IDEAS IN CONTEXT

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AN APPROACH TO POLITICAL PHILOSOPHY:
LOCKE IN CONTEXTS

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Chapter 9

Liberty and natural law

Part one is an analysis of Locke's concept of natural and civil liberty in the Two treatises. His account of liberty in the Essay is interpreted within the framework laid down in the Two treatises. I continue to believe that this early interpretation of natural and civil liberty is substantially correct and crucially important for understanding the formation of the concept of civil society or 'public sphere' in which citizens actively judge the policies of government in light of the public good. Whereas Hobbes and the absolutists argue that citizens alienate their independent political judgement as a condition of subjection, civic humanists uphold independent political judgement but tend to restrict its exercise to those directly engaged in government. Locke, in contrast to both, grants to citizens not in government the right to discuss and judge their governors in public, to dissent, and, if necessary, resist, when they transgress the public good.

However, as I worked on chapter 6 I came to see that the interpretation of Locke's natural law as 'rationalist' rather than 'voluntarist' was mistaken. I took Hobbes' extreme form of moral and legal voluntarism as a benchmark and assumed that any theory short of that was rationalist. But it became clear that Locke developed his theory of natural law within an intellectual context set by Pufendorf of 'mitigated' voluntarism in which the creation of the world is purely contingent, as in all forms of voluntarism, yet once it is created certain unalterable and rational rules of human conduct follow that god ordainably binds himself to obey, as in rationalism. (Thus a rationalist like Grotius and a mitigated voluntarist like Pufendorf could reach similar conclusions from different premises.) In part 2, accordingly, I set aside the Two treatises and trace the development of Locke's thoughts on natural law and moral liberty in his other writings. He did not work out a coherent theory and, towards the end, despaired at
reconciling god's omnipotence and human freedom. His thoughts remain complex, incomplete and inconsistent. The complexity of his work is intensified by his attempt to combine mitigated voluntarism with a hedonistic psychology and a probabilistic epistemology in a way which genuinely answers the threat of moral relativism laid out in book one of the Essay.

Moreover, turning back now to the Two Treatises, in order to ground his philosophy of limited government, Locke attempted to place more limitations on the divine and human will than voluntarist absolutists such as Pufendorf needed to do, yet without recourse to the discrepant teleological assumptions underlying rationalism. While hedonistic motivation and sanctions play central roles, the content of natural law is not derived from god's will but from the relation of God as maker to humans as his workmanship. Although god is free to destroy his creation if he wills, he nonetheless made humans for certain purposes which can be discovered by rational reflection on his workmanship, and natural duties and rights can be derived from them. These limit both individual human will and the will of the lawmaker (or government). Government is further limited by Locke's argument that absolute or arbitrary rule is not a legitimate form of government, and that consent and the rule of law are necessary conditions of legitimacy. Thus natural and human law in the Two Treatises are inconsistent with his voluntaristic statements elsewhere that the will of the lawmaker backed up by sanctions is the law (see chapter 6). The way to clarify these complexities further is not to try to force the texts into the fixed categories of voluntarist and rationalist but to kick away the categories once they have served their purpose.

This chapter shows that the concept of a tradition, such as voluntarism or rationalism, should be used only heuristically to provide an initial representation of a text and a benchmark against which the text's originality can be measured. Unless an author is simply reproducing a tradition of working entirely within it, the unreflective interpretation of a text solely in the terms of a tradition obscures what is most original and distinctive. This is especially true for an author such as Locke who is working with and within a number of traditions and combining elements from each in transformative ways. The understanding of a text that is gradually achieved by interpreting it in the light of various traditions eventually enables a person to turn around and see that the continued use of a tradition as an interpretive grid is an obstacle to further understanding.

LIBERTY FROM THE PERSPECTIVE OF THE TWO TREATISES

In section 15 of the Philosophical investigations Wittgenstein writes,

Our language can be seen as an ancient city: a maze of little streets and squares, of old and new houses, and of houses with additions from various periods; and this surrounded by a multitude of new boroughs with straight regular streets and uniform houses.

Our language of liberty can be seen this way too: the many ways we have to describe, explain, evaluate, question, and characterize liberty are the present interrelated descendants of styles or boroughs 'from various periods', some of which bear the stamp of Locke's contribution.

An account of liberty is a set of terms and a range of distinctions that are the expression of certain purposes, concerns or interests, of an author, group, class, people or so on. The terms and distinctions are partially adopted from the languages or traditions of political expression available to the author, the neighbourhoods of the city with which he or she is familiar (the achievement of intellectual community); and partially adopted by the author to articulate his or her concerns, thus making his or her distinctive contribution to the city (the achievement of intellectual freedom). By making the point or purpose of a depletion of liberty a necessary element I mean to bring into prominence the 'practical' nature of this kind of knowledge: its aim is not speculation nor understanding alone, but a certain kind of life or conduct. That is, the language the author employs is interwoven in human action, in the practice of liberty, and the way he or she adapts it is meant to alter that practice, by being accepted by the audience. This point has been made by Aristotle and Wittgenstein, and put beyond doubt by Taylor.1

To understand Locke's rendition of liberty, then, we will have to become familiar with the ways the terms and distinctions he employs are used by him and by other authors whose writings comprise the available languages of political expression. Describing similarities and dissimilarities will throw into relief what is conventional and what is original in Locke's account. Surveying this in the light of the practical context, the objects of concern to which Locke's argument is a response, will enable us to understand the purposes and concerns

that find expression in, and give significance to the terms and distinctions he uses. Finally, comparisons and contrasts with the ways we commonly talk and write about liberty today will help us to see where our thought runs parallel to Locke's, where his 'style' has left its mark on whole areas of our city, and where our thought diverges.

There are continuities because we are citizens of the same city as Locke and discontinuities because there have been both conceptual additions and evascuations since Locke and new objects of concern. Locke was not concerned with totalitarian movements, for example, as was Berlin, but with, inter alia, absolutism. My aim in approaching Locke in this manner is not only to understand but also to break up our sense of the ordinary with respect to liberty, to paraphrase Cavell; to broaden our horizons when thinking about liberty and thus to provide, to employ a term given a new lease on life by Rorty, edification.

Of the three summaries or explanations of liberty that Locke provides in the Two treatises, the most extensive is given at section 22 (spelling modernized, cf. 4, 57). The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no other legislative power, but that established by consent, in the commonwealth, nor under the dominion of any will, or restraint of any law, but what the legislative shall enact, according to the trust put in it.

The major distinction is between natural liberty and liberty in society, or, as I shall call it, civil liberty. (When I wish to refer to both I shall use the term 'liberty.') After each of the three explanations, Locke concludes that liberty is not what Sir Robert Filmer, his great absolutist adversary, claims it is, namely, 'a liberty for every one to do what he lists, to live as he pleases, and not to be tyr'd by any laws' (22).

3 The numbers in brackets refer to section numbers of the Second treatise, and to the First treatise where pertinent by a 1.

This shows, as Ladett and Dunn have always stressed, that Locke wrote on liberty in response to Filmer's change that liberty is indistinguishable from licence. Thus, I want to examine Filmer's attack on natural liberty in order to provide the appropriate stage setting or, to keep with our original metaphor, urban topography for understanding Locke's response.

Filmer's writings are the most radical attack in the seventeenth century on the political premise that men are naturally free or have natural liberty. In the opening of Patriarcha, subtitled 'A defence of the natural power of kings against the unnatural liberty of the people', he singles out as his target the whole western political tradition that is based on man's natural liberty (53). Since the time school divinity began to flourish many of the Schoolmen and other Divines have published the opinion that: 'Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one hath over others was at the first by human right bestowed according to the discretion of the multitude.'

Filmer quite rightly associates natural liberty with the theory of popular sovereignty, that political power resides naturally in the people and only conventionally, by consent, in the government. He says the theory was first advanced by 'the subtle Schoolmen, who to be sure to thrust down the King below the Pope, thought it the safest course to advance the people above the King; that so the papal power may be more easily take place of the regal' (53). During the Reformation, upon the grounds of this doctrine, both Jesuits and some zealous followers of the Geneva discipline (Calvinism) have built a pernicious conclusion, which is, 'that the people or multitude have power to punish or deprive the Prince if he transgress the laws of the kingdom' (53). That is, natural liberty is secondly associated with early modern theories of revolution (see chapter 1 above). In the seventeenth century, Filmer continues, the 'Divines of the Reformed Churches have entertained it, and the common people everywhere tenderly embrace it' (53). He then goes on to criticize and to refute a number of the leading sixteenth and seventeenth century theories of natural liberty.

5 The numbers in brackets refer to page numbers in Patriarcha and other political works of Sir Robert Filmer, ed. Peter Ladett (Oxford: Blackwell, 1949).
Thus, when Filmer set out to undermine the doctrine of natural liberty he attacked a four-hundred-year-old tradition that ‘ hath of late obtained a great reputation’ (55) and which had been embraced by every major European movement including humanism. When Locke reasserted natural liberty, popular sovereignty, and the right of revolution against Filmer, he was able to draw on this rich and variegated mainstream tradition. From a contemporary viewpoint, Filmer was, as Locke characterizes him, ‘a reformer of politics’ (1:106); Locke an advocate of ‘the old way’ (1:6).

Filmer’s assault on natural liberty consists in two parts. The first is the defence of absolutism; his Adamite theory of natural subjection, Christianity, prior to its perversion by thirteenth century Scholastics and their heirs, and prior to its contamination with pagan ideas of liberty, knew of only one example of natural liberty, and this the tragic liberty of Adam that led to the Fall and original sin. From that moment politics emerged in its unalterable form. God granted Adam absolute and unlimited domain over his family, including his wife, children, servants and slaves, and all land and animals in the world. This fatherly or patriarchal dominion was transmitted through eldest sons to every present monarch over every family in his kingdom and, in a collateral and subordinate manner, to every present father over his family (63). Because every father is under the absolute and arbitrary will of the monarch, there is no natural liberty (290). However, as Locke points out, monarchs and fathers have absolute and unlimited liberty over their respective families (1:9). In the First treatise, Locke, like his friend Tyrell in Patriarcha non monarcha (1681), advances a counter-interpretation of scripture that denies Adam’s absolute dominion and reaffirms man’s natural liberty.

The second arm of Filmer’s attack consists in a series of brilliant criticisms of the doctrine of natural liberty. He marshals them in a singularly devastating form in his refutation of the most influential natural liberty theory of the seventeenth century, The laws of war and peace (1625), by Hugo Grotius. First, if men are naturally free, then they must have come together at specific times in history and unanimously consented to establish governments, but Grotius pro-

vides no evidence that this did or even could happen (273, 280–7). Locke attempts to meet this charge with a much more sophisticated historical and logical account in chapters 5 and 8 of the Second treatise and it need not concern us further here. Filmer’s second point is that if each man is naturally free ‘to live as he pleases’, then we need to know the reason why he would consent to give up his freedom for the restraint and subordination of civil society: yet no reason is proffered (273–4). This problem of political obligation, which liberalism is still unable to answer, is stated by Filmer in a way similar to Wolff’s criticism of all subsequent theories of natural liberty and consent in In defense of anarchism: a man would be ‘a madman, that being by nature free, would choose any man but himself to be his own governor’ (285).

Third, there is no reason for any man not to withdraw his consent when he thinks fit, and so ‘it will be lawful for every man, when he please, to dissolve all government, and destroy all property’ (274). Given the logical incoherence and anarchic consequences, Filmer then rejects the premise of natural liberty and argues for natural subjection. Locke’s task in the Second treatise is to adapt the theory of natural liberty so it is invulnerable to Filmer’s incisive and devastating arguments. We now want to know what sort of defences are available for adaptation from within the natural liberty tradition, so we can determine Locke’s originality, and why he should be concerned to meet Filmer’s criticism, so we can understand the practical point his adaptations or innovations serve. The magisterial surveys of the natural liberty tradition by Skinner and Tuck show that Filmer, in his brief history, conflates two different schools. The voluntarist school, stemming from William of Ockham, holds the belief that man has natural liberty and that liberty is the ability or power to do any possible thing one wills. From this premise that political power or sovereignty resides naturally in the people as part of their natural liberty, voluntarists developed into three subsystems: conciliation, radical individualism and absolutism. The conciliators

argue that the natural power of preservation of the community as a whole is delegated by consent to form a mixed government that exercises this power in accordance with the will of the community, the common good. If the ruler pursues his own interest rather than the common good, he ceases to be the community’s delegate and it has the right, through its representatives, to depose him and re-elect a new ruler. Although I am glossing Pierre D’Ailly’s theory here, it is common to William of Ockham, Jean Gerson, Jacques Almain, and John Mair. The radical individualist argues that each individual delegates his power of preservation to form government and so may revolt and depose a ruler who fails to rule in accordance with the common good. Here I am thinking of the Christian humanism and voluntarism of George Buchanan and of Juan de Mariana. The absolutist voluntarist argues that since individuals have absolute liberty, they must be free to totally and irrevocably alternate, and not merely delegate, sovereignty by consent to form an absolute monarch (unlimited by any law). They claim that this is what rational men would do to avoid the anarchy of absolute liberty, and so men in society are understood to have done so. Civil liberty then consists in the ability to do as one pleases where the law permits. This justification of voluntary slavery and absolutism was popular in the late sixteenth century, in the slave trading absolutist regimes in Portugal and the Spanish Netherlands, and amongst absolutists during the English Revolution, classically with John Selden. Hobbes’ theory of limited natural freedom, where man is not free to take his life and thus not free to alienate it to the sovereign, is a timid version of this theory. Since Filmer’s absolute monarch, and fathers within the family, has absolute liberty, we might characterize his absolutism as natural subjection voluntarism.

The second or ‘rationalist’ natural law school of natural liberty, stemming from Aquinas, holds the belief that man has natural liberty but liberty is not defined as the ability to do as one pleases. Natural liberty is the ability to act in a way conformable to the law of nature, a set of objective and morally obligatory moral principles discoverable by and justifiable in the terms of reason that guide man to his natural end. The aim of the natural law school was to put moral and political philosophy on an objective foundation: natural law prescribes certain subjective practices (such as voluntary slavery) and enjoins others that voluntarism simply permits. The natural law school too is divided into delegation and alienation, collective and individual subschools. The first, Aquinas and Francisco Suarez, argues that the community as a whole alienates its natural law liberty to the sovereign, thus justifying limited absolutism: the sovereign is above civil law but under a moral obligation to enact laws conformable to natural law. Hugo Grotius, Samuel Pufendorf, and Richard Cumberland advance the individualist theory that individuals alienate their natural law liberty to execute the law of nature to preserve themselves to form an absolute sovereign limited by natural law. However, Grotius construed natural liberty as a set of exclusive individual rights of self-preservation and reduced natural law to the negative duty to respect the individual rights of others, thus reducing the sovereign’s duty to the protection of exclusive rights, expletive justice, and emptying natural law of its role as a rule of distributive justice. The way was therefore open for the radical Levellers during the English Revolution to argue that these natural rights are inalienable and men only delegate by consent their natural power of protecting their rights to form a government. Revolution by individuals is thus justifiable when government transgresses individual natural rights.

I will make a number of finer distinctions below, but this is sufficient for the purpose at hand. Clearly, Filmer assimilates all these theories to the ‘voluntarist’ or absolute liberty school, denying the autonomy of the ‘rationalist’ natural law school and equating natural liberty with licence. He justifies this move by pointing out the inconsistencies in natural law as presented by Grotius (265–6). Locke’s first task, then, is to reassert a consistent natural law theory of natural liberty and this he claims to have done in my initial quotation. Secondly, Filmer characterizes all these theories as revolutionary when, in fact, only the delegation theories are intentionally revolutionary (some alienation theories of natural law permit revolution in extremis). His justification of this move, which he makes astutely against both Hobbes and Grotius, is that the element of consent common to all these theories is inherently unstable and cannot but lead to revolution (296–7, 272–4). Although he agrees with Hobbes’ absolutist conclusion, his point is that as theory of natural liberty and consent can support a stable regime; only natural subjection can guarantee order. Filmer is thus the forerunner of modern conservative critics of popular sovereignty, such as Hegel and other opponents of participation, who argue that it leads to the Terror, to unfreedom. Locke’s second task is to show that the role of
consent in his account of natural liberty is not only to protect liberty but also to provide the cement, and not the solvent, of a free political community: that is, to refute Filmer’s criticisms of consent mentioned above.

Why, finally, was Locke concerned to advance a theory invulnerable to Filmer’s assault? Filmer’s works, written to justify absolute monarchy during the English Revolution, were published in 1679–80 during the Exclusion Crisis, the revolutionary situation that came to a head over Charles II’s ultimately successful attempt to secure the ascension to the throne of his Catholic brother, James, Duke of York, later James II. Pressed into service to redescribe and evaluate these political events, Filmer’s arguments justified James’ ascension even though this entailed a Catholic monarch and the consolidation of the draft towards absolutism.11 The Whigs, led by Shaftesbury, wished to exclude James and to place the Duke of Monmouth on the throne in order to defeat absolutism and a Catholic monarchy – the ‘French disease’ (Locke’s code name for the Two treatises is De marce galliarum). Their aim was to introduce religious toleration for the Dissenters and to restore the co-ordinate sovereignty of king-in-parliament by revolution if necessary.12 When parliamentary means failed the moderate Whigs ‘trimmed’ and the radical Whigs turned unsuccessfully to revolution. An aborted popular uprising in 1681–2 was followed by an unsuccessful plot to kidnap the king, a massive repression of the Whigs and their supporters by the Court, the flight of the revolutionaries, including Locke, to the Netherlands and the brutally quashed Monmouth rebellion in 1685.13 Locke wrote the Two treatises to delegitimate James’ ascension by undermining its Filmerian justification, to justify the Whigs’ political aims by advancing his theory of liberty and popular sovereignty, and to justify the Whigs’ political activity by writing his theory of revolution.14 Even if Filmer’s defence of absolute monarchy seemed extreme and untoward to contemporaries, it must have seemed the only alterna-

give to many because his exposure of the anarchic implications of popular sovereignty appeared to be borne out by the Whigs’ activity. Shaftesbury and his non-Conformist allies were constantly accused of fomenting rebellion and threatening a second English Revolution. That the acceptance of Locke’s theory of liberty was crucially dependent upon his demonstration that it would not entail anarchy, as Filmer and the events of 1679–85 suggested, can be seen by the fact that Locke presents his set of arguments for the stability of a political community founded on liberty and consent twice in the Two treatises (205–10, 248–30).

With this survey of Locke’s practical concerns, the theoretical problems confronting him, and the normative political vocabularies available to him, we are now in a position to understand the meaning and significance of the terms and range of distinctions that comprise his account of liberty.

Locke uses the terms ‘freedom’ and ‘liberty’ in two senses: as a ‘state’ or condition of freedom and as an ‘ability’ or ‘power’ the exercise of which is the purpose or point of that condition or state (4, 59). In section 22, quoted above, he says natural liberty obtains when man is not under another’s will and has natural law as his rule. Both the voluntarist and the natural lawyer agree that being under the will of another man is not the condition of freedom and that freedom is defined in opposition to this condition. But, Locke must show, against Filmer and voluntarists generally, that natural freedom is not therefore the state of being under one’s own unamended or ‘arbitrary’ will but under one’s own will and natural law. Like all natural lawyers, Locke does this by employing the two premises concerning man’s nature, one Aristotelian and the other Christian, that Aquinas developed: ‘the proper function of man is acting in accordance with reason,’ and ‘men . . . [are] all the workmanship of one omnipotent and infinitely wise maker’ (6). By ‘reason’ he means both man’s faculty of reason and the rational moral principles discoverable by reason (natural law), and so he calls natural law ‘the law of reason’ (57) or simply ‘reason’ (6). Thus, the ‘freedom then of man and

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liberty of acting according to his own will, is grounded on his having reason, which is able to instruct him in that law he is to govern himself by (63). By the second premise, man, in acting in accordance with reason, is discharging his moral obligation to god, the author of man and the laws of reason (1:86, 6), and so participating in the divinely ordered, purpose universe.

Natural law is a set of objective moral principles that express what man ought to do and forebear, cross-culturally and trans-historically valid, independent of man's subjective will and discoverable by reason. Locke reassessed this venerable tradition in 1660 and defended it throughout his life. A brief survey of his defenses will bring the major features of natural law into sharper relief. Against those such as Lord Herbert who believe that moral truths are innate, like the 'self-evident' doctrine of the American Constitution and twentieth-century intuitionism, Locke argues that this leaves morality without a rational foundation. To say that natural law is discoverable by reason, on the other hand, is to say that each moral principle can be given reasons that justify it; that natural laws are norms, not imperatives. He also takes issue with the scopic, the obverse of the innatist, who, like Berlin and the pluralists today, believes that moral principles must be rationally justifiable but denies that this is possible. He is no less concerned to guard natural law against its greatest adversary, humanism: the view that moral principles are not objective in the natural law sense but, rather, grounded in inter-subjective customs, mores, and practices, and so culturally and historically relative. This Renaissance tradition gained a strong foothold in seventeenth-century English political thought, paradigmatically in James Harrington's Oceana, and it was used to characterize the Whigs' aspirations by Locke's ill-fated fellow conspirator, Sydney, in his Discourses concerning government. In addition to the atheistic and hubristic tendency of the theory in implying that man, not god, is the author of values, Locke objects to its inherently conservative bent. It is difficult to see how a society's cultural practices and form of government could be rationally criticized, especially, as Locke stresses, in a country like Restoration England with its practice of religious uniformity and persecution of non-Conformity and no countervailing tradition of religious toleration to which one could appeal. (This is of course a problem that haunts contemporary 'practice' theories of society, law, morality, and reason). Finally, the doctrine that morality has only a subjective foundation, and this in self-interest, utility, or self-preservation, enunciated by Hobbes and ultimately triumphant with the entrenchment of capitalism in the nineteenth century, is subjected to a scathing rout by Locke. This should be enough to show that Locke's attachment to natural law is not instrumental but rationally grounded conviction, and, in passing, that a theory of liberty has its home within a skein of beliefs about human nature, law, reason, and so on.

The two Thomistic premises of the natural law tradition that man is naturally rational and created by god seem to entail an unacceptable conclusion. By the first premise, there cannot any one moral rule be proposed, whereas a man may not justly demand a reason' (Essay 1:3.4) and, by the second premise, man is morally obligated to obey the fundamental moral rules, because they are willed by his maker, god. This is consistent only if god wills what we rationally discover to be morally good for man and this entails that god is not free to will for man what we would count as non-rational; 'that God himself cannot choose what is not good' (Essay 2:1.49). At first blush, this seems to limit god's freedom and so contradict our idea of god. The voluntarist school resolves this problem in a radical way that has left its indelible mark on our language of freedom. To save god's freedom they deny the premise that a necessary condition of a natural law, and so any law, is that it can be shown to be good for man. A law is a law if it is enacted by an authoritative lawgiver and promulgated. Thus, god's will is good, and just, because he willed it, and not because it is conformable to independent criteria of 'good' or 'just' that are rationally apprehendable by man. God is therefore free in the radical sense of making laws that determine right and wrong, good and evil, for man as he pleases. His justice is inscrutable and so accepted on faith, not reason. Natural law is a set of facts about human beings and scripture a set of ultimately arbitrary facts. Civil law, in turn, is a law, and so just and good, because it is the will of the authoritative lawgiver.

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the absolute and hence 'arbitrary' monarch, just as the word of the father is the law of the household. This command or imperative theory of law is found today in secular form in majority will democracy and in legal positivism. (This explains as well why the voluntarist school were led to logical nominalism: the essence of a thing, or kind of thing, is what we name it to be.) Thus, their indifference theory of freedom of god and man to do as one lists is inseparable from their will theory of law and their project of making reason and faith or morals incomensurable.

Natural lawyers object to the way god's intellect (reason) is assimilated to his will in the voluntarist tradition. With their optimism concerning man's ability to come to rational agreement on the good life for man, they hold fast to the premise that there are rational criteria of the good for man that natural law, and so any law, must meet to be a law (in addition to being promulgated by an authoritative lawgiver). God wills natural law because it is good for man; it is not good solely because god willed it. This is necessary if we are to be able to judge the goodness or justice, and so the validity, of civil law and thereby limit the sovereign. (This explains why this school were led to logical realism: the essence of a thing or kind of thing is 'what it is to be' (Ewing, 39.15.) Laws then are not imperative but normative or 'ought' propositions for which reasons can be given. Divine law comprises natural law, promulgated by reason, and revelation which 'complements' but does not contradict reason. For the natural lawyer, god's laws are obligatory, but not just or good, because they are willed by god, thus saving god's essential role in morality (2.28.12). However, to save their optimistic view of man's moral reason, and thus justify limited government, they require a concept of freedom that is consistent with willing the good to god's and man's freedom is not compromised in acting in accordance with reason.

The account of law and liberty in the Two treaties (57-63) is the employment of a much more detailed analysis presented in book 2, chapter 21 of the Essay concerning human understanding. Locke defines the will as a power or ability 'to order the consideration of any idea, or the forbearance to consider it; or to prefer the motion of any part of the body to its rest, and vice versa in any particular instance' (2.21.15).

The exercise of this ability or power in directing any action or its forbearance is 'that which we call volition or willing'. An action that follows from such a direction, where the agent has the power not to will that action, is voluntary; one that does not is involuntary. Liberty, like the will, is a power or ability, but 'a power in any agent to do or forbear any particular action, according to the determination or thought of the mind, whereby either of them is preferred to the other' (8). When the agent is not free not to do the action he wills then the action is 'necessary'. Thus the distinction between two powers, will and liberty (16), enables Locke to distinguish between voluntary and involuntary action, and free and necessary action respectively. If a man prefers to stay in a locked room, for example, his staying is voluntary but not free because necessary. Liberty comprises the will plus the power to do and not to do the action willed: freedom of choice and action (15).

So far Locke has presented a natural, in the sense of non-moral, account of liberty. He now constructs a moral concept of liberty on this base. He asks, if the will is the power of the mind 'to direct the operative faculties of a man to motion or rest', then 'what determines the will?' (29). He answers that the mind or intellect determines the will but the intellect in turn is determined by a 'motive', called 'uneasiness' or 'desire'. The distinction between two acts, willing and desiring, is initially introduced to make sense of the common problem of willing one thing and desiring another. Locke employs it to win a middle position between two extreme views. The voluntarist is free in so far as his will is unrestrained by reason or law. The extreme subjectivist version of this that Locke attacks (30), represented by Hobbes and Filmer, is that the will is identical to desire, and an object of desire, and so of will, is good because it is desired or willed, as we have seen. Desire, not reason, determines what is good for man. Reason is simply an instrument for calculating the best means to satisfy one's de facto desires, freedom the doing what one desires, and the good life the satisfaction of desires. This is the view that triumphed, massa manibus, in classical utilitarianism and in the various theories of emotivism, non-cognitivism and value pluralism today. The opposite or objectivist view is that the will is determined not by desire but by what is objectively good, the 'greater good' (35).

19 For Filmer see Two treatises 1.9; Thomas Hobbes, Leviathan, ed. C. B. Macpherson (Middlesex, Penguin, 1988, C. 1651, 1840).

20 Hobbes, Leviathan, 1.5 (115), 1.6 (193-970), 1.8 (139).
The will is identified with the intellect, as with Spinoza and Leibniz,\(^{21}\) the intellect or reason discovers the good and this is contingently related to de facto desires. The idea of the good is causally efficacious in the sense of creating the requisite motivation. Freedom is following one’s rational and autonomous will as we see for example in Kant.

Locke, like Aristotle, agrees with the subjectivist that desire accompanies willing (this is why they are confounded\(^{49}\)), that one’s de facto desires standardize determine the will and that we call their object good (47). But he also agrees with the subjectivist that there is a greater good discoverable by reason. However, the greater good does not determine the will or everyone exposed to the teaching of Christ would act like Christians (46). The ‘present good’, the satisfaction of an immediate uneasiness, standardly determines the will (46). What he denies to the subjectivist is that desires are beyond revision or rational evaluation. The desires men seek to satisfy are those which fit into his background conception of happiness: ‘Happiness, under this view, everyone constantly pursues, and desires what makes any part of it: other things, acknowledged to be good, can be looked upon without desire, pass by and be content without’ (43). With our reason we can apprehend the ‘greater good’ and make it our conception of happiness so ‘our desire, raised proportionally to it, makes us uneasy in the want of it’ (53). Sheer force of rational will cannot do this; man requires the motivational inducement of the reward of heaven and punishment of hell to raise his desires so he finds happiness in doing the greater good (44, 60). Reason discovers what man ought to do and the picture of infinite happiness for the immortal soul, along with practice, provides the necessary foritude for doing it and laying aside desires that lead to sin (46).

The ‘source of all liberty’ thus consists in this (47):

For during this suspension of any desire, before the will is determined to action, and the action (which follows that determination) done, we have opportunity to examine, view, and judge, of the good or evil of what we are going to do; and when, upon due examination, we have done our duty, all that we can, or ought to do, in pursuit of our happiness; and ’tis not a fault, but a perfection of our nature to desire, will, and according to the last result of a fair examination.

interests, and prescribes no farther than is for the general good of those under that law' (57). Thus, following civil law in a rationally ordered polity is not the diminution of liberty but the realization of civil liberty: 'the end of law is not to abolish or restrain, but to preserve and enlarge freedom'.

The voluntarist notion of freedom runs parallel to Berlin's concept of 'negative' freedom, 'freedom from', and there is no question that, through Hobbes, the voluntarist view has deeply influenced our secular language games of pluralist and utilitarian freedom. Locke's natural law freedom to perfect our nature in performing our rational duties to god runs parallel to Berlin's concept of 'positive' freedom, 'freedom to'. Berlin wants to say that the philosophical foundation of the 'liberal' freedoms we enjoy today is the theory of negative freedom, and positive freedom historically the foundation of totalitarianism and arbitrary rule. However, if Locke is one of the theorists of liberalism, then Berlin has this part of our intellectual and practical political history the wrong way round. This can be seen not only in the difficulty he has in classifying Locke (124, 126, 142), but also in the important concession he makes in a footnote: 'belief in the absolute authority of divine or natural laws, or in the equality of all men in the sight of God, is very different from belief in freedom to live as one prefers' (130). For Locke, nothing is more important than 'positive' freedom because it is the means to salvation (60). The depth of Locke's analysis partly consists in his remarkable prescience of the untrained individualism entailed by abandoning natural law liberty and embracing secular voluntarism:

A dependent intelligent being is under the power and direction and dominion of him on whom he depends and must be fore the ends appointed him by that superior being. If man were independent he would have no law but his own will, no end but himself. He would be a god to himself and the satisfaction of his own will the sole measure and end of all his actions.

Liberty and natural law by Locke answers Filmer's second criticism: why anyone would consent to abjure his natural liberty for the confines of civil liberty. To understand this we must start with an account of man in a pre-political condition, the state of nature.

The state of nature is a moral community constituted by natural law (128) and man is free in exercising his liberty or natural power in accordance with natural law and with rational choice where natural law is silent (4.59). Although there are three basic natural laws the one that does the majority of the work in Locke's political theory is 'mankind ought to be preserved' (135). This is divided into the negative service duty not to harm another in his life, health, liberty, or possessions, and the positive service duty to 'preserve himself' and 'when his own preservation comes not in competition...to preserve the rest of mankind' (2.6). Man's natural rights to things necessary for preservation follow from these natural duties with the consequence that rights of 'private' property are limited by the claims of others to preservation, 'the support and comfort of their being' (20). (The balancing of man's duty to preserve himself with the duty to ensure the preservation of others is worked out in chapter 5 of the Second treatise.) Part of the exercise of the liberty or power to preserve oneself and others is the duty, and so the right, to punish those who transgress natural law, by violence, theft (8) or by accumulating more than their share of the common (37). The 'execution of the law of nature is in that state, put into every man's hands' (9). This man has two natural powers or liberties the exercise of which is morally obligatory: to preserve himself and others and to punish violations of natural law (128). When men enter political society they give the exercit of their power of punishment and the regu of their power of self- and mankind-preserv to the political society (129). These exercising and regulating powers are then 'entrusted' to the constitution of government they choose (131) and thus, by definition, political power is bounded by the end, preservation, for the sake of which men possessed it in the state of nature (175). Government is thereby under natural law in the same way man is in the state of nature (135).

This is an individualist theory of popular sovereignty. Political power or the state is simply the power that individual members entrust to their government; it is not something different in kind from man's natural power, as it is in the neo-Thomist and Calvinist traditions, or in Filmer's theory. It is an individualist adaptation of the natural law delegation tradition. Marx deploys a similar theory of
popular sovereignty to undermine Hegel's mythification of the state in his *Critique of Hegel's philosophy of right*. Locke's theory of popular sovereignty contains an important feature which can be illuminated by a contrast with Grotius and the natural rights theorists of the English Revolution who followed him. Grotius' state of nature is governed by natural law but the only natural law is the negative service duty to abstain from that which belongs to another. The role of the state is therefore the negative one of protective justice, the protection of contracts and private property and the punishment of crimes against persons. A negative theory of natural law thus yields the minimum or 'nightwatchman' state that protects individual rights, the forerunner of the version of liberalism represented today by Nozick's *Anarchy, state and utopia*. For Locke, natural law also enjoins the preservation of others, and so government is entrusted with the positive duty of regulating the means of preservation, property relations (50, 120, 196). Distributive justice is thus a role of government and so, in this sense, Locke is a forerunner of Ayn Rand and precursor of the version of liberalism represented today by John Rawls' *A theory of justice and of democratic socialism*. If we turn back to Locke's definitions of civil liberty we see that we have covered one half of his account. Men possess civil liberty if their government enacts legislation 'according to the trust put in it' (22). The trust is that their political power will be employed in a way conformable to its original purpose, to natural law (12). The second condition is that political power is established by 'consent' (22). This means that each and every member of a political community must explicitly consent to join that society for him to become a member and for it to become a 'community' (96, 122). In consenting the member agrees to be bounded by the majority, or by the majority of representatives if it is not a direct democracy, in framing a constitution and all further legislation (96). The citizens are not bound to the government but to 'the will of the society, declared in its laws', the 'public will of the society' (151). The government can break its trust and so destroy civil liberty by legislative or executive action contrary to natural and established law, beyond their trust, or without the consent of the

majority. In either case civil liberty dissolves, the exercise of political power is 'arbitrary', power devolves back to the people and they regain their natural liberty and duty to punish the government for violating natural law through a revolution and to establish a new government (149, 222).

Locke's account of civil liberty is similar to republican or civic humanist theories in which political liberty consists of participation in a self-governing commonwealth. It contrasts with the theories of Hobbes and some modern rights theorists who define liberty in terms of the absence of law. Although Locke mentions the point that part of civil liberty comprises 'a liberty to follow my own will in all things, where the Rule prescribes not', this is introduced primarily to distinguish civil liberty from being subject to the 'arbitrary Will' of a despot (22). It is not introduced, as in Hobbes, as the definition of liberty. In section 12 he lays it down that a person who simply obeys the law and does not positively engage in and consent to their political community is not a member of that society. The primary meaning he attaches to civil liberty is the condition of living under the rule of law established by the consent of the governed and limited by their trust (22). Living and acting in such a free commonwealth—whether one is acting in accordance with the law, and so performing one's duties to the public good, or acting where the law does not prescribe—is said to be the 'liberty of man, in society' (22). Thus, with Locke, as with Milton, republican and contraction conceptions of political freedom join hands in common opposition to the disregarded and passive subjection offered by absolutists such as Hobbes and Filmer.

The strength of Filmer's criticism resides in his sharp contrast between the unrestrained natural liberty and communism of the state of nature and the confining conventional obligations one is subjected to in a political community. Confronted with these alternatives, the rational grounds of consent appear ephemeral indeed. Only an excessively bleak picture of how men would behave is such a natural condition, coupled with a countervailing picture of the security of

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political society could, as Hobbes saw, underpin a rationally grounded consent. But once we accept Locke's premise of natural liberty under natural law, Filmer's contrast loses its application and political society appears as a civilized development out of the state of nature, rather than a sharp break with it. Locke presents three reasons for consenting to join political society. First, since men tend to be partial to themselves and their friends in their judgements, the ad hoc administration of justice in the state of nature would be biased, thus tending to insecurity, fear, danger, and inconvenience (13, 123-6). Political society partly solves this by establishing a known and standing judge; the legislature, law, and judiciary (87-9).

Second, following Grotius, men have a natural inclination for political community, not simply as a means to preservation but to enjoy it for its own sake (77). Men 'enjoy many conveniences, from the labour, assistance and society of others in the same community' (130) and find 'political happiness' (107). All men lose is his 'economic' liberty (contrary to many laissez-faire interpretations of Locke): he is in part also with as much of his natural liberty in providing for himself as the good, prosperity, and safety of the society shall require' (130, cf. 120). The third and decisive reason is that civil laws are just and an expression of the public will only if they are conformable to natural law (12). Their end is the 'public good' (3); the application of natural law to human societies grows complex by population increase, the rise of agriculture, trade, and manufacture and the introduction of money (38, 45, 116). Just as he perfects his liberty in choosing to be guided by natural law, so man preserves and enlarges freedom in consenting to be directed by civil laws 'to his proper interest' and 'general good' (57). The laws are the expression of a citizen's rational judgement, 'indeed are his own judgements, they being made by himself, or his representative' (88).

We can summarize these three reasons in the following way: political society is (1) good in the instrumental sense of being the best means to the end of security, (2) good for its own sake or intrinsically good in being a richer and more flourishing form of life, and (3) naturally good in the sense of being partly constitutive of the purpose for the sake of which man has liberty and reason. The argument turns, it seems to me, on consent being the exercise of one's natural liberty for the sake of the 'greater good', civil liberty, not, as with the voluntarist and Filmer, on it being the alienation of one's unlimited natural liberty for the sake of conventional security and absolutism.

The argument as a whole has two dimensions: life in political society is natural against the voluntarist belief that it is conventional and contrary to man's natural, unlimited liberty; and life in political society is free against Filmer's belief that it is servitude (4). Notwithstanding many dissimilarities, in this respect it is similar to Aristotle's argument in book 1 of the Politics against the sophists and Plato.

Locke's final task is to refute Filmer's charge that in a regime of civil or popular liberty the members would withdraw their consent, would dissent and revolt whenever the public good conflicted with their private interest. The reason for this is that a member's consent is based on his individual judgement that the government is governing in accordance with its trust, the public good, but, Filmer writes citing Aristotle, 'the multitude are ill judges in their own case' (94). Thus the partiality of individual judgements that provides a reason for entering a commonwealth would also justify frequent and biased dissent and rebellion. Filmer's comment on Hume's theory of popular sovereignty in A Treatise on Monarchy (1645) is apposite: 'every man is brought, by this doctrine of our author, to be his own judge. And I also appeal to the consciences of all mankind, whether the end of this be not utter confusion and anarchy' (197). Locke cannot finesse this criticism because he accepts that men are partial in their judgements and uses it to partly explain why men enter political society and why they adopt the majority principle (96). Also, his account of civil liberty rests on the premise that continuing consent is based on individual judgement of government performance. He asks, 'who shall judge whether the prince [executive] or legislative act contrary to their trust?' and he answers, 'the people shall judge', 'every man is judge for himself' (139-1). Filmer, like the revisionist critics of popular democracy today, seems to have caught Locke in an insoluble dilemma.

Many commentators have thought that Locke's response is that man's consent to join a political society puts him under a standing obligation to obey the law. What he says is that 'express' consent makes man a member and 'obliged to be and remain unalterably a
subject' until it 'comes to be dissolved' (121-2). All this does is distinguish between 'members', who expressly consent, and those resident aliens over whom the government has jurisdiction. This is no answer at all to Filmer's dilemma because the ground for the conviction that a government is 'dissolved' is the individual's judgement that the trust has been breached. The member is obligated in virtue of his consent only to what he consents to -- government in accordance with the trust -- and that it is such a government is a matter of judgement. Political obligation is thus based on the individual judgement that the government is worthy of one's consent and must be if civil liberty is to remain intact.

What Locke does is advance and defend criteria for judging that the trust is broken and government dissolved (121-22). The criteria are tailored fairly closely to English government and are designed to show that the executive, Charles II, has dissolved government and thus revolution is justified here and now (210, 222). His aim is of course to legitimate Whig revolution and reconstitution of a civil liberty commonwealth in 1688-9 and to demonstrate that this does not lay 'a ferment for frequent rebellion' (224). However, as Locke is well aware, establishing criteria for judgement does not answer Filmer's criticism because people may employ the criteria in a partial manner to justify revolt 'whenever they take offence' (223). Locke gives two reasons why he doubts Filmer's conclusion. First, if the people are 'ill-treated', they 'will be ready on any occasion to ease themselves of a burden that sits heavy upon them' in any form of government, including Filmerian absolutism (224). Because a popular legislature is responsive and open to judgements of the citizenry, is the articulation of their will (151), it is less likely to oppress and more open to claims of oppression than absolutism (197). Since the absolute ruler himself must be partial as well as irresponsible, absolutism foments revolt (90-4). People in popular governments will be partial, but, Locke believes like Aristotle, Machiavelli, and Marx, partial to liberty. 'Whatever cannot but be acknowledged to be of advantage to the society, and people in general, upon just and lasting measures, will always, when done, justify itself' (158). Therefore, turning the tables on Filmer, the best guarantee of a stable polity is civil liberty (225).

Second, Locke again turns the conservative trump card of partiality against Filmer. People are generally partial to the status quo, will not rebel 'upon every mismanagement of publick affairs' (225), but will revolt only once 'the mischief grows general' (290) and 'the precedent and consequences seem to threaten all' (290). In these passages Locke is not denying the individual right to revolt, he is making a sociological observation about the conservative nature of revolutionary motivation (208). Although these reasons surely meet Filmer on his own turf, Locke is nonetheless concerned that the quest for order remain subordinate to the aspiration for liberty. He writes that the Filmerians say 'this doctrine is not to be allowed, being so destructive to the peace of this world' and responds: 'they may as well say upon the same ground, that honest man may not oppose robbers or pirates, because this may occasion disorder or bloodshed' (228).

I would like to make three concluding remarks. First, Locke's government has no authority to enforce a particular religion. Since men entrust only their powers of preservation, the attempt to impose religious conformity, or a particular moral vision of the good life, would constitute a breach of trust and, as he argues in A Letter concerning Toleration, justify revolution. The theory is thus a defence of religious liberty, a paramount concern of Locke's from 1668 onwards and a major aim of Shaftesbury's movement. Locke is liberal in the sense that religion, or morals, and politics are separate and the role of government is to ensure material well-being and individual civil and religious liberty. However, he is not a secular theorist but, rather, a theistic theorist. The obligation to natural law is an obligation to god and the motivation is dependent upon belief in the immortality of the soul. Also, natural law and its derivative natural rights are derived from the relationship between man and god as its maker. Thus, if this theistic framework were removed liberty would become 'living as one pleased' and government a kind of voluntarist majoritarian absolutism. A secular rationalist version of Lockean liberty would require an 'ends' theory of rationality capable of deriving a rational law of preservation and natural rights from the human condition, and theories of moral and political obligation and motivation. As Locke foresaw, nothing remotely resembling this has

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39 For the emergence of secular political thought, see David Wooten, <i>Jesus, atheism, and the social order</i> (Cambridge: Cambridge University Press, 1986).
been produced. This is why Locke says in *A letter concerning Toleration* that atheists cannot be members of political society.

Even though Locke's theory has had an immense and somewhat paradoxical influence on our western way of life, the only faithful attitude we can take to the original contribution as a whole is one of nostalgia. However, we can study it to understand how much of the fragmented ruins of liberty we cling to in desperation today once held together as a coherent and limited structure.

My second point is that Locke's account of liberty presupposes active, rational, and politically informed citizens willing to critically assess their government's performance and a responsive government. During the Exclusion Crisis such a citizenry existed to an extent perhaps unrivalled in English history. The aspiration articulated by Locke to base religion and politics on individual judgement - to have religious and political liberty - was put forward by men who had experienced it in the English Revolution, the Commonwealth and religious congregations. Ever since Schumpeter's *Capitalism, Socialism and Democracy* (1942) social scientists have concluded that such a citizen is a myth (presumably exempting themselves). It is of course a commonplace that present 'liberal' states have defaulted on this early promise of a 'public sphere' in which citizens bring claims and controversies forward, discuss and give expression to the public will. As a result, they are more absolutist than Filmer could have imagined. Those who seek to confront these technocratic absolutisms, who are not satisfied with the liberty to do as one lists where the supervisory state chooses to leave them alone, would do well to re-search Locke's borough of our city of liberty.

Without the theological foundations, Locke's liberty still provides a theory of popular sovereignty and civil liberty as the exercise of critical political judgement about the public good. Foundations for this could be provided by a union with natural law's great rival, civic humanism, and this for two reasons. Civic humanists have always kept alive the argument that political judgement is developed

through the exercise of civil liberty. Secondly, Locke stigmatized humanism as conservative because the criteria for judgement are the intersubjective norms and customs of a society; what counts as a rational political argument is what can be justified in the terms of our established justificatory practices. What Locke is saying is that these practices themselves can be criticized, and this in the terms of an objective law of reason. Just because the theological framework for a substantive law of reason has ceased to be intersubjective for us does not mean that the heritage of critical reason now is simply saying what I please (as modern voluntarists tell us). Part of the crazy quilt of language-games, if not of institutions, that comprise our city is just the natural law tradition of popular sovereignty and liberty. Although now part of the suburbs, it could still provide the ground for justifying claims to liberty against the more established and dominant, but less liberal, practices of our political life.

Third, women were excluded from all these traditions of liberty. If we wish to continue to use these traditions the following critical steps need to be undertaken. The traditions of women writing on liberty need to be recovered and used to expose the male bias of mainstream conceptions of liberty, and to present women's ways of conceptualizing freedom. In addition, the histories of women's struggles for liberty need to be studied in order to become familiar with alternative practices of liberty, and to see how voluntarists, natural law, and humanist conceptions of liberty have been used in practice, and continue to be used, to silence and exclude women from the exercise of political and civil liberty. Finally, the distinctive ways in which contemporary women writers conceptualize liberty, agency, and rationality need to be recognized and affirmed, and not simply treated as 'supplements' to, or absorbed within, the conceptual framework of male traditions of liberty.

**Liberty From the Perspective of the Essay**

John Locke lived in the century in which the modern natural and human sciences, which still form the horizons of much of our thought, were initially constructed. His *Two Treatises of Government* (1690) and *A Letter Concerning Toleration* (1689) are major constituents of modern

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political thought, and *An essay concerning human understanding* (1690) is a landmark in the formation of modern philosophy, especially epistemology and psychology. In the course of writing these texts Locke also worked out his equally significant moral philosophy. He sought to advance an account of morality conformable to his epistemology and psychology and complementary to his analysis of the conditions of freedom and oppression in religion and politics.

Locke worked on his moral philosophy from the *Essays on the law of nature* (1662) to the *Paraphrases of the Epistles of St Paul*, written in the last years of his life. The various changes in his moral thinking are recorded in his published works, in the successive drafts of the *Essays*, written over eighteen years, in the changes he made to the five editions of the *Essay* published during his lifetime, in his Journal notes, and in his eight volumes of *Correspondence*. Since these are all now available to us, we are in a position to survey the development and final arrangement of his thoughts on morality.

One way to gain an initial picture of this large body of writing is to view it as an attempt to combine three modern movements in seventeenth-century philosophy. The first is called the school of 'natural jurisprudence' or 'juristic' morality because its members treated morality as a legal system: that is, a demonstrable body of universal laws promulgated by a lawmaker (god), backed up by rewards and punishments, grounded in each individual's concern for self-preservation, and free from any particular religion, thereby providing a minimal moral foundation on which Europeans of different religious persuasions could agree after 100 years of religious wars. Hugo Grotius, Thomas Hobbes, Baruch Spinoza, Samuel Pufendorf, and Gottfried Leibniz all worked on this great project. The second movement is the revival of Greek hedonism: the attempt to replace the scholastic psychology of innate dispositions and telic faculties with a mechanical model of human behaviour based on the causal motives of pleasure-seeking and pain-avoidance. This is associated with Pierre Gassendi, Walter Charleton, and Robert Boyle. The invention and elaboration of theories of probability in philosophy, law, history, statistics, and religion, associated with Joseph Glanvill, Blaise Pascal, and Antoine Arnauld, is the third school of thought.

Locke began to analyse morality in the terms of natural jurisprudence, hedonic psychology, and epistemic probability in the 1670s and published his first theory in the *Essay* in 1690. It was immediately seen as the most challenging and audacious moral philosophy in Europe and it continued to set the terms of debate for over a century. Readers were scandalized by the moral relativism his views seemed to entail. This charge is based in part on a misunderstanding of Locke's intentions, as he pointed out to James Tyrrell (*Correspondence* 4: 1309).

The account of morality in the *Essay* is first and foremost a critical analysis and explanation of the development, functioning, and use, by moral elites, of different moralities. There is less emphasis on justifying one specific morality, yet this is the question his readers asked of the text. Locke wished to lay bare the workings of diverse moral systems, both within a confessionally divided and warring Europe, and throughout the world that Europeans had recently invaded and now sought to understand and control. Thus, let us survey his critical analysis before taking up the question of justification.

Locke's analysis of moral systems integrates his hedonism and his juristic model of morality. After defining 'natural' good and evil as nothing but pleasure and pain or the means of them, he went on to define 'morally good and evil' as (Essay 2.28.5):

only the conformity or disagreement of our voluntary actions to some law, whereby good or evil is drawn on us, from the will and power of the lawmaker; which good and evil, pleasure or pain, attending our observance, or breach of the law, by the decree of the lawmaker, is that we call reward and punishment.

This encapsulates the main features of his moral philosophy. The primary subject of morality is voluntary human action. All voluntary actions are intrinsically moral or immoral, but only with reference to a law. A moral law is defined voluntaristically as the will of a lawmaker and enforced with rewards and punishments. The rewards and punishments administered for obedience and disobedience are the types of pleasures and pains, goods and evils, that any moral agent is concerned with in her/his voluntary action.

All systems of morality conform to this juristic-hedonic scheme. There are three types (*Essays* 1.3.5, 2.28). Morality and legality are identical in the first or 'Hoblist' system: the will of a political sovereign defines good and evil actions by means of law and enforces them by the rewards and punishments of the penal system. The second comprises all the reputation-based ethical systems — such as those of the Greek and Romans — in which the will of a moral
community or group is tacitly expressed through the laws of public opinion, in the form of the conventional virtues and vices of the group, and these are sanctioned by the rewards of public honour, esteem or praise and the punishments of public dishonour, shame or blame. Locke conjectured that this is historically the most common and effective type of morality because not one in ten thousand can bear the pain of ill-repute or resist the pleasure of a good reputation among companions. The third type, of which Christianity is the exemplar, includes religious systems in which a god makes divine laws and backs these up with the reward of eternal life (heaven) and the punishment of damnation or annihilation (hell).

How does the moral agent engage in these systems? In Book one of the Essay Locke rejected the scholastic and humanist view that humans have an innate moral disposition to assent to and act towards some natural good and argued that the mind is like a blank tablet, morally indifferent and capable of receiving any imprints. Rather, humans have empirically verifiable motives to seek pleasure or happiness and to avoid pain or misery. In all moral action, these take the form of a basic concern to find out and to obey the laws that will bring rewards and thereby avoid punishment; and this concern is both the motivation and obligation of moral agency (Essay 2:27, 36, 2.21.52).

In the first edition of the Essay Locke wrote that a moral agent would always act for the greater good in view. His critics responded that this is empirically false: nothing is more common than the choice of a lesser yet closer good in full knowledge of a greater yet absent good. The will, he replied in the second edition, is not determined by the greater good in view but, rather, by present ‘uneasiness’, a desire to ease a present pain which always accompanies any present pain (Essay 2.21.31). This psychological mechanism also explains how people can be moved to pursue an absent or long-term good. By developing an uneasiness for it an agent is moved to pursue it in order to ease the present pain. Further, most of the types of uneasiness that govern our conduct, such as for honour, power, riches, or virtue, are acquired by what Locke calls ‘use and practice’ or custom. That is, by the repetition of ways of thinking and acting we come to acquire a habitual uneasiness for and, accordingly, a pleasure in them (Essay 2.21.69).

The reason why people find their happiness in diverse ways of life, such as riches or glory, is that they become accustomed, through repetition, to the constituent activities and thereby acquire a habitual uneasiness or mental ‘relish’ for them. This relish then serves as the ground on which they think and act morally. The use of the word ‘relish’ is meant to highlight the fact that moral judgements are as relative as judgements of taste in food (Essay 2.21.55). Once custom and repetition settle habits of thinking, willing, and bodily movement, these become ‘easy and as it were natural’, overpowering and shaping reason and interest (Essay 2.23, added to the fourth edition). Locke’s practice theory of moral conduct is part of a tradition of reflection on the role of custom from Michel de Montaigne to Pascal.

It is now easy to see how this theory dovetails with his three systems of morality. From childhood onward novitiates are induced into moralities by means of a combination of praise and blame, bodily punishments and rewards, and threats of heaven and hell administered by authorities. Through drill and exercise the pupil becomes accustomed to canonical ways of thinking and behaving, eventually finding them pleasant (virtue becomes its own reward) and natural. As he puts it in Some thoughts concerning education (1693), the pupil is ‘only as white paper, or wax, to be molded and fashioned as one pleases’ (216).

Locke’s analysis explains why Europeans believe that their acquired dispositions and conflicting moral beliefs are innate and natural, as their moral authorities conveniently teach them in order to get what they want: power and dominion. In addition, it explains the rise of political, moral, religious, and educational elites, the hold they have over their followers, and how they are able to mobilize millions of nominal Christians to take up arms to defend their conflicting ‘true’ moralities in the wars of religion. Consequently, one of the major aims of Locke’s moral philosophy has been completed: a comprehensive account of how moral systems form moral subjects with the motivation and obligation to die in the defence and propagation of their morality for the sake of glory and heavenly reward (Essay 1.1.16, 1.3.27, 7, 1.4.24).

The justification of moral reform is the second major aspect of Locke’s moral philosophy. In response to the charge that his analysis of morality is deterministic, Locke replied, in the second edition of the Essay (2.21), that persons have the power to suspend their habitual ways of thought and action and to examine the pleasures and pains of proposed courses of action. The power to suspend and examine not only within the background relish of one’s moral system but also,
more reflectively, to suspend and examine one's moral system itself is the foundation of moral freedom. When acquired uneasiness to assent to the said act is suspended, examination involves the application of Locke's two types of probabilistic reasoning. Before outlining these, it is necessary to contrast them with the alternative form of moral reasoning in the seventeenth century in order to appreciate the importance of Locke's turn to probability.

The great project of the juristic school was to demonstrate a certain moral code from a few, unquestionable premises about god, concern for preservation, and the necessity of society. The natural laws and rights would be simple and universal enough to unite a religiously pluralistic Europe and to end the wars of religion. Locke agreed that the existence of a god could be demonstrated with certainty. Further, from the demonstrable premise of a god who made humans and of humans as god's workmanship, he claimed that it is possible to derive a few, certain universal duties and rights of preservation (Essay 4.3.16). The reason Locke and his contemporaries believed that morality could be demonstrable is their belief that moral concepts ('mixed modes' and 'relations'), like mathematical concepts, are conventional or made by the mind (3.11.16). The Two treatises of government is, inter alia, his anonymous attempt at such a demonstration.

However, Locke became sceptical of the demonstrability of the immortality of the soul and the existence of heaven and hell. Hence even if such a code could be demonstrated, it could not provide moral motivation or obligation because we could not be certain that the rewards of heaven and the punishments of hell were attached to it. So rather than continuing this project he turned to a different way of thinking about the rational foundation of morality, in which probability replaces demonstration.

His first step is to argue that most morality lies in the epistemic category of 'opinion', not 'knowledge', and thus is only 'probable', not demonstrably 'certain'. As a result, moral propositions are known not by the logic of demonstration but by weighing their degree of probability in accordance with the weight of the evidence, testimonies and arguments for them; and by carefully apportioning our degree of assent accordingly, from full assurrance down to conjecture, guess, doubt, and distrust (Essay 4.15.2-4). The Essay is a synthesis of seventeenth-century work on this type of probability and a celebration of its usefulness in all areas of knowledge. His criteria of probability were widely adopted throughout the human and natural sciences.

If these criteria are applied to the testimony of witnesses and the evidence of miracles for the Bible, Locke explains in the Essay and The reasonableness of Christianity, then it is rational to believe with full assurance that the Scripture is a divine revelation. Moreover, to distinguish his view from the deism of John Toland, he claimed in the Essay 4.19 (added to the fourth edition) that it would be irrational to go on to apply the criteria of probability to the content of the Bible. Being a revelation, it is a separate and higher ground of assent.

Next, how do we know that Christian revelation is true? In his Disconner of miracles (1702) and reply to Thomas Burnet, Locke asserted, as Descartes had done earlier, it is evident from the miracles that the Christian god is the most powerful, and, therefore, because lying is a weakness, any word of the Christian god is true. It follows that a demonstrable ethics is unnecessary: the Gospel provides a 'perfect body of ethics' and 'reason may be exempted from that enquiry [demonstration], since she may find man's duty clearer and easier in Revelation than in herself' (Correspondence 5: 2095).

Once examination has shown that Christian revelation warrants the highest degree of assent, Locke's second step is to introduce his other type of probability calculation. Here, the moral agent weighs the pleasures and pains associated with each morality. The Bible states that the pleasures of heaven and the torments of hell of all the powerful Christian god far outweigh any other moral reward or punishment and that heavenly pleasures suit everyone's palate. To clinch the calculation Locke employs a version of Pascal's wager. Even if the existence of an afterlife is a 'bare possibility' it is hedonically rational to become a Christian: 'The rewards and punishments of another life, which the Almighty has established... are of weight enough to determine the choice, against whatever pleasure or pain this life can show' (Essay 2.21.70). As he puts it in The reasonableness, with Christ's revelation of heaven and hell, 'interest has come about to her [virtue], and virtue is visibly the most enticing purchase and by much the best bargain' (Works 7: 94).

Although the Bible provides 'a perfect body of ethics', it is still necessary to use reason to clarify and interpret it. Thus, much of Locke's latest moral writing is concerned with developing and applying biblical hermeneutics (see Paragraphs). His interpretation is that Christian ethics are simple and so available to and applicable by
any day labourer, without the need for religious canists and moral philosophers. The central virtues are religious worship as one sees fit, sincerity, toleration, respect for rights, discipline, industriousness, and an overarching duty to preserve oneself and others (in opposition to the honour ethic and its glorification of war). This can be seen as a contribution to the moral affirmation of everyday life that swept across Europe in the early modern period.

The moral reform Locke advocated was to root out the scholastic and intolerant religious systems and to introduce his two types of moral reasoning and his simplified version of Christian ethics. In his educational writings he outlined a system that would weave these three into the very fabric of a student’s nature by means of repetition and practice, and with the judicious application of praise and blame. In 1697 he presented a proposal to the Board of Trade for the reform of the manners of children and adults on poor relief. By forcing them into the local workhouses and subjecting them to a regime of simple, repetitive tasks of labour and the rudiments of Christian duties, backed up by gradations of physical punishments and rewards, the habits of virtue, sobriety, discipline, and industriousness could be instilled and their preservation assured.

Both aspects of Locke’s moral philosophy were widely adopted in the eighteenth century. The irony is that the very forms of moral reasoning he recommended were used to expunge the soul and its final resting place which, for Locke, gave the whole enterprise its moral value.

CHAPTER 10

Political freedom

Three hundred years after the publication of the Two treatises of government and A letter concernig toleration, one aspect of Locke’s thought continues to stand out in sharp contrast to the prevailing conventions of both seventeenth- and twentieth-century political theory. This is his hypothesis that institutionalized forms of government are derived from and perpetually rest upon the prior freedom of the people to exercise political power themselves (summarized at 2.171).1 Locke had no doubt that it would seem a very strange Doctrine to some2 in his own time (2.9). It is no less unconventional today. In the current debate between liberals and civic humanists, for example, the leading participants share the assumption that political freedom is derived from and rests upon basic institutions and traditions.3 The aim of this paper is to enable readers to understand Locke’s strange doctrine by drawing attention to its distinctive features, first by means of a synopsis and then by a series of contrasts with more conventional views.

1 Prior to the establishment of institutionalized forms of government, people are capable of exercising political power themselves in an ad-hoc manner; “the Execution of the Law of Nature is in that State, put into every Man’s hands” (2.7). The exercise of political power

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1 The numbers in brackets refer to sections and section numbers of John Locke, Two treatises of government, ed. Peter Laslett (Cambridge: Cambridge University Press, 1997).