery" was not one reified entity but was created and promoted with many policies and laws, all part of larger frameworks of justice. After 1675, radical Whigs such as Locke began to challenge hereditary status and forced labor. After 1703, Tories and more conservative Whigs sought to expand slavery by returning to Stuart policies and principles that drew on feudal law and myth-making about perpetual and hereditary status. At the same time, they began to add extra elements that made the legal status of slaves ever more distinct in graduated steps.

Locke's early involvement with the Stuart slave program gave him the incentive and knowledge to challenge it. While translating principles into laws is a messy business, full of compromise, as an old man he helped undo some of the wrongs he had helped to create. Radical in some ways but restrained in others, he argued for property ownership, but not in humans. He advocated redistribution of land to smallholders. He encouraged baptism of the children of Africans and Indians to make them subjects with rights, yet at the cost of their own religious beliefs. He opposed

¹¹⁹ "An act declaring the Negro, Mulatto, and Indian slaves within this dominion, to be real estate," in Hening, *Statutes at Large*, 3: 333–335 (October 1705, but really 1706). Note that although the act allowed the oldest son to inherit all slaves, it made him pay the other children for the value of the slaves that would formerly have been their share. This appears to have been a compromise between different factions in the House of Burgesses.

¹²⁰ Since there were no formal censuses, these statistics are estimates based on wills and taxes called tithes collected on all men over sixteen and on enslaved men and women over sixteen. This data comes from solid estimates by Peter H. Wood and by Philip Morgan and Michael Nicholls. Wood, "The Changing Population of the Colonial South: An Overview by Race and Religion, 1685–1790," in Gregory A. Waselkov, Peter H. Wood, and Tom Hatley, eds., *Powhatan's Mantle: Indians in the Colonial Southeast*, Revised and Expanded Edition (Lincoln, Nebr., 2006), 57–132, here 60 (Table 1). Wood estimates that 5,500 out of 61,600 were black, or 9 percent of the population; almost all would be considered slaves in some form. By 1755, according to Morgan and Nicholls's evaluations of wills, 66 percent of the population in the Tidewater area of Virginia was enslaved. On the other hand, the total population of enslaved Virginians was lower, particularly due to their low populations in the backcountry. By 1775, Wood estimates it at 40 percent overall. Morgan and Nicholls, "Slaves in Piedmont Virginia, 1720–1790," *William and Mary Quarterly* 46, no. 2 (1989): 211–251, here 218; Wood, "The Changing Population of the Colonial South," 60 (Table 1). See also Jordan, *White over Black*; Parent, *Foul Means*. For the "terrible transformation," see Wood, *Africans in Colonial America*.

hereditary status. Finally, he objected to rewards for importing slaves and indentured servants.

Some reforms were later reversed, and others incompletely implemented, but we should not judge the revolution by the reaction. The Glorious Revolution shifted policy against slavery and toward representative government.¹²¹ It left a legacy in the reforms Virginia kept, including a college and a strengthened assembly. Arguably, that college—where Locke’s ideas were taught to later generations—provided a seedbed for America’s later revolution. But when Locke’s arguments against sovereignty and slavery reemerged, slavery was so deeply established that they were even harder to implement.

Thomas Jefferson understood how the principles of feudalism and the forces of empire underpinned slavery. In 1776, he successfully abolished feudal elements in Virginia by disallowing the entailing of land and slaves—though not the feudal principle that made slave status hereditary.¹²² His draft of the Declaration of Independence blamed England’s king(s) for slavery:

he has waged cruel war against human nature itself, violating it’s most sacred rights of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere . . . this piratical warfare, the opprobrium of infidel powers, is the warfare of the Christian king of Great Britain. Determined to keep open a market where *MEN* should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce.¹²³

Not only kings but imperial policy had protected slavery and the slave trade for more than a hundred years. (See Figure 6.)

In sum, debates about stages of economic development have obscured the complex history of slavery in ways that affect our ability to assess and regulate capitalism and corruption in the present. Political liberalism and capitalism are not complementary when capitalism allows property in humans; like slavery, capitalism assumes many forms. Theories of economic development that see feudalism and capitalism as opposites are misleading; in the case of American slavery, they developed together, with terrible consequences: Stuart kings manipulated feudal laws and principles to promote not only hereditary property in people but also trade in them. Slavery was part of a highly regulated and taxed market, one guided by the heavy hand of the royal state. Royal edicts like the headright to masters were rooted in feudal principles of dominion that promoted hereditary status. Virginia’s “feudal” laws such as entails on land and slaves hindered the free flow of capital, but also created economies of scale that made production efficient. Feudal variants interwove with capitalism to create an

¹²¹ On the question of the radicalism of the Glorious Revolution, see particularly Pincus, *1688*. He is much less concerned, in his focus in that book, with questions of rights, and even less so with the empire. In one crucial respect, the stories we are telling overlap; as Pincus notes, it was only after 1696 that the full impact of the revolution began to be felt.

¹²² Holly Brewer, “Entailing Aristocracy in Colonial Virginia: ‘Ancient Feudal Restraints’ and Revolutionary Reform,” *William and Mary Quarterly* 54, no. 2 (1997): 307–346; Brewer, “Tocqueville as Historian of the Struggle between Democracy and Aristocracy in America,” *Tocqueville Review* 27, no. 2 (2006): 381–402.

¹²³ “Jefferson’s ‘original Rough draught’ of the Declaration of Independence, 11 June–4 July 1776,” in *Papers of Thomas Jefferson*, vol. 1: *14 January 1760 to 25 December 1776*, ed. Julian P. Boyd (Princeton, N.J., 1950), 423–428, here 426.

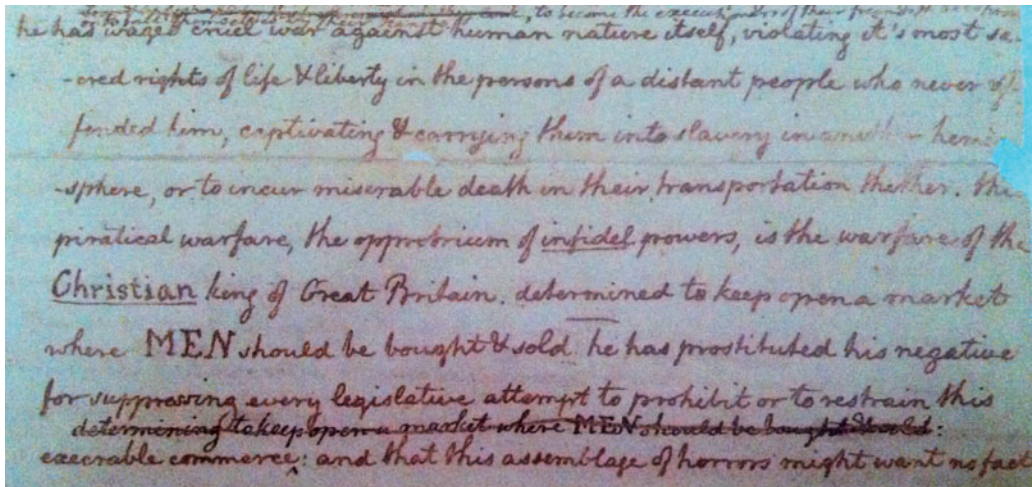


FIGURE 6: The so-called "deleted clause," removed from Thomas Jefferson's original draft of the Declaration of Independence during debate at the insistence of the delegates from South Carolina. Philadelphia, July 1, 1776. Library of Congress.

aristocratic system of large landowners and slaves, one entrenched by the American Revolution. It was this system of slavery that Locke and his allies challenged; in that challenge, the principles we now associate with democracy were born.¹²⁴

Slavery in England's empire emerged from laws and court decisions that drew on the principles of the divine right of kings; its opponents challenged both as inherently connected. Such debates burned fiercely during England's Glorious Revolution, and again during the American Revolution and the Civil War. In 1858, Lincoln recognized the same origin of slavery traced here when he spoke of the "eternal struggle" between "two principles":

The one is the common right of humanity, and the other the divine right of kings. It is the same principle in whatever shape it develops itself. It is the same spirit that says, "You work and toil and earn bread, and I'll eat it." No matter in what shape it comes, whether from the mouth of a king who seeks to bestride the people of his own nation and live by the fruit of their labor, or from one race of men as an apology for enslaving another race, it is the same tyrannical principle.¹²⁵

After the American Revolution, some American revolutionaries rejected slavery and hereditary status as inconsistent with principles of equality, while others rejected the principles of equality themselves. Still others embedded racism into the theory of

¹²⁴ I do not mean that the Stuarts ever achieved complete absolutist rule, simply that their principles supported it, and they (especially James II) pursued it in practice. In the royal colonies, which were under their jurisdiction, they were better able to pursue such policies. Perry Anderson, in *Lineages of the Absolutist State* (London, 1974), also complicates the connections between feudalism and capitalism, emphasizing the emergence of such principles and policies jointly in England and France during the early modern era. Just because I acknowledge these feudal roots does not mean that I agree with the Genoveses' portrayal of slavery as benevolent paternalism in, for example, their *The Mind of the Master Class*. Instead, I argue that feudal legal precedents were one of the building blocks of a far more comprehensive slavery.

¹²⁵ Abraham Lincoln, reply to Stephen A. Douglas, "The Last Joint Debate, at Alton, October 15, 1858," in *Political Debates between Abraham Lincoln and Stephen A. Douglas in the Celebrated Campaign of 1858 in Illinois* (Cleveland, Ohio, 1894), 253–282, here 275–276.

equality to try to justify slavery—thereby embodying Edmund Morgan’s paradox. But Morgan’s paradox emerged only after liberal ideas were in power—as defenders of slavery sought legitimacy within liberal principles. It is the conflict between these factions, not Morgan’s liberal paradox, that explains the gradual emancipations in many American states after the revolution and the Civil War.

The two words with which we began, “Well done,” illuminate Locke’s effort to overturn one of Charles II and James II’s policies that promoted bound labor, their decision to give fifty acres of land to masters who bought slaves or servants. In turn, they appointed those with the most land to powerful colonial councils. Such policies that connected property in people to property in land to political power had a long-lasting effect on the legal, political, and cultural development of Virginia and the United States.

Locke’s arguments against slavery were echoed by the 13th Amendment to the U.S. Constitution, which abolished slavery in 1865: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” Such a ban speaks to the imperfect protection of equality in the Constitution that permits forced labor in America’s prisons. In practice, in courts of law and justice, the loophole allowing slavery for those convicted of crimes can be manipulated and misused; generally, liberalism can be manipulated to create many inequalities. But it had its origins in objections to slavery, to hereditary privilege and oligarchy, objections that finally entered America’s constitution only after a bloody civil war.¹²⁶ That war tore at the vitals of a legal system that perpetuated heredity status for slaves. The cost of eliminating it, as Lincoln promised, was that the Civil War would continue “until every drop of blood drawn with the lash shall be paid by another drawn with the sword.”

¹²⁶ See, e.g., Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York, 1996); David M. Oshinsky, *“Worse than Slavery”: Parchman Farm and the Ordeal of Jim Crow Justice* (New York, 1997); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, 2012).

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