Slavery, Sovereignty, and “Inheritable Blood”:
The Struggle over Locke’s Virginia Plan of 1698
in the Wake of the Glorious Revolution

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Responding to a 1699 report that Governor Francis Nicholson “made an order against taking up land for the importation of negroes” John Locke wrote “well done.” The spindly marks of his quill—among the voluminous reports of imperial administration—gave me goose bumps. Why? I had spent several years retracing the struggle over slave law in Virginia in the decades after the Glorious Revolution of 1688. That it was an imperial struggle was fascinating, even without his involvement. But his involvement, in particular, reshapes how we must interpret the ideological origins of slavery because it unsettles longstanding assumptions. Locke’s words—along with other papers on Virginia which he rolled together and left in a cubbyhole in his desk (where they were found in the 1940s)—provide tangible evidence that he challenged African slavery and other hierarchies in the empire after the Glorious Revolution. That Locke was involved in that struggle was deliberate. Even then he was the iconic supporter of “democraticall” government, and appointing him was part of William III’s efforts to reassure his radical supporters that he would reverse James II’s hierarchical policies and fulfill the promises of the revolution.¹

Efforts to find the ideological origins of slavery have assumed that the English empire arose within a liberal context, that America was attached to “distinctive English freedoms” from the beginning, but only for whites.² As proof, scholars have argued that Locke, the most influential proponent of equality and consent during the seventeenth century, supported African slavery in theory and practice.³ Thus, scholars argue, this thinker who was so important to later American revolutionaries and to the modern political order, embedded racism into his theory of “equality.” Locke’s words and deeds explain the later hypocrisy of the American Revolution as well as many of the dilemmas about race and hierarchy that continue to bedevil the modern world.

While we have moved beyond the notion that slavery was an “unthinking decision” in the British Empire, to acknowledge the systematic nature of the “terrible transformation” from simple servitude to perpetual, hereditary, and race-based slavery, we have not paid enough attention to how the policies that framed it
originated within larger political, cultural, and ideological struggles.

In this article I argue that we've been searching for the origins of slavery in the wrong place. America was not attached to liberal, Lockean principles from the beginning. The policies that promoted slavery emerged from principles that Locke argued against, from principles that supported the divine and hereditary rights of kings. Promoted by the Stuart Kings, Charles II and James II, these principles justified policies that encouraged both large estates and hereditary slavery in their empire. While Locke accepted the restoration of Charles II in 1660 and cooperated with him between 1668 and 1674, Locke and others then decisively challenged their principles of monarchical absolutism and hereditary slavery, a split that culminated in the Glorious Revolution against James II. After that revolution, Locke tried, in league with other appointees of the new King William, to shift the course of empire. They argued that the Stuart imperial program of large estates, bound labor, and power in the hands of a few led to the slavery of the many.

They succeeded in rolling back some Stuart policies. However disentangling embedded laws and practices was difficult; their time in power both incomplete and brief. The Virginians who had benefitted from the Stuarts' policies fought back, especially after William died in 1702 and the politics of empire shifted once again. Retracing this policy reversal casts stark light on how determinedly Charles II and James II had supported American slavery, and how connected it was to their absolutist dreams, which grew out of their commitment to a principle of natural hierarchy whereby everyone was born to a status, whether as king or subject or slave. Slavery and sovereignty were connected in their thoughts and policies with sinuous strands. The Stuarts' ideology, which they legally and institutionally encoded, fundamentally shaped the new world colonies.

**Slavery and Sovereignty in Stuart Ideology and Policy**

While a coherent slavery policy began to emerge only after Charles II's Restoration in 1660, his father's and grandfather's statements about the proper order of society contained its central principles. As James I wrote in 1598: "The duty and allegiance which the people swears to their prince is not only bound to themselves, but to their . . . lawful heirs and posterity [to] the lineal succession of crowns. No objection may free the people from their oath giving to the King and his succession.
As he is their heritable overlord, and so by birth comes to his crown.” Subjects inherit the obligation of obedience just as kings inherit the right to rule; by extension other statuses, such as slavery, could be hereditary and binding. These principles did not rest quietly in the king’s text: They were propagated by politicians, preached in sermons, and recited in catechisms.5

Stuart plans for colonial development had dominium or lordship (in the legal sense) as a model. Dominium equated land ownership with political and social power. So Charles II gave away whole colonies like Carolina, Pennsylvania, and New York to his friends and relatives—as had his father—with not only the land but the right to govern the people who settled it. Likewise, the Stuarts encouraged large estates by giving land bounties to masters who imported indentured English and African servants. Such land bounties formed part of the instructions that both Charles I and Charles II sent to Virginia’s Governor Berkeley: those who imported servants should receive 50 acres per servant; such grants were called “headrights.” As Charles II’s instructed his new governor Culpeper in 1679, for example: “every person that shall transport or carry servants thither shall, for every servant soe carried and transported, have set out to him, upon the Landing and Implyment of such servant, Fifty acres of land, To have and to hold to him the said Master, his heirs and assigns for ever.” The very title to land rested on the ownership of another person. Servants were also supposed to get land if freed.6

Indeed, historians’ estimates of the population of Africans in early Virginia have relied on counting the land that masters claimed as a reward for purchasing them. Wesley Craven counted 82,000 headright land grants (of 50 acres each) for importing servants, whether English or African, between 1635 and 1699, when the policy ended. Tony Parent calls this period “the great land grab.” Indeed it was, but this policy was not simply a result of Virginians’ actions: it was imperial policy.7 As Jamaica’s incoming governor Modyford promised Charles II in 1664: he should be “prodigal in granting the first million of acres, allowing 30 acres per head to [those who import] white or black” with “land [to] be reserved those who promise to bring out more people.”8 Following his father and grandfather, Charles II promoted a hierarchical empire that reflected royalist principles about the proper order of the Kingdom.

Indeed, after 1660, encouraging servitude, especially hereditary servitude, became an organizing principle behind the empire. Charles II founded the first version of the
Royal African Company (RAC) in November of 1660; he appointed his brother James, duke of York, as its governor. Not only did Charles II write to his governors offering to supply them with servants, including “conditional [English] servants and blacks”; he made some of his governors, like Thomas Modyford of Jamaica in 1664, “factors,” or salesmen, for the RAC. The goal of the Royal African Company was to oversee and encourage trade with Africa, including the trade in people. He used the royal Navy (also led by James) to obtain forts/castles for the RAC on the African coast, even starting a costly war with the Dutch to do so. Between 1660 and 1675, Charles and James obtained more than a dozen such castles, which became a base of operations for the trade in Africans. The castles not only helped to consolidate alliances with African princes, but they prevented enemy ships from landing, provided prisons for human cargo, and served as sites of exchange. James directed the company successfully: during the 1680s alone he supervised the importation of more than 100,000 souls from Africa to the new world; from 1685 he was at the same time King of England and Governor of the Royal African Company.

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 responded Charles I’s 1660 request that the colonies codify their laws and submit them for his approval. Governor William Berkeley shared his plan for Virginia laws with Charles I in 1661—before returning to Virginia to pass them in 1662. Berkeley continued to obtain the approval of Charles II and his Council on Foreign plantations for all Virginia laws that “deviated” to any degree from the “Lawes of England.”

Before 1660, most servants in Virginia had been English: they “indentured” themselves to labor for a term of years in exchange for the costs of their passage. Their indentures, or contracts, allowed them to be bought and sold. When some Africans began to be sold into English colonies, they came from Dutch privateers who had raided Portuguese and Spanish ships; colonists who bought them often treated the Africans as they treated indentured servants. African servants, like English, had jury trials, could witness, could be manumitted, could own land and servants themselves when freed. Though some began to treat Africans as more permanent, and possibly even hereditary servants, such status was murky and often rested on arguments that those who were not Christian might be treated differently. Neither group was treated particularly well, but shared similar and limited legal rights.

Virginia’s post-1660 laws about bond-slavery followed Stuart ideals to
emphasize heredity. In 1662 a law that created a holiday to celebrate Charles II’s restoration “to the throne of his royall ancestors” was followed by one that made bond-slavery hereditary.13 “All children borne in this country shalbe held bond or free according to the condition of the mother.” Its language followed the thirteenth-century feudal law of 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 England, royalists idealized Bracton’s “feudalism,” as the source of ancient legal principles.14 Though no doubt also influenced by Spanish and Portuguese laws & practices, which like Bracton’s feudal law had roots in Rome’s ancient civil law, these Virginia laws built directly on the court culture of the restoration, with its celebration of lineage.15

Charles II connected slavery and monarchy by portraying them as literally two halves of the same coin. The guinea, his only gold coin, bore an elephant and castle, the symbols of the Royal African Company, underneath his profile. Minted with gold from Guinea in Africa, such coins were the only way most subjects would see his face (fig. 1).16 Likewise, the seal of the Royal African Company read “By Royal patronage trade flourishes.” It contained James’ ducal crest, a crown, the admiralty anchor (he was admiral of the Navy), as well as two Africans and the elephant and castle (fig. 2).17

Charles II not only supported the principles behind slavery; he recognized that his dominions in America would send him more money if he encouraged the growth of bound labor on large estates that would produce staple crops, crops that could then be exported and taxed. In 1660, Parliament granted him high taxes on staple crops produced in the colonies, income that gave him greater independence from Parliament. By 1680, Charles II was earning 100,000 pounds a year from excise taxes on tobacco from Virginia alone. By 1687, James II’s taxes on sugar and tobacco and other new world crops enabled him to pay for a standing army of 40,000 men without consulting Parliament. Income from his taxes on “plantation goods” comprised roughly 1/3 of his total.18

Charles and James not only supported slavery; they suppressed and undercut representative government in their colonies. When James became governor of New York in 1674 he appointed a council of advisors but no elected assembly. Charles and James suspended charters, abolished legislatures, and imposed royal governors and councils in 1685 when they created the Dominion of New England, an experiment in absolutist government.19 In Virginia, Charles II’s navy supported Governor Berkeley’s
side during Bacon’s rebellion, enforcing imperial control at the point of a sword. Afterward, Charles II allowed the elected Burgesses to continue to play a role in Virginia governance. But he undercut their power by taking away their judicial authority. Virginia’s Council, who held their seats at the discretion of the royal governor, then became both the upper house and highest court, and the royal governor the epicenter of power. Under James II, Governor Effingham declared that, like his king, he was above the law, and could ignore prior Virginia statutes. If there had been no revolution, James II planned to turn the southern and Caribbean colonies into a Southern Dominion under the control of a royal governor and appointed council, just as he had done with the northern colonies in the Dominion of New England.

Even after the revolution against James II, with William and Mary’s attention on consolidating their control of England and on war with France, elite Virginians refined their slave code. In 1691 they passed a law that made servitude hereditary through the father as well—if the father was black—so mulatto children became servants, even if born of a free white mother, for 31 years. The same law forbade manumission of any slave. These passages originated in the appointed council, the unelected house in Virginia and a legacy of James II’s reign—and their emendations never returned to the burgesses for approval. The bill retained the title “for suppressing slaves on outlying plantations,” because the Burgesses had written clauses only about runaway slaves. In 1692 Virginians set up separate courts for heathens (read slaves), which denied them trial by jury.

The main legislators who shaped the slave code for Virginia grew up in England during the restoration and benefitted from Stuart patronage. Fitzhugh and Jenings both moved to Virginia at age 21, in 1673 and 1680, respectively. When James II asked Virginia’s Governor Culpeper to promote Jenings for “his father’s sake,” Culpeper made him attorney general for the colony and clerk and sheriff for two counties surrounding the capital. (Jenings’s father, a member of Parliament, had supported James II’s claim to the throne when Shaftesbury, Locke’s mentor, tried to exclude him in 1679). Both men gained estates by buying people and claiming land as headrights. In 1689 alone, Jenings received 6,500 acres for importing 131 servants, 23 of whom were Anegroes. By 1700 Fitzhugh had 50,000 acres and Jenings 20,000. Both thereby had a substantial stake in Stuart policies; indeed their status was based on their acceptance of the principle that the ownership of people justified the
ownership of land.

Because Fitzhugh helped to shape Virginia’s slave code, his ideas offer particular insight. He justified feudal principles within the English common law and explained why it should apply in Virginia: “the reason must be sought for in old 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.” The feudal law of Bracton, as we have seen, sanctified not only primogeniture, which dictated who should inherit a kingdom and an estate, but also hereditary vilenage. When Fitzhugh wrote about “negroes” on his own estate he emphasized their hereditary status (though with elements that compared them to chattel, not simply villeins): “& the negroes increase being all young, & a considerable parcel of breeders, will keep that Stock good for ever.”

While most elite Virginians acceded to the Glorious Revolution when faced with mobs in April 1689 who shouted that “there being no King in England there was no government here,” not Fitzhugh. His loyalty was so strong that he simply tried to repress the mobs. He neglected to swear an oath of loyalty to the new King and Queen, as did many of Virginia’s continuing elite. Fitzhugh also continued to argue openly for James’ bloodright to the crown. In 1693, after Marylanders reported him to the authorities in England for claiming that James was still king, the high court in Virginia reluctantly put him on trial for treason. However his testimony implicated them: He “further added, that King James sent over Proclamacons to England in print, declaring a Generall Free pardon unto all [who supported his restoration]. . . . [Fitzhugh] Expected an Alteration before he gott to England, & that this & the like discourse was publickly talked on in England and Virginia, & that Sr Edmd Andros himselfe ye Governor of Virginia, did Freely and openly talk of the same, amongst his Council, who also did the same without the least Notice taken.” Many in Virginia continued to adhere to Stuart principles of hierarchy, wondering how long this revolution would last; after all, it had failed before.

Slavery and Sovereignty in Locke’s Ideology and Policy

John Locke grew up during that first revolution; indeed his father had fought for Cromwell, so he was hardly impartial. But by January of 1660, he was in despair. Cromwell had died in 1658 and the remnants of elected government in England were in ruins. As he wrote his father from Oxford, where he had just finished college, he
could not “thynke to enter upon a steady course of life whilst the whole nation is reeling.” He described the despair of those who had supported the cause of Parliament against the king: “In this time when there is no other security against men’s passion and revenge but what strength and steel yields, I have a long time thought the safest condition to be in arms, could I be but resolved from whom I ought to receive them and for whom to employ them, or could be but secured that I should not spend my blood to swell the tide of other men’s fortune or make myself a carcass for their ambition to advance itself on.” He would fight, if only he could say for whom. Despairingly, he continued: “Arms [are] the last and worst of refuges, and ‘tis the great misery of this shattered and giddy nation that wars have produced nothing but wars and the sword cut out work for the sword.”

Charles II’s restoration and coronation later in the year was a moment of hope for many, including Locke—for crowds in the street, for former Parliamentarians and Puritans even—it was a time of celebration, as Samuel Pepys described in his diary. Charles II rewarded the eight men who had helped most with his restoration, including Anthony Ashley Cooper, the future Earl of Shaftesbury, with a new colony in America: “Carolina.”

The next 15 years marked a gradual vanishing of hope for those who still sympathized with Parliament’s principles, that government should be based on “consent” particularly as expressed through parliament, and that the King should not have a divine right to rule. Instead, via the established church, the principle flourished that the King of England, in his capacity as head of the Church of England, ruled as God’s representative on earth, as God’s “anointed servant” and a “Dread Sovereign Lord” over his people. These words from the Book of Common Prayer, from the new service of May 29th, were performed throughout the empire every year to celebrate the restoration of Charles II. In that service—a mandatory holiday in Virginia with prescribed attendance—the people swore an oath to obey Charles II and his heirs in all things. Their responses in church were called their “suffrages”; thereby their oath was a kind of vote, at once a promise and a vow before God, meant to enact the King’s divine right.

Charles II gradually moved to restrict rights; if one was not paying attention, each step seemed small. He abandoned his promised pardon and prosecuted those who had participated in the trial and execution of his father. These “Regicides” were tried by the same biased jury and put to excruciating deaths. He oversaw the dismissal
of more than 2,000 ministers who would not agree to the newly created 39 articles of the Church of England in 1662. During the next decade, the King and Parliament passed laws to punish members of the populace who would not attend the Church of England or take oaths of allegiance to Charles II, oaths to obey him in all things.

Locke, as secretary to Shaftesbury, began to serve the Stuarts during this period, perhaps in an attempt to meliorate such policies, though there is no question he benefitted from the association and supported those principles to some degree himself during that period. In 1669 he drafted the *Fundamental Constitutions of Carolina*, a framework for its government. He served as secretary to the Council on Foreign Plantations, a subcommittee of Charles II’s privy council which had oversight over colonial affairs, and he invested in several companies, including, in 1672, the Royal African Company.34

The *Fundamental Constitutions* did encourage both hereditary aristocracy and slavery in Carolina. However it was written for, and signed by, the eight “lords and proprietors of the province” who were granted it for helping to restore Charles II to his throne. They desired “that the government of this province may be made most agreeable to the monarchy under which we live” and sought specifically to “avoid erecting a numerous democracy.”35 All of the proprietors but Shaftesbury—and possibly Monck—had strong, royalist ideas about the proper order of government and society, having fought for those principles in England’s civil wars.36

Attributing the authorship of this document solely to Locke is problematic, comparable to stating that the lawyer who drafts a will is expressing only his wishes.37 While Locke had some input, and the task influenced him, probably encouraging him to respond in his *Two Treatises of Government*, he held little leverage. Although he continued to be involved with Carolina through 1682, the political chasm that emerged between the proprietors undermined what little influence he had. Indeed, in 1682 Charles II held Shaftesbury—whose 1/8 vote on Carolina Locke was then representing—in prison.38

Between 1674 and 1688, Locke became an important member of the emerging Whig opposition to Charles II. In June of 1675, he sold his shares in the Royal African Company. Shortly afterward he wrote a tract, with Shaftesbury, that condemned Charles II’s absolutism. He then fled to France for four years.39 While he came back to England in 1679 during the Exclusion Crisis, he fled again to Holland in 1683. Like Algernon Sidney, whom Charles II had executed for treason in 1683 on
the basis of his writings against hereditary monarchy, Locke was suspected of involvement in the Rye House plot, a conspiracy to assassinate Charles II and his brother James. In Holland Locke gathered with other English political refugees to help William plan what became the Glorious Revolution. His thinking during this period, which culminated in his publication of *Two Treatises of Government* in 1689, challenged both absolute monarchy and slavery.

As Locke wrote in 1689, in the preface to his *Two Treatises of Government*, the Glorious Revolution had been necessary because the principles of “an advocate for slavery” had become “the current divinity of the times.” By that Locke—and others—meant not only that James II was an advocate of real slavery—but of a set of principles that enshrined hereditary hierarchy and absolute obedience for everyone. They saw his efforts to strip his subjects of rights as an outgrowth of his ideas about his own supreme right to rule. Locke argued that all subjects were slaves in royalist thought. He began his First Treatise of Government with the words: “Slavery is so vile and miserable an estate of man” that it he wondered that anyone would argue for it.

Scholars have tended to explain Locke’s condemnation of slavery as only theoretical and political, seeking evidence, instead, that Locke supported real slavery. Otherwise, if America were always liberal, how could the emergence of slavery be explained? Orlando Patterson, for example, quotes a passage from Locke’s short chapter “On slavery”: “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.”

Yet the entire thrust of Locke’s *Two Treatises* was to challenge slavery and absolute monarchy. The passage above was part of his broader condemnation of slavery. His point was that the only case where slavery *might* be justifiable was as punishment for those who started an unjust war, whereby they inflicted great harm on another people without cause; forced servitude was justifiable only as a punishment for those who committed great crimes. In this “just war” theory, he was following thinkers from Hugo Grotius in the early seventeenth century and English legal tradition going back to Bracton.
Locke, however, distinguished himself from earlier thinkers. While he agreed that the lives of invaders were forfeit because of their great crime, and that their conqueror could punish them by making them servants, he modified the obligation. The conqueror could not take their property, which belongs to their family. Most of all, the obligation—the slavery—could never descend to the invader’s children, who are born equal and had committed no crime. “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 or dominion over their children. He can have no power over them but by their own consent... he has no lawful authority whilst force, and not choice, compels them to submission.”

Locke particularly opposed the Stuarts’ reliance on the common law principle of dominium: that kings and lords inherited not only land but also rule and power over those who lived on it, and that the right of dominium was transmitted by descent from father to son. This principle, Locke contended, had made a whole nation into slaves. Under James II, who claimed he owned all the land and thereby all the power to govern, the ANation... was on the very brink of slavery and ruine.” Locke’s Two Treatises attacked all hereditary authority, especially as it was made unequal via primogeniture, the principle that made one man king. Locke argued that land should descend to all children, equally, and that power and obligation and land ownership are separate, not hereditary. Government of all kinds should be based on the consent of the governed. Conquest does not create a nation of slaves. Monarchs do not have a right to rule on the basis of concessions granted under duress from those they conquered. Even if they did, such consent could not be transmitted to the next generation.

Indeed though Locke framed his First Treatise of Government as a critique of Sir Robert Filmer, as he notes, it was only because those ideas dominated the discourse of Charles II’s and James II’s reigns: Locke was actually indicting Stuart principles and practices. However to attack the Stuart kings directly, even after the Revolution, was dangerous. Thus in paragraph 130, for example, he criticizes how the principles of heredity were used to justify slavery by purchase in the new world: “those who were rich in the patriarch’s 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, which, though they made use of in war or peace, can it be thought
the power they had over them was an inheritance descended from Adam when it was the purchase of their money? A man’s 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 anything by bargain or money is a new way of proving one had it by descent and inheritance.”

Locke was here pointing to how the Stuarts, via court decisions for the empire, had invented a “new way” of establishing hereditary ownership of people. According to a high court case of 1677 in which Charles II was indirectly involved, for example, “The subjects of infidel princes” could be treated as simple property under the law. At the same time, they were feudal villeins, and hereditary.46 The “new ways” of thinking about people as hereditary property were the Stuarts’ innovations which Locke was here condemning.

Locke systematically challenged their link between hereditary property ownership and power. Instead, he argued that property derives from mixing one’s labor with the land, and that one’s title is only secure when there is “as much and as good left over,” an argument which had profoundly destabilizing implications. So while property was an important good for Locke, his was a much more egalitarian concept than the Stuarts’s principle of dominium.47

While studies by John Dunn and James Farr have done much to criticize the interpretation that Locke was either racist or justified slavery, they still condemn his inaction. Dunn described Locke’s failure to act against slavery in the Americas as “moral evasion.” Farr went further. On the question of African American slavery, “Locke remained inert, frozen, speechless.”48 While his theory should have brought him to protest, he did not.

But he did. In 1696 Locke was given a powerful post with oversight over colonial policy. Without fanfare, he sought real reform.

The Glorious Revolution and Colonial Policy

In 1689, with his attention focused on domestic stability, William III kept many of James II’s imperial authorities—from Edmund Andros, to William Blathwayt and Edward Randolph. He did not openly support slavery: James II was forced to resign from the African Company in April of 1689 when his crown was formally revoked by
the convention parliament. The trade with Africa disappeared virtually overnight. Even England’s ownership of the castles in Africa was in jeopardy. But not until 1696 did William seriously turn his attention to the colonies. He then created a Board of Trade with new oversight over the colonies, which he packed with reforming Whigs, including John Locke.

Why choose such radical members in 1696? Perhaps he was influenced by a Jacobite assassination attempt against him in the Spring—certainly that attempt led him to dismiss many Tories from office and shifted power in the house of Commons, which increasingly pressured him to reform the empire. William chose Englishmen who had been with him in Holland in the 1680s helping to plan revolution. While some new members were also privy councilors and had held some power under James II (William Trumbull, Charles Montague), many were men who rose to prominence in opposing James II. In addition to Locke other board members were involved (or suspected) in the Rye House Plot and Monmouth’s uprising against James II (e.g., Somers and Ford Grey, Earl of Tankerville). Some members, like John Methuen, were of commoner stock: “a man of no position or wealth.” William III chose Locke pointedly and specifically, as the crucial justifier of the Revolution against James II, begging him to assume a seat on the new board. Locke was the defacto leader of the majority of the board, which was where William—and Parliament, led by Lord John Somers wanted him.

This new board had many of the same powers as the old Council on Foreign plantations for which Locke had been served as secretary in the early 1670s: they could issue instructions to governors, approve and/or veto colonial legislation, approve appointments, supervise justice; they did all this in the name of the King and with his ultimate approval. William sought, however to shift Stuart policy: much was supposed to be written afresh and judged afresh. Even before the board met in the fall of 1696, William's Privy Council had requested a revival of the laws of Virginia, a revival that never quite materialized. Indeed, it was in tracking that attempt at "revival of the laws" through the 1690s and early 1700s that I first realized just how important a role the board played in shaping Virginia legislation between 1696 and 1705—by vetoing laws, issuing instructions, creating parameters.

The new board’s formal investigation of Virginia began in October 1696 with a report from Edward Randolph, Surveyor of Customs, on the failure to collect quitrents in Virginia, an important source of royal revenue. The elite were not paying
their quitrents and, even worse, were claiming huge estates and preventing lesser men from claiming any land. To increase the King’s revenue and Virginia’s ability to defend itself against the French, he suggested that more tobacco should be planted on smaller farms, owned by more people. Considering “what vast quantities of servants and others have yearly been transported thither,” he wrote, 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.” As a result, 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.”

Randolph’s report inspired more queries from the board, particularly about the headright system and “negro servants,” an issue that Randolph had neglected. William Popple, Locke’s protégé and secretary to the board queried “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 of it.”

By the next summer, the board began a wider investigation into Virginia. Hearing that Henry Hartwell was in London, Locke devised more questions for him or any other “discrete Virginian.” These led to written and oral interviews with Hartwell and two other newly arrived Virginians, Edward Chilton and James Blair, and finally to a sketch of proposed solutions to Virginia’s problems. Several drafts of the queries to Hartwell, an overall evaluation of their responses, and that “sketch” were kept rolled up in a niche in Locke’s desk for centuries. They are now bound together and remain among Locke’s papers at the Bodleian library in Oxford. The sketch shaped board policy for four years — and influenced it for decades.

The “Sketch of the Chief Greivances of the Present Constitution of Virginia with an Essay towards the Remedies thereof” is undated. The document begins in Locke’s hand and finishes in that of his personal secretary, Sylvanus Brounower. It is a neat copy, clear and easy to read. Even though it was in Locke’s desk when he helped the Bodleian to acquire Locke’s papers, Peter Laslett assumed that Locke
would know little about Virginia. Also, Laslett, who is so important in shaping the modern Locke canon, sought to portray Locke and indeed the Glorious Revolution itself—as conservative—and this is not a conservative document. Including it in Locke’s corpus would have created problems for his overall interpretation of him. Instead, Laslett randomly attributed it to a Virginian whom the board interviewed: James Blair. When Michael Kammen transcribed it in the *Virginia Magazine* in 1966, he speculated that Blair might have composed, met with, and then dictated the sketch to Locke: “They may well have collaborated in Locke’s rooms in Mr. Pawling’s house in Little Lincoln’s Inn Fields, as Peter Laslett has picturesquely suggested.”

In 1975 Edmund Morgan accepted Kammen’s attribution, even assuming that Blair had composed other Virginia papers found in Locke’s desk such as the first draft of queries (in Locke’s handwriting) that deepened the Board’s investigation of Virginia: “Queries to be put to Coll. Hartwell or any other discrete person that knows the Constitution of Virginia.” A second (later) draft of them is also among Locke’s papers in the hand of his secretary, with Locke’s amendments as marginalia. The final draft of the questions is among the board of trade papers alongside the answers from Hartwell, Chilton and Blair.

Blair answered these questions two months later, and afterwards supported and thanked Locke for his efforts to reform Virginia’s constitution, but was naught more than a bit player in shaping imperial policy. A Whig whose concerns focused narrowly on the church and the new college of William and Mary, he was a natural ally of Locke’s. In 1681, during the period when Shaftesbury—with Locke’s help—sought to block James from becoming the next King, Blair lost his ministry in Scotland by refusing to swear to support James’s claim and went to Virginia in 1685. After William III appointed Blair to the Virginia Council, Governor Andros dismissed him in early 1697. He came to England in August to complain about his dismissal. When Blair testified before Locke and the rest of the board in October, he emphasized that Andros was robbing ministers of their salaries and the college of its building funds, complaints he repeated to the Archbishop of Canterbury in December. But he displayed no interest, there or elsewhere, in the larger political and social questions in Virginia, the issues that dominate “the sketch.”

It is puzzling, in a way, that the mis-attribution stuck; such is sometimes the way of scholarship, with one cite building on the next. Nearly everything about the
document proclaims that it is Locke’s work, a work that grew out of the board's Virginia investigation. The board was deep into investigations of Andros and Virginia politics in fall 1696. As Webb put it in his analysis of how the Whig Board of Trade sought to break the Tory control of former colonial officials like William Blathwayt and Edmund Andros: “Led by John Somers, the board laid the foundation of their attack on Andros in September 1696.” Somers led the so-called “Whig Junto” of which Locke was a part. Locke worked hard on board business through the fall (this was the period of the initial interview with Randolph—but of course the board had to deal with the business of many colonies!) Locke collapsed in January, writing to Somers and the King, as he fled London, that he was more a shadow than a man, and pleading to be released from his work on the board. He probably had tuberculosis; the grinding work wore him out and London’s smoggy winters decimated his lungs. But Somers and the King both refused his resignation.

During the fall of 1697, Locke worked so hard on board business, including the Virginia investigation of Virginia’s constitution, that he became deathly ill. He wrote “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.” In December 1697 he retreated to Oates, in Essex, about 20 miles outside London, where away from London’s winter smog, its “stifling air,” he was relieved from “the constant oppression of my lungs.” Still, he remained weak. He wrote in January: “if I stir ever so little, I am immediately out of breath.”

After hearing of his sickness and retreat to the country, Blair wrote to Locke in January 1698 to beg Locke to finish his work on Virginia reform: “I can not but flatter myself 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 Errors and abuses of it.”

He knew that Locke was fashioning a complex plan for Virginia whose acceptance required delicate negotiation with the rest of the board: “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 mismanaged it, by an untimely forcing it into other hands, and other methods than you had contrived.” There were indeed deep factions on the board: in Locke’s absence, the rest of the board were debating what to do about Virginia. George
Stepney (a Tory protege of Blathwayte) wrote that he found most of the board’s sentiments on Virginia too radical: “too Eager . . . and tho’ abuses are certainly to be reformed it is not decent in a Commission to censure peremptorily.” Stepney continued, “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.”

Locke stayed away from London’s foul air through the spring, but continued his work on board business from a distance. During these months his secretary (Brounower) brought materials back and forth. On May 31, 1698, Blathwayt wrote to Stepney that the Board was “now falling on the report about Virginia.”

The evidence that Locke wrote the May report is compelling. The only copy was found in his desk, in his handwriting and that of his personal secretary’s alongside the materials that aided him in writing it, many of them in his handwriting, including his questions to the Virginians and his own summaries and analysis of their responses. It was not a formal “committee report” and thus did not survive among the board’s records. It is a collection of organized thoughts such as: “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 . . . .” Its concerns reflected the deliberate investigation into Virginia by the board over two years, covering the range of issues raised with different informants, including the central concerns about population and land. The “remedies” reflect the principles of Locke’s *Two Treatises*. Many pieces of evidence, including those from Blair, show that Locke was the chief investigator into Virginia’s situation and the main architect of the plan for reform.

Locke was so concerned with the sketch’s recommendations that he made efforts to implement them, beginning with drafting instructions to a new governor for Virginia, Francis Nicholson, whom he selected for the post in the same week that he sent the sketch to London. Nicholson wrote to thank Locke personally on May 26, 1698 for “recommend[ing] me [as governor] to some of his most sacred majesty’s great ministers of State.”

Formal instructions to governor Nicholson that translated the sketch into policy recommendations were signed by only five Board members, Locke, John Pollexfen, Sir Phillip Meadows, John Egerton (Earl of Bridgewater), and Abraham Hill, but were clearly mainly by Locke: Egerton, a prominent Whig, was leader of the
House of Lords in Somers’ absence. Hill, a member of the Royal Society, wrote on scientific curiosities such as Russian poisoning. Pollexfen’s main treatise, *Of Trade*, supported the African trade: “The Trade to Africa deserves all encouragement, being beneficial in its exports and imports; Carries from us great quantities of our Draperies, made of our Coursest Wool... returns chiefly Gold, and Elephant’s Teeth brought here, and great quantities of Negroes.” Meadows’ published work was narrowly concerned with the law of the seas and international treaties. Of the other members who did not sign the instructions, Blathwayte was so opposed to the initial Virginia report from which it emerged that he wrote angrily to his fellow member Stepney: “I should think it a sin while I take the King’s money to agree to it.”

One further hurdle remained: those instructions had to be approved by the Lords Justices, members of William’s Privy Council who acted for William during his absence in Holland. Indeed Locke and the board were clearly anxious about the Justices’ approval, explaining many elements of the many innovations they had made in the old Stuart-era set of instructions. Two weeks later, the Justices accepted the new instructions generally, but made one significant change to support the African trade. Earlier in the year, less radical Whigs had allied with Tories in Parliament to abolish the Royal African Company’s monopoly on trade with Africa, with the stipulation that all traders to Africa had to pay for such access with a tax on each African exported to the colonies. That tax was to cover the RAC’s expenses in maintaining control over the “castles” on the African coast, so that they could defend those castles against other European powers. This law sparked a huge debate, the first of eight such debates in Parliament over the next 15 years.

The four Lords Justices who amended the final instructions to Nicholson included the powerful Tory, John Churchill, the Duke of Marlborough, Charles Sackville, Sixth Earl of Dorset; Thomas Tenison, Archbishop of Canterbury; and Charles Montague, then First Lord of the Treasury and Chancellor of the Exchequer.

These details alone give some sense of the political minefields through which Locke was moving, especially in his final two years on the Board. At points he despaired: “The corruption of the age gives me so ill a prospect of any success in designs of this kind.” He complained about the “whirlpool” of politics he was thrust into, and sought repeatedly to retreat from public life altogether. When a friend wrote to congratulate him on his initial appointment to the board, which was an honor and
paid a stipend of £1000 per year, he had responded: “Your congratulations I take as you meant, kindly and seriously, and, it may be, it is what another would rejoice in; but ’tis a preferement 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. 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.”

Despite the whirlpool, he persevered. As Nicholson reported his progress in Virginia in meticulous detail, Locke read his reports and responded. From these thousands of pages the difficulty of instituting imperial change emerges starkly. Distances, stubborn officials in Virginia loyal to the old regime and its principles, institutional rules and precedents, not to mention factions on the board and the privy council above it—all made change slow and painful. Telling the story requires detailed analysis of multitudinous attachments that were long ago buried in elaborately archived folders. With one letter alone Nicholson sent more than 75 different documents.

On February 8, 1699, Blair wrote to Locke to express his deep gratitude for the deep thought and effort Locke had put into reforming Virginia’s constitution, noting that some of the reforms had already made a difference. Blair described “how much this whole Countrey [Virginia] in generall . . . are beholding to you for the thoughts you were pleased to bestow on our late unhappy circumstances, and the methods you contrived to relieve us.”

The tranquility we begin to enjoy in this Countrey by the happy hand of our Governor, and Government is so great that I who have the happiness to know by whose means these blessings were procured have all the reason in the world to take all occasion 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 happiness of mankind. Dear Sir, think not that I speak this from any other principle or design I have, but only from a sense how much this whole Countrey in generall and my Self in particular are beholding to you for the thoughts you was pleased to bestow on our late unhappy circumstances, and the methods you contrived to relieve us.
This was the second letter in which Blair acknowledged that Locke had “contrived” the plans for Virginia. Locke responded to Blair with modesty, “if I have been any way instrumentall in procuring any good to the country you are in, I am as much pleased with it as you can be.”

Locke’s “methods contrived to relieve” sought to shift authority toward the elected Burgesses by limiting the number of appointments under the governor’s control (such as customs collectors) especially his right to choose Councilors. Instead, the Burgesses should nominate Councilors. Whereas previously, the Burgesses had been called and dismissed only at the Governor’s pleasure, Locke urged that they be elected annually and be able to petition the Board of Trade and the King directly. Annual parliaments, direct access, and vesting most power in elected bodies (instead of appointed) were profoundly democratic suggestions. Likewise, Councilors should no longer hold other powerful offices concurrently, such as militia captain, county court justice, and custom collectors. Most of all, Councilors should not form the highest court.

It is a great Grievance that this weighty matter [the superior court] is in the hands of the Governour, and Council; Men utterly ignorant of the Law, impatient of contradiccion, 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 no Oath to doe Justice, Men that have made an order that they themselves shall not be arrested, and Men that are under strong temptations to a byass in giveing their opinion by reason of the places of profitt they hold during 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 Judgment what way he pleases. Locke proposed creating a separate superior court that would make Councilors subject to the law, not above it.

He encouraged free emigration, widespread ownership of land, and more representative government. Locke began with the main problem that Randolph had raised in 1696, a “want of people.” Locke described their headright system as “strangly perverted.” “The ancient Encouragement of 50 acres of Land per poll [person] designed and ordered by the King upon the first seating of the Country, for all that should come and settle there, 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 goe beyond the inhabitants much higher up than the Rivers are navigable, and out of the way of all business.” Locke thus denounced the old headright system that gave lands to masters for importing servants (including those Locke elsewhere called “negro servants”), encouraged townships, and sought to break up the great estates. While he had justified the right to claim uncultivated land in his Two Treatises (which had implications for claiming Indian lands and thus empire itself), he used the same logic here to justify confiscating the uncultivated property of Virginia’s elite and redistributing it to newcomers in small parcels.

Locke’s concern about the headright system became a centerpiece of the instructions to Nicholson: no longer should headrights be granted to masters for importing servants, whether Christian or Negro. Headrights should go only to immigrants themselves. As Hill, Bridgwater, Pollexfen, and Meadowes justified this change to the Lords Justices: “we have added a new Method for taking up Land . . . to be there maturely considered of, That the governour may also give an account to his majesty, in what manner the said Method may be introduced into practice.”

Their instructions had an immediate impact when the governor decided to use the General court to reverse Virginia’s headright policy, denying, especially, that importing “negroes” should give their masters a right to land. The Genereral Court, which was composed of the Governor and council, 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” would no longer give their owner a claim to 50 acres of land: “the said Rights are not good and Legall to qualifie the petitioner to take up the said Land. “And ordered that it be an established rule of this court not to admit of any Rights for Land but only for the importation of his Majesties Christian subjects into this Colony and dominion.” Nicholson acknowledged that he was following his instructions from the board: “His instructions did not permit such Rights to pass.” The court decision was signed by only three councilors in addition to Nicholson himself: William Byrd, Edward Hill, and Jenings. The absence of most members (there were normally 12) is remarkable, indicating that the Council did not support Nicholson and/or that he cannily chose a time when most were absent. Nicholson’s decision also held that only “Christian servants”—and only they themselves should get land—thus inverting the former headright system—
following Locke’s plan and Nicholson’s instructions. One can only imagine the reluctance of Jenings, for example, to approve this case—to reverse a policy by which he had gained tens of thousands of acres, as we have seen. Indeed, after William III died, he led the fight to reverse it... 

When Nicholson reported his decision to the Board, it was summarized, like all such reports, by a secretary. On that summary Locke wrote “Well Done.” (fig 3)86 With those words, Locke brought full circle his efforts to reform one of Virginia’s gravest “abuses” first brought to his attention in 1696 and thereby undid the “strangely perverted” policy of land bounties that had encouraged the importation of “negro servants” and indeed servitude generally. It is more than ironic that Nicholson, and through Nicholson Locke—had to make change via Virginia’s high court, the court Locke had so profoundly criticized.

In his initial sketch, Locke also tried to undo the status quo created by that “perverted” land grant policy. Though he recognized the grants as a fait accompli, he saw it as fraud. He outlined several strategies to confiscate these great estates when possible, through escheats, cultivation rules, and enforcing nonpayment of quitrents. Once confiscated, the land was to be redistributed in 50-acre parcels to new migrants. Arguably Nicholson’s attempt to follow that part of Locke’s plan—to collect quitrents and to enforce cultivation rules with the threat of land confiscation for those who did not comply—led to the concerted efforts of Virginia’s elite to remove him in 1704.

In several other respects Locke’s sketch sought to undercut hierarchies, especially forced labor, and particularly from Africa. Reducing large estates and encouraging smallholdings (which a family could cultivate themselves) limited the demand for labor. He sought to maximize free immigration, suggesting that the King pay for the travel of the poor in England, French Protestants, and “Native Irish,” to Virginia. Locke’s stance thus contrasted starkly with Charles II and James II’s support for the Royal African Company. The only bound labor he supported was in the case of those convicted of crimes in England and sentenced to die: even on this question he was reluctant. He queried whether: “Delinquents had not better be sent to the Plantations (tho’ condemned to several years Servitude) than to be sent to Tyburne” to hang.87

He also urged that the children of blacks should be “baptized, catechized, and bred Christians.” He must have been aware that the main arguments for slavery in
England and indeed throughout Europe justified it only for heathens. Making them Christian meant making them potential subjects, with the rights that entailed. He explicitly demanded that people of all nations should have “equal privileges” with subjects under the law. “As people of all different persuasions enjoy Lybertie of Conscience, so let people of all Nations be naturalized, and enjoy equal priviledges, with the other English inhabitants residing there.” He thereby balanced concerns about liberty of conscience and equality under the law, to be deliberately inclusive.

Locke sought to foster the growth of a prosperous middling sort, of tradesmen and small property owners, commerce and exchange. Tradesmen with skills should migrate to Virginia, while other immigrants should produce more staples—from raisins to cotton, medicinal plants, and Indian Corn, as well as finished goods like silk, iron, and potash. He promoted a stable currency common to all colonies as essential to commerce. Indeed, his vision imagines recreating a bustling English port city.

It is hard to know how much Locke (and the Board of Trade) knew about hereditary slavery in the colonies, which was still solidifying. Locke never used the word “slave” in the Board of Trade correspondence of the 1690s, whether for Virginia or elsewhere, but always “servant” or “negro servant.”

It is difficult to imagine that he did not know that slavery was becoming perpetual and hereditary in Virginia. Yet reading through the handwritten collection of Virginia laws that Andros sent in 1698 shows how difficult that knowing was. The 1662 law that made status hereditary, for example, had been repealed, folded into the final sentence of an irrelevant law of 1696 entitled “An Act for Punishment of Fornication and several other sins and offenses.”

This handwritten volume was sent only in June 1698 in response to repeated complaints from the board that they had no copy of Virginia’s laws. Its arrival postdated Locke’s Virginia report in May, and probably, given summer sailing patterns, even the instructions to Nicholson, signed on August 23. The volume still sits among the Board’s records, a beautifully bound manuscript. The pages on the “suppression of slaves on outlying plantations” (the 1691 law that bound mulattos until age 31) are well thumbed, slightly dirtier than the rest. One can imagine Locke’s inky hands paging through it. If the laws did arrive before August 23, why did he not order Nicholson to undo that law? Perhaps he thought his general recommendation about equality under the law “for people of all nations” was sufficient. Also, he would have known that the high court in England (King’s Bench) had presided over a crucial
decision in 1696 involving an enslaved man from Barbados, that held that no man
could own another and that people could not be property, a case that sent shivers
across the empire.93 That was another way of acting against “slavery”—making it a
temporary servitude, that was clearly part of William III’s strategy at that juncture.

Certainly headright policy, which had been set by Charles II, was easier to shift
(by instructions to the new governor and then a court decision) than Virginia statutes,
especially given the political furor surrounding James II’s dispensing with English law
in 1687 (his judges ruled that he could ignore parliamentary statute). Therefore Locke
could not/would not order the new Governor to simply suspended Virginia statutes,
as it would undermine elected government.94

Several constraints tempered Locke’s suggestions both in his original sketch
and in the instructions to Nicholson that grew out of them. First, he worried about
altering Virginia’s constitution too much. Second, he was working for the King of
England, who depended on revenues from Virginia and had to defend his territory
and people there. Locke therefore couched his suggestions to appeal to William: His
reforms would increase quitrent and excise revenue by better enforcement and
expanded areas of cultivation owned by more families. The colony would then then
have a more people to defend it. Third, he was aware that undoing prior land grants
was a delicate business. Fourth, he knew he had to navigate the different political
interests of those in power in England—one the privy council, in the House of Lords
and Commons—all of whom had some say over colonial policy.

While Locke had to make practical concessions in 1698—to merchants and
Lords Justices and to William III—Locke’s proposals display a deep commitment to
government based on consent of the governed and equality before the law. His
suggestions are so interesting because Locke made few significant reform suggestions
for England itself.95

Taking this story seriously means reconsidering our perspective on both Locke
and the Glorious Revolution. For Laslett, Locke was an aristocrat and the Glorious
Revolution was the conservative revolution of Edmund Burke with whom he ends his
essay on Locke and the board of trade. He portrays the members of the board of
trade as noblemen—elaborately dressed and coiffed. Yet Locke did not fit Laslett’s
image, dressing, especially late in life, simply, like a tradesman (fig 4).96 Likewise, if
Locke wrote this document, and William’s board sought—and in some cases gained—
significant imperial reforms, the revolution was not Burke’s revolution, but one much
The Virginia Response to Locke's Reforms

Stuart ideology helped to shape real slavery in Virginia even after the revolution. In 1705/6 elite Virginians consolidated their slave code, implementing policies that led their population to leap from less than 10 percent enslaved in 1700 to almost 50 percent in 1750. These decades were part of a terrible transformation from indentured servitude to African slavery, which was also happening in other colonies, including Jamaica and South Carolina. The wealthiest Virginians also opposed legal changes that the burgesses supported to protect liberties for poorer and middling Englishmen. Racism was one part of an obsession with lineage; slavery one part of a larger set of ideas about the natural order, one to which consent to government, habeus corpus, and trial by jury were dispensable, even disreputable. Elite Virginians fought to keep power over testimony, land, and justice itself.

The struggle began in 1700. Shortly after Locke resigned from the Board in April, Nicholson wrote plaintively to the slightly altered board, tentatively expressing some of his constituents' complaints that the African trade had virtually disappeared. He appealed to the Tory element, to men such as Blathwayt, that the king's revenues would increase with the importation of negroes: "I do not hear of any more Negroes being 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."}

Not much changed, however, until William's death from a hunting accident in March, 1702. The new Queen Anne resented William's alliances with radical Whigs; she allied, especially initially, with high tories, and immediately shifted the official stance on slavery. Her board of trade began to assume a different form, which the Virginians—like Jenings, who was in England in 1702-3 to lobby the board—immediately realized.

Indeed, the Queen Anne's policies were a completely reversal. One of her two new Secretaries of State in 1704 was Robert Harley, by then England's most prominent slave trader. Likewise, she struggled diplomatically and militarily to gain a bigger share for England in the slave trade. When William Byrd (Virginia's agent in London) addressed the Privy Council in 1697, he had urged that England acquire (from France) the Assiento contract, which gave the right to supply the Spanish
empire with slaves. Doing so would mean a “Cheap and plentifull supply of Servants [i.e. slaves]” for Virginia as well. But William took no such action. But in 1713 acquiring the Assiento—the sole right to supply the Spanish empire with slaves for 30 years—became Anne’s crowning achievement, a crucial component of her terms for the treaty of Utrecht. Pushed through Parliament by Harley, she rewarded him by making him the director of the new company to which she granted the Assiento contract, the South Sea Company. A new structure of power was thus set in place, one that directly benefited the English monarchs in that they earned 10 pounds for each slave imported to the New World by any British ship along with gaining new laborers to cultivate the staple crops which also enriched them. England went from being a bit player in the slave trade in 1700 to importing more than half the slaves to the New World as a whole by mid-century. As Byrd hoped, slaves became cheaper and more plentiful for the British colonies and their population surged.

The imperial changes created a different political balance on the ground as well. Elite Virginians, via a massive set of letters complaining about his corruption to the board of trade, were able to persuade Queen Anne to dismiss Nicholson in 1704. While their laws about headrights and slavery and other issues were vetoed repeatedly by the board up through 1703, Queen Anne’s new appointees had different priorities. Councilor Jenings led the effort to reinstate headrights. He did so in testimony before the board in London after William’s death in 1702-3 and later in correspondence accompanying Virginia laws. There, Jenings and the Council reinserted clauses that the Board had deleted when they had initially rejected the laws, claiming that no one would settle in Virginia unless they could get land bounties for slaves and servants. Given that, at the same time, many settlers were struggling to gain 50 acre grants for their own selves in the recently opened Pumunkey Neck, as the Council well knew, this was an outright lie. Perhaps they meant, nobody “of worth.” The Council made the same arguments when they gave out land patents for thousands of acres.

Finally, in early 1706, Jenings’ and other councilors’ efforts paid off: Queen Anne’s Board of Trade approved many Virginia laws that protected slavery. Many of these laws, which originated in some of Fitzhugh’s suggestions from before he died in 1701, had been rejected by previous boards of trade. Most importantly the 1706 board approved a Virginia law that reversed Nicholson’s court ruling of 1699—with a vengeance. The new statute gave bulk bonuses (of 200 acres per imported servant or slavel) to masters who bought more than five servants/slaves. Likewise, Virginia’s
new laws strengthened the slave code, including a key law that heathens (and their descendants) could not legally testify against Christians, which meant that slaves could not accuse their masters of crimes against them. They likewise promised to compensate masters for executed slaves, which enabled a harsh system of slave punishment.\textsuperscript{103}

They also adopted a powerful law to protect estates whereby owners could create permanent trusts called entail, which enforced primogeniture and kept large estates intact from generation to generation. Slaves and their descendants could be attached to such estates. In principle, then, slaves and their progeny could belong (with the land) to one bloodline, to master and son forever, encapsulating the concept of \textit{dominium} and the essence of feudal law.\textsuperscript{104}

* * *

The contest over Locke's plan shows how embedded Virginia politics were in the larger ideological struggles over power and empire in the early modern World. Slavery—forced labor—was imbricated in these debates. Radical Whigs (or what those contemporaries would have described as “republicans” or “commonwealthsmen” or “levellers”), such as Locke, began to challenge it even as more conservative Whigs and Tories in the House of Commons broadened trade with Africa and thereby expanded slavery, following the wishes of some members of the Virginia Council.

The “feudal” ideas that underpinned the reaction of elite Virginians shows how they were attempting to use the past for new purposes, building on the Stuart policies. Of course this was not complete or real “feudalism”: Virginians were from the beginning growing crops for a market—a highly regulated and taxed market—through which they also bought most of their goods and supplies. While some of the laws that created fixed status (e.g., entail) hindered the free flow of capital and investment, they also concentrated capital by creating economies of scale. By the time of the American Revolution, perhaps 3/4 of the land in Tidewater Virginia had been entailed, locked into inheritance by primogeniture. Likewise, references to entailed slaves fill the wills of colonial Virginia. The laws that held sway for less than a century had a permanent impact on Virginia because of the role they played in creating an aristocratic system characterized by large landownership and slavery, both entrenched at the time of the Revolution. Jefferson argued that his most important revolutionary
reforms, which abolished both entail and primogeniture (for land and slaves), had applied the axe to the foundation of aristocracy in Virginia. 105

Jefferson did not only try to undo the feudal elements of land and slave law; he understood how the forces of empire underpinned slavery. Jefferson’s first draft of the Declaration of Independence blamed the king for the slave trade: “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.” Indeed, not only the King but imperial policy had protected slavery and the slave trade; once institutionalized in the Assiento contract, it made indirect interests direct, enshrining Stuart policy among the Hanovers.

Locke’s policies in the 1690s illuminate at once his pragmatism and his balancing of competing claims. While more radical than we had thought, he was restrained: celebrating property ownership and yet advocating careful redistribution in the face of fraud; encouraging baptism in order to gain toleration and inclusion for the children of Africans; negotiating key changes in the face of political opposition. While translating ideas into laws is always a messy business, full of compromise, this history shows how important that work was.

Especially in the Empire, the Glorious Revolution significantly shifted policy. 107 Though parts were later reversed, and others incompletely implemented, we should not judge the revolution by the reaction. It left a legacy in the reforms that Virginia kept, such as a college and a more representative government. Arguably that college—where Locke=s ideas were taught to later generations of the sons of the elite—helped to provide a seedbed for a later revolution. These arguments about sovereignty, equality and slavery would again rear their heads, but were even harder to resolve when slavery was so deeply established.

Given Locke=s continuing relevance for our modern understanding of democracy, his stance on slavery matters. Is it all a sham, this promise of liberty and equality in Locke’s Two Treatises, a sham that intends merely to enslave the Other? Is that promise embedded, from the start, with racism, a fundamentally tainted message from someone who justified and promoted slavery? No.
The two words with which this paper began, “well done,” when put in context, speak to America=s promise that all men are created equal, a promise that was influenced by Locke=s political philosophy. Slavery arose from the complex of ideas and their institutional embodiment that Locke argued against. Locke’s statement that all men are born equal really did mean all. To the extent that Locke justified forced labor, it was as punishment for a serious crime. His ideas fit with the Thirteenth Amendment that 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.”

1 Many scholars, following in the wake of JGA Pocock’s Machiavellian Moment, do not call Locke’s ideas “republican.” However, by the 1690s, Locke was the leading proponent of ideas about equality and consent that were shared by others whom contemporaries would have described as “democraticall” or “republican” or “Whig” (meaning in this case what we would call “radical” Whig). His were also sometimes called “levelling” ideas, reflecting back to their origins during the English Civil War. Others whose work was remarkably similar to Locke’s are Algernon Sidney and James Harrington. I reflect on these questions of etymology in the introduction to By Birth or Consent. What is critical at this point is that I identify “republican” or what scholars sometimes later call “liberal” ideas as arguing against hereditary status (including monarchy) as the basis of authority, supporting equality under the law, and arguing that government should be based on the consent of the governed. The concerns for virtue that some scholars (following Pocock) have identified as uniquely republican also existed in Locke: restraining self-interest is central to his concerns in his tract on education. Brewer, By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority (Chapel Hill: UNC Press, 2005).

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 nature free and equal, many persist in viewing slavery and the South much as Hartz viewed them: a curious anomaly, abnormality, or aberration of American political culture” (p. 1308). See also Uday Singh Mehta, Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought (Chicago: University of Chicago Press, 1999). He argues that Lockean liberalism was coeval with imperialism and thus somehow provides its justification by making others into children who cannot reason, see introduction, chap. 1. While of course liberalism can be twisted in that way, such rationalization is not intrinsic to Locke’s thought. See Brewer, By Birth or Consent, esp. chap. 3 and conclusion.


While many scholars have challenged the argument that early America was liberal in other respects, they have neglected slavery. One of the few works that connects political ideas to slavery itself is Robert Olwell’s Masters, Slaves, and Subjects, which 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 Morgan’s Slave Counterpoint and Anthony Parent’s Foul Means show how patriarchal arguments helped masters to justify their position in society in the eighteenth century. Kathleen Brown’s work implies a political dimension in her argument that patriarchy required slavery; making the connection to the broader political debate, however, is not her concern. Edmund Morgan, American Slavery, American Freedom: The Ordeal of Colonial Virginia (New York: WW Norton, 1975); Olwell, Masters, Slaves, and Subjects: the Culture of Power in the South Carolina Low Country, 1740-1790 (Ithaca: Cornell University Press, 1998); Philip D. Morgan, Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry (Chapel Hill: UNC Press, 1998); Kathleen Brown, Good Wives, Nasty Wenchses, and Anxious Patriarchs: Gender, Race and Power in Colonial Virginia (Chapel Hill: UNC Press, 1996). 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 (New York: Oxford University Press, 2004)—25th anniversary edition with new introduction.

4 While Filmer did on occasion allow for forms of succession besides primogeniture, much of his text reveals that as his ideal source of authority. Note his use of such phrases as God “reestablished the ancient and prime right of lineal succession to paternal government,” or “next heirs” or “the
right of the father descended to the true heir," or "by succeeding a king" or "escheat for want of an heir," or "true heir." In the latter passage, in particular, where he questions what a kingdom should do if there is no heir, he answers: "It is the negligence or ignorance of the people to lose the knowledge of the true heir, for an heir there always is" a sentence that reminds me of the complicated tables of descents that accompanied the law books on inheritance. Filmer, Patriarcha and Other Writings, ed. Johann Sommerville, (Cambridge: Cambridge University Press, 1991), esp. 9-11.

While some American historians have held that Filmer himself had little sway in America, I would answer that even if colonists did not read him directly, these principles of hereditary status had powerful adherents in certain colonies because of how they were expressed in high Anglican thought and transmitted in portions of the Book of Common Prayer and such popular sermon literature (especially in Virginia) as Richard Allestree's Whole Duty of Man. Tracing this argument more broadly was one of my aims in *By Birth or Consent*. On Allestree, see 304-5. On slavery and the ideology of the Stuarts and the slave trade see also Brewer, "Power and Authority in the Colonial South: The English Legacy and its Contradictions," in *Britain and the American South: Encounters and Exchanges from the Colonial Times to the Present* (Jackson: University Press of Mississippi, 2003), 27-52.


6 Item CO 5/1355 AEntries Relating to Virginia@ p. 347 (from my own photos, not in Colonial State Papers database).


11 The first version of the Royal African Company was actually called the "Royal Adventurers into Africa." For Charles II's requests, see "Minutes of the Council on Foreign Plantations," February 11, 1660/1, letter to Barbados. "To 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." *Calendar of State Papers, America and the West Indies, 1661-1665* ed. W. Noel Sainsbury (London: HMSO, 1880), 6-7. Also see, for example, "Petition of Sir William Berkeley, his Majesty's Governor of Virginia, to Lords of the Council for Foreign Plantations" July ?, 1662 CO 1/16, No. 78.

12 While Africans were kept in servitude in English colonies before 1660, no laws were passed to stabilize their situation or to govern their status in the manifold ways that would come to characterize the rigidity of slavery in the Anglo 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. In Providence Island, the residents captured the African servants/slaves meant for Spanish colonies. The colony there ended in 1641. Although its English sponsors were Puritans, there is no evidence that the settlers supported those principles. See Karen Kupperman, *Providence Island 1630-1641: The Other Puritan Colony* (Cambridge University Press, 1993). In Barbados, slavery was becoming widespread by the mid-1650s and there is evidence that their situation was hereditary as well. Still, the legal structure of slavery was lacking until the Restoration in 1660. Even in the 1650s, Barbados was controlled by royalists, with most parliamentary supporters expelled (and their land confiscated) in 1650. While Barbadians swore temporary allegiance to Parliament in 1651, it did not stick (unlike in Virginia, as is explored below). See Gary Puckrein, *Little England: Plantation Society and Anglo-Barbadian Politics, 1627-1700* (New York: NYU Press, 1984), 113, which describes the confiscations and banishments. Puckrein does not spell out the consequences of this act on Barbadian politics, but there is no doubt it was profound. On blacks in Virginia before 1660, see e.g. A. Leon Higginbotham, *Race and the American Legal Process* (New York, 1978), esp. ch. 2 (Virginia); Breen and Innes, *Myne Owne Ground*, Tomlins, *Freedom Bound*.

13 William Waller Hening, ed., *Statutes at Large of Virginia* (New York, 1823), 2:24-25 (March 1661) and 2:49 (March 1662) and 2:86 (March 1662) which declared that no one could be arrested for debt or served a writ on such holy days.

indicates that someone learned in Latin and the common law crafted it from Bracton.

15 The Spanish and Portuguese civil laws followed Roman practice to trace status to the mother as did Bracton. For Roman practice, see Justinian’s Digests, in particular. Bracton was influenced by a twelfth century revival of interest in Roman law. See note 14 above.

16 Perhaps inspired by the Portuguese coin that also bore an elephant? Indeed, Charles II’s marriage to Catherine de Braganza of Portugal was no doubt influenced by her riches her connections to the slave trade. Though the Portuguese had recently lost some of the major forts to the Dutch (very recently, during even the marriage negotiations, inc. Elmina), the Portuguese had numerous connections to many forts upon which Charles II may have hoped to capitalize from the beginning of the marriage negotiations. Even in 1660 as the ships were crossing with her, 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 . . .* (London, F. Grove, [1660]), p. 1. 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, Laxer, Cottons, Tea, and Porcelain* (New York: Knopf, 1965).

17 I realized the connections to the coin and seal by chance as I was reading the Calendar of State Papers. I read the description of the seal, and then started wondering about the coin. See Sainsbury, ed., *Calendar of State Papers, 1661-1663*, esp. 120-21, January 10, 1663. “Warrant to prepare a bill for the King’s signature, containing a grant to the Royal African Company.”


19 Among many sources see Webb, *Lord Churchill’s Coup*, esp. 101-104.

20 *Colonial Papers, America and the West Indies, 1696-1697*, testimony of Henry Hartwell, James Blair, and Edward Chilton about the condition of Virginia, to the Board of Trade, October 1697, vol. p. 650. They point out that “The 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.” Charles II and his privy council removed this ability upon Culpeper’s appeal. Under James II, Effingham took over the ability to appoint the clerk to the Burgesses, who served not only as a kind of spy, but can shape what is recorded. As Hartwell etc. reported, the clerkship was “a very profitable place by the governor’s gift” (p 650-651). The Burgesses thus cannot even privately petition the King and Council.

21 Cite... I know this from talking with Karen Kupperman, who says she read it in one of the older historians works... Andrews? Viola Barnes Dominion of New England: a Study in English Colonial Policy (1923)? Who? Find it...!

Council's modification of the bill "for suppressing out lying slaves," see H. R. McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia, Council records for May 19, 1691, 1:149.

23 Culpeper was from a strong royalist family. Almost nothing has been written about Jenings. Thomas Daniel Knight was kind enough to share his undergraduate honors thesis on Jenings with me: "That Mean Sycophant Colonel Heartless, A Worm Fit Only to be Trod Upon: Edmund Jenings Examined," Washington and Lee, 1992, citing Warren Billings, Effingham Papers, 33, 209, 216, 265. Also see Knight's MA thesis at Oxford, on creole vs. native elites in Virginia during this period, "To Ride a Native of our Own: Cultural and Political Tensions among the Virginia Elite between Anglicization and Creolization, 1676-1727," MA. Thesis, Oxford, 1994.

24 Only five years after Locke left the Council on Foreign Plantations, Shaftesbury and the other proprietors were on opposite sides in a political struggle in England over how power should be balanced between king and Parliament and over who should next be king. Shaftesbury, who led the new Whig party, sought to exclude James II. In this struggle, Edmund Jenings the elder was a member of Parliament who supported the future James II. Shaftesbury called Edmund Jenings the elder "base" and "vile," but James sought to reward his son of the same name.

25 Fortescue, Calendar of State Papers . . . 1698, heard March 14, 1698 (sent April 24, 1697), p. 133. "I have used my endeavours for the revival of the laws both with the Council and Assembly and encouraged any that would contribute thereto. They were reduced by a principal member of the Assembly under proper heads, which being brought before the Assembly they were impatient of any further trouble therein, but voted the several paragraphs into so many laws. But the Assembly not agreeing with the Council in matters recommended for the King's service . . . was dissolved." Andros had to be referring to Fitzhugh since it was under him that the last attempt had been made, an attempt ending in the dissolution of the Burgesses (in 1693).

26 Richard Beale Davis, ed. William Fitzhugh and his Chesapeake World, 1676-1701: The Fitzhugh Letters and Other Documents (Chapel Hill: UNC Press, 1963), 68-69, hereafter cited as Fitzhugh Letters. H. R. McIlwaine, ed., The Executive Journals of the Council of Colonial Virginia (Richmond: D. Bottam, 1925), 1:285 (April 29, 1693) and 1:302 (October 25, 1693). The initial charges were brought against Fitzhugh in a letter from the "Governor and Council of Maryland" to the Governor of Virginia. This meant that the charges were already reported back to England and had to be taken seriously. Fitzhugh thought erroneously that James II had just had a second son—in fact, his new child was a daughter.

27 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 Fitzhugh's Letters, 65-66. His letters are full of citations to "antient Authors": for two examples of discussions where he cited Coke's Institutes, see pp. 72 and 98 of his letters. Littleton's text, for example, held that when land was sold or forfeit then the villeins went with the land. They were called "regardent to a manor."
Coke upon Littleton, 121b, 122a. Another principal mover in the law reform was Robert Carter, who also owned Bracton, Coke, and Sir Robert Filmer’s writings. On Robert Carter’s library, see Louis B. Wright, *The First Gentlemen of Virginia* (Charlottesville: University of Virginia Press, 1940), 261-83.

28 *Fitzhugh Letters*, 175-76.
29 Fortescue, *Calendar of State Papers, 1689-1692*, 33; Note that Lee assumes his post on the Council again under Andros—without taking an oath. So Nicholson enforced oath taking to the new regime, while Andros did not. Knight, “To Ride a Native” noted that four of the men whom Nicholson initially named to the Council refused the oath as well. *Executive Journals* 1:37, 276, 278, 314, 360, 398 (check, make sure pages for Lee, others, are there...).

34 K.H.D. Haley, *Shafestbury, ...* Locke was granted the shares as part of the new incorporation act of the RAC in 1673, for which he paid 400 pounds. He sold those shares on June 18, 1675, according to his account book in the Bodleian Library (finish cite). June 1675 marks both the emergence of the Whig party, which Shaftesbury and Locke led, and also at the moment that the Royal African Company was moving much more significantly into the slave trade in particular (as opposed to the larger trade in gold, ebony, ivory, and other goods. On the Royal African Company’s shift towards slavery see the slave trade database www.slavevoyages.org, accessed 11/2/09. It shows that the RAC (then called the Royal Adventurers into Africa) imported only 564 slaves into British colonies in all of the 1660s (all to the Carribbean). Between 1670 and 1675, however it moved sharply to focus its trade on slavery, importing 8,986 slaves. After 1675 (when Locke no longer owned stock) the shift is clearest: The RAC brought 27,084 slaves into British colonies between 1675-1680 and even more between 1680-1684 (almost all to the Carribbean). On the earlier trade in many other African goods, see Kenneth Gordon Davies, *The Royal African Company*, (London: Longmans, Green & co., 1957).
35 “The Fundamental Constitutions of Carolina”(1669), in *John Locke: Political Writings* ed. David
Wootton (Indianapolis: Hackett, 2003), 211.

36 The two exceptions are Anthony Ashley Cooper, Locke’s mentor, who had been heavily involved on the parliamentary side and had served under Cromwell, including on his law reform commission of 1653. The other exception is George Monck who had fought on both sides during the civil war, beginning on that of Charles I, and then switching to Parliament. The reasons for them supporting Charles II’s restoration are a story in themselves, but no doubt for Cooper, whom Charles II also created the first Earl of Shaftesbury, it was partly a question of dissatisfaction with the end to which Cromwell (and his death) had brought them.

37 The first published attribution of Locke as the author of the Fundamental Constitutions was by Pierre Desmaizeaux, ed., A Collection of Several Pieces of Mr. John Locke (London, J. Bettenham, 1720), preface; it is the first piece in a collection organized in chronological order, 1-53. Desmaizeaux attributes the work solely to Locke, claiming that the proprietors somehow wanted Lord Ashley to draw the laws up as he was the wisest of them, and he in turn chose Locke. This is a philosophical fairy tale, given the intense political disputes in which all of these eight proprietors had been involved. The “Fundamental Constitutions of Carolina” of 1669, written while he was secretary to Anthony Ashley Cooper, first Earl of Shaftesbury, was in fact written for 8 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. Several were outspoken royalists (like the Berkeley brothers), others—while they changed sides repeatedly during the Civil War and Interregnum (like George Monck, first Earl of Ablemarle) sided at least nominally with royalist positions. Shaftesbury, while radical before—and after (when he was the main agitator in the Exclusion Crisis of 1679-1681) was in 1669 still nominally siding with King Charles II. As secretary for these men, Locke was hardly writing his own plan. They had considered opinions about how they wanted the government in their colony to look, opinions formed during the crucible of a war that was about the nature of power and government. Still, there is no doubt that Locke was at this point more conservative, as were many coming into the Restoration, disillusioned with the way that Cromwell had seized power and with the results of England’s Civil War (though it should be noted that Locke’s father fought for Parliament). This can be seen most convincingly by comparing his writings on religious toleration between 1662 and 1689, the first of which argued that kings should be able to control the religious practice of their subjects, and the last and most famous of which argued that religious choice was a basic right. See Ashcraft’s discussion of the latter in “Revolutionary Politics” and Locke’s Two Treatises of Government (Princeton: Princeton University Press, 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 (1986): 263-89 as well as his more recent article, “Locke, Natural Law, and New World Slavery,” which elaborates the same conclusions and connects them to how later thinkers (especially in the antebellum South) read Locke (Political Theory 36 (2008): 495-522). Farr also makes a strong argument in the latter 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

38 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 is evidence that Locke really did support slavery. However note that the other identified reviser, Peter Colleton (a proprietor, son of John Colleton, a strong Royalist and the original proprietor, to whom Charles II had granted a baronetcy as well as the joint-proprietorship) had “corresponded regularly and intimately [with Locke] until Shaftesbury’s fall from grace with Charles II in 1674,” which is when the political chasm began to emerge, a break that by 1682, as Charles II repeatedly levied criminal charges against Shaftesbury, had become a canyon. To see Colleton and Locke as working amicably together, each getting exactly what they wanted in the revisions at this point, downplays the political divisions, divisions so fierce that they would precipitate a revolution within the decade. Indeed, Locke’s comments indicate that Locke, on Shaftesbury’s behalf, was responding to the suggestions of Colleton and an unknown 3rd writer with compromise and concessions such as: “Agreed that the Proprietors Deputies are not to be turned out,” 614-15. Since these comments were incorporated into the revised Constitution, it is likely that they are already the result of compromise. Other suggestions might represent more of Shaftesbury’s and/or Locke’s ideas, such as the support of regular elections and limiting prorogation of the elected house. Shaftesbury’s hand was thus weak at this point, not only literally (he was sick and would die within the year) but politically and economically, as even his interest in the property in Carolina was mortgaged, as Armitage acknowledges. On Armitage’s larger point that Locke’s involvement in the *Fundamental Constitutions* helped to influence Locke’s writing of the *Two Treatises*, I am more in agreement. However, as must be clear, I think Locke’s *Two Treatises* emerged more in reaction than in harmony with it.

39 See A Letter to a Friend in the Country, (London, 1675) by Shaftesbury and Locke, but published anonymously. Also see Locke’s *Correspondence* for 1675-1679. In that letter, the two men published the proceedings of the House of Lords that criticized a law that Charles II wanted passed that would condemn as treasonous any resistance to the king, in word or deed, in principle or practice, even by members of parliament.

40 Locke, *Two Treatises*, (preface), 137-138.

41 Orlando Patterson, *Freedom in the Making of Western Culture* (New York: Basic Books, 1991), 10. Here, Patterson follows Edmund S. Morgan’s interpretation. As Morgan put it: “This is not to say that a belief in Republican Equality had to rest on slavery, but only that in Virginia . . . it did.” Morgan, *American Slavery, American Freedom*, 381. Morgan’s book has been profoundly influential on
this question among American historians, who about ten years ago voted it their favorite book. This argument has also shaped our understanding of liberalism and the American Revolution in African American studies as shown by the quote from Orlando Patterson.

While I think that Morgan’s analysis has a hard kernel of truth for understanding the views of many Southerners in the wake of the American Revolution, it is only one strand of possible responses in the colonial period (probably helping to shape elite Virginian response, to a limited degree, to the reforms urged upon them in the wake of the Glorious Revolution).


43 See Locke, Two Treatises, “On Conquest,” esp. paras. 183-184, 189. For the context of Patterson’s quote, see the short section entitled “On Slavery,” pars. 22 and 23. The very first words of his Two Treatises 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 persuade all Men, that they are Slaves, and out to be so, for [an] exercise of wit.” Thus launches his attack on Sir Robert Filmer’s political opinions. See par. 1. Also see Tuck, Natural Rights Theories, Eric Mack, John Locke (Continuum, New York: 2009) has an especially insightful discussion of Locke’s ideas about slavery within the context of his arguments and about conquest and resistance (see chap. 5).

44 Introduction to Locke, Two Treatises, 1: 91-92.

45 Locke First Treatise, 1:129.


47 Locke, Two Treatises, chapter V “Of Property.” “As much Land as a Man Tills, Plants, Improves, Cultivates and can use the Product of, so much is his Property” (par. 32). He emphasizes repeatedly that labor gives property rights: “‘tis labour indeed that puts the difference of value on everything” (par. 40). Note how Locke specifies that in America, particularly before trade is extensive, people would produce only so much as benefitted their family. Though he acknowledges that with the invention of money, people can gain more property than they can use (leading to “unequal Possession of the earth (par. 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).

48 Dunn, The Political Philosophy of John Locke (Cambridge: Cambridge University Press, 1969), 175n;
Farr, “So Vile and Miserable an Estate” 281. Farr defends his conclusions in “Locke, Natural Law, and New World Slavery,” Political Theory 36 (2008): 495-522. I find his later argument quite problematic because, in order to reconcile Locke’s ideas with his supposedly problematic actions, Farr tries to wholly separate Locke’s ideas about political and economic slavery and to use evidence of how later defenders of slavery drew on Locke’s authorship of the Fundamental Constitutions to justify it. He surveys Locke’s role in imperial administration to conclude that Locke was complicit in the development of slavery: “He partook of the madness of American slavery” (516). As will be clear below, greater context reveals a very different role for Locke in the 1690s than Farr thinks, that in turn shows that Locke is connecting political and economic slavery, thought and action.

On James II’s resignation see Davies, Royal African Company. On the decline in the African trade, see the slave trade database.


While Richard Ashcraft wrote briefly about Locke’s reforms 30 years ago, he provided little context and neglected the slavery issue. Recent collections of Locke’s work ignore them completely. Richard Ashcraft, “Political Theory and Political Reform: John Locke’s Essay on Virginia,” Western Political Science Quarterly 22 (1969): 742-58. It is most interesting to note, for example, that the Cambridge edition of Locke’s political writings includes The Fundamental Constitutions (1669) among Locke’s “major essays,” while not even considering inclusion of Locke’s plan for Virginia among the lesser writings (though Ashcraft’s article is cited in the bibliography). Mark Goldie, ed., Locke: Political Essays (Cambridge: Cambridge University Press, 1997). It claims to be a “comprehensive collection” of Locke’s political writings (back cover).


Fortescue, Calendar of State Papers, Colonial, 1696-1697, Item 176, received August 31, 1696, read October 6. “Representation of Edward Randolph as to Virginia,” 88-90.

Perhaps from Locke’s previous involvement in colonial affairs, whether as secretary to the Council on Foreign Plantations in 1672-73 or his involvement with Carolina.

Fortescue, Calendar of State Papers, Colonial, 1696-1697, item 300, October 6, 1696, 172. Locke ms c.30 59r-60r Bodleian Library, Oxford. See also item 354 (p. 188). 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,” British National Archives, CO 5/1309, p. 85.

These queries appear to have been initially drafted by Locke and are among his loose papers at the Bodleian. See Lovelace collection, ms. Locke e. 9.

57 When first catalogued in 1941, the Bodleian archivist assumed it was by Locke, as did the few scholars who discovered it in the next twenty years, including Jack Greene in his Quest for Power. See P. Long, A Summary Catalogue of the Lovelace Collection of the Papers of John Locke (Oxford Bibliographic Society Publications, n.s. 8 [Oxford, 1959]), 40. See also Jack Greene, Quest for Power: The Lower Houses of Assembly in Southern Royal Colonies, 1689-1776 (Chapel Hill: UNC Press, 1963).

58 Bodleian Library, Lovelace Collection, MS Locke e. 9. The manuscript has been published in “Virginia at the Close of the Seventeenth Century: An Appraisal by James Blair and John Locke,” ed. Michael Kammen, Virginia Magazine of History and Biography 74 (1966): 141-69, but he attributed it almost wholly to Blair: “It has to be Blair’s composition” (147). Laslett asserts “he [Locke] made Blair write out for him a complete treatise entitled “Some of the Chief Grievances . . . .” without any evidence. Laslett’s speculations can be found in Laslett, “John Locke, the Great Recoinage,” 400. For Kammen’s thanks to Laslett, see note 3, for the reference to Locke and Blair’s supposed private meeting in late August, see note 29. Kammen published only the actual plan for law reform, but none of the additional materials that help to provide context such as the questions and summaries of answers from the interviews with the Virginians. Kammen argued that two documents by Blair of 1697 and 1699 were similar to the Virginia plan, however having read them—and all of Blair’s other writings—carefully, I admit to being perplexed. Blair’s concerns are so narrowly about the church and college, his writing so different from that in the Virginia plan. When I first read it, thinking it was by Blair, I was instead struck by its similarity to Locke’s. Since I had been reading the Board of Trade records before I encountered it, I knew why and how Locke and been so involved in Virginia.

59 Morgan, American Slavery, American Freedom, 322, 381; Bodleian library, Locke Ms. c. 30 59v, dated August 30 [1697]. For Board records see:

60 Blair the troublemaker appears repeatedly in the usual telling of this story. See Blackburn, New World Slavery, for example. See also Warren M. Billings, John E. Selby, and Thad W. Tate, Colonial Virginia: A History (White Plains: KTO Press, 1986), 146-54.

61 For transcripts of both Blair’s complaint against Andros and Andros’s trial in absentia at Lambeth Palace on December 27, 1697, see pp. 9-29 and 36-65 of Papers Relating to the History of the Church in Virginia, ed. William Stevens Perry (n.p., 1870), transcribed from the collections at Lambeth. In both cases, Blair stayed doggedly focused on the church and the college. Blair’s long memorial against Andros, for example, contains two sections entitled: “His conduct to the clergy and Religion” and “Sir Edmund Andros’s Conduct with Relation to the College of William and Mary in Virginia.” While occasionally issues such as corruption in tax collection or misuse of revenue appear, it is because these interfere with support of the church and college.

62 Blair’s various writings, including those of 1697 and 1699 that Kammen says were “similar” to the Virginia plan actually contain few points of overlap with it. One such point, about baptizing slaves in the 1699 document, grew directly out of Nicholson’s instructions, which Blair had seen or knew.
about, which of course came from the Board of Trade and were shaped by Locke’s Virginia plan. See Samuel C. McCulloch, “James Blair’s Plan of 1699 to Reform the Clergy of Virginia,” William and Mary Quarterly, 3rd ser., 4 (1947):60-86. 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 it was written by a Virginian. But given that Virginia was part of the empire, that seems the more likely meaning.

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 was dismissed—abandoned apparently even by him—and has been ignored by Locke scholars. Ashcraft did not even cite it in his main book on Locke’s politics. Still, Ashcraft’s encounter with it influenced his interpretation of Locke in his Revolutionary Politics. The “Remedies” that Locke proposes fit closely with the political principles he lays out in his Two Treatises, and particularly with the interpretation of them put forward by Richard Ashcraft in his “Revolutionary Politics” and John Locke’s Two Treatises of Government (Princeton, 1986). Ashcraft, “Political Theory and Political Reform.” Also see Farr, “Problem of Slavery in Locke’s Thought,” 268, which discusses it briefly but with little context.


65 Locke to Somers, January 7, 1697, in Bourne, ed., Life of John Locke, 2:360-61.


67 Correspondence of John Locke, letter 2380 (January 20, 1698), 6:302-03. Note that the editor of Locke’s Correspondence cites Kammen to attribute the Virginia plan to Blair.


69 On March 19, 1698, Locke wrote to Edward Clarke: “The weather thank god is now become warmer and has a little released me from my close confinement to the chimney corner. . . . [though] I have not breath enough yet to walke and therefor have been without the moat but twice since I came hither.” Correspondence of John Locke, 7:351 (letter 2408).

70 See Brounower to Locke, 7 May 1698, in Correspondence of John Locke 6:394, #2434 (on Brounower’s visit and help); Blathwayt to Stepney, May 31, 1698, quoted in Webb, “Imperial Fixer,” 401.

71 Laslett reported finding the whole set of Virginia papers in a pigeonhole in Locke’s desk, which Locke had left to his nephew Peter King. Laslett helped Oxford to acquire these papers, which were paid for by the American philanthropist Paul Mellon, who also gave the money to create the Yale Museum of British Art. See Laslett, “John Locke, the Great Recoinage,”399. Kammen, “Virginia at the Close,” 167 or in original Locke MS e. 9, p. 32. The funny capitalization (edited out by Kammen) is in the original.

72 Blair had told Nicholson about Locke’s role. See Correspondence of John Locke letter 2446 (May 26, 1698) 6:408-09.
The five signatories were: Locke, Pollexfen, Meadows, John Egerton (the Third Earl of Bridgewater), and Abraham Hill. See CO 5/1359, 252-259 (original pagination). Pollexfen's main treatise was *Of Trade* (London, 1700). On his support of the slave trade, see pp. 128-129. Meadows had been Cromwell's "Latin secretary," and had served as ambassador to Sweden and Denmark during the interregnum, where he negotiated the 1658 Treaty of Roskilde. His two treatises were: *Observations Concerning the Dominion and Sovereignty of the Seas* (1689) and *A Brief Enquiry into Leagues and Confederacies Made between Princes and Nations* (1681).

Blathwayt to Stepney, May 31, 1698, quoted in Webb, "Imperial Fixer," 401.

For some background on the first of these debates, see William A. Pettigrew, "Free to Enslave: Politics and the Escalation of Britain's Transatlantic Slave Trade, 1688-1714" *William and Mary Quarterly*, 3rd ser., 64 (2007), 3-38. 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 he supported either free trade or the RAC. William A. Pettigrew, "Free to Enslave: Politics and the Escalation of Britain's Transatlantic Slave Trade, 1688-1714" *William and Mary Quarterly*, 3rd ser., 64 (2007), 3-38.

There are thus two versions of the instructions to the new governor Nicholson dated August 23 and September 13, 1698. The first, signed by Locke and discussed above, subtly introduced key reforms from Locke's 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." British National Archives, CO 5/1359, esp. 252-59.


Nicholson is a complex figure in this story, and certainly politically astute. Like Blair, he tends to be portrayed as more of 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. It took me some time to realize that 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 Burgesses. During this period 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, etc. For the earlier interpretations of Nicholson, see particularly Stephen Saunders Webb, "The Strange Career of Francis Nicholson," *William and Mary Quarterly*, 3rd Ser., 23 (1966):513-548 and Kevin Hardwick, "Narratives of Villainy and Virtue: Governor Francis Nicholson and the Character of the Good
Ruler in Early Virginia,” Journal of Southern History 72 (2006):39-74. Hardwick tends to take 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. What is particularly interesting is how Nicholson and Blair ended up on different sides by 1704, due at least in part to different attitudes towards the support of the church. Hardwick’s article is particularly valuable in setting these debates within thinking about larger ideas about good rulers.

79 “Commissary James Blair to Locke,” February 8, 1699, letter 2545 in Correspondence of John Locke, 6: 560.
81 Kammen, “Virginia at the Close,” 162.
82 Fortescue, Calendar of State Papers: America and the West Indies... 1697-1698, 1:423 (item 819), September 13, 1698. This item is instructions to the new Governor of Virginia, Francis Nicholson. He is told to push for a complete revision of the laws. He is also supposed enforce land confiscations when quitrents are seven years or more in arrears, to give the names of persons with more than 20,000 acres, and to set up “a new system of land-grants, founded on settlement rather than importation of servants.” See also the notebook that contains the various drafts of the instructions to Nicholson, discussed below, at the British National Archives, CO 5/1359. This notebook showed the political negotiation behind those instructions.
83 On the Indian land question see especially Arneil, John Locke and America, chap. 6.
84 “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, CO 5/1359, esp 256.
85 Item 819 (instructions to Nicholson). “At a Councill Held at James City the Fifteenth day of April, 1699” in McIlwaine, Executive Journals of the Council, 1:42; Nicholson to Board of Trade, July 1, 1699, British National Archives, ms. CO 5/1310, item C2, also transcribed in CO 5/1360. Tony Parent realizes that Nicholson is responding to the Board of Trade request but does not examine the motivations for this shift beyond the immediate Virginia context. He 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 did not want lesser men to gain access to land through slaves, which I find much less persuasive, given how adamantly the council members struggled to regain this right between then and 1706, when they finally resecured it, Parent, Fourth Means, 45. 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 enough context to realize what was really going on in the instructions to the new Governor Nicholson. So Farr assumes that the standard request to tally the population (including “negro servants”) supported slavery and (following Laslett) that Locke wrote clauses in the instructions to support the Royal African Company (which he did not, as shown below), Farr, “So Vile and Miserable an Estate,” 268-69, Laslett, Two Treatises, 284n.
British National Archives, CO 5/1310, p. 8 (old pagination).

His suggestion encouraged a nascent British policy. About 50,000 people reprieved from the hangman’s rope were sent to the colonies, particularly Virginia, in the eighteenth century. See, for example 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: Genealogical Publishing, 1992); for Locke’s proposal, see Michael Kammen, “Virginia at the close,” p. 158.


This issue is one that I’m exploring separately because it demands extensive consideration. Locke was sometimes at a loss in terms of how his attachment to certain principles conflicted, over 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 “‘Baptized, Catechized, and Bred Christians’: Tracing Subjects, Slaves, Suffrage and Sovereignty through the religious debates of the Early British Atlantic” in Peter Onuf and Peter Thompson, eds., *State and Citizen in British America and the Early United States*, Charlottesville, University of Virginia Press, forthcoming, Fall 2012. His 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 as noted, were integral to all of Locke’s philosophy, see Dunn, *Political Philosophy of John Locke*, xi; more comprehensively see Jeremy Waldron, who argues that many of Locke’s central premises, including his basic principles of human equality, had religious foundations. See Waldron, *God, Locke, and Equality: Christian Foundations in Locke’s Political Thought* (Cambridge: Cambridge University Press, 2002).

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 blacks who labor for English masters in the Carribean. Some of the correspondence that Locke signed while secretary to the Council on Foreign Plantations (an earlier incarnation of the Board of Trade, when it was a subcommittee to the Privy Council) did use that word, however. See the relevant volumes of the *Colonial Papers*.

Andros’s laws, sent in late June 1698, 148-50. British National Archives CO 5/1378. The volume is organized chronologically by the year each law is passed and the order 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. It is noted in the margin next to it: “repealed by 1. Act of 24 September 1696.”

Robin Blackburn alleges that Locke approved the 1691 Virginia law that sentenced mulatto
children to 31 years of servitude. Yet Locke had no oversight over colonial laws until 1696 and
couldn’t even get his hands on a copy of Virginia laws until after all the investigations and his plan
were written. Blackburn, New World Slavery, 264-65.
93 Chamberlayne v. Harvey. I write about this case and its impact extensively in my book-in-progress,
“Inheritable Blood.”
95 Locke did send suggestions to his cousin Peter King and to Edward Clarke. For King, see Bourne,
Life of John Locke, 2:450-53, 501-10. For Clarke, see esp. Mark Knights (University of East Anglia,
Norwich), “John Locke and Post-Revolutionary Politics: Electoral Reform and the Franchise”
(unpublished paper possibly forthcoming in Past and Present) 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
was well to support the poor, which would have been a considerable expansion of the franchise in
most boroughs.
96 Peter Laslett begins his account of the Board of Trade: “We must imagine ten Stuart noblemen
and gentlemen sitting in their silken knee breeches in front of pewter sandboxes and goose quill
pens.” He includes Locke among this ten. In fact, he is leading our imaginations somewhat astray.
We have portraits of some members of the Board of Trade and Privy Council and the King that do
fit Laslett’s image—painted by that prolific artist, Sir Godfrey Kneller. But his painting of Locke is
different. Locke’s clothes are closest to the painting that Kneller did of his engraver (John Smith) in
the same year. Indeed, Locke’s clothes seem more rumpled, more worn, than those of the engraver,
his hair scraggier. Locke wore no wig, unlike other patricians in Kneller’s portraits. Laslett, “John
Locke, the Great Recoinage,” 370. Laslett ends his article 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 in understanding the character of the Glorious Revolution more broadly.
97 For a fine discussion of Burke’s role in recasting the character of the Glorious Revolution to make
it conservative, see Seven Pincus, ed., England’s Glorious Revolution, 1688-1689: A Brief History with
Documents, which relates the historiography through the primary sources. See esp. documents by
Colley Cibber (48-49) and Burke (52-54). Cibber wrote in 1740: “to the revolution only we owe the
full possession of what till then we never had more than a perpetually contested right to.”
98 Nicholison to the Board of Trade, August 27, 1700, British National Archives, CO 5/1310.
99 Byrd’s manuscript notes on the speeches he gave to the Privy Council and other official bodies
(include his testimony defending Andros before the Archbishop of Canterbury) are at the
Huntington MS Brock collection BR 744, see esp. 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,” that unless Britain can obtain the
Assiento contract from them, the English will "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.


102 "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, thirdly 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 land ownership among a greater population. The Council refused them, responding that they had changed the level to 500 acres and had allowed owners to claim more land on the basis of their "tithables" such that if they owned more than five servants or slaves, they could ignore this restriction completely, and gain 200 acres for each additional servant or slave, up to 4,000 per patent (See text of law itself, Hening, *Statutes at Large*, 3:306). The Council's response reads, "That no greater quantities of land will be taken up than the persons are able to Cultivate for as five hundred acres of new land allowed in this Bill is little enough to encourage a man to Settle at first with a prospect of advancing his fortune by his industry, So the quantity Superadded to such as have Stocks of Tithables will be but as much as they can cultivate." They then launch 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." What they really mean is they and their friends wouldn't be able to obtain as much land if this were a condition. Given the small parcels that many proprietors willingly settled, this is an obvious and bold lie, but it served their own interests. See McIlwaine, *Executive Journals, Council*, 3:107 (June 20, 1706). For examples of the hunger of poor men for lands, see the numerous petitions surrounding the surveying and deeding of the lands in the Pumunkey Neck in British National Archives CO 5/1315, pt 2, eg. 179 (these are from late 1705/early 1706, the exact time period when the Council was writing this petition). Many people who were eager to have land in quantities of 50 or 100 acres were removed from such parcels (that they had squatted on and were attempting to claim) by Major Thomas Swan, the surveyor, who appears to be rewarding his friends. The point is that the Council must have known that many people were delighted with 50-acre parcels. While tobacco did exhaust the soil, "manuring" as went on in contemporary Barbados and England was an obvious option and those on large estates often left vast areas uncultivated.

103 Tony Parent calls the late seventeenth century (and into the early eighteenth) the time of the "landgrab." See Parent, *Foul Means*, chap. 1.

104 See Hening, *Statutes at Large* 3: 298 (clause 30) and 3:461 (1705, really 1706), clause 38. For what
this meant is practice, see Phillip Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia* (LSU Press, 1988).

104 *Hening, Statutes at Large*, 3:333 (1705, but really 1706): “An act declaring the Negro, Mulatto, and Indian slaves within this dominion to be real estate.” Note that although the act directed that the oldest son should inherit all of the 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.


107 On the question of the radicalism of the Glorious Revolution, see particularly Steven Pincus, *1688: The First Modern Revolution* (Yale, 2011). Interestingly, he was writing his book as I was working on the earliest drafts of this article, and we exchanged notes. He is much less concerned, in his focus in that book, with questions of rights, and even less so with the empire; his focus was on the political economy of England itself and on the actions of James II and William and Mary in turn. 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 fully felt; so too 1696 emerges as the crucial year in this story.