

*An introduction to Locke's political philosophy*

The political thought of John Locke (1632–1704) consists in work on and solutions to four problems that every major European political thinker faced in the seventeenth century. These are: the theoretical nature of government and political power, the relation of religion to politics, the practical art of governing, and the types of knowledge involved in religion and in political theory and practice. I discuss the first three problems in this chapter and the fourth in chapter 6. Of course his political thought and activity were provoked by and contributed to specific conflicts in England.<sup>1</sup> However, neither these events nor the ways of thinking about them were unique to England. Like Locke, Grotius and Pufendorf experienced civil war, religious dissension and exile; Spinoza and Bayle suffered religious persecution; Colbert and deWitt invigilated mercantile systems; and they all shared a body of political concepts. Both the political, religious, and economic difficulties and the way in which these were thought to render political practice problematic were European-wide phenomena.

The difficulties that occasioned the four problems of government were of four kinds: the religious and civil wars of the sixteenth and seventeenth centuries; the administrative-productive consolidation of modern European states as effective governing units; the formation of a balance of power and trade system of military-commercial rivalry among states; and the European imperial struggle over the conquest, domination and exploitation of non-European populations

<sup>1</sup> See Julian Franklin, *John Locke and the theory of sovereignty* (Cambridge: Cambridge University Press, 1978); Mark Goldie, 'The roots of true whiggism: 1688–1694', *History of Political Thought* 1, 2 (1980), 195–236, and 'The revolution of 1689 and the structure of political argument', *Bulletin of Research in the Humanities* 83 (1980), 473–564; Richard Ashcraft, *Revolutionary politics and Locke's Two treatises of government* (Princeton: Princeton University Press, 1986), and *Locke's Two treatises of government* (London: Unwin Hyman, 1987).



and resources. These difficulties helped to sustain, and were partly sustained by, a general epistemological or 'legitimation' crisis which involved sceptical attacks on traditional bodies of knowledge and attempts to reconstruct the foundations of religious, political, and scientific knowledge, from Montaigne and Descartes to Leibniz and Locke. Political thinkers adapted and radically transformed conceptual tools that had been fashioned over the previous 500 years to characterize these difficulties as problems and to advance solutions to them.<sup>2</sup>

Locke's political thought is one of the most important responses to this European predicament. He worked over the traditions of the earlier period and the innovations of the seventeenth century to construct solutions to the immediate problems; and these in turn, to a remarkable extent, became foundational for the Enlightenment. It is the work, to be sure, of a political actor deeply engaged in local struggles and of a political theorist thinking within the available conceptual systems, and so must be studied in the light of both. However, insofar as it is Locke's own political thought, it is neither simply that which is embodied in action, and so condemned to speak only of it; nor is it that which only reproduces an ideology or repeats a tradition. On the contrary, it is what cannot be reduced to either: the activity of standing back to a degree from environing political practice and inherited ways of thinking, criticizing aspects of both, and working out distinctive resolutions.

#### GOVERNMENT AND POLITICAL POWER

The first problem is, what is government – its origin, extent and end? It is classically posed in the *Two treatises of government*, as the subtitle announces. Locke worked on this issue from the *Two tracts on government*, 1660–1661, to the *Two treatises*, 1681–89, moving from a solution of absolutism and unconditional obedience to one of king in parliament, popular sovereignty and the collective and individual right of resistance. The question is not about the nature of the state as a form of power over and above rulers and ruled, although he was familiar with this *raison d'état* way of conceptualizing early modern

<sup>2</sup> See Theodore Rabb, *The struggle for stability in early modern Europe* (Oxford: Oxford University Press, 1975).

politics and sought to undermine it (1.93, 2.163).<sup>3</sup> Rather, it is about 'government' in the seventeenth century sense of the problematic and unstable relations of power and subjection between governors and governed.

According to the first three introductory sections of the *Second treatise*, the problem of government is taken to be a problem about political power. This is not so much a question of what political power is; section three succinctly summarizes the early modern consensus on this (see below). Rather, government is composed of three relations of power: federative (international relations), executive, and legislative (including the judiciary) (2.143–8). The controversy is over the origin, extent and limits of these forms of power and how they differ from other relations of governance: of husbands over wives and fathers over children (domestic power), of masters over servants (economic power), of masters over slaves (despotic power), and of commanders over soldiers (military power) (2.2). All the classic texts of the seventeenth century analyse political power in this relational way, none more systematically than Samuel Pufendorf's *The law of nature and nations* (1668), which Locke recommends as the best of its kind.<sup>4</sup> Thus, the foremost problem of politics is, Locke reflects late in life, 'the original of societies and the rise and extent of political power'.<sup>5</sup>

What, in turn, rendered political power problematic? For Locke, as for his contemporaries, the religious and civil wars that accompanied the consolidation and formation of early modern states as exclusive, or at least hegemonic, ensembles of domination were struggles for political power.<sup>6</sup> This crisis in both the ability to govern and in the way of governing threw into question the nature and location of political power. The theoretical question around which the whole seventeenth-century debate revolves is thus the question of 'sovereignty', or, as Locke more crisply puts it, 'who should have it' (political power)? The great conflicts in practice, in the age of

<sup>3</sup> John Locke, *Two treatises of government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1970). The numbers in brackets refer to the treatise (first or second), section, and, where necessary, lines within the section. For example, (2.25.1–5) is *Second treatise*, section 25, lines 1–5, and (2.25–8) is *Second treatise*, sections 25 to 28.

<sup>4</sup> Locke, *Some thoughts concerning reading and study for a gentleman*, 1703, in *The educational writings of John Locke*, ed. James Axtell (Cambridge: Cambridge University Press, 1968), 397–404, 400.

<sup>5</sup> Locke, *Some thoughts*, 400.

<sup>6</sup> See Richard Dunn, *The age of religious wars 1550–1715* (New York: W. W. Norton, 1979).



'agrarian and urban rebellions' and of 'revolutionary civil wars',<sup>7</sup> were over this very problem of political power that was contested in political theory (1.106):

the great Question which in all Ages has disturbed Mankind, and brought on them the greatest part of those Mischiefs which have ruin'd cities, depopulated Countries, and disordered the Peace of the World, has been, Not whether there be Power in the World, nor whence it came, but who should have it.

Unless both the historico-causal question of which arrangements of political power do and which do not dissolve into civil wars, and the moral-jurisprudential question of who has and who has not the 'right' to political power can be answered satisfactorily, Locke continues, Europe will remain in 'endless contention and disorder'. The *Two treatises* is an answer to both these questions and it is the most radical answer that had yet been given: each individual does have and should have political power.

This European problem of continual conflicts over political power was also, of course, the overriding issue of English political thought and action from 1640 to 1690.<sup>8</sup> During the planning for an insurrection in 1681-3 Locke wrote the *Two treatises* as a populist resolution of the problem: for the people to reappropriate their political power through a revolution and to 'continue the Legislative in themselves or erect a new Form, or under the old form place it in new hands, as they think good' (2.243). In 1689 he published an expanded version of the *Two treatises* to recommend that King William could 'make good his title' to power only if it were grounded 'in the consent of the People', thus acknowledging their sovereignty, by means of a constitutional convention.<sup>9</sup> However, because it is written in the juridical language of European political discourse and addressed to a problem common to European politics, the *Two treatises* is a contribution to both the English conflict and the European crisis. In addition to difficulties of power which were

similar to other European states, even the English conflict itself was part of the wider European context. A major aim of the 1681-3 agitations, as Locke saw it, was to stop England from becoming aligned with and subordinate to France. William of Orange conquered England in 1688 in order to draw it into a European war against France, the Nine Years' War, and the *Two treatises* grants him 'federative' or war-fighting power, unchecked by Parliament (2.147). Indeed, this war is Locke's main concern in 1689.<sup>10</sup>

The form of problematization in which this issue was posed and diverse solutions advanced is the 'juridical' representation of politics. This is neither an ideology nor a tradition but a historically constructed complex of juridic *practices*: that is, ways of thinking and writing about politics and ways of acting politically (of governing, being governed, and contesting government) that have been assembled in Europe since the twelfth century. These legal and political practices developed around the extension of both the concepts and rule of law. The practices of governing conduct by universal rights and duties, law and sovereignty (as opposed to, say, prejudicial trial by battle, feudal particularity, or later governance by economic compulsion and non-juridic discipline) had become so central by the seventeenth century that Locke could write that moral, political, theological, and legal thought and action rest on the indubitable assumption (and practice) that man is an animal 'subject to law'.<sup>11</sup> Locke and his contemporaries were of course aware that the juridicalization of European political thought and action was a more or less continuous process from the formation of legal institutions and bodies of knowledge in the eleventh and twelfth centuries.<sup>12</sup> Nonetheless, the specific context in which Locke explicitly places the *Two treatises* is the practical contests and theoretical debates over political power of his generation and of the previous sixty years.<sup>13</sup> This context thus comprises the struggles between King, Parliament and people in England (1640-90) and the theoretical discussion from the publica-

<sup>7</sup> See Perez Zagorin, *Rebels and rulers 1500-1600*, 2 vols (Cambridge: Cambridge University Press, 1982).

<sup>8</sup> See Caroline Weston and J. R. Greenberg, *Subjects and sovereigns: the grand controversy over legal sovereignty in Stuart England* (Cambridge: Cambridge University Press, 1981); and Franklin, *John Locke*.

<sup>9</sup> *Two treatises*, Preface, line 6, p. 155. He recommends a constitutional convention in a letter to Edward Clark, 29 January/8 February, *The correspondence of John Locke*, ed. E. S. de Beer (Oxford: Clarendon Press, 1978), 8 vols, III, 1102 (p. 545).

<sup>10</sup> Bodleian, MS Locke c. 18, fos 1-4, printed in James Farr and C. Roberts, 'John Locke and the Glorious Revolution: a rediscovered document', *The Historical Journal* 28, 2 (1985), 385-98.

<sup>11</sup> John Locke, *An essay concerning human understanding*, ed. Peter Niddich (Oxford: Oxford University Press, 1976), 3.11.16.

<sup>12</sup> See Harold Berman, *Law and revolution: The formation of the Western legal tradition* (Cambridge, MA: Harvard University Press, 1983).

<sup>13</sup> Locke, *Some thoughts*, 400.



tion of Hugo Grotius' *The laws of war and peace* (1625) to the *Two treatises* (1690).<sup>14</sup>

Locke's solution to the problem of government and political power comprises five steps: i. the definition of political power, ii. the origin of political power, iii. the rule of right in accordance with which it is exercised, iv. the conditional entrusting of political power to government by the consent of the people, and v. the way the three parts of political power are exercised by government and limited by law and revolution. These five features make up a classic theory of individual popular sovereignty, succinctly summarized in section 171 of chapter 15. Each one, except the first, is unique to Locke in certain specific respects. I would like to survey these features in a way that brings out both what is conventional and what is distinctively Locke's own thought, as well as the practical and theoretical difficulties that provoked his innovations. Accordingly, I attempt to do this by comparing the similarities and dissimilarities of his five steps to the tangled and contested conventional steps of the European juridical discourse in which he wrote, concentrating primarily on the 60 year context.

## i

Political power is defined as a tripartite right: to make laws both to preserve and to regulate the lives, activities and possessions of subjects (legislative power); to use the force of the community to execute these laws with penalties of death and lesser penalties (executive power); and to wage wars to preserve the community, including colonies and subjects abroad, against other states (federative power). The end of political power is the 'public good' (2.3, 2.131, 2.135, 2.171). This potent idea of the powers of government is closely tied to the actual claims and practices of the early modern mercantile states, with which Locke, as member of the Board of Trade, was professionally

<sup>14</sup> Hugo Grotius, *On the laws of war and peace* (1625), ed. J. Barbeyrac (London: 1738). For the importance of Grotius in setting out a common set of concepts see Richard Tuck, *Natural rights theories: their origin and development* (Cambridge: Cambridge University Press, 1979), 58-173, and 'The "modern" theory of natural law', in *The languages of political theory in early modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), 99-122.

familiar. It would have been seen as a commonplace by his contemporaries.<sup>15</sup>

## ii

Second, to determine who should have political power, Locke, like other juridic theorists, reduces it to an 'original' or 'natural' form of power from which the present tripartite power, and the author's preferred location, extent, and limit, can be historically and logically derived and justified.<sup>16</sup> The objective of this second step is to answer the question, who naturally or originally possesses political power? Locke's answer is that political power is a natural property of individuals. That is, 'the Execution of the Law of Nature is in that State [of nature], put into every man's hands, whereby every one has a right to punish the transgressors of that Law to such a degree, as may hinder its Violation' (2.7, cf: 2.8). It follows from this premise of political individualism that people are naturally self-governing, because they are capable of exercising political power themselves; naturally free, because they are not naturally subject to the will of another; and, third, naturally equal, because they equally possess and have the duty and right to exercise political power.<sup>17</sup> Therefore, prior to and independent of the establishment of institutionalized forms of government, people are able to govern themselves; and, second, the power of institutionalized forms of government is derived from the original powers of the individual members of the political society (2.87-9, 2.127-131, 2.171).

Locke says, 'I doubt not but this will seem a very strange Doctrine to some Men' (2.9, cf: 2.13). His premise of political individualism is strange: it is one of the major conceptual innovations in early modern political thought. To see this let us contrast it with the two

<sup>15</sup> See Lawrence Harper, *The English navigation laws: a seventeenth-century experiment in social engineering* (New York: Columbia University Press, 1939), 9-18; Charles H. Wilson, *England's apprenticeship 1603-1763* (London: Longmans, Green and Co., 1965), 236; Samuel Pufendorf, *On the law of nature and nations* (1672), ed. Jean Barbeyrac, tr. Basil Kennett (London, 1729), 7.4.1-7 and notes.

<sup>16</sup> For the development of this juridic way of thinking see Berman, *Law and revolution*, 271-95; Quentin Skinner, *The foundations of modern political thought* (Cambridge: Cambridge University Press, 1978), 2 vols, II, 113-88; Brian Tierney, *Religion, law and the growth of political thought* (Cambridge: Cambridge University Press, 1982).

<sup>17</sup> *Two treatises* 2.4, 2.7, cf: 2.5-6, 2.8-15, 2.22, 2.87, 2.90-1, 2.123, 2.171.



conventional ways of conceptualizing the origin of political power available to him and with reference to which Locke situates the *Two treatises*: the traditions of 'natural subjection' and 'natural freedom'.

The *Two treatises* is written in response to the defence of natural subjection and refutation of natural freedom put forward by Sir Robert Filmer (1588–1653) in his *Patriarcha* and other political writings, written between 1628 and 1652 to justify unconditional obedience to absolute monarchy.<sup>18</sup> These were republished in 1680 to justify obedience to the Stuart monarchy during the unsuccessful attempt to exclude the future James II from ascending to the throne. The popularity of Filmer's arguments in justifying absolutism and non-resistance can be judged by the fact that the two classic theories of revolution to come out of this period – Algernon Sidney's *Discourses concerning government* and Locke's *Two treatises* – both contain a refutation of Filmer.<sup>19</sup> In addition, the moderate whig theory of James Tyrrell, *Patriarcha non monarcha*, which was probably written in collaboration with Locke, also is an attack on Filmer's writings.<sup>20</sup> In 1684 Edmund Bohun published a defence of Filmer and a year later he brought out a new edition of Filmer's works.<sup>21</sup>

The thesis of natural subjection is that political power resides naturally and originally in the monarch to whom lesser political bodies and all citizens are naturally subject. Since this relation of subjection is unlimited and natural no resistance to it is justified. In Filmer's type of natural subjection, the political relation is patriarchal: the political power that monarchs naturally exercise over their subjects is identical to the unlimited and arbitrary power patriarchs exercise naturally over their wives, children, slaves, and private property.<sup>22</sup> This kind of patriarchal or 'Adamite' natural subjection theory of non-resistance had always been popular among

<sup>18</sup> See Robert Filmer, *Patriarcha and other political writings*, ed. Peter Laslett (Oxford: Basil Blackwell, 1949). For the relation of Locke to Filmer, see Peter Laslett, 'Introduction', Locke, *Two treatises*, 67–78; Gordon Schochet, *Patriarchalism in political thought* (Oxford: Basil Blackwell, 1974); James Daly, *Sir Robert Filmer and English political thought* (Toronto: University of Toronto Press, 1979).

<sup>19</sup> Algernon Sidney, *Discourses concerning government*, in *The works of Algernon Sidney* (London: 1772). For the relation of Locke to Sidney see Ashcraft, *Revolutionary politics*.

<sup>20</sup> James Tyrrell, *Patriarcha non-monarcha: the patriarch unmonarch'd* (London: 1681). For the relation of Locke to Tyrrell see J. W. Gough, 'James Tyrrell, whig historian and friend of John Locke', *The Historical Journal* 19, 3 (1976), 581–610; Ashcraft, *Revolutionary politics*.

<sup>21</sup> Edmund Bohun, *A defence of Sir Robert Filmer* (London: 1684). See Mark Goldie, 'Edmund Bohun and *jus gentium* in the revolution debate', *The Historical Journal* 20 (1977), 369–86.

<sup>22</sup> Filmer, *Patriarcha*, 57–63, 188; *Two treatises* 1.1, 1.9.

Protestant absolutists and among the Anglican clergy in the 1670s and 1680s.<sup>23</sup> It also had a widespread intuitive appeal in an age when familial relations were taken by most husbands to be patriarchal, absolute, and natural.<sup>24</sup> Locke attacked patriarchalism as early as 1669.<sup>25</sup> The two other prevailing types of natural subjection theories are divine right and *de facto* theories.<sup>26</sup> In all natural subjection theories the people neither possess nor exercise, nor consent to the exercise of political power.

In opposition to natural subjection is the larger and more complex tradition of natural freedom. This tradition includes all theories which posit that the people are naturally free in the sense of not being subject to the will of another. It follows that political subjection must be based on some kind of convention: consent, contract, trust, or agreement. Locke places the *Two treatises* in this tradition (1.3–6, 1.15, 2.4, 2.95). In setting out to attack this whole tradition Filmer characterizes it as consisting in the following propositions:

Mankind is naturally endowed with freedom from all subjection; Mankind is at liberty to choose what form of government it pleases; The power which any man has over another was at first by human right bestowed according to the discretion of the human multitude; Therefore, Kings are made subjects to the censures and deprivations of their subjects.

This account of political power, he argues, is 'the main foundation of popular sedition' because it supports the practical conclusion 'that the multitude have the power to punish or deprive the prince if he transgresses the laws of the kingdom'.<sup>27</sup> This whole tradition, according to Filmer, must be repudiated if the rebellions of the early modern period are to end.

Filmer is well aware that this is an old tradition with its roots in Roman Law and the renaissance of juridical political theory in the twelfth century. He is also aware that not only theories of limited government and the right to resist constituted authority had been built on its premisses; the most prestigious theories of absolutism in the seventeenth century also came out of the natural freedom tradition: those of William Barclay, Hugo Grotius, Thomas

<sup>23</sup> *Two treatises*, preface, 50–1, 1.3, 2.112. <sup>24</sup> See Schochet, *Patriarchalism*.

<sup>25</sup> Bodleian, MS. Locke c. 29, fos. 7–9, reprinted in Maurice Cranston, *John Locke: a biography* (London: Longmans, Green and Co., 1968), 131–3.

<sup>26</sup> Locke seeks to refute these at *Two treatises* 1.4–5, 2.175–96.

<sup>27</sup> Filmer, *Patriarcha*, 53–4, 68.



Hobbes,<sup>28</sup> and, after Filmer's death, Samuel Pufendorf, Richard Cumberland and the unpublished *Two tracts* of the young Locke.<sup>29</sup> Although the absolutist theories of natural freedom hold that the people completely alienate their natural freedom to the king, they always leave an exception where, in extraordinary circumstances, the people may withdraw their consent and defend themselves against a murderous tyrant.<sup>30</sup> This exception in even the most absolutist theories opens the way to justify resistance, as in fact Locke confirmed by using Barclay's absolutist theory in precisely this way (2.232-9). Accordingly, Filmer launched an attack on the whole tradition.<sup>31</sup> Many agreed with him, especially after the failed radical whig uprising and the Rye House Plot of 1681-3. The major tenets of natural freedom were condemned at Oxford and Locke's fellow revolutionary Algernon Sidney was executed for holding them.<sup>32</sup>

In writing the *Two treatises* Locke's task is not only to refute Filmer's natural subjection theory but also to rework the tradition of natural freedom in a form that both answers Filmer's criticisms and justifies constitutional government and revolution against the predominant natural freedom theories of absolutism. The first move Locke takes in refashioning the premises of natural freedom is, as we have seen, to place political power in the hands of individuals. Natural freedom theorists were willing to grant that individuals naturally have a right to defend themselves and their possessions from attack, even to kill the attacker if necessary. This right of defence of self and possessions, however, was never described as political power. Second, political power was said to come into being when the people agreed to establish institutionalized government. It is granted to the people by God or, according to Grotius, it 'immediately arises' at the moment of constitution of government.<sup>33</sup> Third, political power inheres in the

<sup>28</sup> Filmer, *Patriarcha*, 55, 73-4, 251-60, 279-313.

<sup>29</sup> For Locke's early absolutism see *Two tracts on government*, ed. Philip Abrams (Cambridge: Cambridge University Press, 1967). <sup>30</sup> Filmer, *Patriarcha*, 54.

<sup>31</sup> Filmer was particularly prescient in seeing that Grotius' mitigated absolutism could be exploited to justify resistance to monarchs. It was used in this way in England from 1640 to 1690. See Filmer, *Patriarcha*, 66-73, 268-73. For the radical use of Grotius, see Tuck, *Natural rights theories*, 143-73; and Goldie, 'The revolution of 1689', 512. A good example of Grotian radicalism is Charles Blount, *The proceedings of the present parliament* (London: 1689). The relevant sections in Grotius' *De jure belli* are 1.4.7-14.

<sup>32</sup> *The Judgement and Decree of the University of Oxford . . . July 21, 1683*. Sidney was of course condemned as well for his alleged part in the Rye House Plot to kill the King and in the failed rebellion with which Locke was also involved. For the charge of treason for writing in favour of natural freedom see Sidney, *The arraignment, trial and condemnation 1683 in The works*, 4.5.

<sup>33</sup> Grotius, *On the laws*, 1.4.2, 1.

people as a corporate body, not individually. Fourth, the people as a whole never exercises political power. Rather, the people consents either to delegate (in limited constitutional theories) or to alienate (in absolute theories) its political power to one or more representative body that naturally represents the people: King, parliament, or both (in theories of mixed sovereignty). Finally, in the case of legitimate resistance to tyranny, the people, either individually, or as a body acting through their natural representative body, exercise their natural right to defend themselves or their community from attack. That is, the rebellions of the early modern period were not conceptualized as political activity but as individual or corporate acts of self defense against attack.<sup>34</sup>

Therefore, political power is conceptualized as the property of a constituted political body or ruler in the natural freedom tradition prior to Locke. Although the people is or are naturally free, this natural freedom is non-political. Politically, the individual is naturally subject to the community and the community to its natural representative bodies, with respect to the exercise of political power. This is true even for the most radical theorists such as George Buchanan, George Lawson, Richard Overton, and Algernon Sidney.<sup>35</sup> For example, in George Lawson's theory of mixed monarchy, when king and parliament deadlock political power devolves back not to the people but to their natural representatives: the original forty courts of the forty counties (i.e. to the local gentry).<sup>36</sup> No one was willing to grant that the people either individually or collectively had the capacity to exercise political power themselves. In positing individual popular sovereignty Locke thus repudiates 500 years of elite political holism and reconceptualizes the origins of political power in a radically populist way. And this in turn is ground work, as

<sup>34</sup> For Locke's innovation relative to the earlier Ockhamism of Jacques Almain, see James Burns, 'Jus gladii and jurisdictio: Jacques Almain and John Locke', *The Historical Journal* 26, 2 (1983), 369-74.

<sup>35</sup> George Buchanan, *De jure regni apud Scotos*, in *Opera omni* (Edinburgh: 1715), 2 vols., 1, 3-4, 98; George Lawson, *Politica sacra et civilis* (London: 1660), 45, 68; Richard Overton, *An appeal from the degenerative representative body* (London: 1647); Algernon Sidney, *Discourses*, 336-37, 345 (pp. 457-64, 501-2). The pamphlets of the Exclusion Crisis and 1689 also conform to these conventions (see below, note 86).

<sup>36</sup> George Lawson, *An examination of Mr Hobbes, his Leviathan* (London: 1657) 15. I therefore disagree with Franklin's claim that Lawson anticipated Locke's theory of resistance in this respect, in *John Locke and the theory of sovereignty*, and agree with Laslett, *Two treatises*, 2.211 note.



we shall see, for reconceptualizing rebellion as a political activity of the people.

There are three qualifications to this claim. In *De jure praedae commentarius* (1604) Grotius argued that the state's power to punish is derived from its individual members. However, he did not publish this manuscript and he abandoned the argument in *On the laws of war and peace* (1625). Hobbes also derived the power to punish from individuals in *Leviathan*, chapter 28 (the reaction to it shows how unconventional it was). It is, however, a power of self-defence only; not a jurisdictional power to judge any controversy over right, to execute the judgement, and to impose sanctions, as in Locke's theory. Although Pufendorf, in *On the law of nature and nations*, states that heads of families are 'self-governing' in the state of nature, he denies that they possess the powers of punishment and legislation, and stipulates that sovereignty is not derived from their natural power of self-defence (7.3.1-2).<sup>37</sup>

Turning now to the original nature of political power, Locke argues that it is the duty and right of each individual to settle 'controversies of Right'. This comprises three capabilities of governing oneself and others: to judge by means of 'trial' or 'appeal' if any person has transgressed the rule of right (natural law); to execute the judgement by means of punishment of the guilty party; and to seek reparations for the injured party (2.7-12). The three powers of present governments developed historically, and can be logically derived from this original form of political power. The distinction between the 'state of nature' and 'political society' is thus that in the former each individual is judge and executioner of the (natural) law, whereas in the latter the right to judge is voluntarily and conditionally entrusted to a common legislature and judiciary and the right to execute is entrusted to an executive (prince or monarch) (2.87, 2.88-93, 2.131). Hence, political societies are constituted by *representative* governing institutions and natural societies by direct, non-institutional practices of self-government (2.87):

Those who are united into one Body, and have a common establish'd Law and Judicature to appeal to, with authority to decide Controversies between them, and punish Offenders, are in *Civil Society* one with another: but those who have no such common Appeal, I mean on Earth, are still in the state of

<sup>37</sup> See James Tully, 'Introduction', Samuel Pufendorf, *On the duty of man and citizen* (Cambridge: Cambridge University Press, 1991), xxix-xxxv.

Nature, each being, where there is no other, Judge for himself, and Executioner; which is, as I have before shew'd it, the perfect *State of Nature*.

What evidence could Locke advance for his view of the nature of political power prior to the placing of political power in monarchies, representative bodies and, *pace* Lawson, prior to the establishment of the forty courts of the forty counties? Locke's account of the individual and self-governing origins of political power would have been seen as historically plausible by his audience, even though it was 'strange' and subversively populist. The reason is that it is a fairly accurate redescription of the *accusatory* system of justice by which Europeans governed themselves until the legal revolution of the twelfth and thirteenth centuries; until, that is, the inquisitorial system of justice and the juridical institutions of government expropriated political power. The accusatory system was supplanted by institutionalized and fiscalized forms of juridical government roughly during the reign of Henry II and it was officially banned throughout Europe at the fourth Lateran Council of 1215.

Locke's account conforms well to what we know of this 'natural' jurisprudence.<sup>38</sup> Accusations of transgressions were made by private individuals, not public officials, and not only by the injured party. The court of appeal was *ad hoc* in Locke's sense that it had no paid, permanent officials. The accuser who brought the charge swore an oath to the truth of his charge. Other members of the community, compurgators, supported the accuser's oath and others could come in on the side of the accused. Second, if this was thought to be insufficient a trial by ordeal of some kind would take place, on the assumption that God would make the correct judgement visible through the outcome of the ordeal. The most important technique for Locke is the third one: a 'trial by battle' or combat, understood as an 'appeal to Heaven', again on the assumption that God would judge through the battle's outcome. This is of course precisely the language Locke uses to describe revolution and no one could miss his point that a revolution consists in people taking back their original political power and exercising it in the 'natural' or accusatory way. Finally, the whole community had a hand in executing the punishment. This overwhelmingly took the form of reparation by means of payment of

<sup>38</sup> George Rightmore, *The law of England at the Norman Conquest* (Akron, Ohio: University of Ohio Press, 1932); Stephen Kuttner, 'The revival of jurisprudence', *Renaissance and renewal in the twelfth century*, ed. R. L. Benson and G. Constable (Cambridge, MA: Harvard University Press, 1982); Berman, *Law and revolution*, 49-83, 434-58.



goods or services of the guilty to the injured party, as Locke claims, and the majority of disputes in the century prior to the system's abolition were, as Locke argues, about property.<sup>39</sup>

Thus, Locke presents a picture of man as a natural political animal that is neither Aristotelian nor republican because, according to Locke, self-government exists prior to and independent of the formation of states.<sup>40</sup> Why should Locke conceptualize political power in this way? First, at the tactical level, he required a theory that would justify revolt by individuals against the oppression of religious Dissent (see part II). After the failure to gain toleration through parliament the Dissenters had to initiate revolt themselves. They had no support from the Anglican local gentry so could not appeal to any constituted body, as Lawson had done. Second, Locke had to justify armed resistance in support of an oppressed minority by those not immediately affected (since Dissent made up barely 10 per cent of the population). His conception of political power serves these tactical needs well and the conventional self-defence theories do not. In addition, the intense historical debate on the origins of parliament and monarchy made the pre-thirteenth century accusatory system available to Locke.<sup>41</sup>

At a more general level, the representation and explanation of rebellions in the seventeenth century were constrained by the vocabulary of self-defence by isolated individuals or representative bodies against direct attacks. This conceptual scheme became increasingly implausible as the great contests of the century unfolded, especially the English Revolution where people not directly attacked joined in, the people judged and executed their king, and they set up a new form of government. Locke's conceptual revolution enables him to represent these struggles more accurately and, for the first time in European thought, as revolutions involving the exercise of political power by the people. His involvement in the organization of revolution in 1681–83, and for the Monmouth Rebellion of 1685,

<sup>39</sup> *Two treatises* 2.7–4, 2.36–9, 2.50–1, and below. For the centrality of property disputes at the end of the accusatory age see Robert C. Palmer, 'The origins of property in England', *Law and History* 3, 1 (1985), 1–50; and 'The economic and cultural impact of the origins of property 1180–1220', *Law and History* 3, 2 (1985), 375–96; Janet Coleman, 'Dominium in thirteenth and fourteenth-century political thought and its seventeenth-century heirs: John of Paris and John Locke', *Political Studies* 33 (1985) 73–100.

<sup>40</sup> Locke presents anthropological evidence for his thesis, based on Amerindian political organization, at 2.14, 2.106–12. For this context see chapter 5 below.

<sup>41</sup> For the historical debate see Ashcraft, *Revolutionary politics*, 181–228.

must have helped him to see that the people in fact make political judgements and act upon them. It should be remembered as well that many features of the accusatory system were incorporated into English judicial, parliamentary, and common law institutions, whereas the inquisitorial system supplanted it almost entirely on the continent.<sup>42</sup>

Locke presents two arguments on the basis of accepted practice for his premise of political individualism. In circumstances where individuals cannot appeal immediately to the law they are said to have the right to defend themselves and their possessions from attack by the use of force (2.18). This alleged natural principle of justice was traditionally used to justify resistance to tyranny. However, for it to work for Locke the act of self-defence would have to entail the exercise of jurisdictional power, and this is what writers such as Pufendorf were also to show self-defence did not involve.<sup>43</sup> Also, Locke argues, governments punish aliens. Since aliens do not consent, governments must exercise some natural power of judgement and execution (2.9). Again, even if this alleged right is accepted, it does not follow that it is a power originally possessed by individuals. (And, if it were accepted, then aliens could punish unjust governments, which is not widely accepted.)

### iii

The third step is the explication of the rule of right in accordance with which political power is exercised, justified and limited. For Locke this is the law of nature, which enjoins the preservation of mankind. The law of nature is the means of translating the end of government into natural rights and duties of preservation. As we have seen in his definition of political power, the end of government is the 'public good'. The public good is the preservation of society and, as far as this is compatible with the preservation of the whole, the preservation of each member (2.134). The public good and natural law perform three functions: the standard by which controversies are adjudicated in the state of nature; the guide for legislation and executive action in

<sup>42</sup> See James Bradley Thayer, *A preliminary treatise at the Common law* (Boston: 1898), 37–56; E. N. Williams, *The ancien régime in Europe* (Middlesex: Penguin, 1983), 485–96. For example, Locke conceptualizes parliament in an historically accurate way as an adjudicating body (2.89). <sup>43</sup> Pufendorf, *On the law of nature*, 7.B.7, and note 37 above.



political society; and the rule by which people judge their government.<sup>44</sup>

Within the natural freedom tradition a major division is between those who, like Hobbes and the humanists, hold that outside the state individuals are not law-governed, and so not moral; and those who, like Grotius and Locke, hold that people are governed by natural law. All share the basic assumption of juridical political thought from John of Salisbury to Hegel that the law is constitutive and hence the constitution of human society. In virtue of being subject to law in a law-governed community, people are social, moral, and rational beings (2.11). The difference is that the former identify the reign of law, and thereby civilization, with the establishment of juridical states whereas the latter envisage obedience to the law, and so moral life, in pre- and non-state natural societies (2.128).<sup>45</sup>

Filmer's first criticism of natural freedom is that any state of nature, even Grotius', must be a Hobbesian state of lawlessness in practice, due to the conflict of judgements, and thus a condition of license, not freedom.<sup>46</sup> Locke himself believed this in the *Two tracts* but changed his mind in the *Essays on the law of nature* (1661–2). By arguing in the *Two treatises* that the state of nature has a natural law enforced by the accusatory system he responded to Filmer and showed that natural freedom is not a Hobbesian 'absence of restraint' (or 'negative liberty') but the traditional juridical form of freedom as actions within the bounds of and subject to law (2.22, 2.57). He differs from the whole tradition, as we have seen, by characterizing these individualistically self-governing natural communities as ones in which individuals exercise the political powers of judgement and execution of natural law with respect to others. In the framework of Grotius and Pufendorf that dominated seventeenth century thought, each individual simply obeys the two precepts of natural law: the duty

to abstain from that which belongs to another, and the right to preserve oneself by acquiring sustenance and to defend oneself and one's own from invasion by force, including killing.<sup>47</sup>

It follows from the constitutive role of natural law that individuals who transgress natural law, in civil or natural society, by using '*Force without Right*' or manifesting a 'declared design' to do so, place themselves outside of moral or human society, and thereby in a 'state of war' (2.16, cf. 2.8, 2.11, 2.19). If they refuse the appeal of law and adjudication, or if there is no time for an appeal, then 'the want of such an appeal gives a man the Right of War' against the defiant lawbreaker (2.19–20, 2.10–11). It is important to see the careful structure of this argument because the right of war he lays out in chapter 3 is the foundation of the right to take up arms against a monarch or legislature who transgresses natural law, as he immediately points out (2.17, 2.20–1). The right of war is thus a juridical decision by arms: the right to judge and proceed against a recalcitrant transgressor by force of arms is 'an appeal to heaven' (2.20–1). As Locke interprets the biblical account of Jephthah leading his people to battle against the Ammonites, 'then Prosecuting [judging], and relying on his *appeal* [to Heaven], he leads out his Army to Battle' (2.21). This means of enforcing the law of nature continues 'until the aggressor offers Peace, and desires reconciliation' on just terms (2.20).

Locke supports the right of war first with reference to the (alleged) natural right to kill an attacker or a thief (2.19, 2.176). Since this is too weak to justify the exercise of the right of war in the defence of the attacked by those not directly involved, he appeals to a right of all mankind to prosecute a common murderer (2.11). (The reason why this generalized right is taken to be a right of war, and not just of defence, is that a state of war is defined as any situation involving the transgression of natural law.) Since this precedent in turn is too weak to support activating a right of war in response to any violation of natural law (where other appeals have been exhausted) he argues that any design to violate natural freedom, to use force without right, threatens 'to take away every thing else', including preservation, and so is like a direct attack (2.17). By these means Locke stretches the traditional justifications of defence to the generalized right of proceeding against natural lawbreakers. Following George Buchanan he conceptualizes this as warfare, and war in turn, not as

<sup>44</sup> *Two treatises* 2.4, 7, 22, 134–5, 149, 171. For Locke's theory of natural law see Wolfgang von Leyden, 'Introduction', John Locke, *Essays on the law of nature* (Oxford: Clarendon Press, 1970); E. W. Urdang and F. Oakley, 'Locke, natural law, and God', *Natural law forum* 11 (1966), 92–109; John Colman, *John Locke's moral philosophy* (Edinburgh: Edinburgh University Press, 1983); David Wootton, 'John Locke: Socinian or natural law theorist?', *The religious and the secular from Hobbes to Mill*, ed. J. Crimmins (London: Routledge, 1989); James Tully, *A discourse on property: John Locke and his adversaries* (Cambridge: Cambridge University Press, 1980), 35–43; and chapters 6 and 9 below.

<sup>45</sup> For the 'humanist' counter-thesis that outside of an institutionalized political and legal order people are without law and morality, see Cicero, *De inventione* (Cambridge, MA: Harvard University Press, 1949) 1.2 (p. 4); and Machiavelli, *The discourses* (Middlesex: Penguin, 1978) 1.2 (p. 107). <sup>46</sup> Filmer, *Patriarcha*, 264, 273–4, 285–6.

<sup>47</sup> Grotius, *De jure belli*, 2.2.8, 2.3.16.



an act of self-defence, but as a juridical contest of decision by arms.<sup>48</sup> Since tyranny and usurpation can now be defined in the terms of any violation of natural law, as the use of power beyond right and of power without right respectively (2.197, 2.199), he broadens the base for justified revolt and redescribes it as a juridico-political activity of war.<sup>49</sup>

The reworking of conventional legal arguments for resistance is complemented by an innovation in the content of natural law. As a result of the wars of religion, the sceptical attack on the claims of warring Christian churches, and the development of mercantile and state-building policies, most seventeenth-century political thinkers agreed that the basic role of the state is to *preserve* and 'strengthen' society and its members, not to uphold the 'true' religion, unless it could be shown to be useful in bringing about preservation.<sup>50</sup> Accordingly, the basic concept of natural law that was said to guide and legitimate legislation was the law of self-preservation. This received its classical formulation in Grotius' formula of a natural duty and right of self-preservation and dominated the political thought of the century.<sup>51</sup> Locke's innovation here is to argue that the fundamental natural law is not self-preservation but '*the preservation of Mankind*' (2.135). It is this change which explains and grounds the distinctive set of natural duties and rights he is able to develop and which provides further support for a broader account of government activity and revolution.<sup>52</sup>

The preservation of mankind is broken into two natural duties: the traditional natural law duty to preserve oneself and, when one's preservation is not sacrificed, a new, positive and other-regarding duty to preserve the rest of mankind (2.6). Two natural rights to preserve oneself and others follow from the natural duties (2.7). Thus, when people accuse and adjudicate controversies involving others in the natural accusatory system they are exercising their natural rights and duties to preserve others. Hence, as we shall see, these rights and duties provide the justification for the wider population coming to the

<sup>48</sup> Buchanan, *De jure regni*, 38.

<sup>49</sup> Jean LeClerc makes this point in his review of the *Two treatises* in *Bibliothèque universelle*, xix, 591.

<sup>50</sup> Marc Raeff, *The well-ordered police state* (New Haven: Yale University Press, 1983), 11–43; and chapter 6 below.

<sup>51</sup> Tuck, *Natural rights theories*, 58–82, and 'The "modern" theory of natural law'.

<sup>52</sup> For a more detailed account of Locke's natural rights and duties, see Tully, *A discourse on property*, 53–156, and chapters 2–5 below.

revolutionary aid of an oppressed minority; exactly the form of action Locke needed to legitimate and which could not be justified in the Grotian framework of self-preservation.<sup>53</sup> These in turn correlate with the traditional negative duty to abstain from that which belongs to another (2.6).

Further, two different kinds of power are employed in the exercise of each of these natural rights and duties: the power to preserve one's life and the life of others by punishing natural lawbreakers (political power) and the power to preserve oneself and others from starvation (labour power or productive power) (2.129–30). Locke discusses the natural rights and duties of labour power in chapter 5. If humans have the duty and right to preserve themselves and others from starvation, then they must have the right to 'Meat and Drink, and such other things, as Nature affords for their Subsistence' (2.25). Therefore, the world must belong to 'Mankind in common' in the sense that each has a natural claim to the means necessary for 'Support and Comfort' (2.26). This modifies the popular seventeenth-century premise in the natural freedom tradition that the world belongs to no one but is open to the appropriation of each.<sup>54</sup>

Filmer's second criticism is that each act of appropriation would require the consent of all and so everyone would starve waiting for universal consent.<sup>55</sup> Locke's famous reply is that consent is not required in the early stages of history (2.28). The exercise of one's labour power as a *person* on what is given to mankind in common bestows on the labourer a right to the product insofar as it is used for the preservation of self and others and as long as 'enough, and as good [is] left in common for others' (2.27, 2.31).<sup>56</sup> Thus, labour power is the means of individuating the common into individual possessions to be used for preservation (2.25–6, 2.28–9). Labour power also creates

<sup>53</sup> Thus, the *Two treatises* overcomes the conceptual difficulty the Levellers had in justifying revolutionary assistance from their Grotian premise of self-preservation (Tuck, *Natural rights theories*, 150).

<sup>54</sup> Grotius, *On the laws*, 2.2.1–2; Pufendorf, *On the law of nature*, 4.4.2. Istvan Hart and M. Ignatieff, 'Needs and justice in the *Wealth of nations*', in *Wealth and virtue* (Cambridge: Cambridge University Press, 1983), 1–44 at 35, deny that Locke departs from the convention of a negative community. If this were so then the right to the means of preservation would be idle, but it is not. In addition to chapter 3 below, see Richard Ashcraft, *Locke's Two treatises of government* (London: Unwin Hyman, 1987), 81–97; and Gopal Sreenivasan, 'The limits of Lockean rights in property' (Oxford: B. Phil thesis, 1989), chapter 2. <sup>55</sup> Filmer, *Patriarcha*, 273.

<sup>56</sup> For Locke's concept of the person, see John Yolton, *Locke and the compass of human understanding* (Cambridge: Cambridge University Press, 1970), 181–97.



products of value, insofar as they are useful, and the whole chapter underscores the productivity and importance of labour (2.40–4).<sup>57</sup>

In the state of nature the exercise of labour power and possession are *regulated* by political power in accordance with the 'enough and as good' proviso and the natural law enjoining use for preservation. A person who abuses possessions acquired by his own labour, or who appropriates more than one can use without spoiling, takes 'more than his share, and [it] belongs to others' (2.31). He thereby 'offended against the common law of Nature, and was liable to be punished; he invaded his neighbor's share, for he had *no Right, farther than his Use*' (2.37). Natural property rights are, accordingly, use rights set within a larger framework of rights and duties to preserve the community (mankind) and regulated by everyone through the accusatory system.

Increase in population, the introduction of money, development of agricultural arts, the extensive appropriation of land, the division of labour and the emergence of commercial activity all lead to interminable disputes and quarrels over property rights (2.36–7, 2.40, 2.44, 2.45, 2.48). The accusatory system is ill-suited for this situation and so the resulting instability provides one of the major causes of the historical transition from the pre-state accusatory systems to the agreements to establish the first forms of institutionalized and territorial forms of government (monarchies) and formal legal codes to regulate property (2.45, 2.30, 2.50).<sup>58</sup> I return to his transition argument below. The important points here are, first, that Locke has argued that it is a natural function of political power to regulate both labour and possessions for the sake of preservation, or the public good. This provides the justification for the extensive regulation and disciplining of the labouring population in the mercantile systems of the early modern states, when this power is delegated to government, as Locke recommends in his *Report to the Board of Trade* (1697). On the other hand, this framework of natural law rights and duties of preservation and to the product of one's labour places a limit on property legislation, the transgression of which justifies revolt. Once government has determined a system of 'property' – by which he means a right to some thing such that it

<sup>57</sup> See Ashcraft, *Locke's Two treatises*, 81–150.

<sup>58</sup> For the Exclusion Crisis context of these arguments see Ashcraft, *Revolutionary politics*, 181–228.

cannot be taken without the consent of the proprietor or the consent of his representatives (2.140, 2.190) – a transgression of these rights constitutes a violation of natural law and hence a ground for legitimate revolt, just as in the state of nature (2.119, 2.130). A further question is whether these arguments for appropriation without consent and punishment for abuse of land were used, or were intended to be used, to justify the dispossession of Amerindians of their property and the imposition of European forms of property (see chapter 5 below).

iv

The fourth step in the juridical problematic is the way in which political power is placed in the hands of monarchs and/or representative bodies. It is a historical, logical and normative question concerning the rights and conditions under which the great centralizing monarchies or the representative institutions of early modern Europe exercised political power. In the natural freedom tradition two general genealogies were proposed. The first and dominant explanation, which Locke adopted in the *Two tracts*, is that the people as a corporate whole, and usually acting through their representative body, consent to *alienate* completely political power to the monarch and to renounce the right of self-defence. The monarch is sovereign, above the law and therefore absolute. The monarch is said to be bound by natural law but, since the people have renounced their right to defend themselves, only god can punish the ruler's transgressions. Most absolutists mitigate this doctrine of non-resistance in cases where the monarch alienates his kingdom or sets about destroying his subjects. Then, as William Barclay puts it, and Locke quotes with approval, the people may defend itself (without injuring the king), usually through its representative body. Or, as Grotius and Pufendorf concede, an individual may defend himself against direct attack by a murderous tyrant.

The main argument for alienation in its pure or mitigated form is that if sovereignty is shared by monarch and parliament (or estates), or if the people do not renounce their (or its) right to judge when it is a situation of self-defence, then, given human partiality, this will lead to disagreement, dissension, tumults, and so to civil war. The idea that political power is shared by parliament and monarch was castigated as a throwback to the strife-ridden feudal past and an impediment to



centralization and modernization under absolute monarchy.<sup>59</sup> The second argument, famously advanced by Rousseau against the *Two treatises*, is that unless alienation is complete no sovereign is formed and people remain in a quasi state of nature.<sup>60</sup> Locke used both of these arguments in the *Two tracts*.

The second genealogy is that the people, as a whole, consent or contract to conditionally entrust political power to the monarch or to monarch and parliament (in mixed monarchy theories), or to parliament (in parliamentary sovereignty).<sup>61</sup> When the ruler abuses the trust it is broken and power devolves back to the people. Then, the people may defend themselves either through parliament or, if it is a mixed monarchy, through a natural representative body such as Lawson's forty courts of the forty counties. As we have seen no one was willing to say that dissolution of the trust returned the exercise of political power to the people either individually or collectively.

In the *Two treatises* Locke adopts the trust theory of the relation between government and governors and adapts it to his individual account of political power. There are three reasons why he accepted the trust hypothesis. First, according to the alienation hypothesis, the sovereign is by definition outside of political society, since he is not subject to law, and thus absolutism is not a form of political society (2.90). Further, since the people resign their right to judge and punish him for violations of natural law, it is worse than the inconveniences of the state of nature since they have no right to protect themselves against his violence. Hence it would be irrational to consent to alienate: 'to think that men are so foolish that they take care to avoid what Mischiefs may be done them by *Pole-Cats* or *Foxes* [in the state of nature], but are content, nay think it safety, to be devoured by *Lions* [in absolute monarchy]' (2.93). This is clearly directed against any natural freedom theory of alienation, whether Grotius, Hobbes, Pufendorf, or Locke himself in the *Two tracts*. Not only is it irrational. Since it involves transferring absolute power over one's life to another, it presupposes that individuals have the right to dispose of their own life. Locke points out to his Christian audience that only god has such a right (2.23, 2.135, 2.149, 2.171, 2.222). Even if

absolutism enjoys universal consent it is a form of 'despotical power' and 'slavery' that violates the natural law to preserve life by exercising unlimited power over subjects (2.172). By claiming absolute power over another, a monarch 'does thereby *put himself into a state of war*' (2.17). Therefore there is no normative foundation for absolutism, or for the analogous practice of a right to consent to enslavement. The point here again is that man's natural condition is not one of license but of liberty constituted by natural law, and this precludes absolute freedom and so absolute subjection.<sup>62</sup>

His second reason for rejecting the alienation theory is that governments tend over time to tyranny. As states develop, rulers gain the wealth and power to cultivate interests different from and contrary to the people. In addition, they become open to ideological manipulation by religious elites, who use their influence to have their religious beliefs imposed by political means. The resulting tyranny causes civil war. Hence the alienation theory, like any absolute theory, is part of the problem rather than a solution (2.106–112, 2.94, 2.208–10).

The third and major reason for the change is that Locke came to believe that the alienation theory is implausible: post-Reformation, and especially post-English civil war individuals as a matter of fact do not alienate their natural political power. He abandoned the alienation theory in his 1667 *Essay concerning toleration*.<sup>63</sup> In the face of the imposition of the Clarendon Code in 1661–2 – legislation to compel conformity to Anglican forms of worship and punish Presbyterians, Baptists, Quakers, Independents, and Catholics – thousands of religious Dissenters refused to conform, disobeyed the law and suffered draconian persecution. The *Essay concerning toleration* is a justification of this passive resistance based on the premise that individuals neither do nor ought to alienate their right to judge and to disobey laws they believe to be unjust. By 1675, as we see in part II,

<sup>59</sup> See Pufendorf, *On the law of nature*, 7.5.12–15, 7.8.7; Filmer, *Patriarcha*, III; and J. H. Sheenan, *The origins of the modern European state: 1450–1725* (London: Hutchinson, 1974).

<sup>60</sup> Jean-Jacques Rousseau, *Du contrat social*, ed. R. Grimsley (Oxford: Clarendon Press, 1972) 1.6 (p. 115).

<sup>61</sup> See Franklin, *John Locke and the theory of sovereignty*.

<sup>62</sup> *Two Treatises* 2.22–3 and Laslett's note to section 24. For the theories that posited unlimited liberty in order to justify unlimited subjection to absolutism and to slavery on the basis of consent see Tuck, *Natural rights theories*, 52–4. Locke's justification of slavery is that if a person has committed an act that deserves death (a felon or a captive in war) he may be enslaved rather than killed, since he has forfeited his life. For the use of this kind of justification to legitimate the indenture and enslavement of labourers see Abbot E. Smith, *Colonists in bondage: white servitude and convict labor in America, 1607–1776* (Chapel Hill: University of North Carolina Press, 1974). See Wayne Glauser, 'Three approaches to Locke and the slave trade', *Journal of the history of ideas* 51, 2 (April–June 1990), 199–216.

<sup>63</sup> John Locke, *An essay concerning toleration* (1667), Bodleian, MS. Locke c. 28, fos. 21–32, in John Locke, *Scritti editi e inediti sulla tolleranza*, ed. Carlo Viano (Turin: Taylor, 1961).



Locke had gone further towards the *Two treatises*, arguing that individuals never alienate their right to enforce the rule of right against their governors by force of arms. The English experience thus provided an impetus to reinterpret the whole civil war experience of early modern Europe as the practical repudiation of the alienation hypothesis, or any hypothesis that posits depoliticized individual subjects. Alienation and natural subjection theories are thus out of touch with practical reality. As he classically and presciently puts it in the *Two treatises*, popular revolution is a permanent feature of modern politics, irrespective of the official ideology (2.224):

For when the *People* are made *miserable*, and find themselves *exposed to the ill usage of Arbitrary Power*, cry up their Governors, as much as you will for sons of *Jupiter*, let them be Sacred and Divine, descended or authoriz'd from Heaven, give them out for whom or what you please, the same will happen. *The People generally ill treated*, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. They will wish and seek for the opportunity, which, in the change, weakness, and accidents of humane affairs, seldom delays long to offer it self.

Let us turn now to the complex practice of *trust*, compromising the relations between governed and governors which constitute political society.<sup>64</sup> Individuals consent to entrust the two natural powers they exercise themselves in the state of nature to make up a government. First, labour power, the power 'of doing whatsoever he thought fit for the Preservation of himself, and the rest of Mankind' each individual 'gives up to be regulated by Laws made by the Society, so far forth as the preservation of himself, and the rest of that society shall require' (2.129). That is, property and labour are now regulated by the two policy objectives of collective and individual preservation, with the individual being subordinated to the preservation of the collectivity (public good) when these two great rationales of government conflict: 'the first and fundamental natural Law, which is to govern even the Legislative it self, is the preservation of the society, and (as far as will consist with the publick good) of every person in it' (2.134). This, as Locke notes, confines the liberty each had by natural law (2.130-1). Second, political power, the power of punishing, each individual

<sup>64</sup> For Locke's hypothesis that government rests on the conditional trust of the governed see John Dunn, *The political thought of John Locke* (Cambridge: Cambridge University Press, 1969), 120-48, 165-87; 'The concept of "trust" in the politics of John Locke', in *Philosophy in history*, ed. R. Rorty, J. Schneewind, Q. Skinner (Cambridge: Cambridge University Press, 1984); *John Locke* (Oxford: Oxford University Press, 1985) 34-55.

'wholly gives up' to be used to make and to enforce laws, with each individual's assistance if necessary (2.130).

The transfer of powers involves three parts. Individuals consent with each other to give up their powers to form a political 'society' of which each becomes a member. Only explicit consent, 'by positive Engagement, and express Promise and Compact', makes one a member or subject and constitutes a political society, and binds each to the determination of the majority until either his citizenship is revoked or the society is dissolved (2.95-9, 2.120-2). Thus, although Locke is a natural political individualist, he is a conventional political holist because consent makes a person a subject of a community that embodies political power and acts in accordance with the majority. The majority then constitutes the society into a constitutional form of government by placing the legislative power – the power to make laws – in specific hands. If this legislative power, as well as executive power, remains in the majority then it is a 'perfect' democracy; if in the hands of a few, oligarchy; and so on (2.132). The legislative power is the 'supreme power' in any commonwealth because it is the power to make laws and this comes from the members' natural power to judge controversies: 'And this puts Men out of a state of Nature into that of a Commonwealth, by setting up a Judge on Earth, with authority to determine all the Controversies, and redress the Injuries, that may happen to any member of the Commonwealth: which Judge is the legislative, or magistrates appointed by it' (1.89, 2.212). Finally, the legislative entrusts the 'natural force' of the community to the executive (and, *eo ipso*, the federative) to enforce the laws and protect society, members and colonies by means of war and diplomacy (2.144-8).

Locke sees two objections to his thesis that lawful government is based upon explicit consent, involving the delegation of political power, and binding each member to the majority: there are no historical instances of it and that now people are born into, and thus naturally subject to, a government (2.100). In response to the former objection he assembles historical and anthropological evidence to illustrate that free men have commonly set rulers over themselves (2.101-2). In these examples Locke is concerned to falsify both the natural subjection thesis and the equally popular *de facto* thesis that lawful government can be founded in successful conquest. This aim is spliced rather awkwardly into the first section of the Second treatise, perhaps in response to the widespread use of *de facto* arguments to



justify William's rule in 1688–9, and taken up in chapter 16. The constant danger that provoked Locke's attack on conquest theories was the widespread fear, from the early 1670s on to the end of the Nine Years' War, of a French invasion. The 'noise of War, which makes so great a part of the History of Mankind', has caused many to mistake 'the force of Arms, for the consent of the people; and reckon Conquest as one of the Originals of Government' (2.175).<sup>65</sup>

The latter objection is no more plausible. History furnishes many examples of people leaving their government and founding new commonwealths by consent, which would be impossible if subjection were natural. Further, present governments themselves do not assume that subjection follows from birth, but from consent and they in fact demand express consent (2.113–18). Recent scholarship on the origins of institutionalized forms of political power and citizenship in Europe, whether in the Communes, free cities, principalities, or English commonwealth, has stressed the widespread practice of consent and oath-giving.<sup>66</sup> Explicit oaths of allegiance to the present form of church and state were precisely the form the central issue of obedience and resistance took from 1660 to 1690.<sup>67</sup> In 1689 Locke insisted on explicit oaths renouncing *Jure Divinio* doctrine (because it entailed continued allegiance to James II) and *de facto* doctrine (because it did not base allegiance on the *justice* of William's invasion and it would equally legitimate a successful French counter-conquest).<sup>68</sup>

The most difficult question Filmer puts to the consent thesis is one of motivation. Why should anyone ever consent to give up their natural freedom and self-government for subjection to others? As Locke rephrases it (2.123):<sup>69</sup>

<sup>65</sup> For *de facto* arguments in 1689 see Goldie, 'The revolution of 1689', 508–18; Farr and Roberts, 'John Locke and the glorious revolution', 385–98; and Locke's comments on William Sherlock, *The case of allegiance due to sovereign powers* (1691), in Bodleian, MS Locke c. 28, f. 96.

<sup>66</sup> Berman, *Law and revolution*, 359–403; Gerhard Oestreich, *Neostoicism and the early modern state* (Cambridge: Cambridge University Press, 1982), 135–55, 166–87.

<sup>67</sup> See John Locke, *A letter from a person of quality*, 1675, in *The works of John Locke* (London: Thomas Tegg, 1823), 10 vols, x.

<sup>68</sup> Farr and Roberts, 'John Locke and the glorious revolution', 395–8.

<sup>69</sup> Filmer, *Patriarcha*, 286: 'the original freedom of mankind being supposed, every man is at liberty to be of what kingdom he please, and so every petty company hath a right to make a kingdom by itself; and not only every city, but every village, and every family, nay, and every particular man, a liberty to choose himself to be his own King if he please, and he were a mudman that being by nature free, would choose any man but himself to be his own governor'.

If man in the state of Nature be so free as has been said; if he be absolute Lord of his own Person and Possessions, equal to the greatest, and subject to no Body, why will he part with his Freedom? Why will he give up this Empire, and subject himself to the Dominion and Controul of any other Power?

Locke answers that there are three disadvantages of the natural or accusatory system that caused people to abjure it: the lack of established, settled or known law, the lack of a known and indifferent judge, and a want of power to execute a judgement (2.124–6). Natural law can be known and settled, but, because people are always partial in their own cases, they will not admit to a law that applies against them. The second difficulty also turns on the jurisprudential axiom that individuals are biased judges in their own case due to 'interest' or 'partiality'. As a result, 'Passion and Revenge is very apt to carry them too far, and with too much heat, in their own Cases; as well as negligence, and unconcernedness, to make them too remiss, in other mens.' Even the third turns on partiality since he argues that people will not enforce a sentence when the guilty party resists and makes punishment 'dangerous, and frequently destructive'.<sup>70</sup>

He argues in chapter 5 that these disadvantages do not cause serious problems until the pressure of population growth on available land, the increase of and division into towns and villages, the development of agriculture and technology, and the introduction of forms of money conjoin to cause disputes over property which destabilize the natural regime. He also speculates that these developments, especially money, enhanced the sense of self and thus served to enlarge, if not create, the self-interest that undermines the accusatory system (2.37, 2.107–8, 2.111). Thus, confusion and disorder eventually follow from a way of life in which men are 'Judges in their own cases', because 'Self-love will make men partial to themselves and their Friends' and 'Passion and Revenge will carry them too far in punishing others' (2.13). At this conjunction in human history the greatest transformation in the way of governing occurs – from self-government to institutionalized government. Locke immediately remarks that it is absurd to assume (as he had in the *Two tracts*) that people would consent to absolute monarchy at this point as a remedy to their problems. Since the problem is human partiality where each

<sup>70</sup> Cf. 2.13, 2.136. These remain the conventional arguments against self-government: see David Miller, *Anarchism* (London: J. M. Dent and Son, 1984), 169–83.



is judge, what kind of a remedy is absolute monarchy 'where one Man commanding a multitude, has the Liberty to be Judge in his own Case, and may do to all his Subjects whatever he pleases, without the least liberty to any one to question or controule those who Execute his Pleasure?' (2.13). Rather, Locke advances a more plausible history of the formation of states.

While still self-governing, people were used to entrusting their authority to a single ruler to lead them in time of war, although they retained the right, exercised in *ad hoc* councils, to declare war and peace. Only later did they turn to this custom of delegated authority to settle internal disputes (2.108, 2.110, 2.112) (as in the itinerant justices sent out from the King's court from 1166 onward). Thus, institutionalized forms of government evolved out of the practice of external war, hence explaining the initial plausibility of conquest theories. However, delegation of power in wartime and later in internal disputes was based on consent and a somewhat naive trust in the application of the original form of government, 'which from their infancy they had all been accustomed to'; the patriarchal family (2.107). Filmer is thus right in saying that the first forms of civil government are monarchies, patterned on the patriarchal family, but wrong in construing this as natural rather than a contextually rational and conventional response to the breakdown of an earlier way of life.<sup>71</sup>

The initial trust was naive because people had no experience of the abuse of power and so of the need for explicit limitations, even though they understood it to be limited like paternal care of children (2.107). As central authority developed, the monarch, through luxury and ambition, stretched his prerogative 'to oppress the People', and developed interests separate from them (2.111, 2.163). They then realized that it is necessary to limit monarchy by placing the legislative power 'in collective bodies of men, call them Senate, Parliament, or what you please' (2.94). Men examined more carefully 'the *Original and Rights of Government*', and set up legislative bodies 'to restrain the Exorbitances, and prevent the Abuses' of princely power, thus ushering in the present age of disputes about privilege and contests between kings and people about government (2.111). Not only did this attempt at separating and balancing power not succeed in constraining the abuse of power (2.107), as proponents of

mixed monarchy falsely claim, but princes have been further emboldened in the present age by arguments from custom and new ideologies of divine right promulgated by religious elites to advance their own interests (2.94, 2.112). Locke's reconceptualization of the trust between governed and governors is thus designed to provide a solution to the problems of civil wars caused by the failure of the first attempt of representative institutions to curb the power given to princes and by the seventeenth-century resurgence of absolutism.

## v

The fifth and most important step in juridical political thought is the twofold question: how is political power exercised by governors and what prevents the abuse of power? The answer to the first question for Locke is that political power is to be exercised in accordance with the trust. This comprises: laws should be made and executed in accordance with the common good or natural law (the natural rights and duties of preservation); governors themselves should be subject to the laws they make; and the laws and legal rights should not be changed without the consent of the majority through their representatives.<sup>72</sup> The first and fundamental criterion follows from the nature of political power itself because it is bound by this end in the state of nature (2.171). The second makes it clear that there is no sovereign in Locke's theory of government: both governed and governors are mutually subject to the law (1.93).

In response to the second question, in *A letter from a person of quality* (1675), Locke rejected his earlier view that fear of divine punishment would constrain rulers from abusing power (see part II below). He also rejected the prevalent absolutist view that removal of grounds for legitimate contestation of the exercise of political power will remove the cause of oppression (2.224). Locke is also sceptical of the view that parliaments and mixed monarchies are sufficient means to check the abuse of power. Parliaments and elected bodies are themselves susceptible to corruption, as the history of republics illustrates (2.201, 2.221-3, 2.138, 2.149). Unchecked and frequent popular assemblies are untrustworthy, imprudent, and prone to abuse (2.156). Furthermore, even in mixed monarchies, monarchs are able to override the limitations placed on them by parliaments (2.107, 2.111-12, 2.163).

<sup>71</sup> See Ashcraft, *Revolutionary politics*, 181-227 for similar arguments in the Exclusion literature.

<sup>72</sup> 2.94, 2.135, 2.140. The executive may act against civil law if it is in the public good, 2.160.



Locke prefers the customary English system of king in parliament. The king checks the tendency of parliament to corruption (the weakness of republics and democracies), by convoking and dissolving parliaments as the need arises, and by exercising powers of disallowance. The parliament in turn checks the king's tendency to rule in favour of special interests, the weakness of absolute monarchies (2.151–167). This system is the best because it is adaptable to the contingencies of politics, it has proven itself in practice, and the English people are accustomed to it (2.160, 2.165, 2.223).<sup>73</sup> Even with this system of conjoint sovereignty of king in parliament, however, the problem remains of how the king and parliament are to be constrained to their respective and mutually limiting roles.

Locke's solution to this problem, and so to the early modern crisis of government, is that the people themselves must govern their governors. They must judge when and if their governors act contrary to the trust and, when necessary, execute their judgement by a revolution and the establishment of new governors or a new form of government.

Locke's concept of trust captures this reciprocal practice of government. The people entrust their political power to their governors or trustees and consent to subjection as long as it is exercised in accordance with the trust. Reciprocally, the governors are under an obligation to the people to exercise power accordingly. Hence (2.149),

the Legislative being only a Fiduciary Power to act for certain ends, there remains still in the People a Supreme Power to remove or alter the Legislative, when they find the Legislative act contrary to the trust reposed in them. For all Power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the Power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security.

How does this work in practice? In a system where the executive is separate from the legislative, the legislative, being the superior power, governs the executive, which may be 'at pleasure changed and displaced' by the legislative (2.152). If the legislative fails or it abuses the trust in other ways, then, as we have seen, power devolves to the

<sup>73</sup> These arguments are probably directed at his republican contemporaries such as Algernon Sidney, Henry Neville, and William Moyle, as well as at absolutists.

people. In England, the monarch has a share in the legislative, and so is not subordinate to it, and thus cannot be removed by the legislative. These sections (149–52) end fifty years of insoluble debate over the location of sovereignty in mixed monarchy. The legislative cannot effectively act against an executive which ignores its protestations without undermining the mixed nature of the constitution. If a legislature exercises the authority to judge and remove an executive then this establishes parliamentary sovereignty and thus undermines the mixed sovereignty of king in parliament. If, on the other hand, a legislature allows an executive to rule without limitation, then this concedes absolute sovereignty in the executive, and so undermines mixed or conjoint sovereignty again.<sup>74</sup> This was the dilemma of the Civil War and again in 1681, when Locke wrote the *Two treatises*: Charles II dissolved the third Exclusion Parliament and signalled his intention to rule without it. It was also the situation again in 1687–8 when Locke rewrote and published the *Two treatises*: James II ruled against the consent of parliament.<sup>75</sup> Consequently, to preserve the conjoint sovereignty of king in parliament, in a system where there is no constitutional court of appeal, it is necessary to appeal to an independent body to adjudicate the dispute: namely, the people (2.218, 2.222).

There are two means by which this may be done. Subjects may appeal to the legislative, not only to judge controversies among themselves, but also controversies between them and their government (unlike absolutism) (2.93–4, 2.207). Parliament was established, according to Locke, to judge this sort of appeal. However, when religious Dissenters made appeals throughout the Restoration against the transgression of their civil and political rights and the confiscation of their property, their appeals were castigated as 'sedition' and 'faction' (2.209, 2.218). When this means is blocked the trust is broken and the people turn to the second means of redress: revolution as the means of executing the law of nature (2.221–2, 2.202, 2.204).

In chapter 19 Locke distinguishes between the dissolution of government and the dissolution of political society, states that virtually the only way political society is dissolved is by foreign

<sup>74</sup> This dilemma is exposed by Filmer in his criticism of Philip Hunton's theory of mixed monarchy in *Patriarcha*, 295.

<sup>75</sup> See Franklin, *John Locke and the theory of Sovereignty*, for these two contexts and the earlier Civil War debates on mixed monarchy.



conquest, and goes on to analyze cases in which government, but not political society, is dissolved by various breaches of trust (2.211). In this situation, the unjust rulers have dissolved the government, the people are no longer subject to the governors who have broken the trust, so they 'may constitute to themselves a new legislative, as they think best, being in full liberty to resist the force' of the illegitimate governors (2.212). In these cases the unjust rulers (legislators or executive) are in a state of war with the people because they have acted contrary to right or used force without right, just like any individual lawbreaker in the state of nature.<sup>76</sup> Although Locke states that 'Every one is at the disposal of his own will' (2.212), in the first instance after dissolution of government, the people must be bound together as a corporate body, governed by majority rule, in virtue of their initial consent to join political society (2.96). This dissolution of the bond between the people and their governors should not affect the independent and logically prior bond among citizens to form a political community. This is indeed how Locke puts it at sections 242 and 243, where he says that 'the Body of the *People*' should be the judge or umpire. Here, Locke probably has in mind a representative constituent assembly, as he and many Whigs recommended for the Convention Parliament in 1689.<sup>77</sup> Since the 'dissolution of government' entails only the dissolution of the bond between the people and the unjust ruler who has violated the constitution, the constitution and legal structure of political society remain intact. The representative constituent assembly has, by definition, the authority to amend or restore the constitution, but it remains in force throughout the process, as in 1689.

Locke then turns to the more extreme situation where 'the Prince, or whoever they be in the Administration, decline that way of Determination', by the majority (2.242). Who then has the right to judge when the trust is broken and dissolution has occurred? Locke's unequivocally radical answer is that each individual man has this right: '*every Man is Judge for himself*' (2.241). Not only may any man (or woman?) make this judgement, he may make it on the basis of a *single* violation of right, on the judgement that his ancestors had been wronged by conquest (thinking of a French invasion), or even if no

<sup>76</sup> 2.222, 2.232 state the general argument, whereas 2.212-19 take up the specifics of 1681 and 1688.

<sup>77</sup> See letter to Clark, note 9 above; Goldie, 'The roots of true whiggism'; and chapter 2, part 1, below.

transgression has been committed but the individual discerns a tyrannical tendency or design.<sup>78</sup>

Who has the right to execute this judgement by taking up arms to punish the government? Again Locke replies that each individual has this right.<sup>79</sup> As we have seen this follows from the premisses since the revolution is the people governing lawbreakers as they do naturally when other forms of appeal have failed. Then, the majority of the people again have full constituent authority to change office-holders, re-establish the old form of government, to set up a new form, or to set up direct democracy - 'to continue the legislative in themselves' (2.243). To drive home his point that revolution is the exercise of natural political power by the people he calls it exactly what the right of war is called: an 'appeal to Heaven'. Here, because there is no common judge on earth, the only recourse is a decision by arms. 'And where the Body of the people, or any single Man, is deprived of their Right, or is under the exercise of a power without right, and have an appeal on earth, there they have a liberty to appeal to Heaven, whenever they judge the cause of sufficient moment' (2.168, following 2.21). The elaborate account of the state of nature is thus stage setting for the introduction of revolution as the natural and legitimate way the people govern rulers who abuse their power.

Locke attempts to make this doctrine appear acceptable by making William Barclay's respectable natural freedom theory of absolutism appear more populist than it is. George Buchanan had argued that a king who becomes a tyrant dissolves the constitutive pact between king and people, forfeits his rights, and so may be proceeded against by means of a judicial act of war by the body of the people or an individual, just as in the case of a common criminal.<sup>80</sup> In his reply William Barclay countered that an inferior can never punish a superior so neither an individual nor the people as a whole can punish, attack or prosecute their king. However, as we have seen, Barclay does concede that if a king becomes an *intolerable* tyrant the people as a whole, and not an individual, may defend itself as long as it does not attack the king.<sup>81</sup> Although Grotius repudiated Buchanan's theory as well he did go on to assert against Barclay that the people, individually or collectively, could defend themselves by

<sup>78</sup> 2.21, 2.168, 2.203, 2.210, 2.220, 2.240.

<sup>79</sup> 2.222, 2.224, 2.228, 2.231-2, 2.235, 2.239, 2.242.

<sup>80</sup> Buchanan, *De jure regni*, 3B. Cf. *Two treatises* 2.19.

<sup>81</sup> Barclay, *De regno*, 3B, cited in *Two treatises* 2.232-3.



force of arms against an intolerable tyrant who attacked them directly.<sup>82</sup> In this exceptional case the people exercise their natural right to defend themselves. This is justified because the reason people originally established government is self-preservation. Pufendorf repeated this mitigated absolutism, explicitly making the point against Barclay that the duty not to punish a superior does not apply because resistance is an act of defence, not of jurisdiction.<sup>83</sup> This line of argument, as we have seen, was used and abused – as Filmer predicted – to justify resistance throughout the century.

In his commentary on Barclay Locke reverses this trend. Instead of saying that resistance is a non-judicial act of defence he is able to show that even Barclay admits that when a king destroys his people or alienates his own kingdom he ceases to be a king. He thereby 'divests himself of his Crown and Dignity, and returns to the state of a private Man, and the people become free and superior'; he 'sets the people free, and leaves them at their own disposal.'<sup>84</sup> Although Barclay is thinking of extraordinary circumstances he concedes that a king can lose his superiority and thus, as Locke immediately concludes, the rule that an inferior cannot punish a superior does not apply and so the people may prosecute him (as Buchanan originally argued) (2.239). With his very different account of the natural political power of the people and his more extensive concept of tyranny firmly in place, Locke is able to exploit this opening and make it appear that his radical doctrine is not far out of line with the very same absolutists Filmer had criticized for opening the door to resistance (2.239 cf: 1.67):

only that he [Barclay] has omitted the principle from which his Doctrine flows; and that is, the breach of trust, in not preserving the Form of Government agreed on, and not intending the end of Government itself, which is the publick good and preservation of Property. When a King has dethron'd himself, and put himself in a state of War his People what shall hinder them from prosecuting him who is no King, as they would any other Man, who has put himself into a state of War with them.

Despite Locke's exercise in feigned respectability, his theory of resistance is one of the most original accounts in early modern political thought and the first to conceive the rebellions as political contests involving ordinary people seizing political power and

<sup>82</sup> Grotius, *On the laws*, 1.4.7, 1.4.10–11 (referring to Barclay).

<sup>83</sup> Pufendorf, *On the law of nature*, 7.8.7. <sup>84</sup> Barclay, *De regno*, 3.16; *Two treatises* 2.237–8.

reforming government. We can measure how unconventional it is by noting two contemporary responses to its publication in 1690. First, Locke's whig friend James Tyrrell repudiated it in *Bibliotheca politica*, arguing that political power does not revert to the people but to representative bodies or 'great councils'.<sup>85</sup> In *The fundamental constitution of the English government* (1690) William Atwood stated the major objection to Locke's account:<sup>86</sup>

others [Locke] are too loose in their notions, and suppose the dissolution of this contract [James II vacancy] to be a mere [i.e. pure] commonwealth, or absolute anarchy, wherein everybody has an equal share in the government, not only landed men, and others with whom the balance of power has rested by the constitution, but copy-holders, servants, and the very faeces Romuli which would not only make a quiet election impractical but bring in a deplorable confusion.

Atwood's objection is that Locke's theory would entail that the Convention Parliament would not only be a constituent assembly, a conclusion he and other moderate whigs wished to avoid by denying that the government had been dissolved, but also that it would have to represent the majority of all the adult male population. He believes that such a popular election of delegates to the assembly would be impractical and chaotic; and in fact no election occurred. However, Locke does not stipulate how a legitimate constituent assembly is to be selected. There is no reason why the consent of the people, which Locke lays down as essential to William's legitimacy in the *Preface*, could not be given by a ratification of the assembly's proposals in a referendum, irrespective of the manner in which the assembly was constituted.

Locke's theory appears to be the most implausible solution of all.

<sup>85</sup> James Tyrrell, *Bibliotheca politica* (London: 1727) 12, 643.

<sup>86</sup> William Atwood, *The fundamental constitution* 1690, 100. See Franklin, 105. Four pamphlets of the Glorious Revolution are similar to the *Two treatises* on this point of dissolution. As a result of James II's breach of trust government dissolved, political power devolved to the people who had the right to reconstitute government. [John Wildman] *Some remarks upon government in State Tracts* 1, 149–62; [Wildman] *A letter to a friend in Somers tracts* x, 195–6; [John Humfrey] *Good advice before it be too late in Somers Tracts* x, 198–202; [Edward Stephens] *Important questions of state in State Tracts* 1, 167–75. Nonetheless, Humfrey seems typical in construing the people as a natural community and stating that the people have the right to place political power in new hands, not to exercise it themselves as Locke explicitly states in 2.243, lines 17–19. For these writers and the movement of radical Whigs of which they were a part see Goldie, 'The roots of true whiggism'. For a discussion of the pamphlets of the revolutionary period 1681–3 when the *Two treatises* was composed, especially John Ferguson *A just and modest vindication* 1681, see Ashcraft, *Revolutionary politics*, and Goldie, 'The structure of revolution'.



Hobbes had argued that civil war is caused by each individual claiming the right to judge the law in accordance with their subjective standard of conscience or 'private judgement'.<sup>87</sup> In the *Two tracts* Locke argued that in a system of popular sovereignty members would withdraw their consent and revolt whenever a law conflicted with their private interest, claiming that it contravened the public good.<sup>88</sup> Grotius launched a blistering attack on the theory of mutual subjection of king and people, where the people (parliament) obey if the king does not abuse his trust and the king becomes dependent on the people if he does abuse it. It would lead to confusion and disputes because king and people would judge and act differently; 'which disorders,' he concludes, 'no Nation (as I know of) ever yet thought to introduce'. Although this is directed at Buchanan's mutual pact theory, it is the kind of criticism that could be levelled at any theory which gives a right of judgement to the people or their representatives.<sup>89</sup>

Filmer too had made the 'anarchy' of individual judgements the centrepiece of his attack on the natural freedom tradition, citing the authority of Aristotle that 'the multitude are ill judges in their own cases'. As he roundly concludes in his criticism of Philip Hunton's defence of mixed monarchy, *A treatise of monarchy*: 'every man is brought, by this doctrine of our authors, 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.'<sup>90</sup> This argument was repeated throughout the Restoration by defenders of absolutism and mixed monarchy and it has remained the mainstay of conservative criticism of popular sovereignty. Locke cannot deny that people are biased in their judgements or claim that they will impartially judge in accordance with the common good. He uses the assumption of partiality to explain the breakdown of the accusatory system and of the tendency of absolutism to tyranny (2.13, 2.124-6). Therefore he must answer his conservative critics on their own ground, by showing that partiality does not entail confusion and anarchy. A sign that Locke may have seen his answer as the most controversial and unconventional aspect of the *Two treatises* is that he presents it in two separate places in the text (2.203-10, 2.224-30).

<sup>87</sup> Thomas Hobbes, *Leviathan* (Oxford: Basil Blackwell, 1957) 2.29 (p. 211).

<sup>88</sup> John Locke, *Two tracts on government*, 120-1, 137, 226.

<sup>89</sup> Grotius, *On the laws* 1.3.9. <sup>90</sup> Filmer, *Patriarcha*, 296-7.

Here is the question (which is clearly in response to Filmer) (2.203):<sup>91</sup>

May the *Commands* then of a Prince be opposed? May he be resisted as often as anyone shall find himself aggrieved, and but imagine he has not Right done him? this will unhinge and overturn all Politics, and instead of Government and Order leave nothing but Anarchy and Confusion.

He presents six reasons why this will not lead to 'anarchy'. First, as we have seen, people revolt when oppressed irrespective of the type of government. A government that establishes the exercise of popular sovereignty by means of appeals to courts and parliament when people find themselves aggrieved is more likely to avoid revolution than one where juridical contestation of government is forbidden (2.224). Second, just because people are partial, they will be motivated to revolt only if the oppression touches them directly (2.208). Third, again due to partiality, they will not in fact revolt on slight occasions but only when oppression spreads to the majority or, when it affects a minority but appears to threaten all. This is so because they will calculate that it is not in their interest to revolt unless they expect to win, and this requires a majority (2.209, 2.230). (This is the sobering lesson Locke learned when the Whigs refused to support the revolution in support of the minority Dissenters in 1681-3). Fourth, people will revolt only when they are sincerely persuaded in their conscience that their cause is just because they fear divine punishment for unjust rebellion (2.21, 2.209). Fifth, people are in general habituated to the *status quo* and custom causes them to be content with its minor abuses.<sup>92</sup> Sixth, even when there is a revolution people usually return to the old forms of government to which they are accustomed, as English history shows (2.223, 2.225, 2.230, 2.210). In sum, Locke plays the conservative trump card of partiality and habit against his conservative opponents, showing that these causal factors make popular sovereignty more stable than absolutism. The radical right of revolt is restrained in practice by the conservative motive of self-interest and the force of habit.

In section 230 Locke asks himself the central question of seventeenth century politics: whether rulers' oppression or people's disobedience gives rise to civil war? He says that he will leave it to 'impartial

<sup>91</sup> This question is also posed by Buchanan, *De jure regni*, 145-6; and Sidney, *Discourses*, 1.24 (pp. 185, 215). <sup>92</sup> 2.225, 2.137, 2.158, 2.229-30.



History to determine'. One thing he means by this, I think, is whichever answer one accepts his theory is the only viable solution. However, since the question is preceded by a rehearsal of conservative motivation of the people, there is little doubt that Locke's answer is what the whole text is designed to prove: that the people react to oppression initiated primarily by princes, but also by legislatures. If so, then 'this Doctrine of a Power in the People of providing for their safety a-new by a new Legislative, when their legislators have acted contrary to their trust, by invading their Property, is the best fence against Rebellion, and the probablest means to hinder it' (2.226). The reason is that rebellion means opposition to law and thus rulers are the most likely to rebel because they have the temptation and the means, as well as the encouragement of interested elites, close at hand. Showing them that the people both will revolt and have justice on their side brings the rulers' interest and duty in line with the public good: 'the properest way to prevent the evil [rebellion], is to shew them the danger and injustice of it, who are under the greatest temptation to run into it' (2.226).

However, Locke does not believe that the mere threat of revolution and the public recognition of its rightness are sufficient to guarantee good government. He grows impatient in these late sections with persuading his conservative audience that popular sovereignty is the most orderly form of government. It is, for him, enough to show that it does not lead to anarchy and confusion. Revolution is not the worst thing in politics; oppression is.<sup>93</sup> The only guarantee against oppression is not a doctrine but the practice of revolution itself. He argues that no form of government guarantees freedom and rights because every form can be abused (2.209). Only the activity of self-governing rebellion grounds freedom (2.226-9). Those who say popular sovereignty lays a foundation for civil war are, after all, right, but wrong to conclude that it is not to be allowed because it disrupts the peace of the world. It disrupts only the unjust peace of state oppression, violence, illegality and robbery (2.228):

But if they, who say it *lays a foundation for Rebellion*, mean that it may occasion Civil Wars, or Intestine Broils, to tell the People they are absolved from Obedience, when illegal attempts are made upon their Liberties or Properties, and may oppose the unlawful violence of those, who were their Magistrates, when they invade their Properties contrary to the trust put in

<sup>93</sup> 2.92, 2.111, 2.152, 2.158, 2.163, 2.210, 2.224-30.

them; and that therefore this Doctrine is not to be allowed, being so destructive to the Peace of the World. They may as well say upon the same ground, that Honest Men may not oppose Robbers or Pirates, because this may occasion disorder or bloodshed.

The justice of resistance to oppression: this is the theme of the *Two treatises*. As strange as it sounds, this is also the solution to civil wars. If Locke is correct about the causal constraints on popular revolts, then they occur only when the people are in fact oppressed. Hence the cause of civil wars must be the abuse of power by governors, who, being partial, cultivate oppression when it is possible and in their interest to do so. If, however, they know that the people have a right to revolt and will in fact revolt when oppressed, then either their interest in avoiding civil war will outweigh their interest in oppression or it will not (2.226). If it does, then oppression has been 'fenced', government normatively and causally 'limited' and civil war avoided. If, on the other hand, the right and threat do not deter abuse of power then there is nothing that can be done short of revolt, which is both just and necessary.

#### TOLERATION

The second problem faced by Locke and his contemporaries is the nature of religion and the relation between religion and politics, ecclesiastical and political power, in post-Reformation Europe. The wars that swept Europe were not only struggles for power; they were also religious conflicts. Religion had become, Locke argued in 1660,<sup>94</sup>

a perpetual foundation of war and contention [:] all those flames that have made such havoc and desolation in Europe, and have not been quenched but with the blood of so many millions, have been at first kindled with coals from the altar.

Twenty-five years later, still grappling with this problem, he said, 'I esteem it above all things necessary to distinguish exactly the Business of Civil Government from that of Religion, and to settle the just bounds that lie between the one and the other' (LT 26).<sup>95</sup> Without this there would be no end to the controversies.

Like the *Two treatises*, Locke's solution, *A letter concerning toleration*,

<sup>94</sup> Locke, *Two tracts*, 160-1.

<sup>95</sup> John Locke, *A letter concerning toleration*, ed. James Tully (Indianapolis: Hackett Publishing Co., 1983). *LT* hereafter.



has both an English and European context. It was written in 1685 in support of the Dissenters' struggle for religious and civil liberty in England, and translated and published by William Popple for that purpose in 1689. Locke wrote it in exile in Holland to his friend Phillip von Limborch with whom he discussed the whole Reformation experience. Also, it was written immediately after not only the failed Monmouth Rebellion for toleration in England, but also after the Revocation of the Edict of Nantes and the persecution of Huguenots. Published at Gouda in Latin, 1689, it became a classic in the European struggle for toleration. The way in which the question is posed sets it within a recognizably European problematic, the terms of which were set by the generation of Grotius and Lipsius, and it is addressed to the European-wide crisis of 150 years of wars of religion.

As early as the *Two tracts* Locke began to explore the religious causes of war. He argued that Christian leaders had inculcated two erroneous beliefs in both princes and the laity: that there is only one true way to heaven; and that it is a Christian duty to uphold and to spread the true way by force and compulsion and to suppress heresy. Both rulers and the people consequently believe themselves to have an overriding duty and an interest (fear of hell and hope of heaven) to use the force of arms to solve religious disputes. Given the multiplicity of Christian faiths, each of which considers itself orthodox and the others heterodox, this alignment of duty and motivation leads to persecution by government and religious revolts by the people.

The clergy of *all* sects, in turn, have propagated these two false beliefs in order to use either the rulers (prince or parliament) or the populace to gain access to political power, thus achieving what they want: power, dominion, property and the persecution of opponents.<sup>96</sup> When they succeed they use the state to persecute their competitors and potential challengers by means of jail, burning and hanging, and to confiscate and/or distribute property of various kinds and in various ways: appropriation of lands, fines, religious taxes, rights to vote and to hold public office, allocation of civil and ecclesiastical offices at the parish and natural level, transportation, and so on.<sup>97</sup> In

<sup>96</sup> Locke, *Two tracts*, 158, 160–2, 169–70, 211.

<sup>97</sup> Cf. *LT* 23–6. For persecution during the Restoration, see Edward Calamy, *The non-conformists memorial, being an account of the ministers who were ejected or silenced after the Restoration* (London: 1802), 2 vols.; G. R. Cragg, *Puritanism in the period of the great persecution* (Cambridge: Cambridge University Press, 1957); Michael Watts, *The Dissenters from the Reformation to the French Revolution* (Oxford: Clarendon Press, 1978).

using political power in this way religious elites thus provide those who serve the elites' purposes by taking up arms with an additional and temporal interest in performing their (erroneous) religious duty. Political power is thus used not to preserve property but to transfer it.

Hence, civil wars are waged in the name of religious 'reform' and religion serves as a 'vizard' or ideology which masks the struggle of competing elites for access to, and use of political power.<sup>98</sup> By showing the relation of ideological legitimation between religion and contests for political power Locke brings his analysis of the religious problem in line with his claim in the *Two treatises* that the central struggle in early modern Europe is over political power.

The two true Christian beliefs are the antithesis of the widely propagated false beliefs: that god tolerates each man to worship him in the way he sincerely believes to be right (over and above a few plain and simple essentials: the existence of Christ, heaven and hell and the core Christian ethics); and that Christianity should be upheld and spread by love and persuasion only, not by force and compulsion.<sup>99</sup> Locke held that these are the two true Christian beliefs as early as 1659, in opposition to the prevailing endless contention over 'indifferent' things: forms of worship not expressly stated in the Bible yet taken by one church or another to be enforceable and necessary to salvation.<sup>100</sup> These two theses about the nature of Christianity had been articulated by Hugo Grotius early in the century and they were frequently discussed by English protestants.<sup>101</sup> Locke's epistemological justification of the first is that nothing more than the essentials can be known with certainty, and of the second that the kind of belief necessary for salvation cannot be compelled, but must be voluntary.<sup>102</sup>

On the basis of this analysis Locke advanced two radically different solutions. One, like Grotius' solution, is for absolutism and the imposition of religious uniformity, in the *Two tracts*, and the other for popular sovereignty and religious toleration, in *A letter concerning toleration*. A brief account of the former and of its failure will show how

<sup>98</sup> Locke, *Two tracts*, 160, 169–70. <sup>99</sup> Locke, *Two tracts*, 161.

<sup>100</sup> Locke to S. H. (Henry Stubbe) mid-September 1659, *The correspondence*, 1, 75 (109–12).

<sup>101</sup> Hugo Grotius, *De veritate religionis Christianae*.

<sup>102</sup> Locke worked on these epistemological arguments in *An essay concerning toleration* (1667), *Draft A of An essay concerning human understanding* (1671), ed. Peter Niddich (Sheffield: University of Sheffield, 1980); *A third letter for toleration* . . . (1692). See Carlo A. Viano, *John Locke, dal razionalismo all'illuminismo* (Turin: Taylor, 1961).



he moved to the latter and provide a better understanding of its main features, as well as throwing light on the *Two treatises*. Both solutions turn on removing the cause and justification of the wars of religion – that it is the duty of the state and people to uphold the true religion – and on replacing this with preservation, or the ‘public good’, as the duty of government.

The *Two tracts* is Locke’s proposal for the political and religious form of the Restoration settlement of 1660–2. He argues – against a proposal for toleration based on individual conscience advanced by Edward Bagshawe – that as long as the two false beliefs continue to be widely held, a policy of religious toleration would be used by religious groups to build up strength and, eventually, to precipitate another civil war in the attempt to gain political power.<sup>103</sup> The call for toleration thus masks the underlying will to power of a clerical elite bent on domination, as he repeats even in *A letter concerning toleration* (32–3, 43). His solution is for everyone to alienate irrevocably their natural power, including over indifferent things, to an absolute monarch, Charles II. Without this total alienation no sovereignty would be formed. As we have seen, Locke repudiates this type of alienation theory of sovereignty in the *Two treatises*. Indeed, the *Two treatises* often reads as a direct refutation of the *Two tracts*.

Given total alienation, the monarch would then impose whatever forms of worship he judged necessary for peace, order and the public good, using solely customary and prudential considerations as his guide. The magistrate does not have the duty to impose the true religion, convert his subjects or suppress heresy. Religious activity is assessed and governed in accordance with the political criterion of the ‘public good’.<sup>104</sup> Locke then suggests that if the Dissenters (Baptists, Presbyterians, Quakers and Independents) were peaceful, the monarch could tolerate them in the form of a Declaration of Indulgence (as Charles II in fact wished).<sup>105</sup> ‘Indulgence’ would permit Dissenters to practice their religion on the pragmatic condition that it did not disrupt public order, not on the ground of right as in the case of toleration. Dissenters could not be tolerated on the grounds of individual conscience, as Bagshawe proposed, because this would

<sup>103</sup> Edward Bagshawe, *The great question concerning things indifferent in religious worship* (London: 1660); *The second part of the great question . . .* (London: 1661). See Abrams, ‘Introduction’, John Locke, *Two tracts*.

<sup>104</sup> Locke, *Two tracts*, 119, 124–6, 149–50, 160–70, 220–32.

<sup>105</sup> Locke, *Two tracts*, 170. See Charles II, *Letter and declaration from Breda*, 1660.

limit the monarch’s sovereignty and reintroduce a religious criterion into politics.<sup>106</sup>

The greatest threat to peace according to Locke comes not from the Dissenters but from the Church of England. The monarch must be absolute in order to be free of the national church or they will use the state to impose religious uniformity and gain power: [they] know not how to set bounds to their restless spirit if persecution not hang over their heads.<sup>107</sup> Throughout his writings, Locke consistently attacks the Anglican Church as the greatest threat to peace and calls for its disestablishment.<sup>108</sup> Finally, as a consequence of alienation, a subject is always obligated to obey any law and not to question it, even if it prescribes forms of worship the subject believes to be unacceptable to god. This will not compromise a person’s faith because faith is a matter of inner belief – judgement or conscience – whereas obedience to the law need only be a matter of will or outer behaviour. With this crucial Protestant distinction between inner conscience and faith and outer will and obedience, Locke could argue, like all English uniformists, that conformity and obedience are compatible with liberty of conscience.<sup>109</sup>

Locke never published this proposal and it would have failed if he had, because Charles II was not as absolute as Locke envisaged. He was dependent on Parliament and it was dominated by an Anglican church–gentry alliance whose aim was the imposition of religious uniformity, the extirpation of Dissent and the control of public life. Their justification for this policy was the need for a common and public religious life and the identification of religious Dissent with divisiveness, sedition and civil war, as Locke notes in the *Two treatises* and *A letter concerning toleration*. Even the moderate Anglicans or ‘latitudinarians’, with whom Locke is sometimes erroneously grouped, opposed toleration and worked for comprehension within the established church. Charles II fought for indulgence of Dissent and English Catholics, but the Anglican–gentry alliance was powerful enough to enact the Clarendon Code, a set of repressive laws designed to stamp out Dissent. These laws were enforced and augmented during the Restoration, sending thousands of Dissenters

<sup>106</sup> Locke, *Two tracts*, 121, 137, 154. <sup>107</sup> Locke, *Two tracts*, 169.

<sup>108</sup> See Mark Goldie, ‘John Locke and Anglican royalism’, *Political studies*, 31 (1983), 581–610; Ashcraft, *Revolutionary politics*, 39–128.

<sup>109</sup> Locke, *Two tracts*, 220–40.



into poverty, death, jail, or transportation. Charles II used his prerogative to attempt to suspend some of these laws and to grant Indulgence to non-Anglicans, against the wishes of Parliament.

Rather than causing Dissenters to conform to Anglicanism, the Clarendon Code had the opposite effect. The Dissenters refused to comply, continued to practice their religion, disobeyed the law and suffered imprisonment and martyrdom throughout the 1660s and 1670s. The Code created a permanent underclass – oppressed and denied the freedom to practice their religion, to assemble in private or public, and to hold any public or military office – who struggled for toleration until the Act of Toleration in 1689. The Act was only a partial remedy and they were treated as second-class citizens until well into the nineteenth century. By that time the Anglican–Dissent division had become the major political cleavage in English society. From 1667 onward Locke wrote in support of this minority's struggle for toleration in the twofold sense of religious and civil liberty.

Locke first changed his views and began to defend toleration in *An essay concerning toleration* (1667). He prepared this manuscript for Anthony Ashley Cooper (soon to be the first Earl of Shaftesbury), the leader of the struggle for toleration and Locke's employer and closest friend until his death in 1683. The battle for toleration comprises three phases: by royal prerogative 1667–73; by parliamentary legislation 1674–81, and by revolution 1681–3, 1685, and 1688–9. The 1667 manuscript was used to persuade Charles II to support the concerted but unsuccessful effort of the dissenting congregations to gain an Indulgence by royal prerogative and to block new legislation to repress Dissent, especially the use of bounty hunting informers and transportation to the colonies in permanent servitude as punishment. First, Locke revised his views on belief and action in the light of the Dissenters' refusal to conform from 1662 to 1667. Also, he had travelled to the Duchy of Cleves in 1666 and saw that toleration could work in practice if it were based on the two true Christian beliefs.<sup>110</sup> Now, Locke argues if a person sincerely believes that an article of faith is true and a form of worship is acceptable to god, and thus necessary to salvation, he evidentially will profess and act accordingly. Hence, the judgement and will are not separate.<sup>111</sup> Rather, as he later put it in the *Essay concerning human understanding*, the 'judgement determines

the will', and so religious liberty must include liberty of practice as well as belief.<sup>112</sup>

Second, god judges people on the sincerity, not the truth of their beliefs, and thus if a person sincerely believes that something is necessary and not indifferent, it is necessary for salvation. This ushers in Locke's radically subjective definition of religion, which is fully articulated later in *A letter concerning toleration*: 'that homage I pay to that God I adore in a way I judge acceptable to him'. Consequently, to profess or act contrary to one's religious beliefs, even if the magistrate so orders, is now the paramount sin of hypocrisy and it would lead to eternal damnation. This doctrine reverses the *Two truths*. Duty and interest (salvation) are now aligned with disobedience to the imposition of religious uniformity, thereby justifying the Dissenters' widespread resistance to conformity. It also expresses for the first time the Lockean belief about the modern, post-Reformation individual: that the civic person is constituted by moral sovereignty over one's core beliefs and practice that cannot be alienated. He also introduces the argument that the kind of sincere belief necessary for salvation cannot be acquired by force and compulsion but only by argument and persuasion. The use of coercion in religion thus creates either enemies (as with the non-conforming Dissenters) or hypocrites (as with those who outwardly complied). In *A letter concerning toleration*, and in the three following *Letters* in its defence against the attack by Jonas Proast, the claim that sincere belief cannot be induced by coercion is singled out as the main justification of toleration and of the separation of churches, as purely voluntary societies, from state power.

The magistrate's role continues to be to uphold the public good. However, he now does not have sovereignty over his subjects' indifferent beliefs and he knows that the imposition of uniformity will in fact be resisted. Thus, a policy of uniformity will in fact be resisted. Thus, a policy of uniformity causes civil unrest – it is not a response to unrest, as the Anglicans argued – and toleration is the pragmatic means to civil peace. Given this analysis, he reiterates that *any* attempt to impose uniformity under the guise of unity or conversion is a stratagem to gain power and domination. Enforced uniformity, he continues, unites all the competing sects into one hostile opposition, whereas toleration would remove the cause of hostility, create trust

<sup>110</sup> Locke to Robert Boyle, 12/22 December 1665, in *The correspondence*, 1.175 (227–9).

<sup>111</sup> Locke, *An essay concerning toleration*, 1667, in Viano, *John Locke, scritti*.

<sup>112</sup> Locke, *An essay concerning human understanding*, 2.21.48.



and tend to cause the proliferation of sects, thereby dividing and weakening further any potential threat to peace and security. The uniformists argued the other way round: Dissenters instigate civil unrest, hoping to reverse the Restoration and regain power, and the uniformists' legislation is designed to curb their ambitions and restore peace.<sup>113</sup>

The practical problem with this solution is: what interest do rulers have in toleration even if they accept that it brings about the public good? Locke stipulates that although Dissenters have a religious duty to disobey bad laws they also have a civil duty to suffer the punishment, since they must show that they are bound by the public good. This theory of passive resistance permits him to separate the defence of Dissent from defence of sedition, thereby undermining his opponents' identification of the two. As a result, rulers need not fear rebellion and, on the other side, as Locke is well aware, they have a lot to gain in temporal rewards from imposition. To outweigh this kind of utility calculation Locke introduces a providential argument at the end of the manuscript. God punishes with eternal damnation any ruler who abuses his power by supporting the dissimulation and domination involved in the imposition of religious uniformity. Fear of divine punishment also restrains individual subjects from sedition. Thus, belief in this providential apparatus is as necessary to good government as it is to good individual conduct: it outweighs the temporal rewards of imposing uniformity. Although he later abandons the belief that providentialism is sufficient to restrain rulers, the doctrine is an essential feature of his ethics and it is the explanation of why he believes atheists should not be tolerated (*LT* 51).

In 1672 Charles II introduced a Declaration of Indulgence which suspended the penal laws against Dissent. The Anglican-gentry alliance in Parliament attacked it on the grounds that it undermined mixed monarchy, the rule of law, and the constitution. Shaftesbury defended it as a legitimate exercise of royal prerogative. This long struggle for toleration through absolutism, and against Parliament and its constitutionalist justification of uniformity is expressed in Locke's treatment of prerogative in the *Two treatises*. He says that the monarch may act in his discretion not only 'beyond the law' but

'against the law' if this is in accordance with the public good.<sup>114</sup> It also leaves an opening for Lord Monmouth to introduce toleration by prerogative if the revolutions of 1681-3 or 1685 had been successful.

When Charles II withdrew his Indulgence one year later, abandoned his thirteen-year alliance with Dissent, and began to go along with the uniformists in Parliament, the Anglican-gentry alliance became monarchist and Shaftesbury and Locke turned against Charles II and absolutism. They began to build the 'radical' whig movement that would struggle for toleration first through Parliament (1675-81), then, when this did not work, through the failed revolt of 1681-3, the unsuccessful Monmouth Rebellion of 1685, and the partially successful Glorious Revolution of 1689. The transition to the combination of popular sovereignty and toleration as a right that Locke presents in *A letter concerning toleration* is first sketched in *A letter from a person of quality to his friend in the country* (1675).<sup>115</sup> It is a defence of Shaftesbury's opposition to an oath of allegiance, to an oath of non-alteration of the present form of church and state, and to the introduction of a standing army. Locke saw this proposed legislation as the culmination of the Church of England's drive for power: to make the monarchy absolute and *jure divino*, yet subordinate to the national church: 'to set the mitre above the crown'.<sup>116</sup> The monarchy had thus reached the stage mentioned in the *Two treatises* where it is open to the flattery and manipulation of the clergy (2.112, 2.209-10).<sup>117</sup> Since until then parliament had been manipulated in the same way, and since they failed to rally behind Shaftesbury when Charles II dissolved the three toleration (or Exclusion) parliaments in 1679-81, it is not surprising that Locke never entertained the solution of parliamentary sovereignty but moved directly to popular sovereignty.

Locke states in the 1675 *Letter* that what distinguishes limited from arbitrary monarchs is that they have not only the fear of divine punishment hanging over their heads but also 'the fear of human resistance to restrain them'.<sup>118</sup> Thus, a government has a sufficient motive to rule in accordance with the public good only if it fears

<sup>114</sup> 2.160, 2.164. See Weston and Greenberg, *Subjects and sovereigns*, 171-5 for Shaftesbury's defence of prerogative.

<sup>115</sup> In *Works*, x. It is not known for certain that Locke is the author.

<sup>116</sup> Locke, *Works*, x, 232.

<sup>117</sup> Cf. Andrew Marvell, *An account of the growth of popery and arbitrary government in England* (London: 1677). <sup>118</sup> Locke, *Works*, x, 222.

<sup>113</sup> For uniformists' views, see Samuel Parker, *A discourse of ecclesiastical polity* (London: 1670); Edward Stillingfleet, *The mischief of separation* (London: 1680); *The unreasonableness of separation* (London: 1681). Locke and Tyrrell replied to Stillingfleet: Bodleian, MS. Locke c. 34.



armed revolt. On the other hand, the people revolt only when the government genuinely abuses the public good because they fear that the revolt will be crushed unless they have the majority on their side. If this is true, then an oath of allegiance to the present form of government, rather than the public good, undermines good government because it gives the subject who should revolt a motive not to revolt: fear of divine punishment for breaking his oath. Locke argues that a standing army is also an instrument of oppression for an analogous reason. If government governs in accordance with the public good only in virtue of fear of popular revolt, then the threat of popular revolt must be credible. But, a standing army puts this balance of power and interests in disequilibrium, because the standing army can crush rebellion and so it undermines the restraint on oppression.

Locke concludes that when people are oppressed, as with the Dissenters, they will resist, not only passively (as in *An essay concerning toleration*), but actively, by the force of arms, and they do so 'justly and rightly'.<sup>119</sup> Understandably, Locke left for France when this pamphlet was published and did not return until 1679. The pamphlet enunciates Shaftesbury's strategy: to work for toleration through parliament with the background threat of revolt if this was blocked. It was only after Charles II dissolved three toleration parliaments and parliamentarians 'trimmed' in 1681 that Shaftesbury and Locke turned to revolution and Locke wrote the corresponding sections of the *Two treatises*. Accordingly, Locke moved from the 1675 thesis that a credible threat of revolt is sufficient to protect liberty to his mature thesis that, as we have seen, only the actual practice of revolution is sufficient to free a people from oppression. We can also see why the right to revolt had to be lodged in the hands of individuals if the Dissenters were to liberate themselves. Most of them, after all, had experience of revolution and government from the 1640s and 1650s. The Rye House Plot was not carried through, the Monmouth rebellion of 1685 failed, and the repression was so vicious that Dissent did not surface as a political force for almost a century, except for a tiny group around Locke in 1689 lobbying, again unsuccessfully, for the radical, religious, and civil liberty of *A letter concerning toleration*. Algernon Sidney and Lord Russell were executed in 1683 and over

100 dissenters were publicly hanged following the Monmouth Rebellion.

Locke fled from England to the United Provinces in 1683 and did not return until the successful invasion of England by William in 1688. *A letter concerning toleration* was written while he was living in political exile in Holland during the winter of 1685. The text opens with the claim that toleration is the fundamental Christian virtue and duty, and he goes on later to describe it as a right. He presents three reasons why government is not concerned with the care of souls: individuals *cannot* alienate sovereignty over their speculative and practical religious beliefs necessary for salvation; outward force, political power, cannot induce the kind of sincere belief required for salvation, only persuasion can; and even if coercion could induce belief, there is no certainty that the religion of any particular government is the true religion (*LT* 26–8). One major cause of the religious wars is holding religious beliefs with more certainty than is warranted. The criteria of reasonable belief worked out in *An essay concerning human understanding* are designed to solve this problem.<sup>120</sup> The 'principal Consideration' he favours is the combination of the first two reasons: coercion cannot induce sincere belief and god judges on the basis of one's sincerity. These are used to justify toleration, the thesis that a church is a purely voluntary organization, and the separation of church and state. That is, they free 'men from all dominion over one another in matters of religion' by separating coercion and religious belief, introducing his two true beliefs, and thereby removing the cause of religious wars (*LT* 38).

Nonetheless, religion, like everything else in civil society, must be assessed and governed in accordance with the public good (*LT* 39). Therefore, toleration is not an absolute or sovereign right. For example, it would be the duty of government to proscribe the religious practice of sacrificing animals if the population needed the food (*LT* 42). Atheism is disallowed because fear of god is a necessary motive to cause people to keep their promises and contracts, and these are necessary in turn for social order. Religions which teach that promises are not to be kept with heretics are not to be tolerated. This would exclude some millenarian protestants and those English Catholics who retained a political allegiance to the pope. Further, any church that does not teach the duty of toleration would not be

<sup>119</sup> Locke, *Works*, 6, 343.

<sup>120</sup> Locke, *An essay concerning human understanding*, 1.1.2–3, 4.15.4, discussed in chapter 6 below.



tolerated (*LT* 49.5). This would appear to eliminate the Church of England.<sup>121</sup>

What prevents a magistrate from arguing that a policy of outward religious uniformity is necessary, not to save souls or because it is true, but because public order requires a shared public life; that the atomism of religious diversity is deeply divisive and 'inclined to Factions, Tumults, and Civil Wars'?<sup>122</sup> Locke had argued this way in 1660 and many pragmatic defenders of uniformity or comprehension did the same. Locke's first answer is to argue that, as a matter of fact, religious diversity does not cause political divisiveness nor civil unrest. Conventicles are not 'nurseries of factions and seditious' as the opponents of Dissent claim and therefore cannot be repressed on prudential grounds. European history shows that quite the opposite is true (*LT* 55):

It is not the diversity of Opinions (which cannot be avoided) but the refusal of Toleration to those that are of different Opinion, (which might have been granted) that has produced all the Bustles and Wars, that have been in the Christian World, upon account of Religion.

If we ask why the imposition of uniformity has continued in the face of its failure to bring peace, Locke gives the predictable answer that the alleged purpose of the public good is entirely spurious. Rather, the real reason is the greed and desire for domination of the clergy and their ability to manipulate rulers and people (*LT* 55.6f: 24-5, 33, 35, 43, 50):

The Heads and Leaders of the Church, moved by Avarice and insatiable desire of Dominion, making use of the immoderate Ambition of Magistrates, and the credulous Superstition of the giddy Multitude, have incensed and animated them against those that dissent from themselves.

This analysis is repeated throughout *A letter concerning toleration* and his account of the abuse of political power in the *Two treatises* traces it to the same religious roots (2.209-10, 2.112, 2.239). Remember also that Filmer's theory is singled out because it is used by the Church of England to legitimate uniformity. The *Two treatises* and *A letter concerning toleration* are two complementary analyses of civil war, or, as

<sup>121</sup> See the replies by Jonas Proast, *The argument of the letter concerning toleration briefly considered and answered* (London: 1690); Thomas Long, *The letter for toleration decipher'd* (London: 1689); Harry Bracken, 'Toleration theories: Bayle, Jurieu, Locke', *Mind and language* (Dordrecht: Foris Publications, 1983), 86-96.

<sup>122</sup> *LT* 54. Sollingfleet makes this form of argument in *The mischief of separation*.

Locke would have it, of religious domination of civil society through the state and justified popular resistance to it.

Locke is concerned not only with domination by the Church of England but also by the Catholic Church. The secret Treaty of Dover of 1671 between Charles II and Louis XIII caused the fear that the monarch might introduce Catholicism. Second, Shaftesbury's aim in the three dissolved parliaments of 1679-81 and the two rebellions was to try to exclude James II, a known Catholic, from coming to the throne and introducing Catholicism, as well as to replace him with Lord Monmouth, who would introduce toleration. Third, Locke feared that the Anglican clergy would convert to Catholicism if it served their interest in staying in power (*LT* 37-8). Fourth, he feared a Catholic invasion after the Glorious Revolution. The practical problem with Filmer's theory of non-resistance was that it left the people powerless against any of these possibilities.

Locke goes on to elucidate what specifically the clergy seek to gain by their 'Temporal Dominion' thereby illuminating another important feature of the *Two treatises* (*LT* 35). He says that 'they deprive them [Dissenters] of their estates, maim them with corporal Punishments, starve and torment them in noisom Prisons, and in the end even take away their lives' (*LT* 24). Yet, on Locke's account, nothing should be transacted in religion, 'relating to the possession of Civil and Worldly Goods', or civil rights (*LT* 30, cf: 31-3, 39, 43). Further, those who favour intolerance really mean that they 'are ready upon any occasion to seize the government, and possess the Estates and Fortunes of their Fellow-Subjects' (*LT* 50). Dissenters, by the imposition of uniformity, are 'stript of the Goods, which they have got by their honest Industry' (*LT* 55). Yet, the preservation of property in the sense of lives, liberties and estates earned by industry is the reason why people enter civil government in both *A letter concerning toleration* and the *Two treatises* (*LT* 47-8; *Two treatises* 2.123). The violation of this trust is also the form of oppression Locke is specifically concerned to condemn.<sup>123</sup> *A letter concerning toleration* thereby illuminates the property that the *Two treatises* is written to defend. It is not the private property of the bourgeoisie, but the properties – the possessions and legal, political, and religious rights – of an oppressed minority who, in the course of time, became the backbone of English

<sup>123</sup> *LT* 48-9, *Two treatises* 2.209, 2.222.



working class radicalism and took up Locke as their philosopher.<sup>124</sup> Revolution, property, and toleration are all of a piece for Locke.

If the strategy of religious uniformity is as Locke suggests, then we should not expect religious elites to pay any heed to his argument that it is the cause of civil unrest. Rather, we should expect them to defend their use of political power: the hinge on which their domination turns. This was indeed the response. Jonas Proast, the Chaplain of All Souls, Oxford, defended the use of force to bring Dissenters to consider the true religion in his three assaults on *A letter concerning toleration* and on Locke's two following letters. Proast argued that although coercion should not be used directly to induce religious belief, it can be used indirectly to bring people to examine religion, as, for example, public education is enforced. Further, it would be a dereliction of duty for the government to provide no public support for religion. Another Anglican attacked the *Letter* as the work of a Jesuit disguised as an atheist whose aim was to bring about chaos and ruin so Catholicism could regain hegemony.<sup>125</sup> In addition, the *Essay concerning human understanding* (used as a text in Dissenter academies), as well as the *Reasonableness of christianity*, were seen to threaten the established Church, and they were attacked by leading Anglicans and defended by several Dissenters.<sup>126</sup> The Toleration Act of 27 May, 1689 shows how far outside of reasonable opinion was Locke's call for toleration of anyone who believed in any god and for the end of coercion in religion. The Act denied freedom of worship to unorthodox Dissenters (those who denied the Trinity) and Roman Catholics, and granted it, as a revocable exemption from earlier legislation, to Protestant Trinitarian Dissenters who took the oath of allegiance and obtained a licence to meet, but it denied them access to public office.

Locke was well aware that just showing that the public good is disrupted by policies of uniformity and best served by toleration would have no positive effect on the ruling elite. As in the *Two treatises* he reports that the rulers will simply claim that those who protest and dissent from the policy will be said to be the cause of unrest, and their protestations used to justify further repression (*LT* 52–5; *Two treatises* 2.218). His practical solution to the problem is to argue in the same way as in the *Two treatises* that individuals must exercise their popular

<sup>124</sup> Max Beer, *A history of British socialism* (London: The National Labour Press, 1921), 101.

<sup>125</sup> Thomas Long, *The letter for toleration decipher'd*, 1689.

<sup>126</sup> John Yolton, *John Locke and the way of ideas* (Oxford: Clarendon Press, 1956), 26–29.

sovereignty and judge for themselves whether any law concerning religious practice is in the public good. If the magistrate enjoins anything 'that appears unlawful to the Conscience of the private individual' and it is also judged to be 'directed to the publick Good', then 'a private person is to abstain from the Action that he judges unlawful [according to his conscience]; and he is to undergo the Punishment' (*LT* 48). A person has the right to disobey a just law if it conflicts with his conscience, provided he recognizes his political obligation to the public good by suffering the punishment.

The case Locke is of course primarily concerned with is when the law appears not only unlawful to the conscience but also contrary to the public good. If, for example, 'the People, or any Party amongst them, should be compell'd to embrace a strange Religion, and join in the Worship and Ceremonies of another Church', they would be under no obligation to suffer punishment for disobedience (*LT* 48). What if the magistrate continues to believe it is for the public good and the subjects believe the contrary? Locke answers with the same revolutionary doctrine as in the *Two treatises* (*LT* 49):

Who shall be the Judge between them? I answer, God alone. For there is no judge upon earth between the Supreme Magistrate and the People.

And he leaves no doubt as to what this means: 'There are two sorts of Contests amongst men: the one managed by Law, the other by Force: and these are of that nature, that where the one ends, the other always begins.'

Therefore, as in the *Two treatises*, people are justified in turning to revolution when they are stripped of their properties and their religion (*LT* 55):

What else can be expected, but that these men, growing weary of the Evils under which they labour, should in the end think it lawful for them to resist Force with Force, and to defend their natural Rights (which are not forfeitable on account of Religion) with Arms as well as they can.

Civil wars will continue as long as the 'Principle of Persecution for Religion' continues to prevail. The attempt to impose uniformity by coercion is not only the justification of revolt but also its cause. The reason is that oppression naturally causes people to struggle to cast it off (*LT* 52):

Believe me, the Stirs that are made, proceed not from any peculiar temper of this or that Church or Religious Society; but from the common Disposition



of all Mankind who when they groan under any heavy Burthen, endeavour naturally to shake off the Yoke that galls their Neck.

Revolution is necessary to establish and protect toleration. Churches would be required to preach toleration as the basis of their freedom, to teach that 'Liberty of Conscience is every man's natural Right', and that no body should be compelled by law or force in religion (LT 51). This would undermine the link between religious and political power that legitimates religious domination and, hence, 'This one thing would take away all ground of Complaints and Tumults upon account of Conscience.' Unlike a National Church, which causes turmoil, a plurality of equally treated congregations would be, according to Locke, the best guard and support of public peace. Knowing they can do no better than mutual toleration, the churches 'will watch one another, that nothing may be innovated or changed in the Form of the Government' (LT 53). Again, his point seems to be that the only solid foundation for civil and religious liberties is the readiness to govern those who violate them by means of popular political rebellion. Popular religious sovereignty, like popular political sovereignty, is the solution to the problem of government.

#### THE ART OF GOVERNMENT

The third problem is to develop a practical 'art of government', as Locke calls it, appropriate to the conditions of early modern state building.<sup>127</sup> This practice comprises internal administration, 'the art of conducting men right in society', and international relations, 'supporting a community amongst its neighbours'.<sup>128</sup> Locke's solution to this problem is as important and influential as his other two, and would have been accorded as much space by contemporary and Enlightenment commentators.

The aim of the early modern art of governing is, as we have seen, the preservation of society and its members. This comprises the negative role of maintaining law and order and the positive role of increasing the productive capacities, maintaining the welfare of subjects, and of co-ordinating these to bring about the 'riches and

<sup>127</sup> Locke, *Some thoughts*, 400.

<sup>128</sup> Locke, draft letter to the Countess of Peterborough, 1697, in *Educational writings*, ed. Axtell, 392-6, 396.

power' of the community.<sup>129</sup> In this mercantile strategy, Locke points out, the wealth and strength of the nation is assessed relative to other European states in a zero sum situation of commercial and military rivalry.<sup>130</sup> This balance of power and trade system of independent and sovereign states, each with the right to wage war to preserve itself, was officially recognized in the Treaty of Westphalia in 1648. The commercial and military struggle was among European states, but it was over the conquest, colonization and exploitation of the non-European world. This required the co-ordination of the four following jurisdictions: the administration of the colonial system and slave trade to the advantage of the mother country; the regulation of national and international trade; the reform of labouring activities and welfare and population measures; and the maintenance of a global military and diplomatic complex capable of protecting and extending the mercantile system. The art of governing this welfare-warfare system was called, from Montchretien's treatise of 1615 to Locke's contemporaries, Sir William Petty and Sir Dudley North, political economy or political arithmetic.<sup>131</sup>

Locke was at the centre of this activity as secretary to Shaftesbury, with his extensive colonial holdings, and as a member of two Boards of Trade: 1673-4 and 1696-1700. The Board was an inquisitorial body responsible for the invigilation of the following areas of the mercantile complex: national and international trade, manufacturing, the employment of the poor, commercial exploitation and administration of the colonies, and the navy. The Board reported to the king or the Privy Council, not parliament.<sup>132</sup> Locke's experience on the Board surely partially accounts for his broad construal of prerogative in the *Two treatises*. In the *Two treatises* Locke outlines the mercantile strategy (2.42):<sup>133</sup>

This shews, how much numbers of men are to be preferred to largeness of dominions, and that the increase of lands [*sic?* hands. cf. 1.iv.33] and the right

<sup>129</sup> Bodleian, MS. Locke c. 30, fos. 18-19, partly printed in Richard Cox, *Locke on war and peace* (Oxford: Clarendon Press, 1960), 175-6.

<sup>130</sup> Locke, *Some considerations of the consequences of lowering the interest and raising the value of money*, *Works*, v, 13.

<sup>131</sup> See Eli Heckscher, *Mercantilism*, tr. M. Shapiro (London: Allan and Unwin, 1955, 2nd edn).

<sup>132</sup> See Hubert Smith, *The Board of Trade* (London: Putnam, 1928); E. E. Rich, 'The first Earl of Shaftesbury's colonial policy', *Transactions of the Royal Historical Society*, 5th series, 7 (1957), 47-60; Peter Laslett, 'John Locke, the great recoinage, and the origins of the Board of Trade', in *John Locke: problems and perspectives*, ed. John Yolton (Cambridge: Cambridge University Press, 1969). <sup>133</sup> See chapter 5 below.



employing of them is the great art of government. And that Prince who shall be so wise and godlike as by established laws of liberty to secure protection and encouragement to the honest industry of mankind against the oppression of power and narrowness of Party will quickly be too hard for his neighbours.

He promises more 'bye and bye' but does no more in the *Two treatises* than lay out the general framework for governing the actions of each individual for the sake of preservation. Nonetheless, his writings on the art of government are extensive: *The constitution of Carolina* (1668), *Some considerations of the consequences of the lowering of interest and raising the value of money* (1692), *Further considerations* (1695), and *The Report of the Board of Trade on the reform of the Poor Law* (1697). In addition, *Some thoughts concerning education* (1693) and *On the conduct of the understanding* (1706) are also concerned with the art of government in the broad seventeenth-century sense of governing and reforming the mental and physical conduct of others.<sup>134</sup>

*The Report of the Board of Trade* is Locke's proposal to reform the system of about 200 workhouses or poorhouses 'for setting on work and employing the poor of this kingdom, and making them useful to the publick and thereby easing others of that burthen'.<sup>135</sup> Throughout the Restoration the number of poor increased and, consequently, so did the parish poor relief and the level of concern about an ungovernable population of poor and vagabonds. Locke's proposal was one among many put forward during the Restoration. Charles Davenant calculated the cost of the system to each parish and Gregory King estimated that over half the population were dependent in some way on poor relief.<sup>136</sup> Both were members of the Board of Trade and their works helped to establish political statistics or economy: the administration and reflexive monitoring of the labouring population considered as a resource utilizable in policies to increase riches and power.<sup>137</sup>

For Locke in *The report*, as for Davenant and others, it is a case of lazy 'drones' living off the labour of others (similar to his description

<sup>134</sup> Chapter 6 below takes up the following theme in more detail.

<sup>135</sup> Printed in H. R. Fox Bourne, *The life of John Locke* (London: 1876), 2 vols., II, 377-91. Since it is short, I have dispensed with the page references in my summary below.

<sup>136</sup> Gregory King, *Natural and political observations* (London: 1696); Charles Davenant, *An essay on the probable means of making a people gainers in the balance of trade* (London: 1699); *An essay upon ways and means* (London: 1695).

<sup>137</sup> See Peter Buck, 'Seventeenth-century political arithmetic: civil strife and vital statistics', *Isis*, 68 (1977), 67-84; Edgar Furniss, *The position of the laborer in a system of nationalism* (New York: A. M. Kelley, 1965).

of the Anglican clergy). The cause of the growth of the poor is 'relaxation of discipline and corruption of manners'. The solution is to use the workhouses in three ways to correct and reform the inmates by instilling habits of 'virtue and industry' through a system of severe corporal punishments and simple, but useful and repetitive work. First, the system should be used as houses of correction for able-bodied men caught begging, to 'amend' their habits 'by the discipline of the place'. These men would then serve the needs of state by being pressed into three years' 'strict discipline' in the Royal Navy or put to work in the parish. Those over fifty, the maimed, and women would remain in the houses of correction, and engage in productive labour as the local parish requires. Locke's main target group, however, consists of the children of all those on poor relief. The poorhouses in this case function as working schools for male and female children, thus freeing the mother and father for work and removing the basis for their claim for relief. Children would attend from three to fourteen, learning basic skills and the rudiments of Christianity. Through a regimen of work and punishment they would be 'from infancy inured to work, which is of no small consequence to the making of them sober and industrious all their lives'. Unlike his friend Thomas Firmin who was running workhouses on a profit basis, Locke did not expect them to be entirely self-supporting. His aim was rather to habituate the young to a life of industry and discipline. From fourteen to twenty-three they were to be placed in the service of local parishioners to learn a trade, and the local proprietors were to be forced to train them. The system would be operated by storekeepers, guardians, and overseers caught up in a network of legal and financial rewards and punishments.

The proposal became a Bill but it was not enacted as a national policy. Nonetheless, it was utilized in Bristol and it served as a highly praised model for discipline of the labouring classes, organization of child labour, factory discipline, and reform schools right up to the Webbs.<sup>138</sup> The editors of the 1793 London edition enthused that 'Mr Locke' appears (viii):

to be convinced that rewards and punishments, and the mixing habits of industry with principles of religious duties, were the best and surest means of effecting that reformation on the manners of the people, which in those days was judged essential to the strength and safety of the nation.

<sup>138</sup> Sidney and Beatrice Webb, *English local government, English Poor Law history: Part 1: the old Poor Law* (London: Longmans, Green and Co., 1927), 102-20.



Moreover, Locke points out that the lack of the means of subsistence for the poor is a major cause of rebellions.<sup>139</sup> Since access to the means of subsistence is a natural right and the fundamental duty of government, these subsistence revolts are obviously legitimate. The solution to this problem is Locke's proposal for the reform of the national workhouse system, for it provides subsistence work for the able-bodied poor and relief for the disabled. In so doing, it conforms to the theory of the *Two treatises*: it operationalizes the natural right to the means of preservation and the duty to preserve oneself; and it implements the natural duty to preserve others by compelling the local landlords to support their workhouse and hire its inmates as servants.<sup>140</sup> Although Locke's proposal is severe and disruptive of the traditional familial bonds and habits of the poor, it should be assessed relative to the actual functioning of the workhouse system. The system was not reformed and by the mid-eighteenth century Jonas Hanway estimated that 80 per cent of the children died in workhouses.<sup>141</sup>

The proposal, and the austere regimen he put forward to reform the gentry to industry and virtue in *Some thoughts concerning education*, is part of the European-wide proliferation of 'neo-stoic' techniques of disciplining the population recently discussed by a number of historians.<sup>142</sup> The individual labourer is considered as a resource who, on the one hand, needs to be cared for, and, on the other, can be reformed by repetition and practice to be a productive and utile part of a strategy to increase the strength of the nation *vis-à-vis* other states. Political economy as social science developed in conjunction with these techniques and employed the new kinds of probabilistic reasoning and knowledge which are classically presented in Locke's *Essay concerning human understanding*. What is not stressed enough in recent work in this area, and is particularly clear in Locke's case, is the overall integration of these policies into the 'strengthening' of the state for military and commercial rivalry. This overriding concern is evident as well in Locke's analysis of the revolution settlement of

1689. He underlines the need to settle differences and to unite with King William in a Protestant alliance against France.<sup>143</sup>

At the centre of Locke's analysis is the premise that the individual is, as he famously states in *Some thoughts concerning education*, 'only as white paper or wax, to be moulded and fashioned as one pleases'.<sup>144</sup> He cleared the way for this by attacking the competing view that the individual is born with innate ideas or dispositions (either to good or to evil). The only restraint on the moulding of individuals is that each has an innate 'concern' or 'uneasiness' to avoid punishment (pain) and to seek reward (pleasure, or diminution of pain). Therefore, one can be led to engage in mental or physical behaviour by the use of punishments and rewards and, by the continual repetition and practice of the behaviour, the individual becomes accustomed and habituated to it, eventually finding pleasure in it.<sup>145</sup> The three techniques of punishments and rewards for forming virtuous habits are: the use of praise and blame of teachers or peers as rewards and punishments in the educational system of *Some thoughts concerning education*; the use of the punishments and rewards of the workhouse system; and the use of fear of hell and hope of heaven to instill basic Christian virtues, in the *Reasonableness of Christianity*. Locke argues that these techniques have always been used by elites to inculcate ideas and dispositions, which they then claimed were innate. This is especially true of the clergy who have used these techniques to instill their false beliefs about Christianity and so legitimate their domination and cause the 150 years of war.<sup>146</sup> It is now possible to use these techniques to break down the old habits of thought and behaviour that have caused such havoc in Europe and mould new ones of toleration, industriousness, and military preparedness.<sup>147</sup> That is, the application of these disciplinary techniques in churches, workhouses and educational institutions would render individuals 'subject to law' and make them the fit bearers of the rights and duties laid out in the *Two treatises*.

These ideas, and his proposals for education and political economy built upon them, are written within the broad context of this modern or objectifying way of thinking about and governing subjects. Locke,

<sup>139</sup> Locke, *Some considerations*, *Works*, v, 71.

<sup>140</sup> Locke's rights and duties of preservation are very close to the seventeenth-century legal rights and duties of subsistence that the Poor Law embodied. See 39 Eliz. c.3; 43 Eliz. c.2; 1 James c.17, 3; 14 Char. II c.12, 4-14, c.18, c.21.

<sup>141</sup> John Hutchins, *Jonas Hanway, 1712-1786* (London: S.P.C.K., 1940), 50-71.

<sup>142</sup> Michel Foucault, *Discipline and punish: the birth of the prison*, tr. A. Sheridan (New York: Pantheon, 1977); Marc Raeff, *The well-ordered police state*, Gerhard Oestreich, *Neostoicism*.

<sup>143</sup> Farr and Roberts, 'John Locke and the glorious revolution', 395-8.

<sup>144</sup> Locke, *Some thoughts*, 325.

<sup>145</sup> Locke, *An essay concerning human understanding*, 2.21.69-70.

<sup>146</sup> Locke, *An essay*, 1.3.27, 1.4.24.

<sup>147</sup> Locke, *Some thoughts*, Dedication, sections 1-3, 54, 64, 216.



especially in his idea of the malleability of the individual, took these ideas further than most, as his critics quickly pointed out. However, it should be remembered that for Locke, in his writings of the 1680s, reform and habituation by these techniques are limited by mankind's 'common disposition' to resist oppression; to fight against a yoke that galls one's neck. It follows from this that any reform ought to be enacted and administered in a way that not only preserves the population but also respects the rights of the person and human agency laid out in the *Two treatises* and *A letter*, or it would violate natural law and meet with justifiable resistance. Perhaps chapter 5 of the *Second treatise* is a model for this, for he writes that the management of labour must be in accordance with the 'laws of liberty' (42, quoted above). Nonetheless, it is unclear to what extent Locke was aware of the tension between his juristic political theory, which limits the degree and manner of control government can exercise over citizens, and some of his methods of reform, which treat the human subject as a malleable resource. Yet, even in *The report to the Board of Trade*, Locke shows that his proposal is in conformity with the old poor laws and that the local parishioners who support the workhouse are bound by their duties to the poor (see chapter 7 below).

For the eighteenth century, Locke's writings on the arts of government were at least as important as the *Two treatises* and *A letter concerning toleration*. As Marx noted, 'Locke became the philosopher *par excellence* of political economy, in England, France and Italy.'<sup>148</sup> On the basis of these diverse and inchoate theories and techniques of discipline and reform, the eighteenth century was to construct more meticulous and more totalizing practices of government and revolution than juridical thought and action allowed. Juridical practices and classical political philosophy, which had been sovereign from John of Salisbury to Locke, came to be challenged by these new ways of governing, involving the disciplines of applied social science and social theory.

<sup>148</sup> Karl Marx, *Capital*, tr. B. Fowkes (New York: Random House, 1977), I, 14, 513 note.

## *Property disputes*