CHAPTER ONE

John Locke's Democratic Theory

Introduction

The democratic tradition has ancient origins, but contemporary formulations are generally traced to Jean-Jacques Rousseau's discussion of the general will in *The Social Contract*, published in 1762. Joseph Schumpeter went so far as to characterize Rousseau's account as the "classical" theory of democracy, even though his was really a neoclassical view—an eighteenth-century adaptation of the ancient Greek theory in which democracy had meant ruling and being ruled in turn.[1] Many commentators have followed Schumpeter's lead in treating Rousseau as the father of modern democratic theory, yet it is my argument here that John Locke merits the distinction. He developed the elements of an account of democracy that is more realistic, far-reaching, and appealing than is Rousseau's, and it has greater continuing relevance than does Rousseau's to contemporary democratic thinking. Locke conceived of the relationship between people and ruler as one of authorship at a more fundamental level than did Rousseau, placing the authorizing people, acting collectively, at the center of his account of political legitimacy. Yet, unlike Rousseau, he did not reify collective action or the general will in ways that have since been debunked by social choice theorists. Moreover, Locke's democratic theory had other dimensions as well, ranging over accounts of the moral equality of persons, what we might today describe as a political rather than a metaphysical approach to moral and political disagreement, and a strong defense of majority rule as the wellspring of institutional legitimacy.

Some will find my suggestion jarring not so much for the invidious comparison with Rousseau as for the fact that Locke is typically portrayed as a theorist of individual rights rather than of democracy. In the debate over the ideological origins of the American Revolution, for instance, the Lockean view is contrasted, as a rights-centric one, with a civic republican interpretation of the founders' self-understandings. There has been no suggestion by protagonists on either side of that debate that Locke's

[1] See Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper, 1942), pp. 250–68.

view was democratic.[2] Add to this the fact that Locke spent almost no time discussing political participation or representative institutions, and the prima facie case for him as a democratic theorist seems decidedly bleak. It is my contention, however, that the deep structure of Locke's account of politics is profoundly democratic. His understanding of the moral equality of persons lends itself better to democratic than to liberal thinking, even if his is not the "strong democracy" characteristic of the participatory and deliberative democratic traditions.[3] Moreover, as an institutional matter his defense of individual rights is nested in, and subordinate to, majority rule—casting his historical role as a proto–liberal rights theorist in a dubious light. This last contention is not new. As long ago as 1940 Willmoore Kendall noted that Locke's partiality to majority rule lived in tension with his account of individual rights.[4] Kendall saw this as a deficiency of Locke's theory, whereas on my account his defense of majority rule is part of a more sophisticated view of institutional legitimacy than Kendall was able to grasp. Another way to put this is that although Locke was no theorist of democratic participation, he was an innovative theorist of democratic legitimacy.

Does this mean the historical Locke was a democrat? Up to a point, albeit a debated one.[5] The gravamen of my claim here has more to do with the logic of his argument than with his intentions, but I mean to show that even they exhibited a democratic hue that has not been fully appreciated. As a matter of personal biography we know that Locke evolved over the course of his life: a fairly conservative, or, at any rate, apolitical person in his early adult years—one who gave unreflective endorsement to authoritarian political arrangements—he became a political insurrec-

[2] For a discussion of this debate, see my "J.G.A. Pocock's Republicanism and Political Theory: A Critique and Reinterpretation," *Critical Review* 4, no. 3 (Spring 1990): 433–71.

[3] Benjamin Barber, *Strong Democracy* (Berkeley and Los Angeles: University of California Press, 1984); James Fishkin, *Democracy and Deliberation: New Directions for Democratic Reform* (New Haven: Yale University Press, 1993); and Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, MA: Harvard University Press, 1998).

[4] Willmoore Kendall, *John Locke and the Doctrine of Majority Rule* (1940) (Urbana: University of Illinois Press, 1965).

[5] See Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton: Princeton University Press, 1986); Mark Goldie, "John Locke's Circle and James II," *Historical Journal* 35, no. 3 (1992): 557–86; Ellen Wood, "Locke against Democracy: Consent, Representation and Suffrage in the *Two Treatises*," *History of Political Thought* 13, no. 4 (Winter 1992): 657–89; Ashcraft, "The Radical Dimensions of Locke's Political Thought: A Dialogic Essay on Some Problems of Interpretation," *History of Political Thought* 13, no. 4 (Winter 1992): 703–71; and Wood, "Radicalism, Capitalism, and Historical Contexts: Not Only a Reply to Richard Ashcraft on John Locke," *History of Political Thought* 15, no. 3 (Autumn 1994): 324–72.

tionist in Shaftesbury's circle in the 1670s and after. His political outlook expressed itself mainly in terms of the great issue of the day: whether there is a legitimate right to resist an illegitimate monarch to the point of removing him by force. Locke famously concluded that there is indeed such a right. This argument might be thought to have little consequence for democratic politics, dealing, as it does, with the legitimacy of revolution. Moreover, it seems clear that in some respects even the Locke of the 1680s and after distanced himself from the most radical political movements of his day. Without delving deeply into these historical controversies, I will argue that Locke's account of the conditions under which revolution is legitimate is nonetheless decidedly democratic in its assumptions, and that the ever-present possibility of legitimate revolution has significant democratic consequences for thinking about day-to-day politics.

I begin with an exploration of Locke's account of three dimensions of human moral equality, where I show that his inclusive view of all human beings as equally God's property, as intrinsically rational, and as the "authors" of the state was advanced for his day and, moreover, exhibited a fundamentally democratic egalitarian outlook. This is followed by a discussion of Locke's views on toleration and dissent, where I show that, in addition to embracing a comparatively capacious view of toleration for his own day, Locke's justification for the limits on toleration that he advocated was in some respects akin to the mature John Rawls in his "political, not metaphysical" mode, though Locke's political, not metaphysical stance turns out on close inspection to be more thoroughly political (and less problematic) than does Rawls's. This leads to a discussion of Locke's account of the relations between majority rule and institutional legitimacy, where I argue that Locke's embrace of majority rule was less starry-eyed than that of subsequent democratic theorists, but that it was by the same token more attractive given the realities of politics in pluralist societies.

Human Moral Equality

The first and most basic sense in which we are equal, for Locke, is as God's property. Here we need to elucidate both the senses in which we are equal and those in which we are God's property, since both turn out to be relevant to subsequent democratic understandings.

Starting with the latter, Locke's view of humans as God's property is a special case of his workmanship theory by reference to which authority, ownership, and even authentic knowledge are all rooted in acts of creative making. This theory was developed as a consequence of Locke's

position on the nature and meaning of natural law. If one took the view, common among natural law theorists of his day, that natural law is eternal and unchanging, this threatened another notion many thought compelling: that God is omnipotent. By definition, an all-powerful God could not be bound by natural law. Yet if God is conceded to have the capacity to change natural law, then we cannot declare it to be timeless. Locke wrestled with this tension without ever resolving it to his own satisfaction, but in his moral and political writings he came down decisively in the voluntarist, or will-centered, camp.[6] He could not relinquish the proposition that for something to have the status of a law, it must be the product of a will. By adopting this voluntarist view, Locke aligned himself with other will-centered theorists of the early Enlightenment, notably the German natural law theorist Samuel von Pufendorf.[7]

We find similar reasoning in Locke's *Essays on the Law of Nature*, delivered as lectures at Christ Church in 1663–64. Here, Locke's treatment of human capacities was linked to his theology in a different way; it rested on his categorial distinction between natural right and natural law, which explained human autonomy. Rejecting the traditional Christian correlativities between right and law, Locke insisted instead that natural law "ought to be distinguished from natural right: for right is grounded in the fact that we have the free use of a thing, whereas law is what enjoins or forbids the doing of a thing."[8] What humans perceive as natural law is in fact God's natural right; an expression of his will. In this sense right is prior to law in Locke's analytical scheme.[9] Locke's theory of own-

[6] John Locke, *Two Treatises of Government*, ed. Ian Shapiro (New Haven: Yale University Press, 2003), pp. 123–24, 160. All italics in subsequent quotations from Locke appear in the original work. For further discussion, see Patrick Riley, *Will and Political Legitimacy* (Cambridge, MA: Harvard University Press), pp. 61–97. See also Ian Shapiro, *The Evolution of Rights in Liberal Theory* (New York: Cambridge University Press, 1986), pp. 100–118.

[7] See T. J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge: Cambridge University Press, 2001); Ian Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge: Cambridge University Press, 2001); and James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980).

[8] John Locke, *Essays on the Law of Nature* (1663–64), ed. W. Von Leiden (Oxford: Clarendon Press, 1958), p. 111.

[9] By following Hobbes and Pufendorf in this formulation of the distinction, Locke was embracing an important departure from the Thomist tradition, rooted in Grotius's revival of the Roman law conception of a right as one's *suum*, a kind of moral power or *facultas* that every man has, and which has its conceptual roots, as Quentin Skinner has established, in the writings of Suarez and ultimately Gerson and the conciliarist tradition. *The Foundations of Modern Political Thought* (Cambridge: Cambridge University Press, 1978), 2:117, 176–78. See also Richard Tuck, *Natural Rights Theories* (Cambridge: Cambridge University Press, 1979), and John Finnis, *Natural Law and Natural Right* (Oxford: Clarendon Press, 1980) pp. 207–8.

ership flows naturally out of this scheme, transforming the workmanship model of knowledge into a normative theory of right. It is through autonomous acts of making that rights over what is created come into being. Making entails ownership, so that natural law is at bottom God's natural right over his creation.[10] Locke's frequent appeals to metaphors of workmanship and watchmaking in the *Two Treatises* and elsewhere underscore that for him men are obliged to God because of his purposes in making them. Men are "the Workmanship of one Omnipotent, and infinitely wise Maker. . . . They are his Property, whose Workmanship they are, made to last during his, not one anothers pleasure."[11]

Why does this account of natural law and God's workmanship matter for the moral equality of persons? Two reasons. First, because we are all God's creatures, on Locke's account, we were all protected from being owned by one another. It might ring strange to the contemporary ear that Locke felt the need to deny that people can be one another's property, but his central preoccupation in the *First Treatise* was to refute defenses of absolutism that appealed to Adam's "Right of Dominion over his Children."[12] Conventional defenders of absolutism, notoriously Sir Robert Filmer, had contended "that Fathers, by begetting them, come to an Absolute power over their children."[13] Locke insisted, by contrast, that God makes children and uses their parents for that purpose. Parents are "but occasions for [children's] being, and when they design and wish to beget them, do little more towards their making, than *Ducalion* and his Wife in the Fable did towards the making of Mankind, by throwing Pebbles over their Heads."[14] Were parents givers of life, Locke conceded, they might have some sort of quasi-ownership claim, but they are not. Even in this hypothetical eventuality, Locke resists the absolutist case by arguing that "every one who gives another any thing, has not always thereby a Right to take it away again,"[15] and he insists that because the woman "hath an equal share, if not greater," in nourishing a child, the creationist theory in any case does not justify paternal absolutism. It is "so hard to imagine the rational Soul should presently Inhabit the yet unformed Embrio, as soon as the Father has done his part in the Act of Generation, that if it must be supposed to derive any thing from the Parents, it must certainly owe most to the Mother."[16]

[10] Locke, *Essays on the Law of Nature*, pp. 111, 187.

[11] Locke, *Two Treatises*, II, § 6, p. 102. For further discussion see Tully, *A Discourse on Property*, pp. 35–38, and John Dunn, *The Political Thought of John Locke* (London: Cambridge University Press, 1969) p. 95.

[12] Locke, *Two Treatises*, I, § 50, p. 34.

[13] Ibid., I, § 52, pp. 35–36.

[14] Ibid., I, § 54, p. 37

[15] Ibid., I, § 52, pp. 35–36.

[16] Ibid., I, § 55, p. 37. See also II, § 52–53, p. 122.

Regardless of these calculations, Locke is unequivocal that Filmer's case fails for the more fundamental reason that to give life "is to frame and make a living Creature, fashion the parts, and mold and suit them to their uses, and having proportion'd and fitted them together, to put into them a living Soul."[17] Parents do not fashion the child and, most commonly, do not even intend to create it; they do so as a by-product of the instinctive desires God has placed in them. "They who say the *Father* gives Life to his Children, are so dazzled with the thoughts of Monarchy, that they do not, as they ought, remember God, who is the *Author and Giver of Life*."[18] Parents have fiduciary responsibility for their children on Locke's account, but it expires upon their maturity. Parents are obliged to provide for their children "not as their own Workmanship, but the Workmanship of their own Maker."[19]

This is why Locke insists that children are not born *in* a "state of *Equality*, though they are born to it." Adults have "a sort of Rule and Jurisdiction over them when they come into the World, and for some time after, but 'tis a temporary one." The bonds of children's subjection "are like the Swadling Cloths they are wrapt up in, and supported by, in the weakness of their Infancy." Developing age and reason loosen these bonds, "till at length they drop quite off, and leave a Man at his own free Disposal."[20] The power to command "ends with nonage." Thereafter, although "*honour* and respect, support and defense, and whatsoever gratitude can oblige a Man to the highest benefits he is naturally capable of, be always due from a Son to his Parents; yet all this puts no Scepter into the Father's hand, no Sovereign Power of Commanding."[21] The only legitimate sanction at the parent's disposal is the power to withhold inheritance, or "to bestow it with a more sparing or liberal hand, according as the Behavior of this or that Child hath comported with his Will and Humor."[22] Parents are to "inform the Mind, and govern the Actions of their yet ignorant Nonage, till Reason shall take its place and ease them of that Trouble."[23] This treatment of children reflects an inclusive view of the right to make decisions for oneself: the only justifiable basis for paternalism is incapacity.

One reason that Locke's view of moral equality has had staying power since he wrote is that the obvious secular analogue of his claim that we are all God's property is that we are nobody's property. The workman-

[17] Ibid., I, § 53, p. 36.
[18] Ibid., I, § 52, pp. 35–36.
[19] Ibid., II, § 56, p. 123.
[20] Ibid., II, § 55, p. 123.
[21] Ibid., II, § 69, pp. 129.
[22] Ibid., II, § 72, p. 130.
[23] Ibid., II, § 52–58, pp. 122–24.

ship model persisted in the Western intellectual consciousness long after it was cut loose from its Lockean theological moorings. If we abandon the theology yet still embrace the workmanship ideal, as most in the Enlightenment tradition since Locke—be they conservatives, liberals, or radicals—have done, the logic of his argument against Filmer continues to hold. Indeed, it can be extended: parents cannot own children because they do not make them, but by the same token nor can anyone else own them. In this way the egalitarian logic of his argument against Filmer extends beyond their theological disagreements.[24]

A comparably inclusive view is reflected in Locke's discussion of women. Feminist commentators on the history of political theory note correctly that there were limits to Locke's embrace of gender equality.[25] In the *First Treatise* he describes women as the "weaker Sex," and, although he insists there is no biblical authority for men's dominion over women, that it is a matter of human law, he says "there is, I grant, a Foundation in Nature for it."[26] Moreover, in the *Second Treatise*, he says that its "being necessary, that the last Determination, i.e. the Rule, should be placed somewhere, it naturally falls to the Man's share, as the abler and the stronger."[27] Yet, taken in context, in both cases these statements were concessions to considerably more paternalistic views that Locke was challenging, and it should be noted that the bulk of his discussion is concerned with hemming in what Locke took to be the husband's inevitable power.

We have already seen that Locke resisted patriarchalism with respect to children partly on the ground that if children were seen as human creations, women's ownership claim would outweigh that of men. Beyond this, Filmer had contended that "God at the Creation gave the Sovereignty to the Man over the Woman, as being the Nobler and Principal Agent in Generation,"[28] a belief that Locke maintained is utterly inconsistent with a biblical teaching, "for God in the Scripture says, *his Father and his Mother that begot him*."[29] Locke is equally dismissive of Filmer's claim that "*Monarchical Power of Government [is] settled and*

[24] For discussion of the evolution of secular variants of the workmanship ideal since the seventeenth century, see my *Democracy's Place* (Ithaca: Cornell University Press, 1996), chap. 3.

[25] Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), pp. 38, 41, 54, 94. Susan Moller Okin, *Women in Western Political Thought* (Princeton: Princeton University Press, 1979), p. 199.

[26] Locke, *Two Treatises*, I § 47, pp. 32–33.

[27] Ibid., II § 82, p. 135.

[28] Sir Robert Filmer, *Patriarcha and Other Political Writings of Sir Robert Filmer, Edited from the Original Sources*, ed. Peter Laslett (Oxford: Blackwell's Political Texts, 1949), p. 245.

[29] Locke, *Two Treatises*, I, § 55, p. 37.

fixed by the Commandment, Honour thy Father and thy Mother," since as Locke observes, "no Body will say a Child may withhold Honour from his Mother, or, as the Scripture terms it, *set light by her*, though his Father should command him to do so, no more than the Mother could dispense with him, for neglecting to *Honour* his Father, whereby 'tis plain, that this Command of God, gives the Father no Sovereignty, no Supremacy."[30]

Perhaps more remarkably, Locke treated marriage as an egalitarian contract, grounded in the idea of mutual consent: "*Conjugal Society* is made by a voluntary Compact between Man and Woman: and tho' it consist chiefly in such a Communion and Right in one anothers Bodies as is necessary to its chief End, Procreation; yet it draws with it mutual Support, and Assistance, and a Communion of Interests too."[31] The husband prevails in situations of unavoidable conflict, but this nonetheless "leaves the Wife in the full and free possession of what by Contract is her peculiar Right, and gives the Husband no more power over her Life, than she has over his." Indeed, the power of the husband "being so far from that of an absolute Monarch, that the *Wife* has, in many cases, a Liberty to *separate* from him; where natural Right, or their Contract allows it, whether that Contract be made by themselves in the state of Nature, or by the Customs or Laws of the Countrey they live in; and the Children, upon such Separation fall to the Father or Mother's lot as such Contract does determine."[32] In short, Locke was remarkably ahead of his time with respect to women's equality, and, as Carole Pateman and Rogers Smith have noted, the egalitarian logic of his argument is subversive of all authority relations, including those arising in marriage.[33]

Likewise in his discussion of slavery in the *Second Treatise*, Locke insists that "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."[34] Human beings may not sell themselves into slavery because they are God's property. "No body can give more Power than he have himself; and he cannot take away his own Life, cannot give another power over it."[35] Slaves may be taken as a result of legitimate victory in war on Locke's account, but only because the defeated enemy has forfeited his right to life "by some Act that deserves Death," and the victor "to whom he has forfeited it, may

[30] Ibid., I, § 62, p. 41.
[31] Ibid., I, § 78, p. 52.
[32] Ibid., I, § 82, pp. 54–55.
[33] Rogers Smith, "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America," *American Political Science Review* 87, no. 3 (September 1993): 556; Pateman, *The Sexual Contract*, pp. 38, 41, 54, 94.
[34] Locke, *Two Treatises*, II, § 22, p. 19.
[35] Ibid., II, § 23, p. 19.

(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."[36] Legitimate slavery is, in effect, nothing more than the continuation of a state of war between the lawful victor and the captive, who never, strictly, becomes his master's property. [37] There can be no master-slave relationship among members of a legitimate political association, which has to be based on consent. We are all equally immune from being owned by other humans, and by the same token bound to recognize that we cannot own others.[38]

In addition to our all being equally God's property, Locke argued that "*all men by Nature are equal*"[39] owing to God's decision. On Filmer's account, God had given the world to Adam and his heirs. Existing property rights and the system of political authority had allegedly passed to current owners and European monarchs in this way through primogeniture. Locke insisted, by contrast, that God gave the world to mankind in common—subject to the provisos that it not be wasted, and that "enough, and as good" remain available to others to use in common.[40] To this moral theory Locke added two dubious empirical claims that combined to get him from the theory of inclusive use-rights to the common to something like the view of property that contemporary libertarians embrace—often without realizing how it depends on these contingencies. The first was that with the introduction of money the injunction against waste, although not in principle transcended, for practical purposes became obsolete.[41] Second, Locke was convinced that the productivity effects of enclosing

[36] Ibid.

[37] As a result, if the slave concludes that "the hardship of his Slavery out-weigh the value of his Life, 'tis in his Power, by resisting the Will of his Master, to draw on himself the Death he desires." Ibid.

[38] Numerous Locke scholars have puzzled over how, if at all, Locke's views about slavery can be reconciled with the fact that he supported and even profited from the African slave trade and slavery in America—not least because African slaves were not captured in war and women and children were enslaved, which was expressly prohibited on the just war theory. The most comprehensive treatment of this subject is James Farr's "'So vile and miserable an estate': The Problem of Slavery in Locke's Political Thought," *Political Theory* 14, no. 2 (May 1986): 263–89. Farr makes a convincing case that the two really cannot be reconciled, and that Locke simply avoided the contradiction. This is in line with Dunn's earlier conclusion that "what we confront here is not an example of bland but deliberate moral rationalization on Locke's part but merely one of immoral evasion." Dunn, *The Political Thought of John Locke*, p. 175n. Of course the fact that Locke never publicly embraced authorship of the *Two Treatises* in his lifetime meant that he was not forced to account for the contradiction publicly or to confront the charges of hypocrisy that his enemies might otherwise have leveled at him. See also James Farr, "Locke, Natural Law, and New World Slavery," *Political Theory* 36, no. 4 (2008): 495–522.

[39] Locke, *Two Treatises*, II, § 54, pp. 122–23.

[40] Ibid., II, § 27, pp. 111–12.

[41] Locke believed that as well as not being subject to physical decay itself, money made possible the comparatively more productive use of natural resources through trade and

common land would be so great that the "enough, and as good" proviso could in practice also be dispensed with—thereby legitimating private ownership. For "he who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind."[42]

Although Locke's theory permitted substantial inequalities to develop, it nonetheless provided the basis for an egalitarian collective constraint on them: if either of his empirical claims turns out not to be true, the provisos kick in with all the force of natural law behind them. In short, Locke was not a believer in equality of result, nor was he a mere proponent of equality of opportunity, or what Ronald Dworkin has described as starting-gate equality.[43] Use-rights to the common are universal and inextinguishable on Locke's account. Although he does not say this, it would thus be reasonable to infer that anyone who is deprived of access to the common owing to private ownership thus has a legitimate claim to at least what he would have been able to earn from unenclosed land. If this does not "trickle down" as a by-product of the productivity effects of enclosure, then the natural law guarantee is activated.[44]

God's decision to treat humans as one another's peers extends beyond these natural law protections, for Locke; it is built into the nature of human agency. We are all miniature gods on his account in that, provided we do not violate natural law, we stand in the same relation to the objects we create as God stands to us. We own them just as he owns us.[45] Natural law, or God's natural right, sets the outer boundaries to a field within which humans have divine authorization to act as little gods, creating rights and obligations of their own. And although Locke denies that parents create children, for reasons already discussed, he insists that God has endowed humans with great creative power. He minimizes the independent contribution of common resources to the value of what people produce by arguing that the world which has been given us in common is God's "waste," and insisting that "labour makes the far greater part"

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productive work. See Richard Ashcraft, *Locke's Two Treatises of Government* (London: Allen and Unwin, 1987), pp. 123–50, and *Revolutionary Politics and Locke's Two Treatises of Government*, pp. 270–85, and, for the view (which Ashcraft criticizes) that Locke thought the proviso transcended with the introduction of money, C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford University Press, 1962), pp. 203–21.

[42] Locke, *Two Treatises*, II, § 37, pp. 115–16.

[43] Ronald Dworkin, "What Is Equality? Part I: Equality of Welfare," *Philosophy and Public Affairs*. 10, no. 3 (Summer 1981): 185–246, and "What Is Equality? Part II: Equality of Resources," *Philosophy and Public Affairs* 10, no. 4 (Fall 1981): 283–345.

[44] For additional discussion of this point, see Shapiro, *The Evolution of Rights in Liberal Theory*, pp. 89–100.

[45] See John Locke, *An Essay Concerning Human Understanding* (1690), ed. Peter Nidditch (Oxford: Clarendon Press, 1975), bk. 2, chap. 27, and bk. 1, chap. 30. See also Tully, *A Discourse on Property*, pp. 108–10, 121.

of its value.[46] This is why Locke was so confident of the productivity effects of enclosure. The goods produced on an acre of enclosed land are at least ten—more like a hundred—times more than those "yielded by an acre of Land, of an equal richnesse, lyeing wast in common." As a result, someone who encloses ten acres "may truly be said, to give ninety acres to Mankind," at least.[47]

Locke applied his workmanship model to political arrangements no less than to property. Whereas for Filmer political rulers received their authority from God, on Locke's account political institutions are the property of the human beings who create them through a social contract. Indeed, in what might seem quaint by today's criteria for knowledge, Locke held that the study of ethics and politics is superior to that of the physical world because it concerns products of the human will to which we have privileged access through introspection. He distinguished "ectype" from "archetype" ideas, the former being general ideas of substances, the latter constructed by man. This generated a radical disjunction between natural and conventional knowledge, underpinned by a further distinction between "nominal" and "real" essences. In substances that depend on the external world for their existence (such as trees or animals), only nominal essences can be known to man. The real essence is available only to the maker of the substance, God. In the case of archetypes, however, nominal and real essences are synonymous, so that real essences can by definition be known by man. Because the social world is a function of archetype ideas, it follows that real social essences can be known by man. We know what we make. Man can thus have incontrovertible knowledge of his creations—most importantly, for our purposes, of his political arrangements and institutions.[48]

We know what we make just as we own what we make, be it property created through individual work or a commonwealth created by collective

[46] Locke, *Two Treatises*, II, § 25–51, pp. 111–21.

[47] Ibid., II, § 37, pp. 115–16.

[48] See Locke, *An Essay Concerning Human Understanding*, bk. 2, chaps. 31–32, bk. 3, chaps. 3, 6. In this he was following Hobbes, who had distinguished knowledge that depends on the human will from knowledge that is independent of it. As Hobbes put it, the pure, or "mathematical," sciences can be known a priori, but the "mixed mathematics" such as physics depend on "the causes of natural things [which are] not in our power." Hobbes, *De Homine* (1658) (New York: Anchor, 1972), p. 42. So he likened study of politics to that of mathematics on the grounds that "civil philosophy is demonstrable, because we make the commonwealth ourselves." As far as the natural world is concerned, we can only speculate, because we "know not the construction, but seek it from effects." See his Epistle Dedicatory to his *Six lessons to the Professors of Mathematics*, in *The English Works of Thomas Hobbes* (London: John Bohn, 1966), 7:183–84. For further discussion of this issue, see Tully, *A Discourse on Property*, pp. 9–27, and Shapiro, *The Evolution of Rights in Liberal Theory*, pp. 109–10.

agreement. God makes man, we are told in the *First Treatise*, "*in his own Image after his own Likeness*, makes him an intellectual Creature and so capable of *Dominion*."[49] Human beings are equal to one another in these endeavors because their capacity for creativity, their status as miniature gods, is both universal and God-given. It may not legitimately be given, taken away, or otherwise compromised by other human beings. Indeed, natural law requires that each person preserve himself, and that "when his own Preservation comes not in competition," each person ought "as much as he can, *to preserve the rest of Mankind*, and may not unless it be to do Justice on an Offender, take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another."[50] Locke was adamant that "the *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions."[51]

Reason, then, is equally available to all. Locke was quick to defuse arguments from authority by appealing to man's natural and unencumbered reasoning capacities, a view that informs his discussion in the *Essay Concerning Human Understanding* as well as *A Letter Concerning Toleration*. So he insists in the *Essay* that it is not only those trained in logic who are capable of reason. "He that will look into many parts of Asia and America, will find men reason there perhaps as acutely as himself, yet who never heard of a syllogism, nor can reduce any one argument to those forms."[52] God, Locke insists,

> has not been so sparing to men to make them barely two-legged creatures, leaving it to Aristotle to make them rational. . . . He has given them a mind that can reason, without being instructed in methods of syllogizing: the understanding is not taught to reason by these rules; it has a native faculty to perceive the coherence or incoherence of its ideas, and can range them right, without any such perplexing repetitions.[53]

Rank does not supply privileged access to reason any more than education does. Locke insists in the *Letter Concerning Toleration* that although princes are born superior to other men in power, "in nature" they are equal. "Neither the right nor the art of ruling does necessarily carry along

[49] Locke, *Two Treatises,* I, § 30, pp. 22–23.
[50] Ibid., II, § 6, p. 102.
[51] Ibid.
[52] Locke, *An Essay Concerning Human Understanding* (New York: Dover, 1959), vol. 2, bk. 4, p. 389.
[53] Ibid., p. 391.

with it the certain knowledge of other things."[54] And we have seen that in the *Second Treatise*, Locke avers that the laws of nature are more easily intelligible than positive laws, and in his discussion of parental authority the whole basis of his attack on Filmer is that this is limited to their "ignorant nonage." For Locke, adults are all assumed to be equally capable of rational behavior. He thus thought human moral equality was manifest in the scriptures, but that it can also be seen in our rational capacities and through observation of our place in nature.[55]

Toleration and Dissent

Human beings enjoy liberty to act as miniature gods within the constraints of natural law, for Locke, but they do not have license to violate the constraints themselves. This inevitably raises the question: what happens when people disagree about their obligations to one another, about what respecting one another's autonomy as God's creatures requires, or about whether natural law is otherwise being compromised by actions people are taking or contemplating? That which humans comprehend as reason is in part God's law, as I have just noted, but Locke realized that he had to confront the possibility—indeed, the strong likelihood—that people would disagree over the meaning of the scriptures or what reason otherwise requires. One way in which he responded was by embracing a capacious doctrine of toleration.

Locke went out of his way to make toleration in general not contingent on the truth or falsity of the belief to be tolerated. We are all subject to "the duties of peace and goodwill . . . as well towards the erroneous as the orthodox."[56] In *A Letter Concerning Toleration*, he insisted that the state may not force religious conformity on anyone, for "every church is orthodox to itself; [and] to others, erroneous or heretical." A church must therefore be a voluntary association of individuals that the magistrate both safeguards and limits, but may not regulate internally. "[T]he care of souls is not committed to the civil magistrate." His power consists

[54] Locke, *Two Treatises,* p. 230.

[55] Locke's characteristic mode of argument is to insist that nature, reason, and scripture all converge on the proposition he seeks to defend. For further discussion, see Shapiro, *The Evolution of Rights in Liberal Theory*, pp. 80–149.

[56] Ibid., p. 227. This exceptionally broad theory of religious toleration, and Locke's view that the ends of civil society are purely secular, are additional reasons for questioning the interpretation of Locke as a conservative Thomist. For further discussion of Locke's religious radicalism in his later writings, see Ashcraft, *Locke's Two Treatises of Government*, chaps. 1 and 2.

in "outward force," but "true and saving religion consists in the inward persuasion of the mind."[57]

Locke was well aware that an unqualified principle of toleration can generate paradoxes, conflicting injunctions, and self-defeating conclusions. He therefore imposed three kinds of limits on toleration. The first concerns toleration of practices inimical to the principle of toleration itself; that is, actions which, if tolerated, result in people's being forced to do things they would not otherwise do. "For all force, as has often been said, belongs only to the magistrate, nor ought any private persons at any time use force unless it be in self-defense against unjust violence."[58] "Unjust violence" seems to mean direct violation of another's will, a refusal to tolerate another's private actions. Toleration requires intolerance of antitolerant acts: "[F]or who could be free when every other Man's Humor might domineer over him?"[59]

Next, Locke is unequivocal in the *First Treatise* that, because all people are bound by the laws of nature, they have liberty to act freely but not license to do as they please. Thus children are under the authority of parents until they are old enough to understand that law, and thus practices like cannibalism, sale of children, adultery, incest, and sodomy, all of which "cross the main intention of Nature,"[60] cannot be tolerated. We leave aside, for now, how Locke expects us to know what is and is not against the main intention of nature; what is clear is that he expects that the civil law will uphold this law and will not tolerate transgressions of it.

Finally, actions should not be tolerated if they are prejudicial to the existence of the political order. Thus atheists ought to be suppressed not because Locke disagrees with their beliefs (though he does), but because those beliefs threaten the commonwealth. "Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist."[61] Analogous considerations lead Locke to the conclusion that Papists and "Mahometans" ought not to be tolerated because they owe allegiance to alien civil powers. "That church can have no right to be tolerated by the magistrate which is constituted upon such a bottom that

[57] Locke, *Treatise of Civil Government and A Letter Concerning Toleration*, pp. 225, 218, 219.

[58] Ibid., p. 223.

[59] Locke, *Two Treatises*, II, § 57, p. 123–24.

[60] Ibid., I, § 59, p. 39.

[61] Ibid., 246. For an extended account of Locke's views on promising and trust, and their political applications, see John Dunn, "The Concept of 'Trust' in the Politics of John Locke," in *Philosophy in History: Essays on the Historiography of Philosophy*, ed. R. Rorty, J. B. Schneewind, and Q. Skinner (Cambridge: Cambridge University Press, 1984), pp. 279–301.

all those who enter into it do thereby *ipso facto* deliver themselves up to the protection and service of another prince."[62]

It is difficult to know to what extent such beliefs were sincerely held by any writer in the political climate of Restoration and revolutionary England. On the subject of atheism, Locke regarded questions about the existence of God as separate from questions about alternative religions. It is clear from the *Essay* that he was convinced by versions of the cosmological proof and the argument from design.[63] In *A Letter Concerning Toleration*, he seems to follow Hooker in invoking a version of the argument from common consent.[64] For whatever reason, Locke regarded the existence of God as self-evident. But his decisive *political* reason for denying toleration to atheists, Catholics, and Muslims rested on his worry about their incentives for fidelity to the commonwealth. In this he was an early proponent of a view akin to John Rawls's "political, not metaphysical" outlook concerning political legitimacy. True and saving religion might consist of inward persuasion of the mind, but if the mind of an Englishman becomes persuaded of the veracity of Catholicism or Islam, or, indeed, unpersuaded of God's existence, then he is out of luck. In short, the acceptability of a belief turns on its compatibility with the legitimate political order, not on whether its veracity is demonstrable by Locke's criteria.[65]

These considerations notwithstanding, Locke's view of toleration was a variant of the conventional Whig one in the 1680s. Since the Restoration, Charles and James had been attempting to expand toleration for Catholics and nonconformists to undermine the religious and political power of the Anglican clergy. Charles's embrace of toleration in 1662 and his declaration for indulgence a decade later met with insurmountable political opposition, but James had considerably more success with his similar declaration in 1687. James's uneasy alliance with both Catholic and Protestant nonconformists was broken at the Revolution as a result of Anglican promises to tolerate nonconformists in the general interests of Protestantism. This was realized to some extent in the

[62] Locke, *Two Treatises*, p. 245.

[63] See Locke, *An Essay Concerning Human Understanding* (Dover edition), bk. 2, pp. 306–24. For commentary, see Tully, *A Discourse On Property,* pp. 38–43.

[64] "All men know and acknowledge that God ought to be publicly worshipped; why otherwise do they compel one another unto the public assemblies? Men, therefore, constituted in this liberty are to enter into some religious society." Locke, *Two Treatises,* p. 232.

[65] Rawls defines his "political, not metaphysical" approach by reference to an "overlapping consensus" on principles that are likely to "persist over generations and to gain a sizable body of adherents in a more or less just constitutional regime, a regime in which the criterion of justice is that political conception itself." Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 15.

Toleration Act of 1689, even if that law did little more than exempt some narrowly defined groups of dissenters from some specific penalties. The act achieved its purposes, however. It split Protestant from Catholic dissenters, the latter being excluded from toleration legislation. Henceforth, Catholicism could be regarded as treasonable, as it was in the Act against Popery of 1700, aimed at "preventing the further growth of popery and of such treasonable, and execrable designs and conspiracies against his Majesty's person and government."[66] Locke's view was thus in the mainstream of Whig thinking on toleration that triumphed at the Revolution, even if he advocated tolerating a wider array of dissenting groups than would most.

Locke's account of toleration was buttressed by an antiauthoritarian theory of biblical hermeneutics. Underlying his rejection of Filmer's patriarchalism was a challenge to Filmer's reading of the scriptures, and particularly to the inherently hierarchical worldview that emanates from Filmer's contention that God gave the world to Adam and his heirs. Underlying *that* rejection, as Richard Ashcraft has noted, was Locke's radical claim that where the scriptures admit of more than one interpretation, no earthly authority may declare one reading to be authoritative.[67] Our prejudices and opinions "cannot Authorize us to understand the Scripture contrary to the direct and plain meaning of the Words," but where there is silence or ambiguity, the reader must judge how "*it may best be understood*."[68] In the course of rejecting Filmer's claim that scriptural warrant for Adam's sovereignty over Eve can generate a justification for absolute monarchical authority, Locke insists that the burden lies with whoever is advancing an interpretation to give reasons that the reader will find plausible.[69]

Locke insisted that each reader is sovereign over what counts for him as a convincing interpretation of a text. As Locke argued in the *Letter on Toleration*, those things "that every man ought sincerely to inquire into himself, and by meditation, study, search, and in his own endeavours attain the knowledge of, cannot be looked upon as the peculiar possession of any one sort of men."[70] When people disagree over the meaning of the scriptures, they have to weigh the evidence for themselves. God speaks directly to every individual through the text, so that no human authority is entitled to declare one interpretation authoritative in the face of a

[66] The acts referred to in this paragraph are reprinted in A. Browning, ed., *English Historical Documents 1660–1714*, vol. 8 (London: Eyre & Spottiswoode, 1953), pp. 359–410.

[67] Ashcraft, *Locke's Two Treatises of Government*, pp. 65–68.

[68] Locke, *Two Treatises*, I, § 36, p. 26.

[69] Ibid., I, § 49, pp. 33–34.

[70] Ibid, p. 229.

conflicting one.[71] This freedom to comprehend natural law by one's own lights supplied the basis for Locke's right to resist that could be invoked against the sovereign, and to which he himself appealed in opposing the English crown during the 1680s. Ashcraft captures Locke's interpretive radicalism well when he notes that it was "designed to undermine the authoritative weight of an interpretation of the Bible advanced by any individual or group of individuals as an interpretative guide to the meaning of that work."[72]

This is not to say that Locke believed every interpretation of the scriptures to be equally valid. On the contrary, he thought that there is a correct interpretation on which reasonable people will usually agree, and he seemed confident that he could convince people that his reading of the scriptures was consistent with their commonsense interpretations. Although God speaks with more truth and certainty than do men, "when he vouchsafes to speak to Men [through the scriptures], I do not think, he speaks differently from them in crossing the Rules of language in use amongst them. This would not be to condescend to their Capacities, when he humbles himself to speak to them, but to lose his design in speaking, what thus spoken, they could not understand."[73] Commonsense readings of the scriptures must, therefore, reveal their true meaning. We have to countenance the possibility that people will continue to disagree, and we must protect their right to do so, but Locke did not doubt that most of the time people could be brought to agree.

I will have more to say about Locke's treatment of political disagreement anon. For now it is worth noting that there is a certain circularity to his view, parallel to that which attends Rawls in his "political, not metaphysical" mode. Rawls seeks a "political" conception of justice that "can gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society regulated by it." He regards this as essential for people who disagree profoundly on religious, philosophical, and moral matters to "maintain a just and stable democratic society."[74] It is not entirely clear on Rawls's account whether, in order for a religious, philosophical, or moral doctrine to be judged reasonable it must meet independently derived criteria, as he sometimes claims, or whether it must be compatible with political arrangements that can be endorsed by adherents to any of the other doctrines that happen

[71] Locke, *Two Treatises*, I, § 46, p. 32. For an extended discussion of Locke's hermeneutical and methodological critique of Filmer's reading of the scriptures, see Ashcraft, *Locke's Two Treatises of Government*, chap. 3.

[72] Ashcraft, *Locke's Two Treatises of Government*, p. 67.

[73] Locke, *Two Treatises*, I, § 46, p. 32.

[74] Rawls, *Political Liberalism*, p. 10.

to prevail in the society—whether overlapping consensus is derived from reasonableness or the reverse.[75]

To be sure, expansive as it was for his day, Locke's view of toleration is more restrictive than is Rawls's. Yet it seems to exhibit an analogous ambiguity in that it is difficult to pin down whether he ultimately thinks commonsense interpretations of the scriptures should be thought commonsensical because they are compatible with political arrangements that those with different readings can endorse, or rather for some independent reason. And, as with Rawls, difficulties attend both views. If there is to be an independent criterion, the question arises as to where it comes from and what is to be said to those who are unpersuaded of its basis in reason or common sense. If, on the other hand, we adopt the contingent view, there is the danger that there might not be an overlapping consensus. There might not be enough common ground between competing interpretations—say Locke's and Filmer's—to sustain any political order. After all, considerations of this kind were presumably partly what was at issue for Locke in the 1680s. In some moods at least Rawls seems to want to square the relevant circle by claiming that his proposed principles are compatible with the most diverse possible array of doctrines while still being able to sustain a stable political order. The reasons Locke gives for limiting toleration as he does suggest that analogous considerations played into his thinking, but we will see that when push comes to shove he moves in a more decidedly democratic direction than does Rawls.

Democratic Foundations

At this point it might reasonably be asked whether Locke's view is not more liberal than democratic. After all, we have seen that it is the traditional liberal value of toleration, buttressed by a strongly individualist view of scriptural interpretation, that lies at the core of his political doctrine—a far cry from the conventional democratic commitment to participation. This is true; indeed as Kendall notes, given his doctrine, Locke is surprisingly thin on mechanisms of popular consultation.[76] Moreover, as Ruth Grant has convincingly argued, Locke did not think of day-to-day participation as a basic category of political legitimation.[77] Closer examination reveals, however, that his underlying conception of legitimacy is democratic more than liberal, particularly once we focus on his

[75] For further discussion, see Ian Shapiro, *The Moral Foundations of Politics* (New Haven: Yale University Press, 2003), chap. 5.

[76] Kendall, *John Locke and the Doctrine of Majority Rule*, p. 34.

[77] Ruth W. Grant, "John Locke on Women and the Family," in Locke, *Two Treatises*, pp. 286–308.

discussion of the practical implications of disagreement over the meaning of natural law and the right to resist.

Locke's assumption that people can typically be brought to agree on fundamental moral and political questions was obviously at variance with his own political experience. He acknowledged this in the most Hobbesian of terms: "For though the Law of Nature be plain and intelligible to all rational Creatures," he tells us in his discussion of the aims of political society in the *Second Treatise*, "yet Men being biased by their Interest, as well as ignorant for want of study of it, are not apt to allow of it as a Law binding on them. . . . Men being partial to themselves, Passion and Revenge is very apt to carry them too far, and with too much heat, in their own Cases."[78] For Hobbes, this view could generate a command theory of law to force men to be rational; for Rousseau it would generate a Lawgiver to manipulate men to be "genuinely" free. Locke, however, takes the idea of consent of the governed too seriously to make an analogous move. Like the young Rawls of *A Theory of Justice*, he seems to want to reason about the legitimacy of political institutions in a way that pays homage to considerable diversity of belief yet shields it from self-interest. As is well known, Rawls deployed a "veil of ignorance" to get at this: people are assumed to be choosing institutions knowing that there is a plurality of worldviews and conceptions of the good but not what their particular one is.[79] Locke, who conceived of the social contract as an actual agreement, would not have been much interested in hypothetical speculation of this kind. For him, reconciling disagreement with the view that political legitimacy is based on consent is an inescapable political problem. Whereas Rawls's "political, not metaphysical" move retains a rationalist component, Locke's is political all the way down. This is because Rawls restricts the range of acceptable views based on where they come from, whereas for Locke the decisive criterion is what they should be expected to lead to.

For Rawls, acceptable political arguments appeal only to public reason rooted in the overlapping consensus among the different views in society, not to the comprehensive religious and metaphysical doctrines to which people may be committed. This creates difficulties for him in thinking about the legitimacy of movements for political reform such as the civil rights movement. Such reform endeavors were often avowedly religious in inspiration, manifestly rooted in the comprehensive doctrines of their adherents. Of their leaders he says that "they did not go against the ideal of public reason; or rather, they did not provided they thought, or on

[78] Locke, *Two Treatises*, II, § 124–25, p. 155.

[79] See John Rawls, *A Theory of Justice*, 2nd ed. (Cambridge, MA: Harvard University Press, 1999), p. 11.

reflection would have thought (as they certainly could have thought), that the comprehensive reasons they appealed to were required to give sufficient strength to the political conception to be subsequently realized."[80] The obvious question to ask Rawls is what he would say to the pro-segregationist who believed his views, though right because dictated by God, were compatible with what public reason should endorse. Because Locke focused exclusively on the political effects of beliefs in determining what should be tolerated, he did not need to indulge in such conceptual gymnastics to adjudicate among comprehensive doctrines while trying to appear not to be so doing. This consequentialist understanding of "political, not metaphysical" places him closer to Jürgen Habermas than to Rawls in the contemporary debate.[81]

The right of resistance defended in the *Second Treatise* was intensely charged politically. Locke placed himself at odds with the Whig establishment in 1689 by embracing the Lawsonian view that, when James had been compelled to leave the throne, an entire dissolution of government had resulted. In violating the terms of the social contract James had, in Locke's view, gone into a direct state of war with the people. Accordingly, they had the right to resist him and to remove him as king.[82] Locke's view entailed not only that the king had been removed from office justly, but also that the rule of law and the legal authority of Parliament had ended, necessitating a return of power to the general community. As a general matter, this means that, once the right to resist potentially comes into play, the political stakes cannot be higher. It also makes all the more consequential the issue of what to do in the face of disagreement concerning how and by whom resistance is to be deemed legitimate.

In the course of arguing against both mixed and limited monarchy, Filmer had noted that in either case there is no final and authoritative judge within the constitution. Neither Parliament nor any court could resolve a charge of tyranny against the king. Locke tacitly accepted this position, as Franklin notes,[83] yet he never answered Filmer's charge that this would be an open invitation for continual resistance and even attempted revolution by anarchic individuals and groups disaffected by the actions of the king or Parliament. It was exactly this type of conflict that the Whigs wanted to avoid. Locke tried to downplay these radical implications of his view by holding that not every illegal act by the king justi-

[80] Rawls, *Political Liberalism*, p. 251.

[81] See Jürgen Habermas, "Reconcilliation through the Public Use of Reason: Remarks on John Rawls's *Political Liberalism*," *Journal of Philosophy* 92 (March 1995): 109–31.

[82] For an excellent discussion of Tory and Whig attitudes toward resistance, and how they differed from Locke's view, see J .H. Franklin, *John Locke and the Theory of Sovereignty* (Cambridge: Cambridge University Press, 1978), pp. 98–123.

[83] Ibid., pp. 94–95.

fied revolution, "[I]t being safer for the Body, that some few private Men should be sometimes in danger to suffer, than that the head of the Republick should be easily, and upon slight occasions exposed." Unless a ruler actively places himself "into a State of War with his People, dissolve the Government, and leave them to that defense, which belongs to everyone in the State of Nature," he may not legitimately be resisted.[84] Indeed, in the chapter on prerogative power, Locke went so far as to maintain that the independence of the ruler is such that there may be circumstances in which he may act where there is no law, and even in some cases "against the direct Letter of the Law"[85] provided this is for the public good. Wise and good princes will use this power well; others will misuse it.

This is only to push the matter back an additional step, however. Even in extreme cases—arguably especially in such cases—disagreement over whether the ruler has placed himself at war with his people has to be anticipated. Locke's instructive answer is that the "People have no other remedy in this, as in all other cases when they have no Judge on Earth, but to *appeal to Heaven*."[86] This appeal to heaven implies a resort to force. It might seem to bring Locke uncomfortably close to the Hobbesian position that although a person cannot be blamed in certain circumstances for resisting legitimate authority, such resistance is not itself legitimate—all he can do is hope that it will be recognized as valid in the life to come.[87]

Majority Rule

But Locke's view differs from Hobbes's. Locke clearly supposes that genuine cases of a government's violation of its trust will be obvious, because he expects those who are not biased by interest, a group he assumes—perhaps heroically—will comprise most people, to converge on commonsense conclusions. The operational test of this is majoritarian for him: the right to resist does not lay "a perpetual foundation for Disorder" because it "operates not, till Inconvenience is so great, that the Majority feel it, and are weary of it, and find a necessity to have it amended."[88] There is no protection for minority perceptions of violations of the social contract or natural law in this scheme, or any provision to protect minorities from majority perceptions that the social contract or natural law have been

[84] Locke, *Two Treatises*, II, § 205, pp. 190–91. See also Franklin, *John Locke and the Theory of Sovereignty*, p. 95.

[85] Locke, *Two Treatises*, II, § 164, pp. 173–74.

[86] Ibid., II, § 168, p. 175.

[87] Thomas Hobbes, *Leviathan* (1651) (London: Pelican Books, 1968), pp. 268–70.

[88] Locke, *Two Treatises*, II, § 168, p. 175.

violated. Given the importance Locke famously attaches to personal consent as the final legitimating mark of all political action and institutions, it might seem remarkable that at the end of the day majority rule is its only guarantor.[89] Locke *predicts* that in reality people will be slow to resist, that the right to resist—even in circumstances of manifestly tyrannous acts—will frequently not be exercised.

> For if it reach no farther than some private Mens Cases, though they have a right to defend themselves, and to recover by force, what by unlawful force is taken from them; yet the Right to do so, will not easily ingage them in a Contest, wherein they are sure to perish; it being as impossible for one or a few oppressed Men to *disturb the Government*, where the Body of the People do not think themselves concerned in it, as for a raving mad Man, or heady Male-content to overturn a well-settled State; the People being as little apt to follow the one, as the other.[90]

In short, unless and until "a long train of Abuses, Prevarications, and Artifices, all tending the same way," trigger the right to revolution, people must accept the decisions emanating from the prevailing political order.[91] Until that threshold is crossed for a great many, even perceived violations of natural law must for all practical purposes be endured. On entering civil society, people give up the individual right to self-enforcement, and they can reassert it only at the risk of being executed for treason. On the other hand, if a long train of abuses, etc., *does* convince the great majority to revolt, there is no legitimate earthly power to stop them. In these respects, Locke's account recognizes the priority of politics to disagreements about rights and laws, so that Kendall is right to insist that those who appeal to Locke as a conventional defender of rights-based liberalism are misguided.[92]

If this were all Locke had to say on the subject of majority rule, the case for him as an early theorist of democracy would be flimsy indeed. In fact, however, he is quite explicit about the majoritarian foundations of political legitimacy. In the state of nature, "*every one has the Executive Power* of the Law of Nature," but this right is given up at the formation of civil society.[93] Thereafter, "it being necessary to that which is one body to move one way; it is necessary the Body should move that way whither the greatest force carries it, which is the *consent of the majority*: or else it

[89] For a useful discussion of the weaknesses in Locke's account of majority rule as a mechanism for representing personal consent, see Riley, *Will and Political Legitimacy*, pp. 93–97.

[90] Locke, *Two Treatises*, II, § 208, p. 192.

[91] Ibid., II, § 225, p. 199. See also § 226–33, pp. 199–204.

[92] Kendall, *John Locke and the Doctrine of Majority Rule*, pp. 63–74.

[93] Locke, *Two Treatises*, II, § 13, pp. 105–6.

is impossible it should act or continue one Body, *one Community*, which the consent of every individual that united into it, agreed that it should; and so everyone is bound by that to be concluded by the *majority*."[94] This leads Locke to defend a default presumption in favor of majority rule "in Assemblies impowered to act by positive Laws where no number is set by that positive Law that empowers them." Majority rule thus has "by the Law of Nature and Reason, the power of the whole."[95]

Locke recognizes the fact that the public assembly will be characterized by a "variety of Opinions, and contrariety of Interests, which unavoidably happen in all Collections of Men," and therefore, unanimity is unlikely.[96] For Rousseau, this reality would necessitate a Lawgiver to guide and enlighten the public as to the general will. But for Locke, the determination of the majority is sufficient, "for where the *majority* of the community cannot conclude the rest, there they cannot act as one Body, and consequently will be immediately dissolved again."[97] It is "the consent of any number of Freemen capable of a majority to unite and incorporate into such a society" that provides the "*beginning* to any *lawful Government* in the World."[98] It may be true, as Ellen Wood has emphasized, that Locke never advocated expansion of the franchise (which was unusually wide in seventeenth-century England).[99] But the more salient point for the longer term is that his argument provides no basis for limiting the franchise. His egalitarian commitments discussed in the first half of this essay press inexorably in the direction of universal inclusion—the only legitimate grounds for excluding people from decision making that affects them being incapacity.

For Locke, it is majoritarian rather than individual consent that authorizes institutional arrangements. The majority may choose to retain all powers of government, thereby creating a "perfect" democracy. Alternatively, it may delegate some or all of its powers, creating various "forms of commonwealth," such as oligarchies or elective or hereditary monarchies. As Ashcraft notes, "formally, Locke is committed to the view that the majority of the community may dispose of their political power as they see fit, and this includes, of course, their power to constitute a democracy," which is the "form of government that remains closest to the institution of the political community itself."[100] Whatever form of

[94] Ibid., II, § 96, p. 142.
[95] Ibid.
[96] Ibid., II, § 98, pp. 142–43.
[97] Ibid.
[98] Ibid., II, § 99, p. 143.
[99] Wood, "Locke against Democracy," pp. 660–63.
[100] Ashcraft, *Locke's Two Treatises of Government*, p. 183. Ashcraft is quick to point out, however, that this does not necessarily mean that Locke is advocating democracy as the most desirable form of day-to-day government.

government is chosen, it rests ultimately on conditional delegation from the majority. The majority never relinquishes its "Supream Power," which comes into play when delegated power either expires or is abused.[101] Unless a substantial majority comes to agree that abuse has occurred, the opposition of the individual will have no practical effect.[102] Opposition may otherwise be legitimate, but even when it is undertaken against an action that is life threatening, an individual or minority might have to wait for vindication until the next life, as we have seen.[103] In practice, in this world, natural law constrains the actions of governments only to the extent that a majority discerns it and acts on it.

But why *majority* rule? Liberal writers for whom consent supplies the basis of political legitimacy typically appeal to unanimity, not majority rule, particularly on significant questions—effectively granting a veto to all individuals who might wish to withhold their consent. For instance, James Buchanan and Gordon Tullock argue in *The Calculus of Consent* that people would insist on unanimity rule before collective action could be taken concerning the issues they regard as most important. Only on less consequential matters would they see the sense of accepting majority rule, or perhaps even delegation to an administrator, when they trade off the costs of participating in decision making against the likelihood that an adverse decision will be made.[104] Buchanan and Tullock do not supply us with criteria for distinguishing more from less consequential decisions, but it seems safe to assume that Locke's right to resist would be at or close to the top of the list. Yet, as we have seen, he protects it with majority rule only. Why?

The answer is that Locke had a more realistic view of politics than did the hypothetical contract theorists of the second half of the twentieth century. As Patrick Riley has noted, "the social contract, for Locke, is necessitated by natural law's inability to be literally 'sovereign' on earth, by its incapacity to produce 'one society.'"[105] Theorists like Buchanan and Tullock, Rawls, and Robert Nozick are often criticized for writing as if the institutions of civil association—private property, contracts, rules of inheritance—can exist independently of collective action.[106] Locke made no such assumption, and he would surely have recognized its infeasibil-

[101] Locke, *Two Treatises*, II, § 132, p. 157.

[102] Ibid., II, § 208–9, p. 192.

[103] Ibid., II, § 202–10, p. 189–93.

[104] James Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), pp. 172–262.

[105] Riley, *Will and Political Legitimacy*, p. 64

[106] See *Democracy's Place*, chap. 2, and Stephen Holmes and Cass Sunstein, *The Costs of Rights* (New York: W. W. Norton, 1999).

ity—after all, in his lifetime every enclosure of land required an act of Parliament. Once we recognize that collective action is ubiquitous to civil association, then it makes little sense to assume that regimes in which change is difficult are those in which important individual freedoms will be best protected. As Locke was acutely aware, the status quo can be the source of political oppression. When this is so, obstacles to collective action will sustain that oppression. In the real world of ongoing politics, Brian Barry and Douglas Rae have shown that majority rule, or something close to it, is the logical rule to prefer if one assumes that one is as likely to oppose a given outcome as to support it regardless of whether it is the status quo.[107] From this perspective the libertarian constitutional scheme is a collective action regime maintained by the state, and disproportionately financed by implicit taxes on those who would prefer an alternative regime. Locke recognized, as Laslett put it, that "it is the power that men have over others, not the power that they have over themselves, which gives rise to political authority."[108]

In short, Locke's institutional theory differs from that of modern libertarians because he operates with a different underlying theory of power—as ubiquitous to human interaction rather than as a by-product of collective action. As a result, unequivocal as he was that consent is the wellspring of political legitimacy, he saw majority rule as its best available institutional guarantor. Hence his concluding insistence that the "*Power that every individual gave the Society,* when he entered into it, can never revert to the Individuals again, so long as the Society lasts, but will always remain in the Community; because without this, there can be no Community."[109] And the judgment whether or not the government is at war with the community must reside with the people: "If a Controversie arises betwixt a Prince and some of the People, in a matter where the law is silent, or doubtful, and the thing be of great Consequence, I should think the proper *Umpire*, in such a Case, should be the Body of the *People*."[110] Common misconceptions to the contrary notwithstanding, the relation between the people and the government is not a contract. Rather, it is one of trust. Should a question arise as to whether that trust has been violated by a prince or legislature, "*The People shall be Judge*; for who shall be *Judge* whether his Trustee or Deputy acts well, and according to the trust reposed in him, but he who deputes him, and must,

[107] Brian Barry, *Political Argument* (1965), 2nd ed. (Herefordshire: Harvester Wheatsheaf, 1990); Douglas Rae, "The Limits of Consensual Decision," *American Political Science Review* 69 (1975): 1270–94.

[108] Peter Laslett, "Introduction," in John Locke, *Two Treatises*, p. 111.

[109] Locke, *Two Treatises*, II, § 243, pp. 208–9.

[110] Ibid., § 242, p. 208.

by having deputed him still have a Power to discard him, when he fails in his Trust."[111] And the people act by majority rule.

Locke understood that the fundamental political question for human beings is not whether-or-not collective action. Rather, it is what sort of collective action. His presumption in favor of the supremacy of legislative authority reflects this. Legislatures are legitimate just because they embody majority rule, which, in the end, is the best available guarantor of the freedoms people seek to protect through the creation of government. Although Locke perceived advantages to a separation of powers involving an independent executive and "federative" (geared to foreign affairs and to relations with those in the state of nature), he was unequivocal that these are subordinate to the legislative power because it alone embodies the consent of the governed through majority rule.[112] Even in the case of a dissolution of government there need not be a return to a state of nature. Rather, power can devolve to the people who "may constitute themselves as a *new Legislative*, as they think best, being in full liberty to resist the force of those, who without Authority would impose any thing on them."[113] The people, acting as a body by majority rule, have greater legitimacy than the alternative: individuals or arbitrary powers acting unilaterally.[114]

Locke's recognition that power is inevitably exercised in collective life perhaps also accounts for why his discussion of tacit consent seems so cavalier, at least in comparison to that of a theorist like Nozick (who engages in a tortured, and ultimately unsuccessful, argument for forcibly incorporating "independents" who refuse to join the society in a manner that can be said not to undermine their consent).[115] Locke insists that "every Man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doeth thereby give his *tacit Consent*, and is far forth obliged to Obedience to the Laws of that Government, during such enjoyment, as any one under it."[116] His claim that their tacit

[111] Ibid., § 240, p. 208.

[112] Ibid., §§ 149–58, pp. 166–71.

[113] Ibid., § 212, p. 194.

[114] Radical as this indissoluble link between consent and majority rule might seem, John Marshall makes a compelling case that part of Locke's motive was conservative: he was attempting to convince the gentry, yeomanry, and merchants that a rare and limited right of resistance to the monarch could be endorsed "which would not threaten the social hierarchy and lay the foundations for anarchy or for frequent challenge of the political establishment and which was perfectly compatible with the re-establishment of a mixed monarchy with different personnel." John Marshall, *John Locke: Resistance, Religion and Responsibility* (Cambridge: Cambridge University Press, 1994), pp. xvi–xvii, 205–91.

[115] For consideration of the difficulties attending Nozick's discussion of compensating independents who are forced to become members, see Shapiro, *The Evolution of Rights in Liberal Theory*, pp. 169–78.

[116] Locke, *Two Treatises* II, § 119, pp. 152–53.

consent is reasonably taken for granted because they are free to leave is obviously belied by most people's circumstances.[117] Yet if one takes the view that even those who have given express consent must inevitably expect often to be at odds with actions of the government, then this seems less troubling. Only from the unrealistic perspective of someone who thinks it possible to live in a form of political association with others in which one's consent is never violated does it seem troubling that one's only protection is majority rule. No other decision rule provides better protection.[118]

It is sometimes said that this is why constitutional courts and bills of rights are needed to protect individuals and minorities from the vicissitudes of democratic politics. At least since Mill's and Tocqueville's time, it has been characteristic for liberal constitutionalists to worry about majority tyranny, but as I discuss in the next chapter, history has revealed these worries to have been misplaced. It seems that Locke's underlying institutional commitment to majority rule was indeed more farsighted than critics such as Kendall appreciated.

That said, it might nonetheless be objected that Locke's insistence that majority rule is the best available institutional guarantor of the entitlements human beings create for themselves, the agreements human beings make with one another, and the natural law constraints on all their actions, it is an ultimate guarantor with few—if any—implications for day-to-day politics. This is partly what Kendall had in mind when complaining that Locke's commitment to majoritarianism is not buttressed by any mechanism of popular consultation. There is truth to this, but two points should be noted in mitigation. First, Locke's account looks a good deal more plausible if we think of the reality of democratic systems rather than democratic ideals. Actual democratic systems involve a mix of decision-making mechanisms and considerable delegation to administrative agencies; many empower courts to conduct judicial review. But these different mechanisms are all subservient to majoritarian political

[117] Ibid., § 121, pp. 153–54. Taken in context, it was a more radical claim than it might seem to us, since the king's subjects were not generally free to renounce that status—regardless of whether they had given express consent. In our own time the examples of the USSR and Iraq should remind us that even a right not to have exit legally proscribed is by no means without value. A useful discussion of Locke on tacit consent is Paul Russell, "Locke on Express and Tacit Consent: Misinterpretations and Inconsistencies," *Political Theory* 14, no. 2 (May 1986): 291–306.

[118] Indeed, from this perspective Locke's remark that in a marriage the husband prevails in situations of unavoidable conflict could be interpreted as a claim about what Locke expected would happen as an empirical matter rather than something he would choose to defend. The man prevails because someone must and the bulk of the force is on his side, but not because it is otherwise desirable that he should. And as I noted, Locke sought to limit this power to their common endeavors and to preserve the wife's right of exit.

decision making in various ways, whether through systems of appointment, control of funding and jurisdiction, oversight, or some combination of these. Constitutional systems sometimes limit democracy's range, to be sure, particularly in separation-of-powers systems such as the United States. But constitutions generally contain entrenched guarantees of democratic government as well. Moreover, they are themselves revisable at constitutional conventions or via amendment procedures whose legitimacy is popularly authorized. Even liberal constitutionalists like Bruce Ackerman agree that critical moments of constitutional founding and change require popular democratic validation if they are to be seen as legitimate over time.[119] In short, the practice in modern democracies is consistent with Locke's picture of various institutional arrangements—some more participatory than others—existing against a backdrop of popular sovereignty.

There is a second and more specific sense in which Locke might be seen as being more prescient about democracy than Kendall gave him credit for having been, linked to the reality that mechanisms of popular consultation turn out to be fraught with difficulty. Modern social choice theory has taught us that it is doubtful that there can be any such thing as a Rousseauian general will in even minimally diverse societies. As a result, we should think of democracy as a way of ensuring that, however inclusive decision making can be made to be, the possibility of opposition from those whose interests might be harmed by the exercise of power is an important discipline. Majority rule is less a system of representation from this point of view than one of "flexing muscles," as Adam Przeworski puts it; "a reading of the chances in the eventual war."[120] Though he did not intend it thus, it would be difficult to conjure up a more apposite expression of the sentiment behind the discussion of majority rule in chapter 19 of the *Second Treatise*. It calls to mind Machiavelli's argument that elites are best disciplined by the lurking danger of ferocious populism.[121] It is this strand of democratic thinking that would come to be neglected as democratic theorists became consumed with the Rousseau-inspired quest to identify a general will.

That Locke fails to provide for mechanisms of popular consultation looks less worrisome, from this perspective, as does the objection that his right to resist issues in a theory of revolution more than one of govern-

[119] Bruce Ackerman, *We The People: Foundations* (Cambridge, MA: Harvard University Press, 1993).

[120] Adam Przeworski, "Minimalist Conception of Democracy: A Defense," in *Democracy's Value*, ed. Ian Shapiro and Casiano Hacker-Cordón (Cambridge University Press, 1999), p. 48.

[121] See John McCormick, "Machiavellian Democracy: Controlling Elites with Ferocious Populism," *American Political Science Review* 95, no. 2 (June 2001): 297–313.

ment. All governments live in the shadow of possible revolution, as Iran's political elites were sharply reminded at the end of 2009.[122] The way for them to avoid it is to be responsive to the interests of the majority, who might otherwise conclude that their trust has been violated. This may be a more sober view of democratic politics than those that have enthralled many theorists since Locke's time. At the same time, however, his has done better over the long run—and with good reason.

[122] Robin Wright, "Latest Iran Protests Show a Resilient Opposition," *Time*, December 7, 2009, http://www.time.com/time/world/article/0,8599,1946038,00.html [12-09-2009].