Winter 1987

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Recommended Citation

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THE LAW OF NATURE IN LOCKE'S *SECOND TREATISE*:
IS LOCKE A HOBBSIAN?

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Published in *The Review of Politics* (Winter 1987): 3-28.

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(Revised) Abstract

The question addressed by this essay is whether Thomas Hobbes is the true intellectual forebear of John Locke. A brief comparison of the teachings of these two authors with respect to natural justice and civil justice would seem to suggest that Locke is a determined adversary of Hobbes whose views on justice are reducible to the maxim that "might makes right." But a re-examination of Locke's Second Treatise shows that Locke adopts this principle with hardly less thoroughness than Hobbes. Even so, an important difference remains, for Locke takes steps to disguise the grim reality of power, whereas Hobbes makes the enlightenment of people the sine qua non of his political science. Locke's departure from Hobbes is seen as an attempt to instill in the body politic a degree of justice that would not otherwise exist.

The Law of Nature in Locke's Second Treatise: Is Locke a Hobbesian?¹

Locke scholarship for some thirty years now has fixed itself on the question of Locke's intellectual pedigree--Was the Whig philosopher a sincere Christian and faithful conveyor of the natural law tradition, or was he instead a closet Hobbesian, to say nothing of a bourgeois ideologist? The reason behind such concentrated focus is the recognition by many scholars that Locke is inconsistent, or apparently so, and thus difficult to interpret. A case in point is Locke's description of the state of nature. Locke is at pains to distinguish his account from that of Hobbes (Second Treatise, sec. 19), and yet Locke retains enough Hobbesian features to justify the conclusion that man's life in nature, if not "solitary," is certainly "poor, nasty, brutish, and short." Some scholars explain these problems as changes of mind, perhaps as mere inadvertencies, and are satisfied to say that Locke makes mistakes.² Others place Locke in his historical setting, examine thoroughly the debates and vocabulary of the day, and conclude that few if any difficulties really exist, their detection being the consequence of an unhistorical approach.³ Finally a third group of scholars explain Locke's inconsistencies as a stratagem for concealing his indebtedness to the "justly decried" Hobbes.⁴ Those who advance this last interpretation have attempted to show that neither the Bible nor Richard Hooker's Laws of Ecclesiastical Polity are authoritative texts for Locke, despite the fact that Locke quotes frequently from both.

I should confess at the outset that my sympathies lie with those scholars of the third group who believe that Locke is a Hobbesian. My intention is to establish their position, or more modestly lend some credence to it, by examining the subject of natural law as presented by Locke in the Second Treatise. I might add, however, that while I accept Locke's Hobbesianism, I do not regard him merely as a disciple. There are differences to be observed, and one in

particular I will develop in the closing portion of the paper.

I. Laws of Nature

It is a much remarked fact about Locke that he gives no systematic account of natural law in the Second Treatise: " . . . it would be beside my present purpose, to enter here into the particulars of the Law of Nature" (sec. 12).⁵ Even so, the work contains an impressive collection of obligations which are called natural laws at some point or another. If then Locke's disclaimer is set aside and a list compiled, one discovers at least thirteen natural laws in total and as many as six functioning in the state of nature. Those which exist prior to and independent of civil society are: (1) self-preservation (secs. 6, 135, 149, 171); (2) the preservation of others (secs. 6, 134, 135, 159, 171, 182, 183), sometimes referred to as the executive power of punishment (secs. 9, 105, 207) and sometimes simply as the injunction to seek peace (secs. 7, 172); (3) private property (secs. 30, 31), as well as the means of its appropriation, labor (sec. 35); (4) restrictions on private acquisition, namely the requirements that nothing appropriated be allowed to spoil (secs. 31, 36, 37, 46, 50) and that there be "enough, and as good left" for others (secs. 27, 33, 34); (5) parents' care of children (secs. 56, 58, 66, 67, 71, 72, 74); and (6) children's care, defense, comfort, and honor of parents (secs. 66, 67, 68, 71, 72, 74). Of the six the first four mean to regulate the behavior of individuals, while the last two address life in the family.

Once civil society has been established, seven additional laws of nature come into play. These are of two sorts: either they concern the relationship of the commonwealth to its citizens, or they concern the commonwealth in its dealings with other states. Those of the first sort are: (7) limited government, or the prohibition against power that is absolutely possessed (secs. 135, 137) and arbitrarily exercised (sec. 136)--also precluded are the confiscation

(even taxation) of property (secs. 138, 140, 142) and the transferral of legislative authority (sec. 141) without majority approval; (8) government by consent (secs. 95, 176, 186, 192), to which is added the right of emigration with (unlanded) property for those individuals whose consent is only tacit (secs. 118-121, 191); (9) majority rule (sec. 96); (10) legislative supremacy (secs. 149, 150);⁶ (11) prerogative power (sec. 159); and (12) the right of revolution (secs. 168, 196). The second sort contains only one law, (13) the law of just conquest, but justice in this regard has the four following specifications:⁷ (a) that there be no dominion over former allies (sec. 177); (b) that despotical power extend only to the lives and liberties of the captured enemy (secs. 178, 179, 180); (c) that there be no seizure of enemy property beyond what is needed for reparation (secs. 180-184), and that even this claim be relinquished when the lives of innocent people are at stake (sec. 183); and (d) that there be no governing of conquered territories without the consent of their inhabitants (sec. 192).

Before considering in detail Locke's thirteen laws of nature, we might take note of some apparent departures from the Hobbesian original. First of all, Hobbes does not differentiate, as does Locke, between natural laws appropriate to a state of nature and natural laws appropriate to civil society. He does not because he denies that the state of nature is actually governed by natural law. For Hobbes natural law has the sole function of effecting man's progress from nature to society, which progress is accomplished by socializing an otherwise unsocial creature and by establishing elemental rules of fair treatment (Elements of Law I. 4, 10, 15). It is in fact the absence of effective law in nature that leads Hobbes to assert the priority of natural right, defined in De Cive as the right "to have all, and to do all" (I. 10). In a Hobbesian state of nature, people enjoy such a degree of license that distinguishing between lawful and lawless conduct is all but impossible. Accordingly,

Hobbes' description of the state of nature is pointedly amoral. Locke, on the other hand, presumes a firm demarcation between two types of people, the law-abiding and the criminal. Secondly, Hobbes argues that justice is the keeping of contracts, and that contracts in a state of nature are mostly invalid (De Cive II. 11; Leviathan xiv. pp. 124-25). Locke though believes that any violation of natural law is an injustice, and he identifies six laws in nature that can be violated. Thirdly, Hobbes is convinced that justice is lacking in nature because private property, on which justice depends, is an institution confined to civil society (De Cive Dedication). But Locke explains how property is appropriated in nature and how just relations apply in that state.

With respect to civil society, Hobbes and Locke are evidently at opposite poles, with Hobbes using natural law to defend absolutism and Locke using natural law to promote limited government. Hobbes arrives at his conclusion by investigating the various sources of rightful dominion, which sources he claims are three in number: consent, generation (tacit consent), and conquest. In each case, though, power is absolute and despotical--i.e., the ruler rules in his own interest, and the subject submits out of fear. Thus to Hobbes' mind a king and a tyrant are one and the same; likewise a king and a parent/master, for the city is but a large family, and the family a small city (De Cive VIII. 1). Hobbes concludes then that the sovereign's legitimacy is a function of strength (either his own [acquired government] or that added to his by the consent of others [instituted government]); and because what the sovereign commands is law, the sovereign's might is the sovereign's right--might makes right.

Locke also differentiates three sources of legitimate power, which happen to be the same three recognized by Hobbes. But these three sources, says Locke, designate three distinct kinds of power: political, parental, and despotical. Only in the case of despotic power is power absolute, political and parental power being strictly limited. Hence there is a difference between kingship and

tyranny. There also is a difference between politics and parenting in that parental power is temporary and confined to the liberty of the child. Locke further maintains that those subject to political rule have given their consent freely. Hobbes says much the same, although Hobbes supposes that contracts based on fear (which is how he explains the social contract) are fully valid (De Cive II. 16; Leviathan xiv. pp. 126-27). Locke insists, however--and rather strenuously--that actions motivated by fear are not to be taken as voluntary. Finally, Locke contends that legitimate political rule derives from the consent of naturally free and equal people. Power is an instrument of government, but it is not the cause of its legitimacy. Thus might does not make right.

In assessing Locke's Hobbesian lineage, a useful place to begin is with the second law of nature, the preservation of mankind, because it is there especially that Locke obliges the individual to interest himself in the well-being of others:

The State of Nature has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions (sec. 6).

Locke goes on to mention that an additional reason for dutiful behavior towards others is that all men are the workmanship and property of God:

For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one anothers Pleasure.

Upon reflection, this second reason seems more the cause of man's obligations than his species equality.⁸ Equality by itself cannot establish duties beyond the single duty to treat fellow human beings equally. The trouble is that human beings are treated as equals if they are equally conceded the natural right "to have all, and to do all." Equality is consistent with, and even supplies the

basis for, that absolute license in Hobbes (Leviathan xiii. pp. 110-11).⁹ Man rather has obligations because he belongs to God--first the obligation to preserve himself, and then the obligation to preserve his equals because they are equally the creatures of God. Self-preservation is therefore the first law of nature, from which is derived the preservation of mankind as the second law of nature. Although we began with the second law of nature, noting that it is other-regarding, we now see that it is tied to the first law of nature, which in an unexpected way is also other-regarding--a regard for God our maker.

Self-preservation, a natural law, is sometimes called by Locke a natural right (secs. 11, 25, 87, 123, 128, 149, 208).¹⁰ Now it would seem to make better sense to treat self-preservation as a natural right, since man is powerfully inclined to preserve himself anyway. Locke speaks openly of this inclination in the First Treatise:

. . . that general Rule which Nature teaches all things of self Preservation . . . (sec. 56).

. . . pursuing that natural Inclination he had to preserve his Being, he followed the Will of his Maker, and therefore had a right to make use of those Creatures . . . (sec. 86).

. . . an equal Right to the use of the inferior Creatures, for the comfortable preservation of their Beings . . . (sec. 87).

The first and strongest desire God Planted in Men, and wrought into the very Principles of their Nature, being that of Self-preservation, that is the Foundation of a right to the Creatures, for the particular support and use of each individual Person himself (sec. 88).

Not only is self-preservation the most imperious of man's desires, it is also the seat of his rights (that desire engenders rights is the starting point of Hobbes [De Cive I. 7]).¹¹ But if self-preservation is a right rooted in instinct, why is it also a law, a discovery of reason that constricts behavior?¹² Since human beings do not ordinarily line up to destroy themselves, what is there in human conduct to restrain? Two answers seem possible. In the first place it should be noted that Locke's argument here has a rhetorical effect bearing on the second law of nature. Because Locke identifies self-preservation as a duty, this a consequence of man's creatureliness, it comes as no surprise, and is indeed rather obvious, that the preservation of mankind is similarly a duty. Locke implies--he does not say directly--that man is obliged to preserve his fellows because he is even less the proprietor of their being than he is the proprietor of himself. Failure to own himself obliges him to preserve himself; failure therefore to own others, who are his equals, obliges that he preserve them as well. But if man in fact is not obliged to preserve himself under a law of nature, is rather inclined to preserve himself under a right of nature, then no law commanding the preservation of others can be derived from self-preservation. The second law of nature would thus depend on an artful conflation of obligation and inclination as regards the first law/right of nature.

Even though man need hardly be told to preserve himself, still there is a sense in which self-preservation is obligatory. The law of nature is described in its most general terms as reason: "The State of Nature has a Law to govern it, which obliges everyone: And Reason, which is that Law . . . " (sec. 6). Reason can oblige man, not simply to preserve himself--for this is instinctual--but to preserve himself in a way consistent with reason; and rational self-preservation may commonly entail the preservation of others, since to threaten others needlessly is to introduce into one's surroundings the distrust and ill-will that make abandonment of the state of nature and the surrender of natural rights inevitable.¹³ Were all men perfectly rational, i.e., perfectly obedient to natural law, government would have no cause to exist (sec. 123). But if enlightened utilitarianism is the sense in which self-preservation is a particular precept of natural law and reason the whole of natural law, then Locke's understanding differs in no substantial way from that of Hobbes who says in Leviathan that "a law of nature, lex naturalis, is a precept or general rule, found out by reason, by which a man is forbidden to do that, which is destructive of his life . . ." (xiv. pp. 116-117).

Man is said to have obligations consequent on his creatureliness. But these obligations are made suspect by Locke's vacillation regarding the matter of suicide. Time and again Locke repeats the prohibition against self-destruction, more often than not for the political purpose of denying government its claim to absolute power. But Locke is not consistent. In section 23 of the Second Treatise, he first reiterates the prohibition and then suspends it:

For a Man, not having the Power of his own Life, cannot, by Compact, or his own Consent, enslave himself to any one, nor put himself under the Absolute, Arbitrary Power of another, to take away his Life, when he pleases.

. . . whenever he finds the hardship of his Slavery out-weigh the value of his Life, 'tis in his Power, by resisting the Will of his Master, to draw on himself the Death he desires.

It has been suggested by some that Locke merely acknowledges the power to commit suicide but confers not the right.¹⁴ This argument, however, is less than persuasive since Locke makes no effort in section 23 to distinguish power from right.¹⁵ In the first of the two passages quoted above, the word "power" is used plainly to designate a right (which man is said not to have: "For a Man, not having the Power of his own Life"), and elsewhere in the paragraph "power" is a normative term connoting the rightful or wrongful use of force.¹⁶ It is hardly clear, in this last use of "power"--the slave's power to terminate his life--that the word is devoid of normative connotations. Not only has the slave the capacity to bring on his death (this he shares with others), but he seems also to have the right, for Locke supplies the reasons which impel him to the act.

The slave is understood to have forfeited his right to life, which forfeiture empowers the master to kill the slave at any time and for any cause. To this Locke adds that the slave can precipitate his own execution by defying his master's will. Now it might be argued that Locke concedes here the right to suicide but confines its possession to the slave¹⁷--having lost the right to life, the slave gains the right to death. The problem is that any right implies an entitlement to some good, in this case the good of death given the hardship of life. But why would a person, who is defined by the absence of rights, come to possess a right that is denied to others? If it is true that under the law of nature only a slave can kill himself, then a person seeking death (perhaps because disease has made his life not worth living) would be in compliance with natural law if before committing suicide, he took steps to become a slave. We can be very artful about this passage, either in defending the prohibition or in devising escapes, but the fact remains that Locke has caused us to question the absoluteness of self-preservation; and given the centrality of this principle to his political

teaching (limited government depends directly on the suicide prohibition), it is difficult to believe that Locke could have spoken so casually. Of course Locke has not spoken casually if it is his intention to cast doubt upon the natural law obligation to preserve oneself.¹⁸

The second law of nature which dictates that no one harm another in his "Life, Health, Liberty, or Possessions" (sec. 6) has its rationale in the theological doctrine that human beings are the creatures of God--"they are his Property" (sec. 6) and thus are forbidden to damage themselves or their neighbors. But elsewhere Locke affirms the very opposite, avowing that man is the owner of himself--"yet every Man has a Property in his own Person" (sec. 27).¹⁹ The quotation is no incidental remark, for it explains why the individual in nature has a right to property--he owns property because he owns his labor, and he owns his labor because he owns his person.²⁰ The labor theory of ownership founders if Locke sticks by his earlier pronouncement that man is the possession of God, but unless man is the possession of God, the second law of nature cannot oblige solicitous behavior towards others.²¹ Thus both laws of nature, the second and the first, seem incompatible with Locke's teaching on property.

Locke explains that man's duty to see to the preservation of his fellows is a contingent duty, operative only when the individual's "own Preservation comes not in competition" (sec. 6). The first law of nature takes priority over the second. On this point it has been noted by others that the second law of nature will effectively oblige only if the individual is not greatly anxious about his existence; that the individual's peace of mind is a direct result of the peace of nature; and that the peace of nature depends on a law of nature that is known and observed by men, and on an economy of abundance that mitigates the competition for necessary goods.²² It has been further

argued that Locke's state of nature satisfies none of these conditions: nature is not bounteous but penurious, requiring human labor to supply the sum of its value (secs. 36, 37); natural law is not apprehended easily and quickly through the medium of conscience but demands study and deliberate consultation (secs. 6, 12, 124, 136); also natural law is not much obeyed, for the greater part of mankind are "no strict Observers of Equity and Justice" (sec. 123); finally nature is more warlike than peaceful because life there is disturbed by "the corruption, and viciousness of degenerate men" (sec. 128) and by passionate, self-interested attempts at enforcing natural law (sec. 136). From these several points it is concluded that man in the state of nature would have ample warrant for neglecting the second law of nature.

An additional point, not so commonly noticed, is the character of this law of nature that stipulates the preservation of mankind. If we hope to find in this law some assurance that man is naturally a moral being with responsibilities to others, we are likely to be disappointed. The second law of nature is not a golden rule commanding that we treat charitably our fellow human beings; nor is it even, in any serious way, a restrictive injunction ordering that we hold back from gratuitous harm. What purpose the second law of nature mainly serves is to supply man in nature with a license to kill, and to explain how political authority comes by the right to inflict punishment on its subjects. The second law of nature is about killing! Consider the scope of operation which Locke concedes to it. The executive power belongs alike to victims and to bystanders. The first class of enforcers are most probably hot for revenge (sec. 125), although they are told to employ "calm reason and conscience" (sec. 8), while the second class are without number--for it becomes everyone and anyone's business

to capture, judge, and punish the offender, who, having sinned against the law of nature, is held to be a noxious animal deserving of speedy execution. Nor is it necessary that some hideous crime be committed. Any settled design against the life of another precipitates a state of war (sec. 16). Such a state imparts a general entitlement to take all measures necessary to defend one's life, and also one's liberty, since the slightest threat to liberty is quite possibly the direst threat to life (sec. 17). To be set upon by a robber and forced to hand over one's purse is to be at war and thus empowered by the second law of nature to take the robber's life even when the money lost to him would be of no significant value (sec. 207). More than that, no one but the individual himself is allowed to judge whether a state of war has begun (sec. 21). Hence it is not required that any misdeed be actually done, only that the individual suspect that one is coming. If a person fears his neighbor, whether with cause or without (for only the individual can judge), by this partial and subjective determination the neighbor becomes a wild beast and is lawfully destroyed. But then the neighbor, now the target of attack, might understandably conclude that his assailant is the wild beast (and of this only the neighbor can judge) and so endeavor to execute the law of nature against him. Clearly the state of nature, if not synonymous with the state of war,²³ is harassed by anxieties concerning the outbreak of war and by uncertain identification of the innocent and the guilty. About this moral confusion Locke says,

For the Law of Nature being unwritten, and so no where to be found but in the minds of Men, they who through Passion or Interest shall mis-cite, or misapply it, cannot so easily be convinced of their mistake where there is no establish'd Judge: And so it serves not, as it ought, to determine the Rights, and fence the Properties of those that live under it, especially where every one is Judge, Interpreter, and Executioner of it too, and that in his own Case . . . (sec. 136).

In the absence of a neutral judge, no one can accurately know whether his cause is right or wrong. Thus everyone is at liberty to believe himself in the right. But this then means that the state of nature will not divide neatly into groups of upright law-abiders and selfish malefactors. Still, there are those called "degenerate" by Locke, but they have no conceivable motive to proclaim themselves corrupt; they like everyone will find some grounds for vindicating their behavior--at least to their own satisfaction, which is all that matters. Moreover, because the law of nature "serves not, as it ought, to determine the Rights, and fence the Properties of those that live under it," there cannot be a right to property that is acknowledged and respected by others, for even if labor is the avowed source of property rights, there are other rights, such as self-preservation, that may conflict.²⁴ Hence no mine and thine is allowed to nature that is unequivocal and unchallenged, and hence no justice in nature that gives to each his own.

Locke, it appears, takes the three fateful steps that in Hobbes lead inexorably to the absolute license of the individual: the right to preserve oneself, the right to adopt the means necessary for preservation, and the right to be the judge of one's own case. These three rights effectively abolish the obligations of natural law, or, more precisely, they abrogate the second law of nature. And even though Locke affirms that nature "is not a State of License" (sec. 6) and devotes much space to describing the pain and suffering that await the criminally inclined, nonetheless, Locke shows that the actions of men in the state of nature are subject to no real restraint. Locke's "strange doctrine," by which people who are judges in their own case enforce natural law (secs. 9, 13), is little more than Hobbesian natural right dressed up in the splendid garb of legal righteousness.²⁵ Locke thus sides with Hobbes in believing the state of nature to be an amoral condition and in regarding civil society as the true home of justice, for it is only in society that property rights can be defined and protected.

There are other laws of nature that were said before to operate in the state of nature, but they follow much the same pattern as self-preservation and the preservation of mankind and so will be treated more briefly. Private property, or appropriation from the common store, is called a natural law, but like self-preservation it requires nothing that would not be done without it; thus it is better regarded as a natural right (which it is also called). Spoilage is said to be against the law of nature, the reason being that the wastrel invades his neighbor's share (sec. 37). But Locke also maintains that in nature there is more than enough of the materials of wealth to go around,²⁶ so one wonders how spoilage encroaches upon another's share. Moreover, it is almost comical to hear Locke say that wasting is an offense against nature, when seven times he calls nature a wasteland (secs. 36, 37, 38, 42, 43, 45). Were man not present in nature to appropriate, everything, by Locke's reckoning, would go to waste.²⁷ In fact Locke implies that the real crime of spoilage is against practical utility and common sense, for it hardly profits a man to heap up apples and plums only to have them rot in his cell (secs. 46, 51). Spoilage is a self-enforcing regulation because wasting is a "foolish thing";²⁸ and while it may please Locke to call spoilage "dishonest," nothing is added to the enforcement of the law for his having done so. As for the requirement that there be "enough and as good left" behind, Locke assures us that private appropriation, rather than deplete nature's resources, vastly augments them (secs. 36, 37, 40, 42, 43). He further contends that an exchange economy based on money eliminates the problem of spoilage and so frees the individual to acquire all the property he can (secs. 46, 50). The most Locke offers by way of other-regarding responsibilities is the expectation that free enterprise enlarges the general fund of wealth and that a day-laborer under such a system lives better than an Indian chieftain (sec. 41).²⁹

Two final laws that operate in nature are care of offspring and honor to parents. These laws seem not to arise from self-interest but rather to be duties originating from without. Parents must care for their children, and children must honor their parents. However, all is not as it appears. Care of offspring is a duty which human parents share with animals (sec 60). It is an instinct, an inclination to tenderness (secs. 63, 67), and as such not the proper instrument of natural law, which, as Locke says, is communicated through reason alone (secs. 6, 57, 63). Although called a natural law, the care of offspring falls outside the definition. Somewhat different, but no less problematic, is the duty children have to honor their parents. Locke points out that this duty is a product of contractual reciprocity; honor and gratitude are owed to parents in proportion to the care and protection received (secs. 67, 70). If parents fail to supply their young with nurture and rearing, parents are deserving of nothing in return; the debt passes instead to the children's guardians. Filial duties, therefore, have their origin in tacit, self-serving agreements and are not to be understood as selfless obligations to others.

The second category of natural laws, those that institute and help govern civil society, are simple utilitarian devices³⁰ --they effect man's removal from the state of nature for the better preservation of his property. But civil society cannot accomplish its main objective if it does not offer significant relief from what makes the state of nature so threatening. Locke may then agree with Hobbes that in the state of nature "might is right,"
 seemingly
 but he disputes the claim that civil society is built upon the same principle. Civil society is a fortress erected against the lawlessness of nature. The problem with the Hobbesian sovereign, Locke appears to say, is that he has not come out of the
 state of nature: his power is absolute; his command is law; his might is right. He is something like a Trojan horse--magnificent from afar but

ruinous if let past the city gates. As interpreted by Locke, natural law prohibits his admission.

A second search through Locke's *Troy*, however, uncovers telltale signs of the horse's presence. One of Locke's natural laws is the right of the majority "when any number of Men have so consented to make one Community or Government, . . . to act and conclude the rest" (sec. 95). Upon joining society, the individual agrees to surrender absolutely and permanently the right to act in his own defense (except when circumstances force him back into the state of nature [secs. 207, 226] or when he chooses to leave one society for another [sec. 121]) and to be judge and executioner of the law of nature (secs. 127, 128).³¹ This surrender of right is the origin of society's legislative and executive power (secs. 88, 129, 130). The individual in society is totally under the command of the majority--more immediately of the government³²--and is expected to believe, in Hobbesian fashion (*Leviathan* xvii, p. 158), that he authorizes (by his initial consent) all that the government would do, including legislation he directly opposes (secs. 88, 89). Nor does the individual hold on to a residue of rights that are immune to social interference.³³ Locke never quite says that life, liberty, and property are inalienable rights.³⁴ On the contrary, he explains that it is within society's power, in order to prosecute its wars, to tax an individual's property (sec. 140), to conscript him into service (sec. 130), and to send him to his death (sec. 139)--because there are, as Locke asserts, "nobler" uses than bare preservation (sec. 6). Indeed, once society is created, the first law of nature sanctions society's preservation over and above the preservation of the individuals who comprise it (sec. 135). The individual, in a word, has no guaranteed protections against the power of society and its government.³⁵ Society's might is society's right.

If Locke then is something less than a champion of individual rights, as he sometimes seems, still he does take up the cause of the majority in its struggles with oppressive government.³⁶ Locke states that the legislative

power is supreme relative to the executive and federative power (secs. 132, 150), but not that it is supreme relative to the people (sec. 149). The people are the final masters and as such have the authority to cashier unwanted governments. But there are no institutional arrangements in Locke for the replacement of one set of rulers by another. What Locke provides instead is the emergency right of revolution. The people have the right to take up arms against their government if through "a long train of abuses" it proves its contempt for the original purposes of society--life, liberty, and property. It should be noted that the right of revolution is not the kind of right which by its self-evidency enjoys the glad deference of others. It does not persuade the opposition of its obligations; it is not calm reasonableness substituting for strength. Rather it is right in the sense of power. Those have the right who have the power to make good their "appeal to heaven," Locke's euphemism for the resort to force. But if people must apply force in order to exercise their right of supremacy, and if the force they apply must prove mightier than that of the government, then the right of revolution, when effectively asserted, is an example of power that is supreme and absolute and a manifestation of the Hobbesian maxim that "might is right."³⁷ Despite Locke's many precautions and rhetorical denunciations, the Trojan horse of absolute sovereignty (be it popular as in the case of revolution or governmental as in the case of citizen subordination) has slipped into the city.

II. Justice and the Concealment of Power

Locke is a Hobbesian, I conclude, because he subscribes to the thesis that "might makes right." Even so, I wish now to argue that Hobbes and Locke adopt this principle with varying degrees of satisfaction and that they utilize it in different ways. Hobbes thinks that nothing can better safeguard civil peace than the frank declaration that power is

absolute and despotical. Locke thinks that nothing so enhances the prospects for justice and fair dealing than a politic dissembling about the realities of power. Here then is the difference between Hobbes and Locke: Hobbes asks mainly that civil society be the strong guardian of men's lives; Locke asks also that civil society be the fountainhead of justice. It is not then correct, in my estimation, to say that Locke merely perfects the logic of Hobbes, providing the individual with greater security through the institution of limited government.³⁸ For it defies demonstration that limited government can actually redeem this promise; it may instead, depending on the times, be the catalyst of civil unrest. Locke does say, and the point is not denied, that the preservation of property--of life, liberty, and estate--is the function of society. But there is another voice in Locke striving to dedicate society to the higher purpose of justice, willing even to take calculated risks with the association's capacity to preserve itself. In Hobbes there is nothing like this concern or this inclination to risk-taking.

Hobbes and Locke both give to civil society the large and general purpose of correcting the deficiencies of the state of nature. Now purposefulness is itself a type of justice--not that justice which looks to the detailed specifics of contractual obligation but the rationale which informs and makes sense of the undertaking. Purposefulness supplies a transcendent standard that allows for the interpretation of ambiguities, the determination of good faith compliance, and the measurement of progress towards the ultimate goal. Any human endeavor that is deliberate and intelligent

requires of the participants that they be true to the purpose. Hobbes cannot deny that the purposeful character of the political association carries with it an obligation, and that the obligation applies even to the sovereign. Concerning the sovereign's title to property, Hobbes says,

For seeing the sovereign, that is to say, the commonwealth, whose person he representeth, is understood to do nothing

but in order to the common peace and security, this distribution of lands, is to be understood as done in order to the same: and consequently, whatsoever distribution he shall make in prejudice thereof, is contrary to the will of every subject, that committed his peace, and safety to his discretion, and conscience; and therefore by the will of every one of them, is to be reputed void.

Notice that actions prejudicial to the purpose of the association are "to be reputed void." And yet in the very next sentence, Hobbes denies that the sovereign is under any binding obligation whatsoever:

It is true, that a sovereign monarch, or the greater part of a sovereign assembly, may ordain the doing of many things in pursuit of their passions, contrary to their own consciences, which is a breach of trust, and of the law of nature; but this is not enough to authorize any subject, either to make war upon, or so much as to accuse of injustice, or any way to speak evil of their sovereign; because they have authorized all his actions, and in bestowing the sovereign power, made them their own (Leviathan xxiv. p. 235).

In order to provide against the consequences of equal power, which characterizes the state of nature and renders it so perilous, there must be instituted a superior power, and the logic of superior power is that it is subject to no obligation. This of course means that society, organized as Leviathan, is compelled to renounce the justice that accompanies faithful attention to society's purposes.

Locke, too, is aware of the logic of power, but he conceals its imperatives behind repeated reminders of why society exists. As for example:

The Reason why Men enter into Society, is the preservation of their Property; and the end why they chuse and authorize a Legislative, is, that there may be Laws made, and Rules set as Guards and Fences to the Properties of all the Members of the Society, to limit the Power, and moderate the Dominion of every Part and Member of the Society. For since it can never be supposed to be the Will of the Society, that the Legislative should have a Power to destroy that, which every one designs to secure, by entering into Society, and for which the People submitted themselves to the Legislators of their own making . . . (sec. 222).

Unlike Hobbes, Locke rivets the purpose of society foursquare before its rulers, alerting them to the limitations imposed by original intentions.³⁹

It is as if Locke is trying to strengthen the trusses of rational obligation, recognizing with Hobbes that the sovereign is bound by little else. Rational

obligation, says Hobbes in the Leviathan (xiv. p. 119),⁴⁰ is that predilection of the mind for logical rectitude. Because the mind abhors absurdity, it wants not to contradict itself by saying one thing and then its opposite; likewise it takes offense if a course of action once decided on is later reversed. The mind seeks consistency and endeavors to oblige the will to discharge faithfully its contracts. But the mind is a weak counselor, and so faithful compliance must ultimately rest on fear of punishment (Leviathan xvii. pp. 153-54; De Cive V. 4). Of course Hobbes would not have his sovereign punished; and although Locke does threaten his supreme power with the specter of revolution, what Locke mainly relies on is the self-restraint of rational obligation brought to full consciousness by exhortation.

Several scholars have noticed that trust is an important component of Locke's civil society.⁴¹ The legislative and executive powers are deputies of the people entrusted to serve the common good. Now it would seem that trust is a close cousin to purposefulness and that both concepts point to a notion of justice that transcends self-interested contracts. A case in point is the prerogative power, positioned not in the legislature which is supreme but in the executive which is subordinate. The prerogative power is permitted the magistrate because of contingencies beyond the vision of law and because the purposes of the association, particularly the preservation of as many as possible, can be assisted by this discretionary authority. The executive acts where the law is silent and even against the law where the public good is not attainable by legal means. Since there is frequent dispute concerning the public good and the means appropriate to its achievement, the prerogative power is an obvious danger to the tranquility of society. Who will judge between a legislature claiming supremacy and an executive willing to suspend the law? There is no final court of appeal, as Locke himself admits--only the appeal to heaven, or civil war, in the event of serious deadlock (secs. 207, 240). The prerogative power, therefore, cannot be comprehended simply as an efficient instrument for attaining the narrow and immediate ends of government, since its exercise may imperil these very same ends. Rather it must also be examined for the contribution it makes to justice. By facilitating the government's efforts to keep its trust, the prerogative power works to insure the people that the founding principles of their commonwealth remain in force.

As rational creatures men institute society for a purpose, the preservation of property, but their rationality is capable of displaying standards of its own. "Truth and the keeping of Faith belongs to Men, as Men" (sec. 14). Hence it is an affront to man's nature,⁴² an injustice, for promises to be wantonly disregarded. Men are treated as "a Herd of inferiour creatures" and as "void of Reason, and brutish" (sec. 163) if their intentions and their

welfare are not the guiding star of government. Locke's principal assumption throughout the Second Treatise

is that men are by nature free, equal, and rational; and the question Locke asks himself

is, How would such people behave? Hobbes makes the same assumption, but

concludes that two of these features, freedom and equality, are the cause of

infinite trouble, and so must be renounced, by the third, reason, which is

wholly the servant of fear. Locke permits no renunciation of freedom and

equality. To be sure, his main concern lies with safety; men must be

accounted free and equal because superior power, in Locke's judgment, is

more hazardous than equal power (equal freedom or equal natural right):

He being in a much worse condition who is exposed to the
Arbitrary Power of one Man, who has Command of 100000. than
he that is expos'd to the Arbitrary Power of 100000. single
Men . . . (sec. 137).

But a second reason, communicated more by tone than by expressed argument, is

that men are no longer men if they allow their freedom and equality to be denied

them; they are instead herd animals whose master "keeps them, and works

them for his own Pleasure or Profit" (sec. 163).⁴³ This may help explain

why contracts extorted through fear are always invalid--not always are they

bad bargains, but always are they insults to human freedom. Locke, as it

happens, proffers no rejoinder to Hobbes' contention that fear is a legiti-

mate motive of action and that the social contract is a result of fear.

Rather than debate the issue, he appeals to man's intuitive sense of justice:

Should a Robber break into my House, and with a Dagger at my
Throat, make me seal Deeds to convey my Estate to him, would
this give him any Title? (sec. 176)

Sealing deeds may save one's life and be the prudent thing to do, but the

transaction is void because of the offense it gives to human nature. Justice

d demands that human beings be treated as free, equal, and rational creatures.

I have attempted to show that Locke remains committed to justice despite
having accepted the Hobbesian teaching about power, that "might is right."

The question now to be considered is how Locke proposes to make this commitment

efficacious, how to find space for justice in a world governed by power.

Locke's chapter on conquest provides a clue.

Locke confesses that his remarks treating the subject of just conquest constitute a "strange doctrine" (sec. 180). It might be recalled that Locke proposed another "strange doctrine" earlier in the Second Treatise, that one concerning the executive power of punishment. What Locke now calls "strange" is his argument that the victor in a just war has no rightful claim to the property of the vanquished, excepting that portion necessary to make reparations, which reparations he must in turn forego if their payment would jeopardize the lives of innocent people. Both strange doctrines have in common that they specify rules for human behavior in a state of nature; but they differ significantly in the sense in which they are strange. The executive power is strange because it allows an individual to judge in his own case, and so sets loose a cycle of attack and reprisal indistinguishable from Hobbesian natural right. On the other hand, the doctrine of just conquest is strange because it denies the victor the customary spoils of war. One strange doctrine, that governing individuals in a state of nature, prolongs, even perpetuates, the violence (secs. 20, 21); the other strange doctrine, that determining relations among societies, discourages violence by removing a prime incentive to war--no spoils for unjust conquest, and very few where conquest is just. Locke's point, it seems, is that nations are capable of greater restraint and greater justice than are individuals when left to their own resources in a state of nature. Because the individual lacks the barest margin of security, because he has no respite from the burden of defending himself, it is not to be expected that he will take any chances or give any quarter. The people who make up society on the other hand do commonly enjoy the safety of their community; they are spared the worrisome responsibility of preserving themselves; vigilance and combat are not their daily routine. Having been granted the time and the space to build up the habits of peace,

they can be put upon, when war comes, to behave more decently and to show their enemies some mercy. Civil society, in a word, civilizes (sec. 299).⁴⁴

There are, however, problems with the argument of this chapter. Twice Locke asserts that children have a natural right to inherit the property of their father (secs. 182, 190). But previously Locke stated that the father has a contrary right to bestow his property on whoever pleases him best (sec. 72), so long as his children are "out of danger of perishing for want" (sec. 65). The right of inheritance is tied to the second law of nature which "willeth the preservation of all Mankind as much as is possible" (sec. 182). Locke explains that this right transmits indefinitely through the generations (sec. 192); distant descendants have the right no less than newly deprived children. But distant descendants, while they may suffer a diminished standard of living, are not threatened in their existence for having lost the family fortune a century before--at least there is no necessary connection that would warrant a right of inheritance on grounds of preservation.

The same point can be made in a second way. The victor in a just conflict, says Locke, has despotical power over the lives and liberties of his captives; but his power stops short of the captives' property, part of which is shared in by their wives, with the rest passing to their children for their sustenance. When speaking of the slavery that falls to the captured enemy, however, Locke remarks that they "forfeited their Lives, and with it their Liberties, and lost their Estates" (sec. 85). Property, be it noted, is not exempted from the general surrender; also despotical power is said to be exercised "over those who are stripp'd of all property" (sec. 173). The second law of nature commands the preservation of as many as possible. It is by the enforcement of this law that the innocent have their best chance of escaping harm. Now if strict punishment of offenders--forfeiture of life, liberty, and property--succeeds in deterring aggression, where leniency would fail, then the victor who confiscates property saves the innocent the dangers of future wars and so abides by the second law of nature. Once again, the preservation of mankind need not justify a right of inheritance.

Finally, Locke cites the example of the biblical Jephthah in explaining the right of descendants to reclaim property and self-rule unjustly taken away in war; the oppressed, says Locke, may appeal to heaven, as Jephthah did, in order to redress their wrong. The story of Jephthah is recounted in the Book of Judges, chapter xi. Jephthah, we find it said, is the bastard son of Gilead. Forced into exile by Gilead's legitimate heirs, Jephthah becomes the leader of a roving gang of bandits. When the Ammonites later declare war against the Gileadites, Jephthah is recalled and made his people's permanent leader. In negotiations preceding the outbreak of hostilities, the Ammonite king explains his belligerence as a justifiable attempt to regain land long ago taken by the Israelites on their way from Egypt to Canaan:

Because Israel on coming from Egypt took my land from the Arnon to the Jobbok and to the Jordan; now therefore restore it peaceably (The New Oxford Annotated Bible, v. 13).

The messengers of Jephthah respond with a complicated history which argues divine sanction for all that Israel has done, and they finish up by disputing the right of a people to reclaim lost territory at any time in the future:

And the Lord, the God of Israel, gave Sihon and all his people into the hand of Israel, and they defeated them; so Israel took possession of all the land of the Amorites, who inhabited that country So then the Lord, the God of Israel, dispossessed the Amorites from before his people Israel; and are you to take possession of them? Will you not possess what Chemosh your god gives you to possess? And all the Lord our God has dispossessed before us, we will possess While Israel dwelt in Heshbon and its villages, and in all the cities on the banks of the Arnon, three hundred years, why did you not recover them within that time? (vs. 21-26, emphasis added.)

Now it is Locke who refers us to the story of Jephthah, but there is nothing in this reference to support his teaching on just conquest.⁴⁵ Quite the reverse, Judges xi explicitly contradicts the proposition that conquerors acquire no right to the property of the defeated and that subsequent generations retain an indefinite claim on the conquered territory of their ancestors.

So what are we to make of this chapter? Its theory of just conquest is inconclusive because a child's right of inheritance may contend with a parent's

right of free disposal, because humane treatment of the innocent may cause future conflicts which endanger the innocent, and because biblical warfare, although cited as authoritative, complies with none of the rules set forth by Locke. At the same time Locke seems aware of these difficulties and quietly calls our attention to them (he certainly does with the third).⁴⁶ Thus there is concealment in the chapter, as I believe there is concealment throughout the Second Treatise. Other scholars have argued, most notably Leo Strauss, that Locke adopts an esoteric style in order to deflect accusations of Hobbism, which if believed would endanger him personally and deny a fair hearing to his political philosophy.⁴⁷ I accept this explanation, but I wish also to add that Locke conceals his ties to Hobbes, conceals the Hobbesian reality of power, in order to make a reality of justice--in this case that conquerors ought not to despoil the conquered. I conclude, therefore, that some credit is to be given to Strauss' nemesis, Peter Laslett, who detects in Locke an abiding concern for political virtue. But Laslett is wrong in supposing that political virtue is natural.⁴⁸ Neither the state of nature nor civil society are by themselves friendly to virtue. On the contrary, both states are undergirded by the principle that "might makes right." But unlike the state of nature, civil society can civilize, its "strange doctrine" can lessen the inducements to violence, if the dark truth about politics is not fastened upon and propagated. Hobbes counts it among the natural duties of the sovereign to instruct and enlighten his subjects as to the nature of sovereign power; nothing is to be hidden (Leviathan xxx. p. 323).⁴⁹ Locke chooses instead to write esoterically.⁵⁰ He acknowledges and accepts the Hobbesian truth about power, but mainly he looks away from it and has us look away so as to see better a rhetorical surface that teaches justice.⁵¹ Locke therefore is not so honest as Hobbes, but he is more noble in his purposes, and, if I may generalize, more successful, because modern liberal societies have done well by domestic peace without taking Hobbesian precautions to insure it. In Elements of Law Hobbes anticipates the argument for

limited government and refutes it with a series of "what if" objections-- what if revenues are needed to defend the state, and the taxing power lies with a refractory parliament (Part II. 1. 13). By dwelling on and making provision for the worst possible case, Hobbes closes the door on justice. By risking justice, at least through the rhetoric of the Second Treatise (e.g., sec. 176), Locke helps to produce a society that is less prone to worst-case emergencies.

1. This article is a revised and condensed version of a paper presented at the 1985 American Political Science Convention; the original contained a lengthy discussion of the differences between Hobbes and Locke.
2. J. W. Gough, John Locke's Political Philosophy, second edition (Oxford: Clarendon Press, 1973); W. von Leyden, Introduction, Essays on the Law of Nature (Oxford: Clarendon Press, 1954); John Plamenatz, Man and Society, vol. 1 (New York: McGraw-Hill, 1963).
3. John Dunn, The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treatises of Government' (Cambridge: Cambridge University Press, 1969); Dunn could also be included in the above list, e.g., ibid., p. 164, and "Justice and Locke's Political Theory," Political Studies, 16 (February 1968), 71; James Tully, A Discourse on Property: John Locke and His Adversaries (Cambridge: Cambridge University Press, 1980); Martin Seliger, The Liberal Politics of John Locke (New York: Frederick A. Praeger, 1969).
4. Leo Strauss, Natural Right and History (Chicago: University of Chicago Press, 1953); Richard Cox, Locke on War and Peace (Washington: University Press of America, 1982); Robert Goldwin, "John Locke," in History of Political Philosophy, second edition, edited by Leo Strauss and Joseph Cropsey (Chicago: Rand McNally, 1972), pp. 451-86.
5. Locke quotations are from Two Treatises of Government, revised edition, edited by Peter Laslett (New York: New American Library, 1963). Unless otherwise stated, section citations refer to the Second Treatise. Hobbes quotations are from The English Works of Thomas Hobbes of Malmesbury, collected and edited by Sir William Molesworth (London: John Bohn, 1839-45), vol. 2, Philosophical Rudiments concerning Government and Society (but referred

to by its more familiar title, De Cive), vol. 3, Leviathan, and vol. 4, Elements of Law (also known as De Corpore Politico).

6. Locke never actually says that legislative supremacy is a natural law, but he clearly implies as much. A similar inference would not be warranted in the case of separation of powers, however, since Locke says that "well order'd Commonwealths" divide legislative and executive power, not that all commonwealths do (secs. 143, 159).

7. Locke does not directly explain what a just war is. He takes it for granted that combat can be either just or unjust and proceeds to consider those powers that fall to a "Conquerour in a Lawful War" (sec. 177). Cox, however, pieces together a just war theory using both Treatises and A Letter Concerning Toleration. War is unjust, says Cox, if it is fought for the personal glory of the ruler, if its purpose is imperialistic subjugation of another people, or if it is undertaken in the service of religious belief (War and Peace, pp. 154-56).

8. George Windstrup, "Locke on Suicide," Political Theory, 8 (May 1980), 169.

9. Ramon Lemos, Hobbes and Locke: Power and Consent (Athens: University of Georgia Press, 1978), pp. 76-77.

10. In fact nearly all of what Locke calls natural law he also terms natural right. A ready explanation for Locke's seemingly indiscriminate manner is the supposition that every right implies an obligation--one person's entitlement is another person's duty. But this explanation does not hold in the case of self-preservation because the obligatory side of the coin is comprehended under a separate law of nature, the preservation of mankind. Self-preservation is not like care of offspring where the right of the child is simultaneously the duty of the parent.

11. See Cox, War and Peace, pp. 85-89; also C. B. Macpherson, "Natural Rights in Hobbes and Locke," in Political Theory and the Rights of Man,

edited by D. B. Raphael (Bloomington: Indiana University Press, 1967), p. 7. Cf. Tully, A Discourse on Property, pp. 46-47. Tully offers a teleological explanation of man's desires--man seeks his preservation because God designed him that way. Tully goes on to say that the second law of nature depends entirely on this interpretation: "If, on the other hand, preservation were nothing more than the subjective goal consequent upon an individual's desire for self-preservation, no Lockean moral theory would be possible. It would be impossible to generate the positive duty of preserving others and to discover a natural criterion of justice which could be used to define and delimit legitimate acts of self-preservation" (p. 47).

12. Aquinas makes self-preservation a natural law, but he places it at the lower end of a hierarchy of natural instincts. Self-preservation is an animal desire. Reason affirms the goodness of this desire, but reason does not produce it. So regarded, self-preservation fails to meet Locke's definition of natural law which is a discovery of reason. (Summa Theologica I-II, Q. 94, A. 2.)

13. Robert Goldwin, "Locke's State of Nature in Political Science," Western Political Quarterly, 29 (March 1976), 128-31.

14. Dunn has recourse to this explanation, claiming that Locke "did not suppose that a man has a right to do anything which he has a power to do. Indeed the entire Two Treatises is specifically concerned to refute such a position . . . (Political Thought, pp. 108-09, n. 5). Dunn accounts for the exception by supposing that a slave is not a moral agent and thus not responsible for anything he might do (pp. 108-10). But could it be Locke's considered opinion, the surface arguments of the Second Treatise notwithstanding, that a human being destroys his moral intelligence, becomes in effect an animal, for having once broken some precept of natural law? Dunn himself says otherwise (p. 107). See Windstrup, "Locke on Suicide," pp. 172-73.

15. At numerous other points in the Second Treatise, Locke uses "power" as a synonym for "right" (secs. 7, 11, 65, 87, 128, 149, 171, 184). See Seliger, Liberal Politics, p. 131.

16. Seven times in section 23 Locke repeats the word "power"; never does he use the word "right." Concerning the master and his slave, Locke once says, "when he has him in his Power." "Power" would seem here to mean force, but the larger context is still that of rightful force.

17. Cf. Gary Glenn, "Inalienable Rights and Locke's Argument for Limited Government: Political Implications of a Right to Suicide," Journal of Politics, 46 (February 1984), 84-86. Glenn seems to argue that suicide is not self-destruction, but self-destruction where there is the right (duty) of self-preservation. Having lost the right of self-preservation, the slave can kill himself without committing suicide. Were it not for this too-subtle technicality, Glenn would be admitting that suicide is a right of the slave.

18. Laslett (Two Treatises, p. 325, n. sec. 23) believes Locke to be inconsistent but offers no comment or explanation.

19. J. P. Day, "Locke on Property," in Life, Liberty, and Property: Essays on Locke's Political Ideas, edited by Gordon Schochet (Belmont, California: Wadsworth, 1971), p. 117; also Francis Devine, "Absolute Democracy or Indefeasible Right: Hobbes Versus Locke," Journal of Politics, 37 (August 1975), 762, n. 162. Locke seems to distinguish in section 6 between person and life ("though Man in that State have an uncontrollable Liberty to dispose of his Person or Possessions, yet he has not Liberty to destroy himself"); but this distinction does not really hold. See note 21.

20. Cf. Tully, A Discourse on Property, pp. 108-09. Tully admits no connection between ownership of one's person and ownership of one's body. But if man has no property in his body, why would he have property in the labor of

his body? It might be argued in reply that man's body is like the natural world--created and owned by God but utilized by man. However, Locke says that man's use of nature gives him title to it; thus it follows that use of the body includes title to the body as well. Now if one responds that man's title is relative to other men but not to God ("This no Body has any Right to but himself" [sec. 27]), still a second problem arises: in order to establish man's right to appropriate privately from the common store, Locke must assert that the materials of nature are nearly worthless, 1/1000 part of value; hence God's creation of the human body is similarly worthless until put to good use by man. According to this calculus man would have title even relative to God since man and not God is the true creator of value.

Tully suggests that life is an inalienable right because man's life is not his to alienate; it is God's (p. 114). But life is alienable--man may

take his life "where some nobler use, than its bare Preservation calls for it" (sec. 6), and society may take his life where the preservation of society is at stake, as in times of war (sec. 139).

21. In two additional passages Locke states again the independence and self-possession of man: " . . . yet Man (by being Master of himself, and Proprietor of his own Person . . .) (sec. 44), and " . . . A Right of Freedom to his Person, which no other Man has a Power over, but the free Disposal of it lies in himself" (sec. 190).

The word "disposal" (or a variant) shows up again in section 6 where it seems not to imply an individual's complete command over himself: " . . . though Man in that State have an uncontroleable Liberty, to dispose of his Person or Possessions, yet he has not Liberty to destroy himself " Locke distinguishes freedom and property from preservation, saying that man is master of the former but not of the latter. However, Locke elsewhere asserts that liberty is the indispensable means of preservation (sec. 17) and that property is similarly vital (sec. 27). If man has an "uncontroleable liberty, to dispose of his Person or Possessions," and if personal freedom and property are essential to man's preservation, then it would seem to follow that man also has an uncontrollable liberty to dispose of his life.

22. Strauss, Natural Right and History, pp. 224-31; and Cox, War and Peace, pp. 81-94.

23. For a clear and instructive discussion of the state of nature/ state of war question, see Goldwin, "John Locke," pp. 454-56.

24. See Goldwin (ibid., p. 465): " . . . if there is a scarcity of perishable provisions in the original state, there cannot be natural property." Rousseau's state of nature degenerates into a state of war at the point where people begin quarreling about the source of property rights--whether it is self-preservation that confers this right, or labor, or first occupancy, or

the needs of the greater number. (The First and Second Discourse of Jean-Jacques Rousseau, edited by Roger D. Masters [New York: St. Martin's Press, 1964], pp. 158-59.)

25. Cf. Laslett, Introduction, pp. 122-35. Laslett develops what he calls the "Lockean doctrine of natural political virtue" (p. 111) which views the exercise of the executive power as essentially altruistic. But Laslett is aware that his interpretation runs somewhat afoul of a second argument in Locke that emphasizes power and willfulness (p. 130). Cf. Dunn, Political Thought, p. 127.

26. Lest there be confusion here, nature is potentially wealthy, but actual wealth depends on human labor; and in the absence of human labor nature is penurious.

27. Goldwin, "John Locke," p. 466. Lemos tries to improve on Locke in a way that avoids this problem (Hobbes and Locke, p. 146).

28. Plamenatz, Man and Society, p. 243.

29. That Locke is a proto-capitalist is the thesis of Macpherson and Strauss. Macpherson, The Political Theory of Possessive Individualism (London: Oxford University Press, 1964), pp. 208 ff.; Strauss, Natural Right and History, p. 246. See also Cox, "Justice as the Basis of Political Order in Locke," in Nomos VI: Justice, pp. 254-61. Cf. Laslett, Introduction, p. 119.

30. Once in force, however, these institutions take on a higher purpose. See below, Section II.

31. Cf. Gough, Locke's Political Philosophy, p. 32. Gough is uncertain about the extent of the surrender, citing section 99 where Locke says that man surrenders "all the power, necessary to the ends for which they unite into Society" (See also section 129.) But what is necessary on any given occasion is determined by the majority, to whose decisions the individual is absolutely bound (sec. 97).

32. Cf. Dunn, Political Thought, pp. 127-29.

33. Wilmoore Kendall, John Locke and the Doctrine of Majority-Rule (Urbana: University of Illinois Press, 1965), p. 68.

34. See Glenn ("Inalienable Rights," pp. 90-102) for an argument that rights are inalienable.

35. In A Letter Concerning Toleration (James Tully, editor, [Indianapolis: Hackett Publishing Company, 1983]) Locke makes an exception for liberty of conscience, suggesting on three occasions that it is an inalienable right (pp. 26, 48, 55) (that it is a natural right he says explicitly [p. 51]). But he later implies that this liberty is inalienable in a Hobbesian sense, i.e., the individual is entitled to exercise it, but if its doctrines are injurious to the public good, the society is also entitled to suppress it (pp. 49-51). Thus there ensues a contest of rights with the stronger prevailing.

36. Kendall, Majority-Rule, pp. 103, 112-19; also Lemos, Hobbes and Locke, p. 124.

37. This is not to say that revolutionaries are right because they prevail, only that because they prevail, they have a right, at least one that is effective. If they do not prevail, they may still have a right, but this right avails them little as they are marched to the scaffold or left languishing in prison. See Seliger, Liberal Politics, pp. 135-38. On one occasion, however, Locke does suggest that a right may be effective even when disjoined from power. He says that "the best fence against Rebellion" is the right of the people to form a new legislature, for when publicly affirmed it can work to deter government from the abuse of its power (sec. 226). If the government practices self-restraint (either out of fear of a multitude made resolute by the doctrine of natural right, or persuaded itself of the injustice of absolute power), then there will be no test of strength and no proving the effectiveness of the right of revolution.

38. This seems to be Strauss' understanding (Natural Right and History, p. 231).

39. Because those original intentions--life, liberty, and property--are not merely agreed on, but determined by natural law, it is appropriate to say that Locke is not a strict contractarian. See Patrick Riley, Will and Political Legitimacy (Cambridge: Harvard University Press, 1982), pp. 63-74.

40. This expression actually belongs to Michael Oakeshott (Introduction, Leviathan [Oxford: Basil Blackwell], p. lix).

41. Gough, Locke's Political Philosophy, pp. 154-92; Laslett, Introduction, pp. 126-35; Dunn, Political Thought, p. 162.

42. See Robert Kraynak, "John Locke: From Absolutism to Toleration" American Political Science Review, 74 (March 1980), 61. Kraynak suggests that Locke came round to a position of toleration in part because he concluded that the pride men take in their opinions is a major source of their human dignity. Lockean man, says Kraynak, is a "partial" animal, which means that he is less than the rational animal of Aristotle but more than the vain-glorious animal of Hobbes.

43. Kendall, Majority-Rule, p. 134.

44. Cf. Rousseau, Second Discourse, p. 161. See Hilail Gildin (Rousseau's Social Contract: The Design of the Argument [Chicago: University of Chicago Press, 1983], p. 47) who thinks that Rousseau and Locke are in essential agreement on this point.

45. Strauss, Natural Right and History, p. 214.

46. Cf. Macpherson ("Natural Right," p. 10) who implies that Locke is unaware of what he is doing, that he denies natural law (except for Hobbesian natural law) and yet affirms it in order to limit the powers of government.

47. Strauss, Natural Right and History, pp. 206-09. Cf. Seliger, Liberal Politics, p. 36. Seliger disputes Strauss' thesis on grounds that the right of revolution, which Locke brazenly proclaims, was more dangerous and offensive than any of its theoretical underpinnings. But Locke could hardly have concealed what he was most concerned to teach, that people have a right to overthrow their government. Still this teaching would have gone unheeded if it was apparent to all that Locke's intellectual forebear was Hobbes. As for Locke's personal safety, the Two Treatises of Government was not published until after the issue had been settled and thus at a time when revolution was an acceptable and popular notion. And although the threat of counter-revolution did persist, throughout the period (the 1690's) Locke steadfastly refused to admit his authorship, doing so only on the last possible occasion--as a codicil to his will. See Cox, War and Peace, pp. 1-44; also Dunn, "Justice and Locke's Political Theory," p. 70, n. 1.

48. Locke does say, as noted above, that "Truth and keeping of Faith belongs to Men, as Men, and not as Members of Society." In light of the examples he adduces to confirm this claim (see Cox, War and Peace, pp. 94-105), I understand him to mean that the capacities for truth-telling and trustworthiness are natural to men but that their realization depends mostly on society.

49. Strauss, Natural Right and History, p. 198.

50. Laslett explains in detail how incredibly cautious a man Locke was (Introduction, pp. 58-79; especially pp. 77-79). But Laslett does not draw

the conclusion that Locke's caution might have affected his writing. And when Strauss comes to this conclusion independently, Laslett dismisses it out of hand (p. 119, n. 21). See Kendall, "John Locke Revisited," The Intercollegiate Review, 2 (January-February 1966), 230-34. Kendall has the distinction of being the only Locke scholar to have changed his mind.

51. I think that Glenn comes to a similar conclusion, although what he regards as genuine in Locke is the exact opposite of my own position. Glenn wants to know why Locke never uses the expression "inalienable rights," and he argues that Locke deliberately softens his claims for the absoluteness of rights so as to make them compatible with stable government ("Inalienable Rights," p. 102). Believing that the weight of the evidence is on the side of Locke's Hobbesianism, I argue, on the contrary, that Locke deliberately disguises the absoluteness of government in order to make its power compatible with individual rights. Glenn is not concerned with Locke's relation to Hobbes, but it is interesting that when he asks the question of whether rights exist which cannot be surrendered, his answer is strictly Hobbesian (De Cive VI. 13)--by consent, says Glenn, the individual gives full power to the government to take his life but nonetheless retains the right to defend himself (pp. 97-102).