TRADITIONS OF LIBERALISM

Essays on John Locke, Adam Smith and John Stuart Mill

Edited by Knud Haakonssen

Shirley Robin Letwin • Alan Ryan • Lauchlan Chipman
William Letwin • Donald Winch • John Gray
C.L. Ten • Philip Pettit • Kenneth Minogue

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Foreword

Michael James

In the Preface of his *On Classical Liberalism and Libertarianism* (Macmillan, 1986), Norman P. Barry observes:

> Despite many similarities in policy prescription the prominent classical liberals differed greatly over the fundamental theoretical premises on which these policies were founded ... Furthermore, the differences that are easily detectable in their works reflect some of the oldest and deepest problems in the history of political thought. (p. ix)

This passage succinctly summarises the problem that prompted the appearance of the present volume: namely, that the 'liberal tradition' quickly dissolves under analysis into a variety of strands of thought based on diverse and sometimes mutually antagonistic assumptions. But the matter is even more complicated than that: each of those contributory strands is itself open to a variety of conflicting interpretations. And what exactly is the thing they contribute to: Should we dispense with the idea of a single liberal tradition or, as the title of this volume suggests, characterise liberalism in terms of several coexisting traditions? Or is the very idea of a 'tradition' of thought a misleading fiction that imposes on a group of thinkers a common focus of concern that they could not themselves have intended or recognised?

These are the issues that this volume addresses. Thus, it does not offer a simple exposition of the thought of the three key figures in the history of liberalism; it does not present liberalism as some convenient combination of Locke's theory of natural rights, Smith's account of the self-correcting mechanism of the free market, and Mill's advocacy of personal liberty and individuality. Instead, three specialists consider each thinker from the standpoint of a putative liberal tradition. The result is a

collection that throws much new light on all three thinkers but renders somewhat controversial their hitherto secure status as 'liberals'.

Not that there is necessarily any unanimity among the contributors on the correct interpretation of their respective subjects of enquiry. Thus, the more familiar pictures of Locke and Mill as clear advocates of liberal conceptions of freedom are vigorously and freshly painted by Alan Ryan and C.L. Ten. But we are also offered new and unfamiliar versions. Shirley Letwin claims that Locke was no friend of the rule of law — the doctrine that requires us to observe general rules of conduct so that we can all safely pursue our individual, self-chosen goals — since he thought we were obliged to carry out God's purpose as made clear through natural law. John Gray goes beyond the commonplace observation that Mill toyed with semi-socialist schemes to claim that his entire liberal doctrine was flawed by an excessive faith in reason and by the divorce he postulated between production and distribution: these gave birth to a 'revisionist' liberalism that in the present century has largely displaced the sceptical, cautions 'classical' liberalism of Smith and his school. Such provocative interpretations are unlikely to become the received ones, at least in the foreseeable future. But they raise doubts about the coherence and even the existence of any such thing as a 'liberal tradition'.

This issue is most explicitly treated in the papers on Smith. William Letwin and Donald Winch agree that Smith's politics, unlike his economics, were hardly liberal. But Winch goes on to insist that asking whether Smith was 'really' a liberal risks falling into some bad intellectual habits. Rather than trying to 'recruit' the 18th-century Smith into what emerged self-consciously as a tradition only in the 19th century, Winch recommends the 'recovery' of the real Smith by establishing the intellectual and linguistic context in which he wrote and deriving from that some understanding of the intentions he might have had in writing what he did.

The soundness of this essentially historical approach to the study of political theory need not, however, rule out the validity of the intellectual construct of the 'tradition' of ideas. In his Introduction to the volume, Knud Haakonssen urges historians of ideas to recognise a 'methodological pluralism' that legitimises a division of labour in the way they approach their subject. Kenneth Minogue's concluding chapter certainly demonstrates that a successful characterisation of a tradition of thought combines the historian's sense of nuance and diversity with the philosopher's grasp of logic and coherence. While recognising that identities are elusive and can never be completely encapsulated in words, Minogue finally settles on this formulation: 'the liberal tradition is a political practice in which reason is brought to bear upon political and social arrangements so that they can be continuously modified according to what individuals judge ought to be done' (pp.195-6). This is a highly

formal definition, but Minogue is confident that it succeeds both in distinguishing the liberal tradition from its conservative and socialist rivals and in accommodating the diversity of foundations that liberals themselves have proposed for their beliefs.

Professor Minogue has the last word in this volume. But the last reference in this Foreword must be to Dr Haakonssen, in recognition of his splendid achievement in arranging the gathering of distinguished scholars whose thoughts are collected in this volume. *Traditions of Liberalism* deserves to become a major source of insights into a body of ideas that, in Australia as elsewhere, is being taken seriously again and bringing to an end what seemed only a few years ago to be collectivism's impregnable intellectual monopoly.

Editor's Preface

With the exception of my Introduction, the papers in this volume were presented at a conference on 'The Liberal Tradition' in Sydney in August 1987. My choice of title for the conference was meant as a provocation to elicit a variety of liberal themes through considerations of the thought of Locke, Smith and Mill. The papers make up an only slightly edited record of the response, while the Introduction gives a brief rationale for the enterprise — which I have no reason to believe the other participants will agree with. I gratefully acknowledge the advice of Geoffrey Brennan and Philip Pettit and the assistance of Greg Lindsay and the staff of the CIS, especially of Rose Philipson.

K.H.
Canberra
20 June 1988

Introduction: Liberal Traditions and the History of Ideas

Knud Haakonssen

> It is pure illusion to think that an opinion
> which passes down from century to century,
> from generation to generation, may not be entirely false.
> *Pierre Bayle*

Liberalism is a notoriously ambiguous concept. More than anything else, this has led to persistent historical contests for the idea. Thus, while the label is young, the thing in itself has been pursued across every epoch back to ancient Greece. The result has been not only a plurality of liberal traditions but also a general uncertainty among liberals about the nature and purpose of the invocation of the past. What begins as an historical search for liberalism's identity or, worse, 'definition', too often proceeds through a supposed sharing of the 'insights' of the past, to a barely disguised prescriptive use of that past. Yet liberals of all persuasions alike tend to distinguish themselves from conservatives by decrying the notion that history is authoritative, a point never more eloquently made than by F.A. von Hayek in *The Constitution of Liberty* (Hayek, 1960:397-411).

To the extent that liberals have paid attention to this problem — and too often they have not — they would seem to have adopted a more or less intuitive version of Karl Popper's 'rational theory of tradition'. That is, they have extended Popper's parallel between social traditions and scientific theories to theories of politics:

> we should always remain conscious of the fact that all social criticism, and all social betterment, must refer to a framework of social traditions, of which some are criticized with the help

I am greatly indebted to Robert Brown and Philip Pettit for criticism of a draft of this Introduction.

> of others, just as all progress in science must proceed within a framework of scientific theories, some of which are criticized in the light of others. (Popper, 1972:132)

From this perspective, the proper use of past liberal ideas is to identify the problems of the present and the theoretical and conceptual means of their solution.

The use of tradition to cast light on the present fits well the dominant tendency in modern theories of intellectual history, especially theories of the history of political thought. John Pocock has refurbished Hegel's distinction between pure reflective history and pragmatic-reflective history, although denying the dialectic between them (Hegel, 1980:16-23). Pocock, agreeing with Quentin Skinner, suggests that we must maintain a sharp separation between 'genuinely historical history' and the philosopher's, or political theorist's, use of past thinkers. The theoretician

> may read a text from the past and find that it suggests many trains of thought worth pursuing as part of the discipline of political theory or philosophy. To pursue them is a wholly legitimate activity; it does not invalidate, and is not invalidated by the historian's activity of seeking to establish what trains of thought were being pursued — or what other intellectual or linguistic performances engaged in — by the author who wrote the text, or by persons who read and responded to it in his time or thereafter. ... What cannot be legitimised, but is for several reasons very difficult to avoid, is that he/she should proceed as if interpretations of the text so constructed could be made the foundations of *historical* interpretation: as if meanings discovered by non-historical means and for non-historical purposes could be treated as meanings borne by the text, or intended by its author, in history; and as if histories of political thought could be constructed in terms of the being and becoming of meanings and intentions so discovered. (Pocock, 1979:96).[1]

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[1] This is a necessarily brief sketch of Pocock's and Skinner's rich and complex methodological ideas, in which I, among other things, have to ignore their differences and the development of their writings in the area (Pocock, 1969, 1972a, 1972b, 1972c, 1979, 1985 and 1987; Skinner, 1966, 1969, 1970, 1971, 1972, 1974, 1978a, 1978b and 1985). The most comprehensive discussion is Boucher (1985). There is much of relevance in Condren (1985), which, however, has its own methodological message. A particularly useful brief discussion of Pocock is Höpfl (1975), and of Skinner, Tully (1983), and of both, Janssen (1985). Cf. also King (1983).

Historians like Pocock (and Skinner) will thus grant theoreticians like Popper (and Hayek) that the past may be used legitimately as a rationalised tradition in debating contemporary issues. But the former deny that such a use of the past has anything to do with 'the activity of being an historian'. On their view, a conference devoted to elucidating 'The Liberal Tradition' through discussion of the works of three great political thinkers of the past may be a useful exercise in modern political theory and philosophy. It is not, however, respectable intellectual history. Yet the discussion at the conference, and the papers themselves, seem to offer both historical and theoretical insights, and these do not appear to be the outcome of essentially different activities. How, then, are history and theory related in our studies of past political thought?

The historians' sharp separation of theory and history is based on the view that the chief subject of the historical study of past political theory is the linguistic behaviour of agents in history. The notion that linguistic usage should be an object of behavioural study has its origins in Wittgenstein's theory of language and, more immediately, in the theory of speech acts developed by thinkers such as J.L. Austin and J.R. Searle (Austin, 1971; Searle, 1969). According to this theory our use of language cannot be understood merely as oral or written utterance with propositional meaning, i.e. with sense and reference — the so-called locutionary function. We must, in addition, understand the use of language as an act, as a form of behaviour which meshes with the rest of the speaker's behaviour. Like other deliberate behaviour, it has a point, a purpose, a 'force'; this is the so-called illocutionary function or force of language (Austin, 1971:99-131. We need not be concerned with Austin's third category, perlocution; see 1971:101-31). In order to understand the second, i.e. what the author was **doing** in saying or writing something, we need to know the situation or context in which he was doing it. Otherwise we shall not see the point of his action but be left with a free-floating statement. Hence the method recommended by the speech activists among the historians is often referred to as the contextualist method. Although ideally we should study linguistic behaviour in the context of the author's general behaviour, we cannot, of course, observe the behaviour of the past. To a large extent we must rely on linguistic reports of it, i.e. on the other speech acts, though historians naturally draw on additional evidence of past behaviour. Consequently, the context for a given past speech act is primarily, though not exclusively, linguistic in character, a point eloquently stressed by Pocock (e.g. Pocock, 1987:20).

The effect of the contextualist turn in recent historiography of political thought and, to a smaller extent, in other areas of intellectual history, has been dramatic and, in my opinion, beneficial. It has provided an ever richer texture in many areas of history, which has led to

an unprecedented rapprochement between the history of political thought and other areas of history. It has begun to dispose of the ocean of anachronism which used to overflow the history of political thought. In some cases, notably those of Hobbes, Locke and Smith, it has led to important revaluations of major thinkers in the traditional 'canon', and it has created a rising standard of excellence in historicity in other areas of intellectual history.

It is a pretty question whether the intended divorce of history and theory has been achieved and even more problematic whether any failure in this respect is due to inattention to the methodological lessons offered or to some inadequacy in these lessons. It seems to me that the historical and theoretical pursuits of political ideas are as intertwined as ever and, although this is not the place either to document or defend this practice, it is a place for putting forward another perspective on the study of intellectual history than that provided by the speech activists banning theory from history.

At the heart of the matter is the speech-act theory mentioned above. While its proponents are aware that this theory encompasses both the locutionary and illocutionary functions of language, the former, nevertheless, play no role when they apply the theory in their historiographical program. The background to this neglect is undoubtedly Austin's insistence that the two functions of language are intertwined in every utterance, so that referential function must be understood in performative context. Although adhering to a correspondence theory of reference, the truth of a description, considered as an utterance, is thus supposed to be a matter of its adequacy to the language-community in which it is being uttered. 'True' means 'very well said', as has been said very well (Passmore, 1966:467).

Despite Austin's own attempt to achieve a balanced view, the referential function of language, as ordinarily understood, has to a large extent gone begging for a place in the contextualist methodology. For the purposes of formulating a methodology for, or even an attitude to, the study of the history of ideas, we do not, however, have to commit ourselves to an elaborate alternative metaphysical and linguistic theory about the 'real' referents and the proper referential function of language. We can take it as a matter for exploration rather than assertion that given utterances have identifiable objects of reference. If we accept that many utterances are intended to say something about these objects — in addition to whatever else the speaker may be 'doing' in the uttering — then it would seem to be part of the intellectual historian's task to write the history of the utterance not only as a performance, but also as a reference. The latter, however, cannot be done except through an investigation of the purported objects of reference, which in intellectual history will primarily be the ideas employed by an historical speaker in

making his utterance. (Needless to say, I am not claiming that all referents are ideas.)

Once we see this as our task, we can no longer entirely reduce intellectual history to the history of discourse in the sense of linguistic performance. We must always bear in mind that the speaker's choice of words may be inadequate in some way to the formulation of the ideas he is trying to express. Since linguistic expression is the only immediate source for the ideas in question, historians seek to check their interpretations in various indirect ways. Some draw on the theoretical constructions of social psychology, in the broadest sense, and thus try to produce a so-called history of 'mentalities'. Others invoke one or another psychoanalytic theory, creating psycho-histories. Marxists will read the historical text as ideology and thus link it to the unfolding class-struggle. The contextualist historians will protest against all this in the name of 'genuinely historical history', insisting that the text be read on the specific linguistic premises of a particular situation.

At their best, all these, and still other, approaches have yielded outstanding contributions to historical understanding. They have served to correct the merely anachronistic writing of history-as the-record-of-'progress', which is popularly referred to as 'Whig history'. Yet unless we want to reduce ideas to the somewhat mysterious expression of collective mentalities, or to something purely psychological, or to epiphenomena of social and economic forces, or to linguistic behaviour, there is evidently something missing, namely the history of **ideas**. When one or all of these ways of writing the history of thought have been tried, there will often be not only room but need for an investigation of the ideas thought, simply as ideas. In order to do this, however, the historian has to understand the ideas in question, not just as mental, social and linguistic events, but as intellectual phenomena with their own logic. By this I mean that the historian has to reconstruct the premises for, and implications of, theories. He has to consider possible alternative formulations of distinctions and problems; and he has to do this in order to gauge exactly where in this intellectual problem-situation specific historical formulations of ideas are to be located. Through an understanding of the logical possibilities in a theory or in a complex of distinctions and problems, the historian can appreciate not only the particular route taken by a past author or speaker but also, and not least, the routes **not** taken — the logical implications of a theory which were not drawn, the inconsistencies which were not seen, the looseness of distinctions that were taken to be exhaustive. This is not to say that the historian's task is to **record** what might-have-been, the historical counter-factuals. It is to claim that our appreciation of the logical possibilities in a situation structures the questions we must ask in order to make the historical agent's response intelligible to **us**.

Here the interchange between the history of ideas proper and the other approaches to intellectual history becomes particularly valuable. Very often we shall be satisfied that some logically possible implication or distinction was not in fact drawn because the author concerned did not find it within the mental horizon of his society; or because he happened to have some particular psychological blockage against it; or because it was not part of the discourse he had available to him and thus not what he could be doing in the situation. While such answers, and especially the last, often satisfy us, they are, from the standpoint of argumentative logic, extraneous, and they may be too easy a way out. More particularly, they may be resorted to prematurely. It is important, therefore, that our explanation of 'errors' and 'missed opportunities', as they appear to us in analysing a complex of past thought, be sought first in purely argumentative terms. Only then can we be confident that we have comprehended our author's understanding of the ideas he is trying to handle and thus that we can apply the other methods of explanation in the right place.

The approach is not, as sometimes alleged, based on the assumption that our past author was perfectly rational, whatever that may mean. It is exactly because we do not know his rationality, its extent and its nature, that we must appreciate the logic of the ideas he was trying to deal with. In doing this we cannot a priori exclude any theoretical insights. It would be foolish to assume that either the author's or his linguistic community's formulation of a set of ideas was exhaustive of the argumentative potential of these ideas. While we should start from such formulations as our explananda, we should, as preparation for our explanations, utilise the theoretical insights gained from all periods, including our own. The purpose is not, of course, to ascribe to past authors ideas they did not have. The point is that fruitful intellectual history is not simply the record of successfully expressed ideas, but also an explanation of mistakes, of missed opportunities, of the only half-understood. If we neglect this, we will not press our historical material hard enough nor will we understand the intellectual problem-situation or context which one generation, more or less unintentionally, presents to the next. It is not only an author's actual **utterances** that have unintended consequences, a point made with extraordinary force by Skinner in his magnum opus; the **ideas** the author tries to express often have unintended implications of consequence. At the same time it must be emphasised that to pursue the history of ideas in this way is not to judge the truth-value of past theories and complexes of ideas and thus to assess the 'contribution' of past thinkers to the present state of knowledge. A clear distinction between the validity of a conclusion given certain premises, and the truth of the argument as a whole is to be

maintained here.[2] The argumentative possibilities open to Locke, given his theological premises, and thus the connection between these premises and, say, his theory of rights is the business of the historian of ideas; the truth of the whole proceeding is a matter for the philosopher. It is quite possible, however, that the former will learn from the latter new ways of probing his material.

If the history of ideas is pursued in the manner briefly indicated here, the relationship between history and theory is no longer entirely one-sided. In addition to any enlightenment contemporary theory may derive from the great thinkers of the past, our understanding of their ideas may benefit from the insights of subsequent generations, including our own. This suggestion is neither an endorsement of anachronism nor of teleological history. In utilising the theoretical tools of a later period to elucidate the ideas of an earlier one we must, of course, resist any temptation to transpose the former on to the latter. One of the main benefits of the contextualist fashion in modern intellectual history has been to make historians of ideas more honest in this regard. Similarly, the speech activists have served us well in criticising all tendencies to 'explain' the past as a process whose goal is the present. There remains, however, a distinction between, on the one hand, gauging the logical or argumentative potential of past ideas by means of present insights and, on the other, saying that the latter were already there in the past, or that we can understand past ideas **because** they led to the present (whether this has happened or how is a further historical problem).

Apart from the charges of anachronism and teleology the history of ideas as outlined here is open to other, related suspicions. It may appear that such an approach presupposes that there are 'universal', trans-historical ideas, theories, problems, etc., such as A.O. Lovejoy's great 'unit-ideas' (Lovejoy, 1974:1-23). This is obviously not so. The point of the present approach is precisely that we have no means of knowing whether there are such ideas except by piece-meal investigation. We cannot start from such ideas; whether we can end up with them is at least questionable. Since it seems impossible to specify what 'universe' is being referred to in talking about 'universal' ideas, it is extremely difficult to give the notion a specific meaning. The 'universality' of ideas is a matter of degree, and the degree is determined by the theoretical perspectives from which we choose to compare historically given ideas.

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[2] This is the only point which separates me from the distinction between 'intellectual history' and 'the philosophy of history' recently made by Rorty, Schneewind and Skinner in a particularly useful piece (1984:1-14, esp.4). By committing the latter to a necessary concern with truth they create an unnecessarily wide gap between the two disciplines, conceived as ideal types, which makes it harder for them subsequently to establish the connections between them in practice: They seem to miss the concept of the history of ideas sketched here.

In practice we must elucidate ideas from different periods and contexts in the light of each other, and the suggestion made here is that it is up to our theoretical ingenuity to make this more and more enlightening for each idea in its context.

My insistence upon the possibility of a history of **ideas** is emphatically not to be taken as a suggestion that this should replace other approaches. My concern arises from the monopolistic claims made by the supporters of these various methodologies. It seems to me that intellectual history, perhaps more than any other field of history, calls for a methodological pluralism, and I have no doubts about the necessity for an intimate connection between the contextualists' study of past thought as discourse and the sort of history of ideas suggested here. In fact, such a combination has been variously attempted with extraordinary success in modern German historiography by so-called conceptual history (*Begriffsgeschichte*).[3] Typically, this form of integrated history has been practised by teams of historians writing encyclopedic works; for the solitary historian and the individual monograph it is obviously a tall order. There is, however, a division of labour in intellectual history, and this ought to be legitimated by the methodological pluralism indicated here. In such a scheme there is no room for the idea of 'total history'; we have to make do with the totality of histories as we find them at any given time.

Against this background it makes perfect sense to ask half a dozen distinguished colleagues to ponder 'the liberal tradition' through the works of Locke, Smith and Mill, knowing full well that the implied notion of liberalism is a nineteenth-century construct. It makes equal sense for the outcome to be labelled 'liberal traditions'. Whether the authors' maps of the diffusion of concepts indicated by this label are accurate is a further question to be answered by the reader. To ask the original question is, I submit, not only a liberal, but a legitimate tradition.

[3] I refer in particular to Brunner, Conze and Koselleck (1972–) and many publications associated with this great project. Cf. two valuable discussions in English (Richter, 1986, 1987).

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John Locke: Liberalism and Natural Law

Shirley Robin Letwin

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I. INTRODUCTION

With the notable exception of Wilmore Kendall, and of those who regard Locke as an agent of the *bourgeoisie*, most commentators agree that 'Locke reasserts a radical constitutional theory of popular sovereignty and an individualistic theory of resistance' (Tully, 1980:53). His doctrine that no government can legitimately retain its title unless it protects certain inalienable rights of its subjects has made Locke a prophet of liberalism.

As the rule of law has traditionally been considered the supreme protection against arbitrary power, Locke is taken to be a major figure in the history of the philosophy of law. Yet a systematic account of Locke's theory of law is not to be found in discussions of either law or Locke's philosophy. And the reason is that Locke seems to have agreed with his contemporary who described 'the punctilles of the law' as a subject in which 'the more a man flutters the more he is entangled' (Locke, 1967a:87). The *Essays on the Law of Nature*, discovered by von Leyden, were never published by Locke himself and he nowhere explained just how his theory of natural law is connected with the rest of his doctrine. There are many scattered observations on positive or civil law but nothing like an extended discussion. A systematic philosophy of law has to be assembled from Locke's writing on a variety of topics.

Certainly Locke advocates the rule of law and in that context his views are wholly traditional. He says that those who govern are bound to do so by duly promulgated standing laws, which along with 'known authorised judges' he contrasts to 'extemporary arbitrary decrees'. Locke emphasises also, much as his predecessors had, the importance of having such laws in writing: '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 established judge: And so it serves not, as it ought, to determine the rights, and fence the properties of those that live under it' (T II, 136).[1] He points out that laws have the virtue of having been made before the event to which they might be relevant; he equates 'absolute arbitrary power' with 'governing without ... standing laws', and describes subjection to arbitrary power as a 'worse condition than the state of nature' (T II, 137). Everyone should be equally subject to the law: the rules are not 'to be varied in particular cases' and the same rule ought to govern 'rich and poor, ... the favourite at court, and the country man at plough' (T II, 142). In traditional fashion as well, Locke argues that what particular form a government takes is far less important than that 'the ruling power ought to govern by declared and received laws, and not by extemporary dictates and undetermined resolutions' (T II, 137). And Locke's definition of liberty is familiar and congenial to admirers of the rule of law: 'Freedom of men under government, is, to have a standing rule to live by, common to everyone of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man' (T II, 22).

In describing the rule of law as the alternative to arbitrary power Locke is wholly at one with his predecessors. He departs from them in just that aspect of his doctrine which is supposed to have made him such an effective defender of the rule of law and liberty, his theory of natural law.

II. NATURAL LAW — GOD'S LAW

In his early *Essays on the Law of Nature*, Locke described the truths of natural law as 'so manifest and certain that nothing can be plainer' (E 201). In the *Second Treatise*, he went further to say that natural law is 'as intelligible and plain to a rational creature, and a studier of that law, as the positive laws of commonwealths, nay possibly plainer; as much as reason is easier to be understood, than the phancies and intricate contrivances of men, following contrary and hidden interests put into words' (T II, 12). In the *Essay on Human Understanding* Locke

[1] Quotations from Locke are identified as follows: T I = *First Treatise of Government*, T II = *Second Treatise of Government*; the Arabic numbers refer to paragraphs. E = *Essays on the Law of Nature*, *Essay* = *Essay Concerning Human Understanding*; the numerals refer to book, chapter and paragraph.

explained more fully the suggestions in the early *Essays* about how the truths of natural law became known to man.

They could not be discovered from the opinions, customs, or traditions of human beings nor any other 'second-hand knowledge' (E 133-5) because everywhere there are men, indeed whole nations, whose thought and behaviour flagrantly violate natural law, who consider it 'praiseworthy to commit ... such crimes as are utterly loathsome to those who think rightly and live according to nature' (E 191). The same evidence establishes that knowledge of natural law is not innate in the human mind, for if it were no one could be ignorant of natural law. In both his earliest reflections on the law of nature and his later *Essay on Human Understanding*, Locke insisted that the truths of natural law had to be discovered by the proper exercise of reason on the material provided by the senses, without which reason is as helpless as a labourer 'working in darkness behind shuttered windows' (E 149).

The role of reason is that of a passive 'discursive faculty ... which advances from things known to things unknown and argues from one thing to another in a definite and fixed order of propositions' (E 149). The senses reveal 'the magnificent harmony' of the 'visible structure and arrangement of this world' where 'everything is regularly and constantly made' (*Essay*, III, vi, 12; E 133). From observing that the world has a definite order, reason proceeds to the conclusion that 'some Deity is the authority of all these things' (E 133; cf. also 109ff, 147-59), and that men are wholly dependent on Him because His will determines whether they are brought into the world, maintained, or taken away.

Being the product of God's workmanship, man is His property and wholly subject to His will. Since nothing in the world is made without a purpose, God must have designated mankind to fulfil some particular end. And since God orders everything in the world by immutable laws, from the idea of an all-powerful Creator and man's dependence on Him there necessarily follows 'the notion of a universal law of nature binding on all men' (E 133).

What is new in this picture of the relationship between God and man arises from Locke's repudiation of traditional metaphysics. Whereas the highly refined metaphysical categories of medieval natural theology allowed for a distinction between different sorts of ends or purposes — between, for instance, a final, material, efficient, and formal cause — no such distinctions were available to Locke. He accordingly reduced the relationship between God and man to that of potter and clay, what has been called the workmanship model, in which man is simply 'dependent' on God. The law of nature then becomes a 'decree of the divine will' (E 111) prescribing 'definite duties ... which cannot be other than they are' (E 199). The instructions of natural law seen in this fashion are manifest and indisputable, making it perfectly clear that God wishes us to 'do this but leave off that' (E 151).

That Locke sees law as an instruction for how to behave is suggested as well by his argument that the law of nature does not constitute a restriction of freedom. Men who fail to observe it are slaves of their passions, unable to consider what action will best promote their happiness. In submitting to the law of nature, they are not being restricted but are being shown how to achieve what they truly, rather than apparently, desire.

Just how such definite instructions could be reconciled with responsibility for sin was explained in the *Essay on Human Understanding*. There man is described as a being born with a drive or instinct to seek pleasure and avoid pain, summed up as 'seeking happiness'. That explanation does not contradict Locke's earlier refusal to admit that human beings had innate ideas, because pleasure and pain have the character not of ideas but of sensations which give rise to desire. What immediately 'determines the will ... to every voluntary action, is the uneasiness of desire, fixed on some absent good' (*Essay*, II, xxi, 33). The great privilege granted to men by making them 'finite intellectual beings' is that they can suspend action in order to scrutinise their desires and deliberate about whether satisfying a desire would interfere with achieving 'true happiness'. This constitutes their liberty, which is 'improperly called free-will' (*Essay*, II, xxi, 52; II, xxi, 47). Human freedom consists in the ability to stop desires from determining what we do until we have considered the consequences. The capacity for such suspension of desire prevents men from being robots who cannot distinguish between will and desire, and when they exercise that capacity they have done their duty (*Essay*, II, xxi, 52). As God 'requires of us no more than we are able to do', he would not chastise anyone who failed to master himself under torture. But in ordinary circumstances, the 'right direction of our conduct to true happiness' depends on restraining our disposition to satisfy a present desire until reason has given its judgment (*Essay*, II, xxi, 53). And God has provided an irresistible inducement for such restraint through 'the rewards and punishments of another life' (*Essay*, II, xxi, 70). Even those who lack faith are bound to be affected by 'the mere probability' of such a future state since there is no absolute proof of its non-existence. Whatever will secure eternal bliss is action in conformity with God's will.

Even in the shorter run, God has constructed us in such a fashion that a rational calculation of what will produce more pleasure will direct us properly. The pleasure and pain that men experience are the good and evil that attend our observance or breach of God's law; they are the reward and punishment that he has ordained to enforce the natural law. In this way, the *Essay on Human Understanding* explains Locke's assertion in the *Essays on the Law of Nature* that God not only 'demands of us that the conduct of our life should be in accordance with his will' but has made clear what things he wishes to be done by us (E 151).

Bound up with this view of the nature of reason and the relationship between man and God is an understanding of moral conduct that exalts the idea of law. It appears not only in the early *Essays* but also in the later *Essay on Human Understanding* where Locke describes a 'moral relation' as 'the conformity, or disagreement, men's voluntary actions have to a rule, to which they are referred, and by which they are judged' (*Essay*, II, xxviii, 4). And he defines moral good and evil as 'the conformity or disagreement of our voluntary actions to some law, whereby good or evil is drawn on us, from the will and power of the law-maker ...' (*Essay*, II, xxviii, 5).

Conformity to law given by a superior will is for Locke the essence of moral conduct because there is nothing in the human will by itself that can demand dutiful action, nor can human reason by itself distinguish virtue from vice. Left to himself, man is incomplete for he is a dependent being. If he did not subordinate his will to another superior will, satisfaction of his own desires would be the only measure of his actions. He would become 'a god to himself' and a slave to his passions (cf. Ms c. 28, fol. 141, quoted in Tully, 1980:36). This picture of moral conduct follows from Locke's denial that human reason has a creative power to invent laws for itself, and from his view that reason can do no more than discover the laws made by God. That is why Locke concludes that 'the formal cause' of law consists in its being 'the decree of a superior will' which informs man about 'what is and what is not to be done' (E 111-13).

Because a relationship in terms of law is defined by Locke as a relationship between a superior and an inferior will, Locke considers enforcement intrinsic to the idea of law and not merely an addition to it: 'For since it would be utterly in vain, to suppose a rule set to the free actions of man, without annexing to it some enforcement of good and evil, to determine his will, we must, wherever we suppose a law, suppose also some reward or punishment annexed to that law' (*Essay*, II, xxviii, 6). Apart from the natural consequence of an action there must be some independent consequence in the form of reward or punishment if an action is to be affected by a rule. Otherwise 'it would be in vain for one intelligent being, to set a rule to the actions of another, if he had it not in his power, to reward the compliance with, and punish deviation from his rule' (*Essay*, II, xxviii, 6). A rule cannot then qualify as a law unless it carries sanctions for disobedience. And conversely, whatever carries a sanction can qualify as law. Thus Locke distinguishes three kinds of law: the will of God made manifest in natural law and Revelation, which is sanctioned by the pleasure and pain attached to good and evil in this world and the next; civil law, which is enforced by the power of the commonwealth to take away 'life, liberty, or goods from him who disobeys' (*Essay*, II, xxviii, 9); and the 'rules of fashion', which are just as much law as the others, Locke insists, because enforced

by social disapproval, which no man can endure. By thus connecting law with punishment as by identifying law with the command of a superior will, Locke makes power (or force) an essential ingredient of law.

All laws rest ultimately on natural law and on God because even though the natural law is discovered by reasoning from observations of the natural constitution of things, what is being observed is what God has willed. That natural law is God's command is paramount for Locke, and that is why he refused to extend toleration to atheists. Because atheists do not acknowledge their dependence on God, they cannot recognise any duties. Therefore 'the taking away of God, though but even in thought, dissolves all' (1824:V, 47).

III. THE CERTAINTY OF NATURAL LAW

Although in saying that knowledge of what is good and evil is given to man by God and nature, Locke appears to be at one with his classical and medieval predecessors, he departs radically from them because natural law as they understand it has a fundamentally different character. It consists of highly abstract principles, and does not provide precise practical instructions or commands. On the contrary, principles of natural law are compatible with a considerable and significant diversity at the level of practical action. Aristotle distinguishes sharply between the theoretical truth that constitutes man's 'final end' and the practical wisdom needed to discern what actions and arrangements are required to pursue this end in different circumstances, and never suggests that recognising the final end of human life gives men indisputable knowledge of their rights and duties either within or outside civil society. On the contrary, the movement from final end to practical decision is neither direct nor simple and arrives at conclusions that are irremediably contingent and disputable.

For Aquinas as well, natural law consists of the highly abstract principles from which no command follows directly or inevitably. Positive law cannot be deduced from natural law but has to be 'determined' much as an architect decides on the precise plan for a house which conforms to but cannot be deduced from his general idea of a house: 'From the precepts of the natural law, as from common and indemonstrable principles, the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason are called human laws ...' (*Summa Theologica*, Q 91, a 3). Man has knowledge of natural law because 'man has a natural participation in the eternal law according to certain common principles, but not as regards the particular determination of individual conclusions ... Hence the need for human reason to

provide further to sanction them by law' (Q 91, ad 1). Although Revelation enables man to know without any doubt what he ought to do and what he ought to avoid in order to achieve eternal bliss, it does not enable him to judge how to derive positive law unerringly from Divine Law. Of course, Aquinas assumed that the Church had been given authority to declare the true interpretation of Divine Law. But the rightness of particular determinations of natural law for civil purposes is necessarily disputable because they concern matters 'which are singular and contingent' about which reasonable men can always disagree, unlike the 'necessary things' with which the speculative reason is concerned. Because their subject matter is contingent, human laws 'cannot have that inerrancy that belongs to the demonstrative conclusion of the sciences' (Q 19, a 4, ad 3).

No such room for uncertainty about practical conclusions appears in Locke. His reputation for taking a modest view of knowledge rests on his description of himself as only 'an under-labourer ... clearing ground a little' (*Essay,* Epistle to the Reader, p.11). But within the areas that he chose to clear, Locke had a fundamentalist's confidence about what had to be done.

The problem of dealing with conflicting interpretations of Revelation never disturbed Locke. He admitted that philosophers have failed to make out a complete system of morality 'from unquestionable principles, by clear deductions'. Nevertheless all the truths that men need about moral conduct are manifest in Revelation, which is 'the surest, the safest, and most effectual way of teaching' morality (1824:VI, 140, 147), and no one can 'be excused from understanding the words and framing the general notions relating to religion right' (1892:sect.8, p.26; cf. 1824:V, 41). In the *Essay* as well, Locke says that faith 'leaves no manner of room for doubt or hesitation' (*Essay,* IV, xvi, 14), just as he writes to the Bishop of Worcester that, 'The Holy Scripture is to me, and always will be, the constant guide of my assent; and I shall always hearken to it, as containing infallible truth, relating to things of the highest concernment ... and I shall presently condemn and quit any opinion of mine, as soon as I am shown that it is contrary to any Revelation in the Holy Scripture' (1824:III, 96). When his friend William Molyneux urged him to complete the work that he had begun in the *Essay Concerning Human Understanding* by demonstrating all the truths of ethics, Locke explained that he need not do so because, 'The Gospel contains so perfect a body of ethics, that reason may be excused from inquiry, since she may find man's duty clearer and easier in Revelation than in herself' (Locke to Molyneux, 30 March 1699, in Locke, 1708:143-4).

He expressed doubts about whether the ability to arrive at moral truth could be equally cultivated in all men, and the severity of these doubts varied at different times of his life. But such doubts could trouble

him only because he was so thoroughly persuaded that the knowledge about conduct that human reason could achieve is as certain as the conclusions of mathematical demonstrations. Though he denied that the human intellect is 'fitted to penetrate into the internal fabrick and real essences of bodies', he insisted that 'morality is the proper science, and business of mankind in general' (*Essay*, IV, xii, 11) and that the certainty of moral knowledge is indisputable. Whether we take a rule from 'the fashion of the country, or the will of a law-maker', Locke assures us that 'the mind is easily able to observe the relation any action hath to it; and to judge, whether the action agrees, or disagrees with the rule'. As a rule is 'nothing but a collection of several simple ideas ... belonging to it' (*Essay*, II, xxviii, 14), the results of comparing an action with a rule can never be in doubt.

What may seem to be qualifications on this fundamentalist view of moral truth appears in several different contexts. Locke acknowledges that though natural law is 'perpetual and coeval with the human race', no one can be bound to perform at all times everything that the law of nature commands because 'he can no more observe several duties at once than a body can be in several places'. And Locke concludes that even though the binding force of the law never changes, there is often a change in both the times and the circumstances of actions, whereby our obedience is defined (E 193). As examples of cases where the 'binding force of the law is equally permanent' but 'the requirements of our duty' are not, he cites conversation about the concerns of others: No one is obliged to make that a subject of conversation but anyone who does so is obliged to be 'candid and friendly' and refrain from malice. In such cases the moral quality of the 'matter' of the action is indifferent until we know the circumstances in which it is performed, but only conditionally. It is left to our 'prudence, whether or not we care to undertake some such actions in which we incur obligation' (E 195). But far from recognising that to determine by 'prudence' what a rule means in particular circumstances is a contingent decision that is necessarily disputable, Locke asserts that there are things that are altogether forbidden and that 'to force or cheat a man out of his property is at all times a crime and no one can stain himself with another man's blood without incurring guilt' (E 193-5), without in any way suggesting that it would remain to determine whether a particular event in which one man caused the death of another constituted murder, self-defence, accidental homicide, or a duty of war.

Another suggestion that the interpretation of principles for practical action might be uncertain appears in the discussion of the imperfection and abuse of words in the *Essay* (*Essay*, III, chs x and xi). In that context, Locke speaks very much as Hobbes does about the unlimited variety of interpretations that men invent for the same set of words. But even this did not lead him to temper his convictions about the certainty

of moral truth. He still maintained that the knowledge of moral truth rests on the agreement or disagreement of 'those ideas which are presented to them' and if the mind proceeds correctly in deduction from them, the conclusions are determined. All that is voluntary in knowledge is whether or not men exercise their faculties, but once they are employed, 'our will hath no power to determine the knowledge of the mind one way or other' (*Essay*, IV, xiii, 2).

He distinguishes between opinion and knowledge (conclusions of a deduction) but he denies that because a practical decision had not been deduced and therefore constituted opinion rather than knowledge, it was any the less certain: 'most of the propositions we think, reason, discourse, nay act upon, are such, as we cannot have undoubted knowledge of their truth: yet some of them border so near upon certainty, that we make no doubt at all about them; but assent to them as firmly, and act, according to that assent, as resolutely as if they were infallibly demonstrated, and that our knowledge of them was perfect and certain' (*Essay*, IV, xv, 2). Indeed in some cases 'the probability is so clear and strong, that assent as necessarily follows it, as knowledge does demonstration' (*Essay*, IV, xvii, 16; cf. also IV, xvi, 6-9). Just why some propositions that we act upon cannot be demonstrated to be indisputably true, Locke neither explained nor considered. Nor could he have done so, because he never acknowledged that the irremediable contingency of the human world made it impossible to move from universal principles or general rules to indisputable practical conclusions about what should be done here and now. Practical reasoning has no place in Locke's philosophy.

Nor does contingency or the uncertainty of practical reasoning enter into Locke's explanation of the diversity of the human world. Though he recognised and occasionally even emphasised the existence of diversity, he attributed it to error. He never withdrew his assertion in the early *Essays on Natural Law* that diversity occurs only because men are led astray by habit and following traditional examples, when they follow the herd like brute beasts and give way to their appetites.

When in the *Essay* Locke translated all satisfactions into pleasure and pains, he was able to explain more precisely how diversity is compatible with the universal validity of the conclusions reached by reason about right and wrong. The diversity acknowledged is not, however, a diversity of intelligent responses but merely a difference in reactions to stimuli. Nothing more is involved in Locke's censure of ancient philosophers for arguing about whether the *summum bonum* consists in riches or contemplation. That he misrepresents the meaning of *summum bonum* and the ancient dispute is less important than that he attributes the pleasure that men get from things to 'their agreeableness to a particular palate'. He insists on this in order to deny that the differences are due to the things themselves. Whether different

moral views might arise from diverse ways of understanding and responding to the sensations aroused is not considered by Locke. He is concerned only with establishing the one true conception of moral good — that of 'the greatest happiness' — which consists in having 'those things which produce the greatest pleasure, and in the absence of those which cause any disturbance, any pain'. Though the reactions of men differ, the character of the calculations required to achieve the greatest happiness is absolutely uniform. When they make faulty estimates of the pleasure that different courses of action will bring, men go wrong, but about a pleasure or pain that is immediately present, there can be no mistake: 'The greater pleasure, or the greater pain, is really just as it appears' and the apparent and the real good are, in this case, always the same (*Essay*, II, xxi, 63). Only when it comes to comparing present pains or pleasures, with future ones, which is 'usually the case in the most important determinations of the will', is it easy to judge wrongly (*Essay*, II, xxi, 63).

In making 'the greatest happiness' the ultimate aim of human activity, Locke emphasises that he is providing a moral and not a utilitarian standard. While men can arrive at what is right by observing what is convenient, he argues, it is only because God made man in such a fashion that a rational pursuit of happiness under the guidance of reason necessarily constitutes virtue. Nevertheless, nothing is right because it is convenient. The rightness of an action does not depend on its utility but on its conformity with God's will (1824:VI, 142). And the ultimate end is never in doubt: 'The rewards and punishments of another life, which the Almighty has established, as the enforcements of his law, are of weight enough to determine the choice, against whatever pleasure or pain this life can shew, when the eternal state is considered but in its bare possibility, which no body can make any doubt of' (*Essay*, II, xxi, 70).

Locke attends to human diversity only when it serves to support his denial that knowledge of natural law is innate or that it can be discovered from observing human practices. Even when he acknowledges in the *Essay* that differences of temper, education, fashion, maxims or interest lead men to different notions of virtue and vice, he concludes that in the main men are inclined to esteem the same sorts of things. If we consider not how men behave, but 'their innermost ways of thinking', we find there an 'internal' law, or 'conscience', which brings even those who 'act perversely' to 'feel rightly' and to recognise that they behaved wrongly. Serious moral diversity is excluded by Locke's philosophy because it confines reason to discovering universal indisputable truth and deducing therefrom.

The differences among human beings are therefore due either to different reactions to sensations which are not the product of reason, or to a failure to suspend desire in order to consider future pleasures and

pains, or to an error in making such judgments. None of these gives rise to a diversity rooted in the privacy of human personality. That kind of diversity can be acknowledged only by understanding human reason as a power to create and not merely to receive diverse modes of experience.

IV. THE INDIVIDUAL AND THE NATURAL COMMUNITY

Since Locke does not see human beings as intrinsically private personalities, his picture of the human world is far from individualistic. The difficulty of finding a common ground among the self-enclosed persons that gives rise to the human predicament in Hobbes's philosophy does not exist for Locke. Neither is there the space for individuality allowed by ancient and medieval philosophies in the movement between abstract universal principles to contingent practical decisions. Instead moral conduct consists simply in subordination to a superior will and obedience to the clear directions given in the natural law.

Nevertheless the basic provision of the natural law might seem to justify Locke's reputation as an individualist. In the *Second Treatise,* Locke says that the law of nature 'teaches all mankind ... that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions' (T II, 6). Locke's insistence that each man has a right to command himself and the resources that he needs to preserve himself without invasion has every appearance of an individualistic declaration of natural rights. From that premise, however, Locke moves off in quite another direction.

Access to the law of nature enables men to live together and be free 'to order their actions, and dispose of their possessions, and persons as they think fit ... without asking leave, or depending upon the will of any other man' (T II, 4). Moreover, the natural law, being a law, provides for its own enforcement. Every man has a right to punish transgressions of the law of nature not only when they are directed against himself but wherever they occur. If anyone offends against the law of nature, everyone else has the right to punish him for it and exact retribution, not simply for his own damage but to vindicate the rule of 'reason and common equity, which is that measure God has set to the actions of men, for their mutual security' (T II, 8). Certainly murder and possibly even thieving may be punished by death, for punishment has to be severe enough 'to make it an ill bargain to the offender, give him cause to repent, and terrifie others from doing the like' (T II, 12). How far punishment is based on retribution or deterrence is unclear, since Locke speaks of them as one when he says that the power to punish is not an absolute or arbitrary power 'but only to retribute to him, so far as calm reason and conscience dictates, what is proportionate to his

transgression, which is so much as may serve for reparation and restraint' (T II, 8). Yet he also describes these as the two reasons why one man may harm another. It follows that in principle human beings are capable of existing in 'the state of nature', which is 'a state of liberty' but 'not a state of licence'. Locke concludes that the whole of mankind belongs to a 'natural community'. And this idea of a 'natural community' is the foundation of his departure from individualism.

Because it is a natural community, Locke's state of nature is often supposed to have an affinity with Aristotle's *polis*, which is also 'natural'. But what renders the *polis* natural according to Aristotle is something very different. Nature in Aristotle's sense denotes a cosmic order according to which human potentialities are arranged in a hierarchy. The higher of these potentialities can be actualised only in an association that has a sufficient number and variety of members to produce the arts of civilisation, making possible not merely survival but the achievement of 'the good life'. Aristotle's *polis* is natural because it can satisfy the need given by the nature of human beings for the good life; it is not natural in the sense of being established by a non-human agency. On the contrary, Aristotle emphasises that human beings do not necessarily come into the world as members of a *polis*, and that it is a human artifact whose members can choose to join or leave. This distinguishes the *polis* from a family or tribe, where membership cannot be chosen, and which besides satisfies a different kind of need, the need to survive and to procreate. Moreover, the *polis* can come into existence only when there is established a law distinct from the various tribal customs of the members. This law is not a mere attribute of the *polis* but that which constitutes it because the rule of law makes possible a kind of association that could not otherwise exist.

As Locke tells the story, however, men come into a world governed by a law that makes them members of one, universal community. Civil society differs from the state of nature only in its power to punish transgressions of the law given by nature more systematically and effectively. For what moves men to quit the state of nature is 'the irregular and uncertain exercise of the power every man has of punishing the transgressions of others' (T II, 127).

This explanation is not altogether unambiguous. For Locke also says that 'there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies', which suggests that law has to be invented. Yet in the very next sentence, he writes that 'the law of nature [is] plain and intelligible to all rational creatures'. He seems to offer a reconciliation of the two assertions in what he calls his 'strange doctrine' that 'every one has the executive Power of the Law of Nature' (T II, 124 and 13), because it is the defects of this 'strange power' that move us to leave the state of nature. Whether this difficulty

arises from a failing intrinsic to all men or found only in some is not clear. Sometimes Locke attributes the inconveniences of the state of nature to 'the corruption and viciousness of degenerate men' (T II, 128) and sometimes to a widespread propensity in people to be 'biased by their interest', or ignorant 'for want of study' of the law of nature, which, as everyone is both judge and executioner, may produce misjudgments of what punishment is required. This inconvenience in the state of nature leads men to seek 'a known and indifferent judge' who will have 'authority to determine all differences according to the established law' and who will never want for sufficient power to execute the sentence (T II, 124-5). To establish such a judge, men leave their 'great and natural community' and make 'positive agreements' to 'combine into smaller and divided associations' (T II, 128). Upon entering civil society, they surrender the right each has by nature to punish violations of the law to someone appointed 'amongst them' who shall exercise that right 'by such rules as the community, or those authorised by them to that purpose, shall agree on' (T II, 127). In other words, when men enter into civil society they do not become associated for the first time, but merely agree to break up into smaller associations and to accept a more effective instrument for punishing transgressions against the terms of association that previously existed.

Locke's doctrine of natural law thus radically attenuates the importance of the rule of law. It ceases to be the bond of civil society as it had been for his predecessors. It ceases to be essential for all men, virtuous as well as wicked. For Locke's law of nature is much more than a postulate of civil law or even a standard or measure for civil justice. The law of nature is the civil law writ large. Far from being a fundamentally different sort of law as it was for Locke's predecessors, the civil law merely fills in details missing from the natural law, above all by providing just and effective punishment of transgressions. Precisely how civil law is derived from or related to natural law, Locke does not say. His epistemology allows for nothing other than deduction but he does not treat the civil law as substantially different from natural law. He describes it rather as a corrective for those who are incapable of exercising their faculties adequately enough to perceive and abide by the law that God has made manifest, and it follows that the more nearly men approach perfect rationality, the less need they have for civil law. Nor does civil law serve any purpose distinct from that of divine law; it merely provides aid for obeying divine law with greater assurance. All this follows from Locke's doctrine of natural law because it denies the independence of the earthly city from the heavenly city. Man's natural ends are not distinct from his eternal destiny. As in all fundamentalist doctrines, God is ruler of the earthly as well as the heavenly city.

V. LAW, OBLIGATION, AND AUTHORITY

The predicament that led Locke's predecessors to fear civil unrest above all disappears. While this is generally recognised, its implication for law is usually overlooked. It means first of all that in deciding about civil arrangements, the problem is not how to reconcile different but equally worthy opinions about what is desirable, but how best to achieve objectives that everyone who is adequately rational necessarily seeks. And this introduces a radically revised understanding of the subjects of law. They are not, as they were for Locke's predecessors, independent agents pursuing different projects, but servants of one and the same project. The objective of civil law is not then to make possible an association that embraces many diverse projects, but rather to achieve more effectively the project that everyone necessarily ought to pursue. In other words, law is an instrument of the enterprise that God has assigned to men.

That explains why the obligation to obey the law depends on its rightness. In order to secure its rightness, it might seem, Locke rests the binding power of civil law on its conformity to natural law: 'the municipal laws of countries ... are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted' (T II, 12). But as always with Locke, there are signs pointing also in other directions, for at other times he attributes the obligation to obey civil law to its being a command of a superior, and derives that obligation from natural law. This ambiguity is parallel to that about whether man's obligation to obey the will of God rests on God's power or on the rightness of His commands. Generally Locke says that the bond that obliges us 'derives from the lordship and command which any superior has over us and our actions' (E 183), and that we are bound to obey God 'because both our being and our work depend on His will, since we have received these from Him'. But he adds quite another reason in the remark that 'moreover, it is reasonable that we should do what shall please Him who is omniscient and most wise' (E 183), which suggests that we should obey God's commands because they are undoubtedly right.

Rightness is made the foundation of the obligation to obey civil law when Locke insists that the law must have the consent of its subjects. But his emphasis on consent is somewhat muddled by his speaking sometimes of authority in the manner of Hobbes, as when he says that a man leaves the state of nature when 'he authorises the society, or ... the legislative thereof to make laws for him', and that civil society sets 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' (T II, 89). But more often Locke couples authority with consent as if the two were synonymous. Or perhaps it is because his concept of

'dependency', introduced to explain the relation between God and man, is a curious blend of 'consent' and 'authority' and is used to explain also the relationship between law-maker and subject.

Because his emphasis on the rightness of laws and consent to them appears to give individuals a greater say in determining their obligation to obey the law, Locke is assumed to have a high regard for human individuality. The opposite is more nearly true. Locke's theory of law does not respect individuality because the idea of authority plays no part in it.

Authority can be bestowed only by those subject to it. When I recognise someone's authority I commit myself to acknowledge his right to make certain decisions. Consent enters into authorisation only when the terms on which authority is granted are being agreed to. In other words, as a subject of law I consent to the rules designating the procedures for appointing law-making officers and defining their duties. In doing so I confer 'authority' on the officers who are appointed, which means that I recognise their right to make certain decisions. But my recognition of their authority does not imply that I consent to the substance of the decisions they take in the course of performing their duties. Nor do I consent to the authority of the law-maker because I recognise his superiority; on the contrary, I endow him with a 'superiority' in the sense of a right to decide, which he could not otherwise possess. Having recognised the authority of the law-makers and of the procedures governing their decisions, I become obliged to conform to decisions that are 'authentic', that is to say, conform to the authorised conditions.

Obligation that rests on authority is accordingly a wholly human creation. Locke cannot accept the idea of authority because he denies that obligation can rest on a purely human commitment: 'it is not to be expected that a man would abide by a compact because he has promised it, when better terms are offered elsewhere, unless the obligation to keep promises was derived from nature, and not from human will' (E 119). Because Locke denies that men can give laws to themselves, he insists that if men were not bound by the law of nature, which is imposed by God, they could be bound by nothing. That is why 'the laws of the civil magistrate derive their whole force from the constraining power of natural law' (E 189). The only qualification suggested by Locke is that those who have access to Christian Revelation need not rely on natural law because they have access to another source for God's commands. Even when he emphasises that the obligation to obey a civil ruler is a matter of conscience rather than fear, that the ruler, unlike a tyrant or robber, does not possess merely superior power, Locke still attributes the obligation to obey civil law to the law of nature, which 'decrees that princes and a law-maker, or a superior by whatever name you call him, should be obeyed' (E 189). Thus 'all obligation leads back to God' (E

183) because Locke provided no adequate account of authorisation.[2] Just how any law-maker acquires his superiority remains a mystery.

Locke rests obligation on what human beings do or think only when he confounds obligation with power. That appears both when he makes the power to enforce its requirements an intrinsic part of law, and when, in the course of arguing that the majority within the community has a 'right to act and conclude the rest' (T II, 95), he speaks of the majority's 'power'. And he seems to equate power with mechanical force in saying that the power of the community 'to act as one Body' is given only by the will of the majority because 'the Body Politick' will 'move that way whither the greater force carries it, which is the consent of the majority' (T II, 96).

VI. GOVERNMENT AS A TRUST, LAW AS A MEANS

Although in civil society the immediate test for the validity of a law is whether it is made by the legislative, the reason is that only laws made by the legislative body can have the consent of the people (T II, 134). The power of the legislative body is not limited by law but by 'the public good of the Society' (T II, 135), and the legislative body cannot oblige obedience from the people unless its acts are 'pursuant to their trust' (T II, 134).

Since authorisation plays no part in Locke's understanding of civil society, it is not procedural correctness that determines whether the governing body can oblige obedience but rather whether the governing body has discharged its 'trust'. The legislature is described as a 'fiduciary power to act for certain ends' ... 'all power given with trust for the attaining an 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' (T II, 149).

In a relationship of trust as in a relationship of authority, one person acts for others, but the nature of the action to be taken and the assignment of the task is different. In authorisation the obligation is to abide by the conditions of the office one holds; one's duties are prescribed by the rules defining the office. In a trust the obligation is to achieve a designated objective. An authorised officer has a 'right' to take certain decisions; a trustee has a 'duty' to perform a particular task, such as managing an estate to profit the beneficiary. Whereas authorisation is

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2 For a very helpful discussion of Locke's religious views see Ashcraft (1969). A similar emphasis on Locke's religious faith appears in Dunn (1969).

a substitutional relationship, a trust is an instrumental relationship. Since the power given with a trust is for the attaining of a designated end, the power is limited by the end designated in the instructions of the trustor. If an authorised officer observes the rules defining his office, he cannot be accused of violating his authority even though he may have acted unwisely or ineffectively. But a trustee violates his trust if he acts unwisely or ineffectively. If parliament is authorised to make or alter the laws of the realm, there are two distinct questions to ask about its activities: Have the appropriate rules and procedures been observed? Are the conclusions reached desirable? The former is a legal question, the latter a political one. In Locke's account the legal question disappears and there is only one question — whether parliament has acted effectively to achieve the task entrusted to it.

That Locke should regard governing as a trust is in keeping with his theory of natural law. Since the purpose of governing is quite precisely given by the law of nature as Locke understands it, the problem of ruling in civil society is not how to unite a multitude of diverse wills, or how, given the variety of opinion and wants, to determine what the public good requires. It is the much simpler problem of how to achieve what everyone knows ought to be done. The legislature is entrusted with power so that it may pursue a known end.

Although the legal idea of trust is a distinctively English idea that first appeared at the end of the 14th century (Maitland, 1936:141-223), Locke's description of legislative power as a trust is undoubtedly odd and he appears to recognise as much when he says that the trust may be 'tacit'. Whereas a proper legal trust involves three parties, the trustor, the trustee, and the beneficiary, in Locke's account of political trust there are only two parties since the people are both trustor and beneficiary (cf. Barker, 1934:II, 299; 1947:xxvi-xxx; Gough, 1950:143-7). On the whole most students would agree with Dicey that 'nothing is more certain than that no English judge ever conceded, or, under the present constitution, can concede, that Parliament is in any legal sense a "trustee" for the electors. Of such a feigned "trust" the Courts know nothing' (Dicey, 1927:73). But whatever the constitutional authenticity of Locke's notion of trust, there can be no doubt that where the government is understood in this fashion, the laws that it makes have the character of an instrument. Thus, Austin, who had a similarly instrumental view of law, also took up the idea of trust (Austin, 1954:246).

Understanding governing as a trust and law as an instrument for serving that trust excludes any conception of civil society as an association of independent agents pursuing diverse ends who wish to retain their autonomy. The rights of individuals are derived from — they do not determine — the public good. Even in his arguments for toleration, it is ultimately the public good that is Locke's criterion for

how far the magistrate's power should extend (Locke, 1967a:103). That explains why Locke never describes civil society as an 'association' but rather as 'one coherent living body', or as the 'Body Politick'. And that is in keeping with his description of the law as a provision for preserving 'Mankind in General' and transgressions of it as 'a trespass against the whole species' (T II, 8). Instead of saying, as did Hobbes, that the will of the sovereign is substituted for the wills of those who have covenanted to enter into civil association, Locke says that civil society has an 'Essence and Union', which consists not merely of 'mutual influence, sympathy and connexion' among its members but in their having 'one Will', which is in the keeping of the legislative (T II, 212).

That Locke's use of the organic metaphor is not merely ornamental or an insignificant adoption of a medieval image is made clear by what he says about the regulation of property. There is nothing unusual in Locke's description of the object of government as 'the regulating and preserving of property, and of employing the force of the community, in the execution of such laws, and in the defence of the commonwealth from foreign injury and all this only for the public good' (T II, 3). The 'regulating and preserving of property' and 'public good' may be used as abstract terms that cannot determine concretely what is to be done until they are interpreted for particular circumstances, by political deliberation. That Locke meant something else, however, is suggested not only by his indifference to the problem of deriving practical conclusions from general prescriptions but also by what he says about the duty to regulate property.

It is an obligation of the government because 'subduing or cultivating the Earth' (T II, 35) is a duty assigned by God who 'gave the World ... to the use of the Industrious and Rational' (T II, 34). Locke tells us also that men are obliged to promote 'the great Design of God, Increase and Multiply' (T I, 41), that 'numbers of men are to be preferred to largenesse of dominions', and that 'the increase of lands and the right imploying of them is the great art of government' (T II, 42). The right of individuals to private possession is not, for Locke, fundamental but a corollary of the 'fundamental Law of Nature', which is 'the preservation of Mankind' (T II, 135). Each man's fear of death does not figure in Locke's concern with civil peace because he takes God to be commanding not self-preservation but the survival of the human species. Thus private property, even if only in the sense of private use of land, is a natural right because otherwise men would not labour to produce enough to secure the preservation of mankind. Because this is the given purpose for the acquisition of property, the law of nature prohibits any man from acquiring more than he can consume, since otherwise the rest would be wasted and denied to those who needed it.

It follows that once men invented money, which made it possible for an individual to accumulate more than he could consume without any danger of its going to waste, the government had a duty to regulate and limit property so as to ensure that all have enough. So in *An Essay Concerning Toleration* of 1667, Locke writes: 'The magistrate having a power to appoint ways of transferring proprieties from one man to another, may establish any, so they be universal, equal, and without violence and suited to the welfare of that society' (Locke, 1967a:366, fn.par. 120). In *A Letter Concerning Toleration* of 1689 he writes: 'It is the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general, and to every one of his subjects in particular, the just possession of these things belonging to this life' (1824:V, 10). Von Leyden suggests that in this latter passage Locke sanctioned redistribution to government (von Leyden, 1982:108). Even if that contention is disputed, it must be acknowledged that, as Laslett (Locke, 1967a:104) points out, Locke never withdrew nor contradicted those ambiguous statements. Whether or not Locke recommended control of credit and prices, or whether measures such as nationalisation could be justified on his principles, as has been suggested by Laslett, Kendall and Von Leyden, there is nothing in Locke's understanding of law to prevent the use of legislation to do whatever the majority of the society considers desirable in order to subdue and cultivate the earth as God commands.

Civil society, as Locke understands it, is then an association with a given purpose, that is to say, an enterprise association; and law is, according to Locke, the appropriate instrument for achieving this purpose. Whatever Locke may say about the rights of men, he never speaks of law as a set of adverbial conditions that ought not to direct anyone's behaviour but only to indicate the considerations that must be taken into account when deciding what to do. There is no suggestion in Locke's writing for making the traditional distinction between laws imposing taxation, which command the performance of certain actions, and contract law, which stipulates the conditions for making a contract that can be defended at law but does not oblige anyone ever to make a contract. Nor is any of this surprising because an instrumental view of law is inseparable from regarding the power of government not as an authorisation but as a trust. Since authority is created by rules defining offices and their duties, the rules have an intrinsic rather than an instrumental value — like the rules of a game, they are designed to make the game possible, and not to assure anyone of victory. But if, as in Locke's view, the government is entrusted with power for the sake of attaining a given end, what matters is whether that trust has been effectively discharged. Whether the rules have been adequately observed is unimportant, or significant only insofar as it aids or hinders

discharging the trust. That this was Locke's view of law is obvious in what he says about both adjudication and prerogative.

The independence of the judiciary did not concern him. He speaks of legislation and adjudication as one: The duties of the legislature are, he says, a power to 'decide the Rights of the Subject by promulgated standing Laws, and known authorised Judges' (T II, 136). He describes the Legislature also as a 'Judge on Earth, with Authority to determine all the Controversies' (T II, 89). And he couples legislation with adjudication as if they were aspects of one power: in civil society men have 'a common established Law and Judicature to appeal to' (T II, 87). At the same time, he attributed a judicial power also to the executive, and besides coupled the executive power with the legislative when he derived civil society from the right of every man in the state of nature to judge and punish violations of the law of nature. There is not the slightest suggestion that adjudication has to be kept separate in the statement 'herein we have the original of the Legislative and Executive Power of Civil Society, which is to judge by standing laws' (T II, 88). Instead of seeing adjudication as a distinct legal procedure, Locke regards it as a 'pervasive feature' of civil society (cf. von Leyden, 1982:108).

Locke's indifference to the independence of adjudication is consistent with both his blindness to the character of practical reasoning and his view of government as a trust. If law is understood as the foundation of authority, it is essential to keep the rules fixed, and adjudication is needed to interpret fixed rules for different circumstances. To ensure that the rules are made and changed only by those who are authorised to do so, and that the law is not changed for particular cases, adjudication and the enforcement of law have to be kept separate from legislation. In other words, regard for the independence of the judiciary is part of a regard for the formalities of law. But those formalities are unimportant for Locke because he does not regard the rule of law as a set of procedures that enables people who do not wish to obliterate their disagreements to settle them amicably. Instead, Locke sees the law as a set of instructions for performing the right actions. What determines their rightness is whether they promote the flourishing of the human species. Since the law is an instrument for achieving a goal, whose desirability is indisputable because it has been designated for man by a superior will, the only thing that matters is the effectiveness of the law for achieving its object. That is why Locke holds that 'law, in its true Notion, is not so much the Limitation as the direction of a free and intelligent agent to his proper Interest' (T II, 57).

That Locke values the rule of law not for its own sake but rather as the most effective instrument for achieving desirable consequences is even clearer in his discussion of prerogative. He defines prerogative as the 'power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it' (T II, 160).

And he gives the same reason for the right of the people to grant or enlarge the prince's prerogative as for their right to limit it: 'whatsoever shall be done manifestly for the good of the people, and the establishing the government upon its true foundations, is, and always will be just prerogative' (T II, 158). These are not chance remarks; the same view is repeated in different contexts. Locke explains for instance that since 'a rational creature' would not willingly subject himself to another 'for his own harm', when he 'finds a good and wise ruler, he may not perhaps think it either necessary or useful to set precise bounds to his power in all things'. It is entirely reasonable for the people to permit their rulers to 'do several things of their own free choice' not only where the law is silent but 'sometimes too against the direct letter of the law' (T II, 164).

Of course, all admirers of the rule of law have acknowledged that occasions may arise where the law has no answer, or gives an answer so violently unsuitable that it must be ignored. To provide for such occasions even the strictest of constitutions grants emergency powers in some form or other, for times of peace as well as war. Besides it is always acknowledged that managing relations with other states requires a large degree of discretion. And if that were all that Locke had in mind when he insisted upon the importance of prerogative, he would be saying nothing remarkable. But in fact he is not merely making the traditional qualifications on the rule of law. He assigns the discretion required for dealing with foreign affairs to the 'federative' branch of government; the power that he discusses in connection with prerogative belongs to the executive. Moreover the necessity for ignoring the law at times is not something that Locke deplores; on the contrary, he assumes that the law is there to be observed only insofar as it serves the public good, and that whenever the public can be served better by other means, the law becomes otiose.

He accordingly explains that there is no reason in the abstract for suspecting prerogative and that the English people have traditionally been tolerant of prerogative because it is a power to do good: They 'are very seldom, or never scrupulous, or nice in the point', or questioning of 'prerogative, whilst it is in any tolerable degree imployed for the use it was meant; that is, for the good of the people, and not manifestly against it' (T II, 161). The people have never 'contested' what 'was done without law'; on the contrary, they have acquiesced in whatever the prince did, regardless of whether it was done 'contrary to the letter of the law' or how much it enlarged the prince's prerogative, as long as it served the public good. They would not limit the prerogative of 'those Kings or Rulers, who themselves transgressed not the Bounds of the publick good. For prerogative is nothing but the power of doing publick good without a rule' (T II, 165-6). Where a dispute arises between the executive power and the people about claim to prerogative, 'the tendency of the exercise of such prerogative to the good or hurt of

the people, will easily decide that question' (T II, 161). When the people are blessed with a good prince who discharges his trust faithfully, he 'cannot have too much prerogative, that is, power to do good'. And conversely, when the prince turns out to be a poor trustee, the people are justified in limiting his power. Merely changing the extent of the prerogative in either direction is no cause for complaint since 'the end of government being the good of the community, whatsoever alterations are made in it tending to that end, cannot be an incroachment upon any body ... And those only are encroachments which prejudice or hinder the publick good' (T II, 163).

VII. RESISTANCE AS A RIGHT

Locke's view of prerogative is wholly consistent with his theory of natural law as well as with his view of government as a trust, since on neither ground is the rule of law the constituent of civil society or valued for its own sake. The rule of law is merely an instrument designed to serve a given purpose, and whether or not an instrument should be employed depends entirely on how well it can serve its purpose.

In keeping with this depreciation of law, Locke sanctions a right of resistance to governments that fail to promote the public good. There would be nothing unusual in his discussion of resistance if Locke had argued merely that there are occasions when men might be justified in refusing to obey the established law. That in some circumstances rebellion might be justified has generally been granted by defenders of the rule of law, even by St Thomas Aquinas. The novelty in Locke's argument is that he insists on a 'right' to resist unjust law. And that is of a piece with what he says about the desirability of prerogative because the object that justifies both is the same, promoting the public good. If the legislature is entrusted with power so that it may pursue a known end, then it follows that when those who have entrusted this power find that the legislature has acted contrary to the trust reposed in it, they are entitled to 'place it anew where they shall think best for their safety and security' (T II, 149).

Earlier on, in his *Tracts on Government*, Locke did not recognise any right to resistance, arguing that if the magistrate abused his powers, it was for God to punish him. Nor did Locke ever withdraw the arguments that he made in the *Tracts* against claims to a right of disobedience based on conscience. When writing later about toleration, he argued that 'a toleration of men in all that which they pretend out of conscience they cannot submit to will wholly take away all the civil laws and all the magistrate's powers, and so there will be no law or government' (Ms Locke, c. 28, fol. 24, Locke, 1967b:102, fn. 45). In a letter of 1660 he altogether repudiated any sanction for resistance.

Having from early childhood found himself 'in a storm which has lasted hitherto', he said, he now felt bound 'both in duty and gratitude to endeavour the continuance of the blessings of peace by disposing men's minds to obedience to that government which has brought with it the quiet settlement which even our giddy folly had put beyond the reach not only of our contrivance but hopes' (Gough, 1950:178). Nevertheless, in the *Second Treatise* Locke argued persistently and firmly for a 'right' to resist 'the exercise of a power without right' (T II, 168). Whereas in the *Tracts* he had emphasised the gulf between the ruler and the multitude 'whom knowing men have always found and therefore called beasts' (Locke, 1967a:158), in the *Treatise* Locke declares rulers to be just as vulnerable as any of their subjects to using 'force, the way of Beasts' (T II, 181).

In the course of defending the right to resistance Locke occasionally comes close to speaking as if authorisation is the ground of government. He says for instance that when 'oaths of allegiance and fealty' are taken to the supreme executive, 'it is not to him as supream legislator, but as supream executor of the law ... allegiance being nothing but an obedience according to law, which when he violates, he has no right to obedience, nor can claim it otherwise than as the publick person vested with the power of the law, and so is to be considered as the Image, Phantom, or representative of the commonwealth, acted by the will of the society, declared in its laws; and thus he has no will, no power, but that of the law' (T II, 151). In the same spirit, a tyrant is defined as one who 'makes not the law but his will the rule' (T II, 199), who 'exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not' (T II, 202). But Locke's censure of tyranny is never a clear-cut condemnation of lawlessness as such. Censure of a tyrant's arbitrariness is coupled throughout with condemnation of the consequences of his lawlessness. Indeed Locke explicitly emphasises that the consequences are what matters. If the lawlessness, the transgressing of the law, did no harm, it would not be a ground for censure: 'Wherever law ends, tyranny begins, *if the law be transgressed to another's harm*' (T II, 202; emphasis added). This qualification keeps Locke's censure of tyranny consistent with his views on the prerogative, and it makes a judgment of the consequences of lawlessness, rather than an obligation to observe authentic law, the ground for opposing tyranny.

Some qualifications Locke does make on the right of resistance. The cause for dissatisfaction must be of 'sufficient moment' (T II, 168) and the rebel 'must be sure he has right on his side' (T II, 176). Not just any individual, but a substantial part of the community must judge that the government has betrayed its trust. In any case resistance is unlikely under other circumstances since a few 'private men' are so powerless to recover what has been taken from them, that even the 'right

to do so [to resist the established government] will not easily ingage them in a contest, wherein they are sure to perish' (T II, 208).

Rebellion need not, moreover, affect the person of the prince or king if it is directed at his subordinates who have violated their trust: 'the sacredness of the person exempts him from all inconveniences' (T II, 205). But if a king arbitrarily dissolves the legislature, he declares a state of war with his subjects and then the king becomes a rebel. Apart from these qualifications Locke argues that a right to rebellion is not likely to be interpreted as an invitation to anarchy because people desire peace and security and are naturally disinclined to overthrow an established government, even when their grievances are substantial. He also suggests that the right of resistance is important chiefly as a threat because rulers are less likely to give cause for rebellion if they believe that their subjects are alive to their right to resist misuse of power.

But otherwise Locke defends a 'right of resistance' to 'the exercise of a power without right'. Indeed the qualifications he makes elsewhere are forgotten when he says that not only the 'body of the people' but 'any single man' has 'a liberty to appeal to heaven, whenever they judge the cause of sufficient moment ... by a law antecedent and paramount to all positive laws of men ... God and nature never allowing a man so to abandon himself, as to neglect his own preservation' (T II, 168).

Throughout, Locke's emphasis falls on the self-evident nature of the ground for resistance. If the people '*universally have a persuasion*, grounded upon manifest evidence, that designs are carrying on against their liberties, *and the general course and tendency of things* cannot but give them strong suspicions of the evil intention of their governors', they cannot be blamed for resorting to rebellion (T II, 230). Whenever the people come to believe that the legislators have designs on their property, they are 'thereupon absolved from any further obedience, and are left to the common refuge, which God hath provided for all men, against force and violence ... [and] have a right to resume their original liberty' (T II, 222). To those who protest that if the commands of a prince may be resisted by anyone who feels aggrieved, anarchy and confusion will replace government and order, Locke replies 'That force is to be opposed to nothing, but to unjust and unlawful force; whoever makes any opposition in any other case, draws on himself a just condemnation both from God and man, and so no such danger or confusion will follow, as is often suggested' (T II, 204). Furthermore, to say that men are not to be 'absolved from obedience, when illegal attempts are made upon their liberties or properties' is like saying 'that honest men may not oppose robbers or pirates, because this may occasion disorder or bloodshed'. Whatever undesirable consequences may attend such resistance should be charged not 'upon him, who defends his own right, but on him, that invades his neighbours' (T II, 228).

VIII. LOCKE'S ILLIBERAL LEGACY

Locke's discussion of the right of resistance makes it impossible to doubt that he regards law as an instrument of social policy, and that conformity to legal procedures is but one means for ensuring that the ruler remains faithful to his trust. If he can discharge his trust more effectively by violating or ignoring legal procedures, he is obliged to do so. If his subjects can better ensure the effective discharge of that trust by renouncing their obligation to obey the law they are similarly entitled, indeed have a duty, to rebel. The formalities of the law are to be respected only insofar as obedience produces the desirable consequence of promoting good policy.

All this rests on Locke's assumption that the truth about what is right in human conduct, public as well as private, is not subject to reasonable disagreement. He is nowhere concerned with the possibility of disputes among good and wise men about whether the law has been violated or adequately observed, whether the public good has been faithfully pursued, or what constitutes the public good. Such questions are meaningless for Locke because he did not recognise that practical reasoning about contingent matters, unlike demonstrative reasoning, arrives at conclusions that are ineradicably disputable, and because he believed that moral truth is as undeniable as mathematical truth.

Locke is indifferent to the possibility of such disputes among good and wise men because he assumes that the truth about what is right is manifest. This belief is rendered plausible by his religious faith combined with his rejection of natural theology. Since he did not accept his predecessors' intricate conception of a rational cosmic order and of the law that ruled that order, he had no regard for what that conception implied about the distinction between theoretical and practical reasoning, self-evident first principles, and contingent conclusions. And he did not understand reason as a creative faculty that can produce infinitely various interpretations of experience and responses to it. His defence of natural rights rests ultimately on a simple, fundamentalist conviction that what men need to know in order to conduct their lives has been made manifest in Revelation, and that the meaning of Revelation is too plain to allow serious disagreement among believers. As a result, Locke has left an unfortunate legacy for liberalism.

His doctrine of natural law has been interpreted as a teaching about natural rights and it has been adopted by people without any religious faith, who are, if anything, antagonistic to the Judaeo-Christian tradition, and are therefore neither influenced nor restrained by any reading of Christian doctrine or Christian theology. Instead they take their bearings from an unpredictable variety of conflicting compasses. To such an audience, Locke's doctrine, stripped of its Christian underpinnings, becomes a defence of wholly arbitrary claims to 'natural

rights', which are used not only to encourage violation of established law but also to denigrate the conception of law as a set of formally authenticated rules on the ground that it hinders the adoption of desirable social policies. Although such doctrines are considerably cruder than Locke's, their presuppositions about human rationality and individuality and the rule of law are essentially the same because they trace obligation not to rights that are established by human contrivance but to rights given to human beings. But they do not deign to explain how rights can be 'given' if there is no Divine Ruler.

Their lack of Locke's religious faith may lead them to a somewhat different catalogue of rights, yet the current advocates of natural rights conclude, as Locke did, that the rule of law is an expedient for securing desirable social policy. They do not distinguish between instrumental and non-instrumental or adverbial rules. They assume that all associations are enterprise associations. They try to escape from the notion of law as constraint by describing law as a direction to our greater good or by adopting a mumbo-jumbo about 'positive' and 'negative' freedom, but always ignoring the difference between the constraints of procedures, which characterises non-instrumental law, and the constraints of commands. For these latter-day disciples of Locke, the only alternatives are obedience or rebellion, and the reduction of law to these simple extremes is destroying all regard for the rule of law.

If the rule of law is part of the liberal tradition, then Locke cannot be counted among its friends. But as he illustrates so well the ambiguities that have dogged it, he can contribute a text to be used in considering whether liberalism entails a serious commitment to the rule of law. And we cannot answer that question without asking whether Locke's picture of the human world is compatible with a satisfactory conception of law. If we reduce reason to a deducing and calculating machine, as Locke did, and at the same time exclude God, we are left, as Locke warned us, with the conclusion that has dominated the West in recent years, that everything is as good or bad as everything else and that the boo-ha theory is the only explanation for the distinction between right and wrong. Demands for natural rights founded on that sort of view are likely to protect tyranny more than liberty.

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Locke on Freedom: Some Second Thoughts

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Locke on Freedom: Some Second Thoughts

Alan Ryan

Although the theme of this collection of essays is 'The Liberal Tradition', it is a moot point whether Locke is best understood as 'a founding father of liberalism'. I do not mean by this that, judged by some timeless test of liberal virtue, Locke is disqualified from joining the liberal club. Rather, I mean that Locke was notoriously secretive in life and remains elusive in death. Exactly what his own intentions were, it is hard to say; exactly what lessons secular, pluralist, 20th-century liberals might draw from the devoutly Christian Locke, it is even harder to say. Certainly, one way in which historians of ideas have been having second thoughts about Locke for the past 30 years is that the old picture of Locke as a slightly muddled liberal who tried to balance consent, property ownership and the public good as alternative bases for political authority has been discredited. He has been seen as a covert Hobbist, defending absolute government, as the defender of the rising bourgeoisie, as the defender of capitalist landowners, as a Calvinist emphasising the arbitrary and contingent quality of all earthly hierarchy, and as a revolutionary and a regicide (Cox, 1960; Macpherson, 1962; Wood, 1984; Dunn, 1969; Ashcraft, 1986). None of these views is wholly without merit; none is wholly satisfactory. The elusiveness that did much to save his skin (see Ashcraft, 1986:426ff), posthumously does much to save him from the interpreter's oversimplifications. Of the innumerable topics this paper might tackle, I address only a handful. The main topic is the familiar question of how Locke's account of government in his *Two Treatises*[1] can be a solution to the problem of reconciling freedom and authority, which I take to be a, if not the central problem of liberal politics. In the course of providing a fairly simple answer to that question, I say something about the connections

[1] Quotations from Locke's *Treatises* are identified in the text by I (First) and II (Second) and the section number.

between freedom and property, a little about the connections between freedom and republicanism, and lastly something about the dismissal of liberalism as an essentially 'privatised' view of the world by Miss Arendt and Professor Wolin (Wolin, 1961:309ff; Arendt, 1961). It will be apparent that on all of these, I am offering second (third, fourth and later) thoughts, but very few conclusions.

I. PRELIMINARIES

If men are born naturally free and equal, there is a problem about how they come to live under political authority. There are problems familiar from the theory of games: if everyone is willing to obey an authority but everyone fears that other people are not, how is mutual assurance to be achieved? If matters are worse than that, if we should all like to exercise authority but would also like to avoid obeying it if we could, how then can we set up any sort of political and legal authority? If *per impossibile* we can achieve that, how can we decide **who** is to exercise authority? Ordinarily, persons who exercise authority are authorised to do so; but to make an authoritative appointment demands that someone already possesses or has acquired authority. Readers of Hobbes will have asked themselves and him such questions. It is Hobbes who insists that we cannot infer from the Bible what authority to obey until we are told by some authority how to understand the Bible, just as it is Hobbes who seems to turn the establishment of any authority into a 'prisoners' dilemma' game. There is, however, a sharp difference between Hobbes and Locke. Locke did not ask himself such questions, and this was not out of carelessness or inattention but because he did not think he needed to. If men were born free and equal, they were not born outside all forms of authority. They did not face the problem which Hobbesian men face, that of pulling themselves up by their moral or legal bootstraps.

Their freedom and equality consisted of the absence of **earthly** hierarchy; but they were in all conditions governed by a law of nature that was intelligible to anyone who consulted his reason. Men were the handwork of God. Moreover, they were his handwork in a way that no object of human manufacture could be; God created the world *ex nihilo*, whereas men merely reassemble the ingredients they find around them; God inspires us with a soul in a way that defies rational explanation. We are therefore God's property in a very special way, quite different from the way our earthly property is ours. God may dispose of us as He sees fit. No human being has this sort of authority, neither over himself nor over anyone else, nor even over anything else. Since our lives are God's and not our own, our property **in** our own persons amounts to the freedom to choose how to employ our talents and time in order to realise the purposes intended by God.

Freedom is therefore not the arbitrary domination of our will, but the uncoerced following of the law of nature. 'Freedom is not, as we are told, *A Liberty for every Man to do what he lists:* (For who could be free, when every other Man's Humour might domineer over him?) But a *Liberty* to dispose, and order, as he lists, his Person, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is; and therein not to be subject to the arbitrary Will of another, but freely follow his own' (II,57). Although Locke insists as Hobbes had that law supposes the will of a superior, his view of law is, for all that, Aristotelian, and less Hobbesian or 'Benthamite' than most modern commentators find congenial. God's law is 'not so much the Limitation as *the direction of a free and intelligent Agent* to his proper Interest' (II,57). It is more than a set of coercive rules founded on general utility. Although God's goodness means that He wills the happiness of His creatures and the flourishing of all things as far as possible, the law of nature is not merely, as I once suggested (Ryan, 1984:ch.1), a utilitarian moral scheme. A utilitarian account of natural law and natural right would see the primary role of law as the defence of each of us against the ill usage of other men, rather as Mill's essay on *Liberty* does, and it is true the content of the utilitarian schema and the law of nature as described by Locke overlap. Reason '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' (II,6). Nonetheless, the rationale of this injunction is not that its acceptance forms the basis of a social peace treaty — as it is with both Hobbes and the utilitarians — but that it directly points out to each individual what God requires of him.

Men are 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' (II,6). The individual acting in the light of this Lockean law will not harm another, but whereas the Hobbesian or utilitarian perspective makes mutual forbearance central to the justification of the rule of law, the Lockean perspective does not.[2] Locke's is a Christian perspective in which the fact that we have been sent here about the Almighty's business yields both the content and the authority of natural law. On my view, therefore, the prior authority of God is one of the supports of an insistence on the rule of law in earthly politics; Mrs

[2] I say this in spite of Hobbes's insistence that a law of nature is a truth found out by reason whereby we are forbidden to do what is destructive of our own welfare; Hobbes's summary of natural law in the negative Golden Rule 'do not unto others what you would not have them do unto you' precisely is to reduce natural law to rules of mutual forbearance.

Letwin and I agree that Lockean individualism allows the individual no ultimate freedom to decide his or her own ends — these being set by God — but I dissent from her suggestion that this sort of freedom is necessary to a defence of the rule of law. Even piously motivated pre-emptions of the rights of others are ruled out by Locke as a violation of the sanctity of the individual's own judgment and the individual's own relationship with the Almighty (see this volume, pp. 7ff, 13ff).

II. PROPERTY AND LIBERTY

If we focus on the connections between freedom so conceived and Locke's account of property, we get two strands of argument. The first is that human beings sent into the world on God's business are required to make good use of the world's resources. They cannot do this except by appropriating them; food for eating and water for drinking must be taken into our bodies before they are any use to nourish life. We must therefore have the right to make things 'ours': 'there must of necessity be a means *to appropriate* them some way or other' (II,26). The property rights thus acquired are chronically misrepresented in the literature; Macpherson, for instance, assumes that Lockean property rights are unencumbered freeholds, and that what we get by initial acquisition is the *ius utendi et abutendi* of the Roman lawyers. He further muddies the waters by contrasting Locke's conception of property with that of Aquinas and other medieval writers and misappropriates the labels of 'exclusive' (or 'exclusionary') and 'absolute' to define this conception. This makes a fearful tangle in the following several ways.

Lawyers have a use for the distinction between 'absolute' and 'non-absolute', which is technical and unlike Macpherson's distinction. Where he means 'under the unfettered discretion of an owner unencumbered by customary or communal claims upon the property', the lawyers distinguish between forms of property law that start from the presumption of a single owner who possesses all the powers (be they few or many) over his property that the law recognises, and systems that do not. English land law was archetypically an example of the second and remained so until 1925. Yet, it is in the context of landed property in 17th-century England that Macpherson is writing.

Certainly, to say of someone that he had an 'absolute' property right is often a way to conjure up the thought that he 'can do what he likes' with his property and that nobody may say him nay; but even here, there is a misleading suggestion in the air. Roman Law, which is the paradigm case of a system founded on an absolute-in-the-lawyers'-sense conception of ownership, actually gave the owner less power to create dependent interests in his property than did the common law. Parting with the *ius fruendi*, for instance, because it was a personal contract, was

a less satisfactory way of creating a lease than the English leasehold; it was the system that lacked the absolute conception of ownership that, perhaps paradoxically, gave the owner most scope for the imaginative control of his property. If the powers of owners over their property were greatly expanded during the 17th century (and it is not at all clear that they were), this did not introduce the 'absolute' conception of ownership into English law (Macpherson, 1962:220-21; Lawson, 1958:8-9; Reeve, 1986:13-23, 45-51).

Similarly, Macpherson's emphasis on the 'exclusive' conception of property thoroughly confuses conceptions of property with ideas about who is to do what with whatever property is in question. Macpherson contrasts the power of the capitalist to exclude others from access to the means of production with an 'inclusive' conception of property that guarantees access to the means of production. Pre-capitalist societies had collective ownership of one sort and another, which allowed villagers to graze their cattle on common land or run their pigs in the woods, or gave them access to strip fields to grow wheat, and so on. Under socialism, the forms of ownership will be very different, but the same thought holds: property will be property for access. This, however, muddles two different issues. In the first place, **all** property is exclusive; when a village owns a common it has the right to exclude nonmembers from access to the common. If it has de facto control over a hunting run, what it has is the power to exclude members of other tribes or villages from access to the hunting run. The power is held by all the group and not by individual members; but the power is just as much (or as little) a power to exclude as the power of the capitalist. Moreover, the emphasis on the capitalist's powers of exclusion is misconceived in another way; the capitalist needs to employ his capital in setting workers to work. If he had no power to exclude some, he could not employ others, but unless he does employ some he will not long be in business. In that sense, one might well say that his property forces him to offer access to those he employs. It is impossible to see how there would be any conception of property under socialism that was not also an exclusive conception, even if property was employed to include as many people as possible in the workforce.

Whether property conceptually includes a right to exclude is a wholly distinct issue from the question of the extent to which people either may or habitually do use their ownership for private gain. It may be that those who own the commons are unconcerned to do anything more than live as they always have; and it is certainly true of socialist economies in practice that they have been eager to avoid unemployment and have therefore tended to guarantee employment to all who are half-way willing to work. All the same, the rights of the Russian state over Russian industry are very like the rights the British state has over nationalised industries. The idea that a society dedicated to securing full

employment either has or needs to have a different **conception** of property is a confused way of making points that could readily be made without entering into such territory (Reeve, 1986:32ff).

We must, therefore, try to decide what Locke's views on these issues were, without unduly encumbering the issue with extraneous matter. To get to this point we must begin with Locke's conception of rights. Locke evidently begins with duties rather than rights. God's design for the world gives us duties and sets us tasks; we must therefore have the rights that are necessary if we are to fulfil those duties. This vision is very different from the one that Nozick ascribes to Locke (Nozick, 1974:174ff; but at least p.58 acknowledges some of the distance between them). We are obliged to **preserve life,** and therefore must have the right to what is necessary to preserve it; this is how the duty to preserve life lies behind the right to appropriate property. It is not a self-centered conception of rights at all. 'Every one as he is *bound to preserve himself,* and not to quit his Station wilfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, *to preserve the rest of Mankind,* and may not unless it be to do Justice on an Offender, take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another' (II,6).

Because the law of nature is God-given and imposes duties before it confers rights, Locke took seriously the record of what Adam's rights and duties were. Against Filmer, who started from the thought that Adam had an arbitrary and unlimited dominion that was at once magistracy and ownership, and ended with the conclusion that Charles I had the same, Locke claimed that Adam had not even had the right to destroy the inferior creatures for his own use; 'who, as absolute a monarch as he was, could not make bold with a Lark or a Rabbet to satisfy his hunger' (I,39). Adam had dominion over, but not in the usual sense, ownership of, the animal kingdom. Adam's property extended only to the vegetable kingdom (contrast Genesis 1:31-2 with Genesis 9:31). It is noticeable that Locke does not suggest that Adam would have been even freer than he was in the Garden of Eden if he had been allowed to slaughter animals too. Freedom remains firmly **within** the bounds of God's law.

The 'duty-based' conception of rights is important in making proper sense of Locke's 'strange doctrine' that we all begin with the right to execute the law of nature against offenders. If this were a liberty right, it would imply that we might execute the law of nature if we felt like it and not if we did not. This reading of the matter would be alarming in the sense that it would provide an incentive to anyone violating the law of nature to go to the length of murdering his victim, since if the right to punish violators was simply the liberty to do so if we chose, there would be a good chance that nobody other than the victim would choose

to do it, and therefore that the violator's best hope would be to eliminate his victim entirely. This was the logic of Hobbes's war of all against all. Locke's view was that we had a duty and therefore a right to enforce the law of nature; we might not be able to enforce it, but wherever we could do so we ought to do so. By the same token, it was only if the duty lay behind the right that the social contract setting up government could create what we wanted — not a government that had the right to enforce the law of nature if it felt like it, but a government whose duty was to enforce the law and that had, as individuals did not always have, the power to do its duty. Here as elsewhere, Locke has the advantage of Nozick, who simply omits any explanation of how 'protective associations' are to be made to do their duty (compare Nozick, 1974:137-40 and Locke II,9).

Unsurprisingly in the light of this duty-backed view of rights, the acquisition of property is the fulfilment of a duty and only for that reason the exercise of a right. The literature on Locke's theory of property is extensive, but chronically underattentive to this feature of Locke's theory. James Tully's long and careful account, for instance, tries to make sense of Locke in terms of what one might call the 'embodiment' of personality in property (Tully, 1980:110). This is not wholly wrong, but it is subtly misleading in that it starts from a concern that is distinctively more modern than Locke's; to the extent that Locke thought of property as connected with personality at all, it was only via the thought that person is a 'forensic notion', that what made persons persons was their capacity to obey the law, take responsibility for their actions, and generally live up to the standards of natural, moral and divine law.

Tully, to be sure, maintains that 'Locke's use of the term "person" is also traditional'. He cites Aquinas, Suarez and Pufendorf; but in so doing he emphasises the thought that to have a personality is to be a free agent, and that the free man is defined as proprietor of his own will. It is this that strikes a false note. Although Rousseau, Kant and Hegel picked up old traditions of thought when they emphasised the role of the will, their vision of the embodied will is distinctively modern and very unLockean. A modern reader cannot stress the embodiment of the will as Tully does without picking up such Kantian and Hegelian themes. What we have to stress instead is that Locke was light years away from accepting the Romantic (or even the English Idealist) doctrine that personality as such demanded expression in the external world, save in the limited sense that the world had to allow a man scope to do his duty. Self-expression was something about which Locke was at best ambivalent; it came close to the pure wilfulness that he was always eager to repress. The 'self' that was to be allowed expression was so circumscribed by the duties laid upon it by God that there was no scope

for Hegelian or Romantic notions of *Bildung* in the Lockean universe, not even when Locke was writing about education.[3]

Macpherson's emphasis on the theory of differential rationality, which he — uniquely — discovers in Locke's works, suggests, rightly, that there is a rational imperative to acquire a property in external things, but Macpherson goes on to infer, wrongly, that 'unlimited appropriation' is the mark of rationality. If John Dunn exaggerates a little when he says that Locke 'must be supposed to have had about as much sympathy for unlimited capitalist appropriation as Mao Tse-tung', he does not exaggerate much (Macpherson, 1962:232-8; Dunn, 1969:209). Nonetheless, it remains true that rationality requires us to acquire property. In the first place, it is only by taking and using what nature offers that we can survive at all. Reason enters the equation in the following way: what human beings ought to do is a matter of what their essence or nature dictates. Our natures, like the real essences of anything else, are a matter of God's construction. *An Essay Concerning Human Understanding* denies, of course, that we possess genuine 'knowledge' of the real essences of things other than those we have ourselves created — though Locke seems at times to have wondered whether Newton might not have penetrated the veil of appearance and somehow read the mind of God after all. In the case of geometry, which is a human construction, we do possess an a priori and in that sense Godlike knowledge of the objects thus constructed. Indeed, we have the same knowledge wherever an action or object is made what it is by meeting a standard we have laid down. We do not know the essence of gold, because 'gold' refers to whatever it is that gold turns out to be like, but we do know the essence of adultery, because 'adultery' refers to an activity that satisfies criteria we ourselves have set (Locke, 1964:ii:66-70; Ashcraft, 1987:44-6).

What of the knowledge of ourselves? There seems no certain or simple answer to be had to this question. Locke does place the knowledge of our own selves in the same category as mathematics and morals, but how much we know about our own selves and what it is that we know is not spelled out very satisfactorily. Locke needs simultaneously to insist that we do not know how God has wrought us

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[3] I had not read Mrs Letwin's essay when writing my own. She and I are wholly in agreement that Locke's conception of individual rights does not rest on any kind of moral pluralism. The only pluralism in Locke is supplied by the thought that God has given us diverse talents and placed us in diverse situations, so that the practical implications of the injunction to employ God's bounty to the best of our abilities are different for different people. However, she and I are at odds on the political implications of this. Locke's sense of the sanctity of the individual's private concerns seems to me to be quite as firm a basis for the rule of law as one could ask.

in order to insist on God's authority over us and its difference from earthly authority, and yet that we know enough about our own construction to reveal the dictates of natural law. It is not clear that there is any way of reconciling these demands. What there is is a loose analogy with the *Essay*'s strategy of showing that we have knowledge sufficient to our needs. The Gospel, Aristotle, common sense, and a view of what is needed for happiness all converge on the same point. It is contrary to reason to suppose that God would create us with desires that he chronically intended to frustrate. Our search for happiness and our attempts to avoid misery were implanted for good reason; and success in them — both here and in the hereafter — is not impossible. Obedience to the law of nature makes for happiness, both because God's injunction to live modestly and at peace with our neighbours, to practise charity, and to place our happiness in what is eternal rather than transitory, makes for earthly happiness anyway, and because God's capacity to inflict eternal punishments on those who violate his laws and give eternal rewards to those who keep them ensures that over the infinitely long run virtue and happiness coincide.

The dependence of all this on a Christian framework is complicated; indeed, it is multiply complicated. One dimension of the complexity, to which we must return, is that Locke intends to drive religion out of politics and politics out of religion; but he proposes to do so for what one might call 'religious' reasons. Another, of immediate concern, is that Locke evidently thinks that Christian and non-Christian reflection will coincide in an agreement on what the law of nature requires. The Aristotelian, teleological framework of classical natural law picks up the natural presumption that things that serve human needs so exactly are there to do just that. Apples, so to speak, are there to be eaten for our benefit; the rational man will eat them, not use them as missiles, nor will he gorge on them. The needs of any sort of social interaction similarly dictate what sort of moral code we must follow. The Swiss and the Indian bartering for trade in the woods of inland America know perfectly well that *pacta servanda sunt*, though they share no common religion. Perhaps the Christian, equipped with the Gospel and the unique enlightenment it offers, is better off than anyone else, but the law of nature is not unavailable to anyone who is both rational and of moderate goodwill.

This is not a complete answer to our question; Locke seems also to doubt whether men are so much at one in their moral views as he himself suggests in his more optimistic moments. His *Essays on the Law of Nature* admit that 'there is almost no vice, no infringement of natural law, no moral wrong, which anyone who consults the history of the world and observes the affairs of men will not readily perceive to have been not only privately committed somewhere on earth, but also approved by public authority and custom. Nor has there been anything

so shameful in its nature that it has not been sanctified somewhere by religion, or put in the place of virtue and abundantly rewarded with praise'. Nor does he go far along the path of trying to distinguish between the more or less utilitarian considerations on which one might expect mankind to agree — the need to keep faith, tell the truth, abstain from violence within at any rate a certain social circle — and ideas about the good life, the sexual virtues and vices, family life and the like, which one might expect to vary much more dramatically (Hampshire, 1983:164-7; Locke, 1954:167). It is perhaps surprising that he does not do so, since the general pattern of his politics is to insist on the need to provide a framework of enforceable law within which individuals may pursue their own intimations of the good life. However, it is easy to see that Locke's concern in his *Essays on the Law of Nature* is to fend off Hobbes; *contra* Hobbes, it is crucial to insist that morals are not validated by convention and do not rest on individual self-interest. It would only weaken the case to stand back and contemplate cases that are more nearly conventional.

Still, even if we cannot press Locke very hard on this, we can now return from the law of nature to property and see what this implies for his views on freedom. Without unduly rehearsing an old story, the gist of the Lockean account is to insist on **use** as the moral basis of proprietorship. The **definition** of ownership, as distinct from its moral basis, is, however, firmly linked to consent: 'For I have truly no *Property* in that, which another can by right take from me, when he pleases, against my consent' (II,139). It is the concept of use that allows him to say that the grounds of legitimate appropriation are set by the law of nature, as are the limits of such appropriation. 'The same Law of Nature that does by this means give us Property, does also *bound* that *Property* too. *God has given us all things richly,* 1 Tim. vi. 17 is the Voice of reason confirmed by Inspiration. But how far has he given it us? To *enjoy.* As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a Property in' (II,31).

For familiar reasons, Locke needs to show that although God gave the earth to mankind in common, each individual may establish property in what he acquires, **without** the consent of everyone else. Filmer had argued as a *reductio ad absurdum* against those who began from the claim that men were born free and equal, that the institution of property could never have got off the ground; each joint owner would have had to give his consent to the appropriations of any individual. As Locke later said, men would have starved in the midst of plenty if they had had to get such a consent before they could pick acorns or drink from the brooks. Filmer's answer had been to trace title from the right of Adam, or else, and more interestingly, to trace title from the rights of any *paterfamilias* who had no earthly superior. If men were simultaneously the fathers,

owners and governors of their offspring, individual property could be explained as the legitimate grant made by former owners. If Adam had owned everything and everybody and had had an absolute arbitrary power over all of it and all of them, subsequent rights had a pedigree (Filmer, 1949:10-14). Locke needed to fight off that account.

He did it by mixing several elements familiar from Roman and natural law, but in a curiously English common law fashion. That is, Locke did not need to, and did not in practice try to, turn anyone into an 'absolute' owner. The English law's familiarity with the idea of an 'estate in' whatever it was allows Locke to see proprietorship as necessarily including the right to exclude others from enjoyment of whatever it is in the respect in which we have a property in it without having to suggest that this follows from our having an absolute and arbitrary power over it. Property in is the crucial notion. Locke mixes English and Roman conceptions by tying together first appropriation and labour as ways of gaining ownership. Roman Law recognised both these; Locke in effect needed to be able to answer the question to which first appropriation was an answer — namely, how does it come to be his in particular? But he wanted to do so in a framework that built in the view that we could only acquire what we could make use of, and the view that God sent us into the world to make something of his creation. So labour sometimes collapses both into using and into first appropriating — as when we lean over the brook and drink — but at other times stands out as part of an argument from justice — when we make fields fertile and therefore work hard to improve God's donation to us, we deserve the benefits we reap.

This matters a good deal, because it raises the question of how free we are to deal with the world so appropriated. It is not clear that Locke offers one and only one account of this, but I incline to agree with Richard Ashcraft that there is a strong suggestion that the Lockean state of nature is a two-stage state of nature, in the second stage of which many of the simplicities of the first stage are lost. If that is right, then the first stage is one of Golden Age innocence; it needs only simple moral rules about when we must regard things as taken under the control of particular others. We shall have rules about when the fish in the lake become yours rather than mine; where we go in for cooperative hunting and gathering we shall have rules about how the spoils are divided. None of these establish freeholds in the earth, as opposed to its fruits; and since the objects owned are so perishable, the rules leave it wide open how far powers such as the power of bequest go along with ownership. The capacity to give what is ours to our friends and children plainly is part of ownership even in this simple state, but bequest is very different from *inter vivos* gifts.

What we are entitled to when we own something is innocent use. This rules out letting things spoil in our possession; Locke suggests

that spoliation is a form of theft from others, but this seems implausible in the state of affairs where we can so easily leave 'enough and as good for others'. The more plausible thought is that God gave nothing to man to destroy; anyone who destroys what lies in his possession is therefore acting beyond the limits of his proprietorship. Ownership is derivative from God's gift; spoliation violates the terms of God's donation. If we apply the same thought to the acquisition of land as well as the fruits of the earth, what we get is the thought that in order to make the land more fertile and fruitful, we must be able to rely on exercising some control over it. At least there must be a presumption that once we have enclosed and cleared it, we are entitled to reap the fruits of our labour, and entitled also to say who shall and shall not have access to it.

This does not mean that we shall get bequeathable freehold ownership. Locke's mode of argument reverses Kant's — Kant sees ownership as a claim to sovereignty over the substance of external things and therefore sees landownership as prior to ownership of the crops, which are 'accidents'; this is a thoroughly Romanised conception. Locke builds up towards ownership in the full, liberal sense defined by Honoré, by extending the functional requirements of 'use' (Honoré, 1961:108ff; cf. Ashcraft, 1987:142ff). If landed property demands a good deal more than the simple rights over perishables, which we have in the Golden Age, it does not immediately demand outright freehold ownership. Quasi-leasehold such as simple agricultural societies have would do the trick — the rights of Fijians over their gardens and plantations are far short of English freeholds, but establish the conditions Locke had in mind. Locke's own example of the way Spanish villages allowed short-term ownership of wastelands brought into cultivation is equally removed from freehold ownership but a perfectly plausible solution to the use-based requirements of Locke's theory.

The difficulty lies less in grounding increasingly elaborate rights in increasingly long-term uses than in securing that the crucial limitation on the freedom to appropriate — 'as much and as good for others' — is satisfied. It is a limitation that in the early stages can hardly help being satisfied; men are few, the world is empty and it is hard to deprive others except by deliberately wrecking the environment — by polluting a stream, say. However many acorns or however much fruit we consume, we shall leave as much and as good for others. 'And thus considering the plenty of natural Provisions there was a long time in the World, and the few spenders, to how small a part of that provision the industry of one Man could extend it self, and ingross it to the prejudice of others ... there could be then little room for Quarrels or Contentions about Property so established' (II,31). In that state, even land presents no problems; the fact that it is finite in quantity is not a problem, because

the numbers who want it are so small. Even in Locke's time, there would be enough land to give some to everyone who wanted it, if it had not been for the invention of money.

So we must distinguish two states of nature, the one innocent of money, the other equipped with it. In the former, the only uses to which anything can be put are near-immediate consumption and simple barter. In these conditions, there is no incentive for elaborate accumulation of property, and therefore presumably no accumulation. Once money comes in, everything changes dramatically. Money has two vital properties. In the first place, though useless for any immediate purpose it is exchangeable for what is useful. In the second, however much of it anyone has, they are in no danger of it spoiling, and therefore in no danger of violating the prohibition on letting things perish uselessly in our grasp. Locke does not raise the question whether one man's accumulation of money means that there is 'as much and as good' left. And for this there is a very good reason.

Locke's account of property is oddly **un**concerned with the actual stuff over which people claim ownership. The reason for this is that Locke thinks that God gave us the world so that we might have a good living; to fix our hearts on any particular things would be a violation of God's purposes and would display the sort of wilfulness he was anxious to remove in the course of education, for instance. 'As to the having and possessing of Things, teach them to part with what they have easily and freely to their Friends; and let them find by Experience, that the most **Liberal** has always most plenty, with Esteem and Commendation to boot, and they will quickly learn to practise it' (Locke, 1968:213). Now, if the use to which one man puts the world increases rather than diminishes the chances of another man having a good living, the first has not taken anything from the common stock but has added to it. So the account we get of the role of money and trade and its impact on equality and on landed property is intriguingly two-edged. The love of money is the root of all evil; once money appears, the *amor sceleratus habendi* can get a grip on us. Locke is one of the philosophers Rousseau described as explaining human depravity by the introduction of gold and silver. On the other hand, money allows trade, the division of labour and economic progress. Without it, we should not be eating white bread and living in houses with glazed windows. Locke follows Hobbes in thinking of these as innocent improvements in our conditions of life, not, as Rousseau was to do, as signs of how far we had fallen from Carib innocence or Spartan toughness.

How this bears on landownership is a familiar point. A man who has money may pay another to bring waste land under cultivation, paying the other a wage and reserving to himself ownership of the land. In this way, ownership and actual labour are detached from each other, though not ownership and use. A man may own more land than he

himself can cultivate or consume the produce of because there are other uses to which the produce can be put — it can be sold to people who themselves can acquire more of the useful things of life by working at something other than growing their own food. Unlike Plato and Aristotle. who thought trade dangerous and the handling of money a sure route to corruption, Locke is ready to acknowledge the utility of trade and therefore to see it as fulfilling God's purposes. If one effect of this is to put all the land into private ownership, this occurs without violating anyone's freedom.

How it occurs without violating anyone's freedom, on the other hand, is less easy to spell out convincingly. The crucial point is that Locke is, contrary to the view of him taken by Nozick and Grunebaum, not a 'first appropriation' theorist; that is, it is not true that Locke derives ownership titles from an enquiry into pedigree that terminates in the appropriative act of whomever first set out to exert his will over whatever it is that is in question. There is therefore no temptation for Locke to think that we all come into the world entitled successfully to appropriate something in particular — land for instance. If we were to enter the world with such a right, those who happened to arrive before us would not have been entitled to appropriate all the land for themselves, or at any rate not in such a way as to claim outright freeholds. The only just system would be one in which some sort of rearrangement of titles occurred on the death of existing owners and on the birth of new arrivals — or on their reaching the age of majority perhaps (Steiner, 1982:513-33; Spencer, 1851:1145; Reeve, 1986:82-6; Tuck, 1979:77ff) If, conversely, the entitlement to appropriate was only an entitlement to appropriate what was not already appropriated, we could reach the other extreme conclusion, namely that those already in lawful possession of the earth could treat all newcomers as trespassers and refuse to allow them to live save on such terms as the owners thought good. Locke plainly regards any such idea as preposterous, though Grotius did not.

So, what we have instead is the idea that those who between them own the landed property of a country such as England have a duty to see that the non-owners can live by working (Nozick, 1974:177). That is the conclusion to which Nozick comes, too — one of the rare occasions when his account is genuinely Lockean. Ownership on such terms violates none of the rights of the non-owners, who may secure their share of the good things of life by labour; and it does not impose unreasonable demands on the owners, whose property is at all times to be considered only as entrusted to them subject to the maxim *salus populi suprema lex est.* Locke clouds the issue by arguing also that whereas appropriation in the simple, non-monetarised state of nature occurs without the need to secure the consent of the rest of mankind, money exists only by consent; we consent to it, and thus to its consequences also. This, however, seems a pretty feeble argument.

Money exists by consent only in the weak sense that conventional monetary instruments are indeed conventional. There is no suggestion that in using money I have consented to the existence of a monetarised economy — or if there is, everything Hume says against the social contract can be said against this suggestion too. Locke's strongest argument is instrumental, and it is as strong as it is because it is not just an instrumental argument but is backed by a vision of natural law which settles issues of justice and individual right that a secular instrumental theory would not.

III. LIBERTY AND REPUBLICANISM

Locke spends a great deal of time on the nature of property, as he ought in view of its role in his theory. I have therefore spent most of my time on the same topic. However, it would not do to evade some further questions that Locke provokes without himself raising them. Locke's view of political legitimacy relies on the theory of property in our persons to distinguish parental, despotic and political authority in a way reminiscent of Aristotle's treatment of the subject. Just as Plato lumped together the authority of husbands over wives, owners over slaves and rulers over subjects, failing to acknowledge that political rule was distinctively the rule of a statesman over freemen, so Filmer lumped together ownership, despotic authority, parental authority and political authority. Aristotle took it for granted that free government existed only in a constitutional republic — though a lawful monarch appears to be perfectly consistent with his insistence on the government of laws, not of men. Locke seems in his discussions of the constitutional framework of a legitimate state to take it for granted that it would have much the features of the England of his day — that it would be a constitutional monarchy. It is of course true that much of the point of his saying so was to lead on to the argument that a king who refused to summon parliament was in a state of war with his people and might properly be resisted and deposed. This raises the question whether Locke was in any sense a 'republican' theorist, and invites the reply that in the sense made familiar by Machiavelli and his successors, and objected to by Hobbes, Locke does not seem to be concerned with republican liberty.

This is a complicated topic to straighten out; I want to suggest that Locke is more nearly a republican than he might appear at first glance, and in the process to cast some doubt on the distinction between ancient and modern prudence, first made by Harrington (1977:161) and recently echoed by Pocock (1983:235ff). This is a two-stage process: this section tries to establish one way in which Locke connects republicanism and freedom, and the final section tries to clear Locke and

liberalism more generally of an anti-republican hostility to political involvement.

The recent enthusiasm for the history of civic humanist theories of government and the taste for seeing the Machiavellian moment recurring from 16th-century Florence to 19th-century America makes it harder than ever to get Locke straight. Locke, to be sure, reads like neither Machiavelli nor Harrington; however, he would have agreed with Rousseau in distinguishing between states that were predictably in search of the common good and were thus republican, and states that were predictably dominated by the will of some person or class and were therefore tyrannies, whether of the one or the few or the many — though I say no more than Locke 'would have' done so, since he never raised the question in quite this form. Republican government in this sense — that is, constitutional, public-spirited government whose authority stems from its commitment to the public good — is calculated to reconcile freedom and authority in the sense that individuals are never required to obey the arbitrary will of another (which is Locke's own polar contrast to freedom under law) and never required by the law to do what they morally ought not.

This 'republicanism' is a long way from the sense in which Harrington might be said to have defended a Machiavellian conception of republican liberty (Pocock, 1974:384ff). The Baconian and Harringtonian vision of republican liberty relates to landed proprietorship in what is by now a familiar way: the yeoman is the backbone of the country, far different from the French peasant who is a mere ground down labourer, or 'base swain'. The yeoman is a fighting man whose like exists nowhere in Europe; he is attached to his own land, he has a stake in the country, he is fit to vote and play a part in politics. The enthusiasm for colonialism and expansion that we find in both Bacon and Harrington is part of their vision of freedom — the nation is master of its fate and its fortunes, just as its citizens are master of theirs. Freedom consists of following one's own will, not that of tyrants, nor that of external necessity. Locke equally wished men to follow their own will, not that of tyrants, but was a 'negative' libertarian in focusing on the citizen's treatment by his rulers, not a 'positive' libertarian in focusing on an expansive state. However, this latter distinction may not be as solid as it looks. Machiavelli, to whom Bacon and Harrington are deeply indebted, did not insist that only expansive states were free. A state invulnerable to domestic tyranny and foreign conquest was a free state. Locke surely went that far. As we shall see, there is an obvious difference between Locke and the classical republicans in their conception of the ultimate goods of life; but we ought not to conclude too quickly that Locke was unable or unwilling to connect political liberty and constitutional forms. He was not Hobbes.

An area in which Locke agreed with the Machiavellians was in their antipathy to standing armies as opposed to citizen militias; but again this was not because he saw the armed farmer as peculiarly the defender of liberty. Locke was hostile to standing armies, and to that extent a Harringtonian de facto, because he thought the monarchy of his day was determined to reduce the English people to servitude. Charles II's desire to establish a standing army was part and parcel of his intention to govern without parliament, and to force his people to convert to Catholicism as he had promised Louis XIV he would. Locke's belief in the supremacy of the legislature over the executive reveals a more nearly de jure commitment to republicanism, evidenced by the decision to **publish** — as opposed to the decision to **write** — the *Two Treatises* when he did. For Locke's view of the Glorious Revolution was drastic and republican in just the way Edmund Burke later objected to. Where the soberer Whigs were ready to go along with the fiction that James II had abdicated, leaving the throne to his nearest Protestant relative, otherwise his son-in-law William of Orange, Locke was insistent that what had happened was a dissolution of the old constitution and therefore that parliament had become a real constitutional convention that had authority to start all over again. This was doubly a trope out of ancient prudence, both in its emphasis on the possibility of a fresh start, and in its emphasis on the powers of the legislature.

Locke's whole theory of government in fact leads in a republican direction, because of its emphasis on law and consent. Traditionalists would have derived the authority of the sovereign from his occupancy of a throne inherited from his father and grandfather before him. Locke, by contrast, made legislative authority the central feature of the state. If there is a hereditary monarch, the right to inherit is itself given to the monarch by the legislature; supremacy belongs to the legislature because it represents the whole people considered as a legislating body. Thus, the nature of authority is swung away from any picture in which monarchy can sustain itself in its own terms; hence my earlier claim that Locke and Rousseau were at one in their view of the republican quality of a constitutional monarchy.

As to the freedom that republics preserve, that is a matter of some banalities and some very 17th-century matters. Crucially, Locke identified absolute monarchy with the Catholic despotism of Louis XIV. This trampled on individual conscience, violated the individual's security of person and property, and damaged the liberty of trade and occupation on which prosperity depended. This is one way in which Locke's claim that government is instituted for the preservation of property latches onto the pressing concerns of the improving classes who were most hostile to Charles II and willing to go to all lengths to stop his brother the Duke of York ascending the throne as James II. But the antipathy to monarchy was a seamless web. The republicans still alive and in

opposition after the Civil War were as fiercely hostile to an established church as they were to the despotic pretensions of Charles II. Their republicanism was not merely a matter of insisting on legislative supremacy and a dislike of the person of Charles II; it neatly combined a belief in the traditional liberties of the Englishman with an insistence on his right to representation and a new doctrine of toleration, which picked up the ancient belief that the state's interest in religion was confined to the preservation of good public morals.

If Ashcraft is even halfway right in his account of Locke's political activities — though he, too, is forced by Locke's efficient covering of his tracks to resort to surmise more often than is comfortable — there is no doubt that from the 1670s onward, that is, from the time he joined Shaftesbury's household, Locke was allied to the radicals who kept alive the alliance between dissent and republicanism. His religious convictions marched in step with his political convictions. Locke became steadily less convinced that Christianity required of us anything more than the faith that Christ is the Lord. Curiously, he began and remained wholly hostile to Hobbes, who seemed to his contemporaries to be a principled opponent of toleration; yet Hobbes had himself argued exactly as Locke had, that Christianity required only commitment to the truth that Christ is the son of God and our Saviour.

Hobbes may have been a greater friend to toleration than has usually been thought, but the crucial point on which he and Locke agreed was that there was no doctrinal basis for a church establishment (cf. Ryan, 1988, and Ashcraft, 1986:48-52). Freedom, for Locke, was evidently tied, all but conceptually, to the right to worship God as we chose, according to our own convictions. Hobbes, of course, admitted no such right but thought sensible people would allow one another so much liberty, and in the meantime thought them foolish to mind what worship men performed in private; Locke thought the law of nature included the injunction to give **public** praise to the Almighty, and had to admit an individual right to worship publicly in the way that seemed best to us. Locke was almost bound to be tempted by the Romans' uninterest in a religious establishment and to think that republics generally offered a safer home to religious liberty.

IV. 'PRIVATISATION' AND LIBERALISM

There has been a tradition of distinguishing between classical, participatory, political liberty and liberal, apolitical, private liberty. It was started by Benjamin Constant's famous *Essai sur la liberté des anciens comparée à celle des modernes*, though one might without exaggeration see the same story in Hegel's *Philosophy of History* and *Philosophy of Right*. But Constant's account differs strikingly from

what we have had over the past 30 years from Miss Arendt and Professor Wolin; he wrote to praise a liberalism that he understood as a possible importation from Britain into France, where they wrote to criticise a liberalism that is essentially that of postwar America. Though it is an agreeable exercise to wade in to these arguments and start throwing punches in all directions, I confine myself to two small issues. The first is whether it is true that Locke's vision of liberty is privatised; the second is whether, to the extent that it is, it is indefensibly so.

The republican critics of liberalism, if so we may call them, start from a somewhat unfair advantage in being able to call on Miss Arendt's vivid but misleading account of politics as 'virtuosity' (Arendt, 1958:77-8, 305ff). Once one has put together Heidegger's contrast between mere happening and genuine acting on the one hand and Machiavelli's injunctions to boldness on the other, we have something bound to make most other political theory look slightly pallid (Arendt, 1958:42-6). But there is reason to think that the effect is achieved at the cost of historical accuracy (Skinner, 1984:203-12). Machiavelli was not the theorist of virtuosity that he is made out to be, and the emphasis on acting in front of others, and on performing on the public stage, is a foreign, Heideggerian importation. Machiavelli was a soberer, more cautious defender of private goods and negative liberty than Miss Arendt suggests.

There is a second, less metaphysical aspect of the contrast between public actors and private behavers, which equally tells to the discredit of liberalism. This is the suggestion that republican theory concentrates on the search for the common good while liberalism aims only at individual, essentially private satisfactions. Now, I do not wish to say that there is nothing in any of this, though I do wish to begin by recalling that Locke's account of political power stresses that authority exists only in order to promote the common good. Power is not given to anyone for their own exclusive benefit; governments possess the public power and must therefore be guided in all things by the maxim *salus populi suprema lex est*. The retort of the republican is evidently that the **commonness** of the common good is intrinsic to its goodness in the republican theory, but is only a matter of instrumental efficacy in liberalism. That is, in liberal thought, individuals have an essentially private interest in the maintenance of public goods such as defence and law and order; republican thought makes freedom the highest good, and sees it as a matter of participating in a shared enterprise — the glory of Athens or whatever. Put differently, the liberal reduces the common good to the product of compromises between bargaining interests, in the way recent political science has done. The republican seeks to infuse a desire for the common good in every citizen, and thus relies on citizen virtue rather than bargaining to produce the common good.

This seems implausible as an attack on Locke. It may have some force as an attack on Hobbes, whose famous definition of freedom as

'immunity to the service of the commonwealth' (Hobbes, 1914:113) certainly betokens a concern to detach the concept of liberty from a defence of classical republicanism. Against Locke it is very much less powerful; Locke insists that the state has those rights and duties that individuals concede to it. One of those is to enforce the law of nature against malefactors, as we saw earlier. This means that Locke's individuals do not enter the world with no interest in anything but their own welfare. On the contrary they enter the world with duties to the public. The state is a device for assisting them in doing their duty to others, as much as a device for protecting them against the ill-will or irrationality of others.

Is this the pursuit of a genuinely common good? As I have agreed when mentioning Locke's republicanism, if we have in mind the patriotic conception of a common good that identifies the common good of the Spartans with their being Spartans, Locke does not have any room for that. Indeed, it is very hard to see quite how anyone really belongs to some given country in the Lockean scheme of things — and one might well imagine that Locke himself had no great sense of belonging to a country that he twice had to leave in haste (Ashcraft, 1986:122-3, 406ff). But doing one's duty by God and natural law is certainly not a private good in the disapproved sense.

We need to look a little more closely at the ultimate goods of the Lockean universe before we can conclude the case. There is no doubt that the ultimate goods are private in the sense that they are a matter for God and the individual. The Puritan concern to be able to account for ourselves at the Day of Judgment animates Locke as well. It is, however, not a distinctively private concern in the same way that private economic interests are private. Private interests compete with public interests; my salvation does not compete with anyone else's. It is certainly true, as Machiavelli observed, that in rough times, a man who minds about the safety of his soul may be unable to do what the safety of the republic demands; it is not true that a man who minds about the safety of his soul will always or even often have to choose between his duty to God and his duty to his fellows. Locke, after all, served Shaftesbury and his fellow Whigs without hesitation; in quieter times he served William and Mary on the Board of Trade. One can do one's individual duty to the Almighty by public service. It remains true that Locke's concern to give a good account of himself to his creator is distinctively Christian and unclassical. It gives a dimension to life in which we are not merely private but alone. It is a dimension of moral thinking distinctive and peculiar to western Europe, and there is no bucking the difference it makes to comparisons between us and, say, the classical Greeks.

All the same, if it makes for a sort of moral loneliness, it does not make for privatisation. Quakers are notoriously public-spirited and rich

in good works; New England town meetings may rarely have been quite as impressive as we would like to believe, but they do not come a poor second to the *agora* in Thebes or Corinth. Nor should we underestimate a Puritan society's capacity for friendship and for a common intellectual life. Locke himself combined a well-founded and self-centred fear of what the agents of Charles II would do to him if they laid hands on him with a great capacity for friendship and for loyalty to his friends. So, we must not jump from a proper emphasis on the individualised and internalised vision of the good to which Locke undoubtedly subscribed to saddling him with a purely instrumental, self-centred political vision to which he did not subscribe (Cranston, 1957:esp. 342ff).

Lastly, however, one ought to admit that Locke's vision of freedom is not a particularly political one. In Constant's terms he was an enthusiast for modern rather than ancient liberty. He was almost certainly much more of a democrat than we have hitherto thought, but he was not inclined to set political activity at the centre of the moral universe — differing twice over from Aristotle in this (Aristotle, 1947:5-6; Ashcraft, 1986:128ff). But we ought not to raise our eyebrows at this and treat it as a knock-out blow for the 'privatisation' thesis. As Constant observed, one reason why the Greeks took so much interest in politics was that they were constantly in a state of war with each other; another was that when they were not, there was rather little to do. Life in antiquity had *longueurs* that could only be coped with by fights, games and debates, to coin a phrase. Lockean freedom is negative freedom, though it is also moralised freedom — liberty is not licence. It is negative freedom for good reason, namely Charles II's assaults on the constitutional, religious, commercial and private liberties of his subjects. Politics is not itself a realm of free action, a concept Locke would have found odd in any case. But political involvement may for all that be a duty for anyone who cares about freedom and the common good as much as Locke evidently did.

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Comments on Shirley Robin Letwin and Alan Ryan

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Comments on Shirley Robin Letwin and Alan Ryan

Lauchlan Chipman

Private Property and the rule of law have long been thought essential to the liberal tradition, not only as useful instruments for the attainment or retention of further freedoms, but also as themselves expressions of liberal ideals. Locke's name has been associated with both, not least by secularist liberals who have assumed Locke's arguments were logically detachable from the Christianity that evidently animates so much of Locke's writings in political philosophy.

If Ryan and Letwin are right, as I believe they are, then such secularist assumptions are flawed. If a secularist analysis and defence of the institution of private property can be constructed, it will be essentially non-Lockean. If a modern liberal wishes to argue for the importance of the rule of law, Locke may agree, but Locke's reasons for agreeing will be formally parallel with the reasons given by Marxists and those in quasi-Marxist critical traditions (such as members of the Critical Legal Studies movement) for disagreeing with assigning special value to the rule of law.

The question for Locke and the Marxist critics is the same: does the rule of law further some independently prescribed good? Locke thinks by and large it does. Marxists and those in the post-Marxist critical traditions think by and large it does not. Both agree that the rule of law stands or falls on its contingent instrumental value for the attainment of further prescriptive (and not merely adverbial) goods.

Letwin makes abundantly clear the role of Locke's Christian fundamentalism. Revelation, not secularised reason, provides the prescriptions for human conduct, and contrary to some within natural law traditions, for Locke it is doubtful if secularised reason is even capable of discovering how man should live, or more precisely the laws we should obey. These laws derive their authority from the Will of the

Creator. Not only is it improbable that reasoning in a purely secular mode, such as that employed by Thomas Hobbes in deriving his 19 concrete prescriptions from the law of reason, could yield a prescriptive content corresponding with that available from Revelation: any such prescriptions would lack the awesome sanctions that underlie divine commands. Hence Locke's unwillingness to extend the principle of toleration to atheists. Even if fortuitously right about the good for man (which would be improbable), their own reasons for conforming, and the only motives they could offer to induce compliance from others, would be intellectual, and insufficient to generate internalisation of duty. Locke was enough of a social realist to realise the comparative impotence of intellectuality, in competition with other more immediate and sensuous human passions.

While acknowledging the power of Locke's Christian fundamentalism on his political philosophy, we should also note it has its own problems. Leaving aside the notorious metaphysical and epistemological problems associated with defending the Christian conception of the universe, indeed assuming them satisfactorily answered, there is still the question of precisely how Christianity (or any comparable theism) could provide a fundamental law without circularity.

There is the old philosophical chestnut, going back at least as far as Plato, of whether the good for man is good because it is what God prescribes for us, or whether God prescribes it for us because it is good. If we affirm the first alternative, the question then becomes, why does the fact that God prescribes certain conduct — assuming we know that he does and what that conduct is — make it good?

The answer is usually given in terms of God's own inherent goodness. But then the question becomes, by what standard are we to say God is inherently good? Either the standard is independent of God, or it is not. If it is independent, and we judge God to conform positively and pre-eminently to that standard (the view, incidentally, taken by Grotius), then our ultimate standard of goodness is really secular, not religious. If, on the other hand, we judge God's goodness in terms of some standard internal to God, then we are trapped by vacuity. God is good because he conforms with Himself (don't we all?).

If we do not answer in terms of God's inherent goodness, but say the authority of God's commands derives from something else, then what might this be? The only plausible answers would seem to be His wisdom, or His power. If the answer is in terms of His wisdom, then this assumes moral knowledge is possible, although perhaps not attainable directly by man's menial intellect. But that same intellect is entitled to assurance that God really has it, and that cannot be given unless we have some independent reason for believing that the Author of Nature is right on moral matters.

The alternative is to source it in His power, which, in a way, is what Locke does. Whose universe is it anyway? Contrary to a Sartrean atheistic existentialist, a Lockean Christian believes our essence precedes our existence, and living rightly consists in conforming with that essence. Like the creative craftsman who both invents and makes the first watch, God knows precisely what the elements of His Creation were made to do, and when they are doing it properly. True, humans have freedom, unlike the watchmaker's products, but that freedom is used in an orderly way only when it is instrumentalised to conform with our divinely prescribed essence. That is achieved when, and only when, we comply with our duties pursuant to God's law, as made available through Revelation.

There are serious internal difficulties with this view. It reduces morality to legality, but legality deriving from a higher authority than any human institution. The 'height' of the higher authority derives from its power, both present (in human terms) as Judge and ancestral as Creator. Having reduced morality to superior legality, the possibility of a moral reason for obeying this higher law, as opposed to one based on prudential self-interest, is driven from the system.

Turning directly to the rule of law, the issue for liberalism is whether it is given merely instrumental status, and if so to what ends, or whether it can be made out as an inherent part of liberalism. In a book review at least as famous as the book of which it is a review, Morton Horwitz has cast doubt on the proposition that the rule of law is 'an unqualified human good' (1977:566). Like so many members of the Critical Legal Studies movement, Professor Horwitz sees the rule of law as an institutionalised obstacle course, features of which at least offset even those goods that he concedes it furthers.

For Horwitz, the rule of law is a restraint on the free use of state power (a good) but it also 'prevents power's benevolent exercise' (a bad). The rule of law creates formal equality — 'a not inconsiderable virtue' — but at the same time 'it promotes substantive inequality by creating a consciousness that radically separates law from politics, means from ends, processes from outcomes'. The rule of law's emphasis on procedural justice 'enables the shrewd, the calculating, and the wealthy to manipulate its forms to their own advantage'. Moreover it 'ratifies and legitimates an adversarial, competitive, and atomistic conception of human relations'. The rule of law 'excludes "result-oriented" jurisprudence ... [and] ... also inevitably discourages the pursuit of substantive justice'.

Quite so. But for defenders of the rule of law, the exclusion of 'result-oriented jurisprudence' is one of its great merits. While procedures, any procedures, may well be manipulable by the shrewd and calculating (or, in more neutral terms, the clever and the rational), and while the wealthy, like the beautiful, always have an advantage when

dealing with anything corruptible, defenders of the rule of law maintain any alternative is intolerably worse. But why it is worse needs to be made clear. Is it because, unlike Locke, we are not confident that we can ascertain, with moral certainty, the certain requirements of morality? Is it because, unlike Marx, we do not accept the historic inevitability of a post-liberal non-atomistic society?

There are five elements to the rule of law. They are:

(1) The doctrine of legal supremacy — the rulers, as well as the ruled, must be subject to law.

(2) The doctrine of legality — governmental authority must be exercised only through law, as in the maxims 'no offence without law' and 'no punishment without law'.

(3) The doctrine of notice — laws imposing burdens or penalties must be promulgated on the public record prior to their application and enforcement (thus excluding secret and retroactive burdens or penalty-imposing laws).

(4) The doctrine of due process — judicial impartiality and disinterestedness, and the requirements of 'natural justice' in its technical legal sense.

(5) The doctrine of formal justice — like cases must be treated alike, and different cases differently, always in strict accordance with only the relevant differences.

It is worth noting that Locke appeals to the fourth of these in explaining one of the ways in which the state of nature is less morally satisfactory than civil society — in the state of nature, in judging violations of the law of nature as when we believe our natural rights have been violated by others, each of us is compromised by being a judge in our own cause.

An even deeper problem for the liberal tradition than positioning the rule of law, is that of providing a moral foundation. Letwin rightly warns us that a doctrine of natural rights founded on moral subjectivism and a pretended social egalitarianism of values — all values are equally valuable — is more likely to found a tyranny than a liberal society. (The recent growth of a para-legal human rights industry in Australia, with its mission of 'modifying behaviour', is a timely warning.) Locke's liberalism, if such it still deserves to be called, is founded on a morality and a metaphysic largely repudiated by contemporary liberals. Can we find an alternative? Or can we reconcile political liberalism with moral scepticism?

Reference

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Was Adam Smith A Liberal?

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Was Adam Smith A Liberal?

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I. SMITH'S LIBERAL FRAMEWORK

In raising the question of whether Adam Smith was a liberal, I must presuppose — as the title of our colloquium presupposes — some rough idea at least of what 'liberal' means. Attempts to define the idea carefully, either by induction from the stated views of self-proclaimed liberals or by deduction from a set of stipulated axioms, have filled many library shelves. But for the present purpose it may suffice to say that a liberal is someone who prefers individual actions to collective action. This is not to say that he would whimsically want each individual to do everything for himself and by himself. On the contrary, he would commend cooperative efforts of individuals joined in voluntary associations, and would at least condone actions of government in fields, such as defence, where government alone is able to do the job. But he would resist the intrusion of government into other fields, most of all efforts by government to homogenise individuals in the hope of creating ideally virtuous citizens or of manufacturing equality and fraternity. 'That government is best which governs least' expresses something essential in the liberal spirit, despite being hackneyed and empty in that it tells us nothing specific about the least that government must do. Yet it will serve as a starting point.

Tested by this standard, Adam Smith's broad doctrine concerning economic policy was unquestionably liberal. Little evidence is needed beyond the renowned passage in which, after having dissected previous systems of economic policy — physiocratic and mercantilist — that aimed artificially to encourage either agriculture or commerce and industry, he went on to commend 'the obvious and simple system of natural liberty'.

> Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way ...

> The sovereign is completely discharged from a duty, in the attempting to perform which he must always be exposed to innumerable delusions, and for the proper performance of which no human wisdom or knowledge could ever be sufficient; the duty of superintending the industry of private people, and of directing it towards the employments most suitable to the interest of the society. (1976a:IV.ix.51 [687])

A quick reading of that passage and similar ones might suggest that Smith considered unfettered action by individuals to be better than action superintended and coordinated by government.

But so broad a conclusion would overlook finer points in the quoted passage. Although every individual is to be left 'perfectly free', Smith restricts that freedom to pursuit of the individual's economic interests, not extending it to, for instance, the practice of his religion. Furthermore even his economic freedom is restricted by the proviso that he must not 'violate the laws of justice'. Now if by 'laws of justice' Smith meant any and every existing body of legal rules, then his apparent declaration in favour of economic freedom would amount to little or nothing. Some bodies of law are far more restrictive than others, yet within any body of law, no matter how restrictive, the individual retains liberty to do what the law does not prohibit. To see just how much economic liberty Smith really meant to advocate, we will have to look closely into the meaning that he attached to 'the laws of justice'.

Further, we must ask in what precise sense Smith believed that economic freedom of the individual was 'better', or as he put it, more conducive to 'the interest of society'. Would he have argued, as some liberals do, that economic liberty, like every sort of liberty, is desirable because it enables each individual to shape in his own way the potentialities peculiar to himself? Evidently not. For if we scrutinise the immediate context of the quoted passage, we find that Smith condemned the two false systems of economic policy only because they retard 'the progress of the society towards real wealth and greatness ...' (1976a:IV.ix.50 [687]). Within *The Wealth of Nations* at least, Smith advocated only economic liberty among the whole range of individual liberties, and advocated it only as the most efficient means to achieve economic growth.

That Smith should have posited 'opulence' as a final end of human activity was entirely in keeping with the rhetorical purpose of *The Wealth of Nations*. The book explains first, how and why some nations have become wealthy, and second, what governments have done and should do to foster enrichment. The first subject, which occupies Books I and II, is subservient to the second subject, which occupies Books III and IV. The latter pair aim to demonstrate that 'natural liberty' is the

best way to achieve a purpose, which he assigns to the statesman considered as a practitioner of 'political oeconomy', namely 'to provide a plentiful revenue or subsistence for the people, or more properly to enable them to provide such a revenue or subsistence for themselves ...' (1976a:IV.Intro.1 [428]). In other words, the essential objective of *The Wealth of Nations* was to establish a normative precept.

But was it really normative? Normative statements in the form, 'This is good', can often be rephrased as imperatives, in the form, 'Do this'. But imperatives belong to one or another of two substantive types. One type commands pursuit of an end desirable for its own sake: for instance, 'You should act justly'. The other type commands an action as a means to an end: for instance, 'In order to avoid heart trouble, you must give up smoking'. The first type is a moral statement, the second technical. The second, unlike the first, is conditional. This sort of conditional, technical imperative may be called 'quasi-normative'. Smith's prescription of natural liberty should accordingly be recognised as quasi-normative.

One attribute of a quasi-normative proposition is that the person who states it need not applaud the end in view. For instance, if a lawyer says that in order for a partner to sell his share of a business he must get the consent of his co-partners, the lawyer need not approve of such a sale but may in fact regard it as unwise or otherwise undesirable. Similarly, in Smith's case, the proposition that laissez-faire is the proper means for maximising wealth does not necessarily entail that he himself favoured opulence. Indeed, as I will show, he had many misgivings about it. Nevertheless he considered it to be somewhat desirable and also in a certain sense inevitable. We find him, for instance, contrasting a rich nation with a 'savage nation' and equating it with a 'civilised' nation (1976a:Intro.4 [10]), and he obviously approved of civilisation. Elsewhere he argued that in a nation undergoing economic growth, 'the condition of the labouring poor, of the great body of the people, seems to be the happiest and the most confortable' (1976a:I.viii.43 [99]). In his essay on the history of astronomy he held that man's curiosity about the world is released as subsistence becomes less precarious and leisure more available (1980:3 [50]); and this may be taken to say that some degree of opulence is a precondition of philosophical inquiry, which is an aspect of the good life. But the main impression is that Smith regarded a materially comfortable life as self-evidently good, contrary to those ascetics who deliberately embraced poverty and those visionaries who hoped to resume the lost innocence of the noble savage.

In the bulk of *The Wealth of Nations* then, Smith maintained a liberal position: if people want a materially comfortable life, which there are good reasons for wanting despite the considerable spiritual costs of achieving it, then individuals should be allowed to achieve it for themselves without interference by government.

II. TENSIONS IN THE FRAMEWORK

This liberal image of Smith must however be modified when we come to the last book of *The Wealth of Nations*, which, though somewhat misleadingly entitled 'Of the revenue of the sovereign or commonwealth', begins by analysing those functions of government that Smith regarded as indispensable and therefore proper.

A discordant note is sounded in the passage that introduces that topic: 'Political oeconomy, considered as a branch of the science of a statesman or legislator, proposes two distinct objects ...' (1976a: IV.Intro.1 [428]). In interpreting this we must recognise that Smith, following classical Greek usage, meant by 'oeconomy' the art of managing a household and by 'political oeconomy' the art of managing a nation (Letwin, 1963:84-5). By 'science' he meant not, as we now do, a body of theory (such as physics) that implies nothing at all about the proper ends of human action, but rather what 18th-century writers generally meant, that is, any body of systematic knowledge (OED, q.v. science). And by 'the science of a legislator' he meant, as I understand Knud Haakonssen to have shown, the set of general principles that ought to govern the conduct of any law-giver at all times (Haakonssen, 1981:2 and passim). In other words, Smith regarded political economy as a practical art, which is precisely why it 'proposes' — aims to achieve — certain practical objectives.

One of these, as we have already seen, is 'to provide a plentiful revenue or subsistence for the people'. The other is 'to supply the state or commonwealth with a revenue sufficient for the public services'. These Smith sums up by saying that political economy 'proposes to enrich both the people and the sovereign' (1976a:IV.Intro. [428]).

Would this way of speaking not jar the ear of any consistent liberal? Granted that a society fashioned on liberal lines must have a government, and that the government's indispensable functions must be financed, still the last thing that a liberal would wish is that the government should be 'enriched'; rather, as Gladstone is supposed to have said, should its diet be confined to cheese-parings. But we should refrain from shaping our view of Smith's general position by over-reacting to what may have been simply an unfortunate turn of phrase. Let us consider instead what, in Smith's view, a government that has learned not to intrude in the economic undertakings of its subjects should confine itself to doing.

In outline, the proper functions of government according to Smith are to provide national defence, administer justice, maintain certain public works, ensure education of the young, and perhaps subsidise religious instruction. With the exception of the last item, about which Smith himself displayed considerable vacillation, the list in itself accords well with the liberal axiom that collective action should be held to a

minimum. But the picture begins to shift as we look closely at just how Smith dealt with these matters in detail.

Defence

Providing for national defence, Smith says (his discussion in *Wealth of Nations* is at V.i.a [689-708]), was an easy matter in 'barbarous societies' (Smith identifies societies of hunters, shepherds and farmers as barbarous at 1976a:V.i.f. 517 [782]). In a nation of hunters ('the lowest and rudest state of society') and in a nation of shepherds (somewhat less low and rude), every man is a warrior. In the next higher stage, an agrarian community, the hardiness of daily work equips every man to become a soldier easily. In all barbarous societies, the whole nation 'goes out together to make war' (1978:542]). Difficulties about putting an army in the field arise only after a nation becomes 'civilised', that is, when many earn their livings in manufacture and foreign commerce.[1] And this is partly because artisans cannot continue to earn their livings while serving in the ranks, unlike the pastoral or agrarian summer-soldier, whose flock feeds or corn ripens while he fights. Even more it is because the industrial worker's ordinary work quite unfits him for military service. Division of labour, one of the two principal sources of opulence (1976a:I.i), makes the factory-hand's work specialised, simple, and repetitive; it thereby makes him 'as stupid and ignorant as it is possible for a human creature to become', a being, as Smith complains in a bitter passage, quite devoid of 'intellectual, social, and martial virtues' (1976a:V.i.f. 50 [781-2]).

Because a civilised nation lacks what we might call a 'natural army', it must resort to an artificial one, either a militia or a standing army. A militia is difficult to establish, says Smith, because the government must rigorously force citizens to undergo military training, even after which they will remain at best amateurish soldiers. Alternatively the government can induce some men, by paying them, to become full-time, expert soldiers. So far, then, Smith's recipe accords with a broadly liberal outlook: far better that the government should buy the services it needs than that it should extract them from individuals by coercion, especially as purchased service — which is voluntary — is more effective than coerced service.

But other aspects of Smith's doctrine concerning defence distinctly depart from the liberal outlook. Many of Smith's contemporaries

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[1]For the identification of 'civilisation' with commerce and manufacture, see e.g. 1976a:V.i.a. 11 [695]. But Smith also identifies civilisation with 'order and internal peace' (1976a:V.i.2. 40 [706]) and maintains that commerce and manufactures led gradually to good government, and so to liberty and security of individuals (1976a:III.iv.4 [412]).

distrusted a standing army as a threat to individual liberty; and the prevalence of military dictatorships since his time confirms the reasons for such distrust, especially on the part of liberals, for whom the fundamental problem of politics is how to insure that subjects can effectively govern their government, and, as part of that, how they can enforce their will on an institution that enjoys a constitutional monopoly of armed force. Now Smith concedes that a standing army would threaten liberty if the interests of its commanders were contrary to the existing constitution. But he denies that a standing army threatens liberty if it is commanded by the monarch and the 'principal nobility and gentry', those 'who have the greatest interest in the support of the civil authority, because they have themselves the greatest share of that authority ...' (1976a:V.i.2 41 [706]). In other words, a standing army threatens liberty if it threatens the established constitution and does not threaten liberty if it upholds the established constitution.

Smith here equates individual liberty with constitutional stability; whatever a constitution may ordain, liberty is preserved while that constitution persists and is diminished or extinguished once that constitution is overturned. So extraordinary a view would be tenable if Smith had used 'constitution' in the narrow sense that associates it with 'constitutional government', the opposite of despotic, tyrannical, or unfree government, for then certainly constitution and some degree of individual liberty go hand in hand. But in fact Smith seems always to have used 'constitution' in the broad sense, as signifying the framework of any government, free or tyrannical. That being the case, it is difficult to follow Smith's reasoning. It is easy enough to see the merit of constitutional stability: any constitution is better than chaos, or as Smith put it, even a deformed constitution in need of repair may preserve 'public tranquility' (1976b:VI.ii.2. 12 [231]). Yet people used to little liberty may be tranquil, and rational people may prefer to demolish an ancient constitution with a view to constructing a new one that promises to guarantee greater liberty.

How can we explain this flaw in Smith's argument for a standing army? Carelessness cannot be the cause, for Smith had been working out and reworking his doctrine on defence for at least 15 years.[2] Exaggeration seems a more likely cause. Smith was persuaded that a rich country required a standing army for successful defence; he believed also that national defence is the paramount duty of any government. For him it therefore followed that a standing army is indispensable, whatever its impact on individual liberty. Whereupon, in a misplaced effort to sugar-coat the pill, he allowed himself to maintain that a standing army, at least under certain circumstances, might be harmless. It is true

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2 Much of what appeared in 1976a:(1776) was prefigured in *Lectures on Jurisprudence* (A) (1762-3); see e.g. 1978:iv.75 ff.; 228 ff.

enough that Britain's standing army since 1660 has been safe, though that was good luck fortified by wholesome tradition. In principle, nevertheless, a military establishment is as dangerous as any other lethal weapon. It may defend the liberties of a free people against foreign tyrants, or it may prevent a foreign liberator from freeing a tyrant's slaves, or it may seize power to carry out some tyrannical mission of its own. A consistent liberal must therefore regard a standing army as a watch-dog whose owner is never totally immune from its ferocity.

Other passages in Smith on defence would also fall outside a consistent liberal position. Men being what they are, war is sometimes unavoidable. But because it requires mobilisation of individuals in a thoroughly collective undertaking it is always in some degree objectionable to the consistent liberal, who would accordingly reject Smith's quixotic declaration that the art of war 'is certainly the noblest of all arts' (1976a:V.i.a.14 [697]). He would wince at Smith's dictum that 'defence is ... much more important than opulence' (1976a:IV.ii.30 [464-5]), which aside from foreshadowing Galbraith's thesis that public expenditure is better than private affluence, suggests that the fraction of individuals' earnings spent on defence can never be too large. And he would regard as droll Smith's intimation that a rich country would bankrupt itself if it kept more than one in a hundred of its people under arms (1976a:V.i.a. 11 [696]), in Smith's eyes a limitation to be lamented rather than welcomed.

Justice

Smith's discussion of justice, like his discussion of defence, divides into two parts. One, concerned with political theory, explains how the modern state — Smith's 'civilised nation' — became the dispenser of justice. The other, concerned with economic policy, explains how the expense of administering justice ought to be defrayed.

As usual, Smith takes a manifestly liberal line on the matter of economic policy. He argues forcibly that those who immediately benefit from the service performed by judges, namely litigants, should pay for the service. The fees that they pay into court should be turned over to the judges, in proportion to the amount of work that has been done by each judge. Adjudication will thereby become efficient: 'Publick services are never better performed than when their reward comes only in consequence of their being performed, and is proportioned to the diligence employed in performing them' (1976a:V.i.b. 20 [719]). Notable about this scheme is that, as far as finance goes, it would so to speak privatise the courts. Providers of judicial service would earn in accordance with their output; users of the service would pay in accordance with their demand; judges and litigants would become in effect producers and consumers; price and output could be left to regulate

themselves in this public-sector 'market' just as in any private-sector market.

But when we turn to Smith's political theory of adjudication, we find an underlying attitude that is not easily identifiable as liberal. As usual, Smith opens his discussion by an exercise in anthropological history or, as Haakonssen (1981:7) calls it, historical jurisprudence. In the original, crudest state of society, a nation of hunters, nobody owns any property to speak of, so theft is out of the question (1976a:V.i.b.2 [709]). In such a society therefore one person can injure another only by attacking his body or reputation. But as the assailant — so Smith would have us believe — receives no 'real or permanent advantage' from such attacks, few people will commit them and only seldom. Accordingly few injuries take place, which is why nations of hunters seldom establish judges or courts.

Everything changes as soon as men begin to accumulate property, as they do in the second, pastoral stage of society (1976a:V.i.b.12 [715]). For then robbery becomes rampant, prompted by 'avarice and ambition in the rich, in the poor the hatred of labour and the love of present ease and enjoyment', passions which — if we are to believe Smith — are more widespread and continuous than the passions ('envy, malice, or resentment') that motivate attacks on peoples' bodies or reputations (1976a:V.i.b.2 [709]). Property owners are consequently 'at all times surrounded by unknown enemies', from whose thieving proclivities only civil government can protect them. Security of property is therefore the end on behalf of which men establish government. Going a good deal further along this line, Smith allows himself to conclude that government 'is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all' (1976a:V.i.b.12 [715]).

Various elements in this account are disquieting. Smith's conclusion, founded on his psychology of the passions, that crimes against persons are bound to be rare and crimes against property common, does not fit the facts of our own age as well as perhaps of other ages. More important, many of us would attach far greater moral opprobrium to assault than to burglary or theft. So a consistent liberal might well argue that whatever may have been the origins of government — a question which if it can ever be answered will not be conclusively answered by Smith's sort of hypothetical, conjectural, theoretical history — a good government must guarantee personal rights of many sorts other than the admittedly important right of the individual to be secure in his property, some of them conceivably more important than the right to property.

Some may seek to defend Smith by maintaining that he, like Locke, attached an extended meaning to 'property', one wide enough to comprehend life, liberty, and assets. If this were so, Smith would have

meant that government exists to protect each individual's possession of everything that he holds dear. But this defence of Smith is untenable, for it is abundantly clear in Smith's works that by 'property' he means material possessions — as is amply illustrated by his having said that members of a hunting community own practically no property, which he could not have said had he included life and liberty among a person's property.

It is strange also that Smith should have pre-figured the Marxist view that in a civilised nation, or, as Marx would have said, a capitalist order, government exists to defend the rich against the poor. It is strange inasmuch as Smith identified vices of the rich that, with different vices of the poor, prompt people to invade others' property. Following the tenor of Smith's moral psychology, we might be led to surmise that in the absence of government the rich would rob more avidly and successfully than the poor. But be that as it may, a liberal state would no more specialise in protecting the rich than in protecting property.

Public Works

Smith's discussion of public works (1976a:V.i.c-e. [723-58]) — canals, turnpikes, bridges, forts in overseas trading posts, and the like — can be surveyed quickly. In general he maintains that these should be paid for by their immediate users (although eventually by their ultimate beneficiaries) and so far as possible in proportion to the costs generated by their use. Here again he applies the free-market principle that every person should bear the full cost, no less and no more, of consuming what he chooses. In its broader political implication, this corresponds to the liberal intention to arrange matters, as far as possible, so that each individual bears the consequences of his own action, individual responsibility being the foundation of responsible individualism.

Given Smith's conviction that public works should be paid for just as though they were private works, why did he believe that they are or should be public, that is, built, owned, or managed by the government? Smith maintains that the government should provide such works if, though highly 'advantageous to a great[3] society', they could never generate a profit and would therefore never be undertaken by private entrepreneurs (1976a:V.i.c.1 [723]). But in the detailed discussion that follows he maintains that many 'public' works should be operated by private entrepreneurs or private trustees and not by government. Detectable in that ambivalence is an unresolved clash between the Smith

[3] By a **great** society, Smith evidently means, here and elsewhere, a rich and powerful nation rather than one distinguished morally, intellectually, or aesthetically.

who advocated economic freedom and the Smith who aimed to enrich the sovereign.

Education

In opening his discussion of education (1976a:V.i.f. [758-88]), Smith remarks that schools and universities could be supported by fees charged to students. He proceeds to show at considerable length that they should be supported in just that way, because the prospect of earning more is the only incentive that will motivate teachers to do their work energetically and skilfully. So 'public institutions', those that are endowed and privileged, generally teach less well than private schools, those whose masters' earnings depend on the number of pupils they can attract (1976a:V.i.f.16-17 [764-5]). And thus Smith nearly reaches the conclusion that government need not, should not have anything to do with schools or universities, neither by requiring attendance, nor by superintending instruction, nor by providing funds, nor by conferring privileges on graduates.

But three-quarters of the way through the chapter, Smith suddenly stops to ask whether the government ought therefore to give education no attention at all (1976a:V.i.f.48,50 [781-2]). He answers that it must. In an industrialised country, most workers would be totally corrupted by the monotonous simplicity of their work unless government stepped in. It should establish and partly subsidise parish schools to teach lower-class children reading, writing and arithmetic; it 'can facilitate, can encourage, and can even impose' the acquisition of that basic grounding (1976a:V.i.f.54-5 [785]).

Aside from the good that this essential education would do for the lower classes, it would greatly benefit the state. People who have been instructed are less liable to be deluded by 'enthusiasm and superstition', to be seduced by 'faction and sedition', to judge their government's conduct 'rashly or capriciously' (1976a:V.i.f.61 [788]). In short, education, even a little of it, makes good citizens of a free country.

In analysing the ends and means of education, Smith displays a tone of sovereign self-confidence: he condemns without qualification, he recommends without hesitation. But there are large questions that he scarcely explores. Should a free government maintain any state schools, even for the children of indigent parents? Should it aim to improve its people's moral character, for instance by establishing some sort of compulsory courses to eradicate cowardice, as Smith implied (1976a:V.i.f.60 and passim [787-8])? Should it direct education toward the making of good citizens, an endeavour that may degenerate into the making of submissive puppets? Those are some of the doubts that would trouble a consistent liberal, doubts that evidently did not trouble Smith.

Religion

Finally, in his survey of government's functions, Smith arrives at religious instruction (1976a:V.i.g. [788-814]), of which 'the object is not so much to render the people good citizens' as to prepare them for the afterlife (1976a:V.i.g.1 [788]).

At the outset Smith applies once again the principle of pecuniary incentives: clergymen will work more industriously if their income derives from voluntary contributions rather than fixed salaries funded by tithes, private endowments, or government grants. But then Smith appears to reverse himself. He produces a long quotation from Hume (1976a:V.i.g. 3-6), who, while agreeing entirely about the efficacy of pecuniary incentives, maintained that the state should establish all sects and assign salaries to all clerics. Hume's objective was thus 'to bribe [all 'ghostly practitioners'] into indolence', because zeal — or 'interested diligence', as he calls it — 'in every religion except the true ... is highly pernicious ...' and is liable even to pervert the true religion 'by infusing into it a strong mixture of superstition, folly, and delusion'. So Hume reaches the ironic conclusion that the best way to disarm the clergy is to make them public stipendiaries — to which Smith neither assents nor objects, only adding the laconic comment that churches have 'perhaps very seldom' been established for Hume's reason.

On the contrary, says Smith, churches have been established as a result of self-seeking collusion between clerics and politicians. In the absence of such collusion and the resulting establishment, competition would have prevailed, adherents being attracted to one or another of hundreds or thousands of sects, each too small to be politically disturbing or theologically oppressive (1976a:V.i.g.8 [792-3]). In that happy event, the government could totally abstain from meddling in religion. We may observe that if it did, the market for religious practice would be organised on free-market principles of unregulated entry by producers and unconstrained choice by consumers. Religious liberty, parallel to the economic liberty of free markets, would result — though it is noteworthy that Smith did not explicitly commend freedom of conscience.

But having come this far, Smith abruptly changes direction. He heaps praise on the clergy of an established church, namely the Church of Scotland, whom — with their presbyterian counterparts in Holland and Switzerland — he describes as a most 'learned, decent, independent, and respectable set of men' (1976a:V.i.g.37 [810]). That excellence he attributes in large measure to their stipends being small (1976a:V.i.g.37-42 [809-14]), an explanation that directly contradicts his principle of pecuniary incentives.

Clearly Smith was averse to the zealotry, bigotry, and superstition of many clerics, as well as to the moral austerity they encouraged

(1976a:V.i.g.10-16 [795-7]) and the political turmoil they fomented. For these and other reasons, he maintains that a government should ideally steer clear of religion. Yet it is an established church that he singles out for praise, without making any suggestion that it ought to be disestablished. His ambivalence about establishment may be only apparent, reflecting his reputed objection to carrying any doctrine, including perhaps his own, to the limit. Or, as I believe to be more likely, the ambivalence is real, stemming from only partial adherence to liberal principles.

III. NATURAL LIBERTY VS. LIBERTY UNDER LAW

If Smith, a philosopher, had been a liberal in the broad sense that I suggested at the outset, we might expect him to have worked out a coherent and comprehensive theory of liberty. It is easy enough to understand why such a general theory is not presented in *The Wealth of Nations*, more difficult to understand its absence from the works on moral and political philosophy, *The Theory of Moral Sentiments* and the *Lectures on Jurisprudence*. Indeed if we relied on the indexes provided in the Glasgow Edition of those works, we would conclude that Smith managed to traverse the wide terrain of moral and political philosophy without once mentioning either 'liberty' or 'freedom'. But this oversight is blameable on the indexers rather than Smith. In fact Smith said a good deal about liberty, though most of it consists of scattered comments that are elliptical and elusive, unsystematic and inconsistent.

Most of these occur in the section of the *Lectures on Jurisprudence* that gives a far-reaching historical account of how government evolved. In the beginning, says Smith, all governments were democratic; later some became republican; later still the republics lost their liberty (1978:408-14); for parallel passages in LJ(A) see the collation given at pp.24ff. of the Glasgow Edition of LJ). Citizens of those former republics then declined into subjects of oppressive governments, including the most oppressive form of government imaginable, that in which 'life and fortune ... depend on the caprice of [even] the lowest magistrate' (1978:414). From this and similar remarks it becomes clear that, for Smith, liberty is lost when individuals come to be dominated by arbitrary tyrants, domestic or foreign, sovereigns, lordlings, or petty officials. In essence, then, liberty means an individual's independence from the capricious will of others; it means, in our terminology, living under the rule of law.

Liberty, in the sense of life under the rule of law, is more fully explained when Smith turns to the modern history of British government. The king's revenues having been brought under the control of parliament and various independent fiscal officers, those revenues

'never can endanger the liberty of the nation' (1978:420) — as they would if the King could tax at will and spend the proceeds to usurp tyrannical power (1978:269). As this arrangement illustrates, the mixed constitution of modern Britain, according to which king, nobles, and commoners 'properly restrain' each other, affords 'perfect security to liberty and property' (1978:422). Specific British institutions that provide 'securities to liberty' are life tenure of judges, impeachment of ministers, habeas corpus, popular election of MPs, and impartial juries (1978:422,425).

Much the same view emerges from a passage, typical of Smith's historical jurisprudence, in which he contrasts the situation of individuals in barbarous and civilised communities. In the former, people lived 'almost in a continual state of war with their neighbours, and of servile dependency upon their superiors', exposed in other words to arbitrary exactions by those more powerful than themselves. But commerce and manufactures, once they arrived on the scene, 'gradually introduced order and good government, and with them the liberty and security of individuals ...' (1976a:III.iv.4 [412]). Liberty — and security, which in Smith's mind is the Siamese twin of this kind of liberty — are the fruits of 'good government', government that, whatever collective goals it may pursue, proceeds according to established constitutional rules.

In view of this theory of liberty, how could Smith denounce the whole body of existing British law and regulation concerning economic policy as contrary to his 'system of natural liberty', despite the presumption — which Smith never questions — that those laws and regulations had been adopted and enforced in accordance with British constitutional practice and must therefore be compatible with liberty? Is there not a massive contradiction between the theory of liberty under law and the theory of liberty from law? If, as Smith says, men enjoy liberty when they live under laws made and enforced in constitutionally proper ways, how can they be said to lack liberty because some of those laws constrain some of their economic activities?

As always, there are temptingly easy ways to resolve this difficulty. It could be argued that Smith's two theories of liberty coalesce into a single unified theory: liberty is the condition that exists when the laws are both proper in procedure and wise or efficacious in substance. Alternatively it could be suggested that whereas the procedural theory, that liberty is guaranteed by rule of law, pertains to all four of Smith's fields of government activity, Justice, Policy, Revenue, and Arms (1978:5-7),[4] 'natural liberty', freedom from law, pertains only to the field of Policy, whose objective is to promote opulence (1978:5-6). To

[4] Although Smith used 'police' more frequently than 'policy', his meaning is now better conveyed by the latter.

be sure, the distinction between the laws of Justice (such, for instance, as the law of contract) and the laws of Policy (such as a law prohibiting the export of raw wool) explains why Smith was able to say that natural liberty would leave every man free to pursue his own interest 'as long as he does not violate the laws of justice' (see p.66 above). But it does not explain why Smith regarded the laws of Justice, that is the concrete laws of any given community at a particular moment, as beyond criticism from the standpoint of natural liberty.

Rather than searching for a spurious reconciliation of Smith's two theories of liberty, we can, without disparaging Smith's memorable achievement, admit that he never quite made up his mind about the extent to which liberty could or should be invoked as an argument against the **substance** of procedurally proper laws.

A few examples will illustrate the variability of Smith's approach to this problem. At one point he says that of all taxes, an excise tax paid by the seller 'seems most to favour liberty', at least it seems so to the buyer from whom the tax is hidden (1978:533); the underlying premise is that all taxes violate natural liberty. Yet at another point he maintains that because the British system for managing public revenues has been regularised and institutionalised, it has established 'a rational system of liberty' (1978:421); here Smith raises no question about whether the tax system, well-ordered though it is, might be so burdensome as to infringe substantive liberty. Again, when discussing the law of divorce, he brings to bear considerations of justice and expediency but not of liberty (for instance, 1978:442). Similarly, as we have seen, liberty plays no decisive role in shaping his proposals concerning government regulation of churches (see above, pp. 75-6). Nor does the idea of natural liberty cause Smith any qualms when he endorses 'the most severe and rigid discipline' in standing armies as necessary in order that soldiers should 'be more afraid of their general and officers than of the enemy' (1978:543).

More revealing still is Smith's reflection on the state's role as an agent of moral reform. Among the duties of the law-giver, one is discouraging 'every sort of vice and impropriety', which he may do by prohibitory rules. But this duty must be exercised tactfully and prudently: 'To neglect it altogether exposes the commonwealth to many gross disorders and shocking enormities, and to push it too far is destructive of all liberty, security, and justice' (1976b:II.ii.1.8 [81]). What kind of liberty would be destroyed if the law-giver went too far? Not procedural liberty, for Smith acknowledges the magistrate's duty and power to legislate on this subject. Then it must be natural liberty, substantive liberty; but if that is so, natural liberty must militate against any such law, because each such law limits the individual's freedom to make his own moral choices. It is easy to sympathise with Smith's intuition that, for instance, an ordinance closing down pubs at midnight

would be tolerable whereas one summarily closing all pubs forever would not be. But a wide gulf separates reasonable intuitions from a firmly built theory.

From the standpoint of the consistent liberal then, Smith's theories of liberty are an inadequate basis for analysing issues concerning various freedoms that are guaranteed or claimed, freedoms concerning speech, assembly, religious practice, marriage, divorce, abortion, conscientious objection, and the like. Smith's theories of liberty are an inadequate basis for determining, even theoretically, how little law and government people absolutely need in order to live together peaceably, that is, peaceably enough.

IV. WINCH'S SMITH

The conclusion that Smith was not a liberal, or more precisely, not a thorough-going liberal theorist, is confirmed by Donald Winch's finding that he was a 'civic humanist' and 'sceptical Whig', who, like others in those camps, though perhaps less unequivocally than they, believed that the possibility of good government rests on the 'civic virtue' of citizens, and that a good government must therefore seek to inculcate virtue in the citizens (Winch, 1978:33,46,ch.5). To put the contrast between liberalism and civic humanism in an extreme form, one holds that individuals should shape the state to be their minimal agent, the other that the good state should shape individuals to be at least minimally virtuous citizens. Smith, as I have shown, comes closer to the latter view than the former, with the potent exception in favour of economic liberty.

Besides answering the question of whether Smith was a liberal, Winch rather objects to its being asked, because he sees it as an effort to force an 18th-century man into a 19th-century mould. Many people, he notes, have wished to assign Smith to the 'English tradition of liberal individualism' stretching from Hobbes and Locke through to John Stuart Mill (Winch, 1978:13-14). To such an exercise in 'recruitment' of Smith, to serve either liberals or their antagonists, Winch opposes 'recovery', the effort that a historian should make to discover 'what it would be conceivable for Smith, or someone fairly like him, to maintain, rather than ... what later generations would like him to have maintained' (1978:5). Of course it is corrupt practice to read into authors, against the grain of their texts, everything we wish they had said while deliberately overlooking much of what they did say.

Everyone will agree that a weighty text should be read with as much detachment and sympathy as we can muster. After that, many puzzles will remain. At that point one may usefully consult contexts. One is the whole of the author's works, for it may reasonably be supposed that

what he said here bears some rational relation to what he said elsewhere, and may be illuminated by it. A second context is the author's intellectual lineage, which shows what he drew from his forbears. A third is the writings of his contemporaries, for as Winch says, a writer 'is frequently employing a well-established public language ... the resonances of which were already well known to the educated members of his immediate audience' (1978:5). And the fourth is his intellectual descendents. In short the contexts of a writer are past, present, and future. I find it strange that Winch is more willing to interpret Smith in the light of Machiavelli, Hume, and even James Madison (1978:178 ff.), than in the light of Bentham and the Mills, who educed various implications of Smith's thought.

Contrary to Winch's methodological preferences, I hold that the question of whether Smith was a liberal is admissible and important. What makes for difficulty in answering the question, apart from the usual uncertainties that arise from the unascertainable distance between any deep writer's words and intentions, is the difficulty of arriving at any quite definite and widely agreed meaning of liberalism.

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Adam Smith and the Liberal Tradition

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Adam Smith and the Liberal Tradition

Donald Winch

I. INTRODUCTION

Sussex to Sydney may seem a long way to come in order to report on a case of mistaken identity, but that, in part at least, is what the editor of this volume must have anticipated when he invited me to write this paper. In a book published nearly a decade ago, I suggested that the writings of Adam Smith — one of which especially, the *Wealth of Nations*, has always occupied a prominent place in almost everybody's idea of the liberal canon — were not best understood within those orthodox liberal-capitalist perspectives that have dominated both liberal and Marxist interpretations of the significance of his work since the 19th century (see Winch, 1978). Surrounded by some leading interpreters and exponents of liberalism in one or other of its potent modern forms, this volume might seem as good an opportunity as any to renounce these earlier heresies. Yet while I readily confess to some exaggeration through ignorance and omission, as well as to a failure to grasp the full implications of what I was contending, I am unwilling to go much further. It also occurred to me that giving reasons for **not** being able to retract, despite recognising the cogency of some of the criticisms of my case, could provide the best, certainly the most honest, basis for my contribution to this book.

One further introductory remark seems in order. Despite the self-referential form of much of what I have to say, I hope that this approach will give access to some of the larger issues connected with liberalism as a political philosophy or ideology. In saying this I am simply presuming that an understanding of whether an actual historical figure called Adam Smith was successful in combining the economic, moral and political dimensions of his position, and if so, how this was achieved, has considerable significance to the doctrines we associate with

liberalism, not least because so many of its exponents and critics have invoked Smith's name in support of their diagnoses of its dilemmas, possibilities and limits. With a last apology for taking a scoundrel's refuge in autobiography, therefore, I begin with some remarks on my essay on *Adam Smith's Politics* and its critics.

II. *ADAM SMITH'S POLITICS* IN CONTEXT

Apart from wishing to illustrate the virtues of a particular mode of historical interpretation, I was advancing a number of substantive claims that can be summarised as follows. The first set of claims was negative: it consisted in showing how the imposition of anachronistic 19th- and 20th-century categories onto the work of an 18th-century author — for whom, after all, the term 'liberal' could only have broad adjectival significance — had resulted in systematic distortion and loss of meaning. Second, and still in a sceptical or negative vein, I was arguing against what for brevity if not beauty I shall describe as the predominantly apolitical, economistic, even deterministic viewpoints on Smith, making use of the evidence, some of it new, provided by the *Lectures on Jurisprudence* to suggest what the 'theory and history of law and government' that he projected but failed to finish might have looked like. This also entailed an attempt to place the *Wealth of Nations* within the wider context of Smith's 'science of a statesman or legislator' — a context that was undoubtedly 'political' in one or two of the significant senses of the term, where this includes questions of a moral, constitutional, and juristic nature. Third, in dealing with Smith's analysis of a number of contemporary political issues — with what might be termed the 'art' corresponding to his 'science' of politics — I was able to make use of Duncan Forbes's fruitful insights into what he calls the 'sceptical' or 'scientific' Whiggism of Hume and Smith, as well as the large body of revisionist literature centring on the work of J.G.A. Pocock and others, which has revealed the strength of 'classical republican' or 'civic humanist' ideas within Anglo-American political culture during the 18th century (see Forbes, 1975; Pocock, 1975). Apart from showing that Smith adopted and recommended a characteristic style or stance to the philosopher faced with contemporary political problems, a stance that could be variously described as sceptical, realistic, moderate, contemplative, cynical, or conservative, I wished to maintain that his politics recognised the existence of a dimension to political life and action that, again in shorthand terms, I will call 'republican' or 'civic' — a dimension that could neither be reduced to, nor reproduced by, models of political and economic behaviour based solely on assumptions about the rational pursuit of self-interest by individuals.

As I shall presently maintain, however, far from wishing to advance a 'civic humanist' alternative to the usual 'liberal' interpretations of Smith's politics, I went to some trouble to show just why and where such an interpretation was likely to fail when applied to Smith's more complex political vision. Though far from indifferent to how economic circumstances affected the capacity of men to perform their duties and protect their rights as citizens — as shown in particular by his diagnosis and remedies for the moral, political and military drawbacks associated with the extension of the division of labour in commercial society — when compared with the stress placed on citizenly virtue and corruption by both ancient and modern exponents of classical republican values, Smith's politics is far more readily seen as a politics of constitutional and other machinery designed to curb those activities by individuals and groups that ran counter to the public interest. While many would characterise this as a 'liberal' position, it should be noticed that the affinities are with Hume, Montesquieu and, say, Madison, rather than with Locke — whether Locke is seen, unhelpfully, as the evil genius of 'possessive' or 'bourgeois' individualism, or as the founder of a liberal defence of limited government constructed along contractarian lines. In so far as Locke enters the picture at all, it is for a number of qualities he has in common with such other 17th-century natural law theorists as Grotius and Pufendorf.

The forward linkages between Smith and the Benthamites in any notion of an unbroken tradition of liberal thinking have often been recognised as problematic, perhaps even libellous — notably by Hayek and his followers (the original statement of this view, much developed in later writings, can be found in Hayek, 1948). But if Hume and Smith could not be readily located on a spectrum that stretched from Hobbes and Locke at one end to Bentham and John Stuart Mill at the other, then perhaps the whole idea of a liberal tradition, true or false, owed more to the teleological presumptions of Whig historiography than to anything that could be demonstrated by means of genuine historical continuities or imputed philosophical similarities. Hence the agnostic tone of one of my conclusions, namely that Smith's politics were pre-industrial, pre-capitalist and pre-democratic.

III. CRITICS AND OTHERS

In retrospect, I have reason to be grateful for the tolerance and generosity of my reviewers, particularly those who were political theorists and historians of political thought. Several members of the guild in which I had served my apprenticeship, that of the economists and historians of economic thought, were either bemused or far more resistant (the most dismissive review was by Sowell, 1979; a longer and more appreciative

one by Hollander, 1979, made use of what I took to be one of my main conclusions to criticise the book — a sure sign that I had failed to get my message across). They seemed less willing to come to terms with an argument that had little relevance to the way they read the *Wealth of Nations* (or rather perhaps, their favourite parts of this protean work), chiefly for premonitions of modern, mostly economic-theoretical, concerns. Indeed, faced with the kind of evidence necessary to establish the nature of Smith's science of the legislator, that is, with the material on 18th-century political conventions and language, I suspect that many of those who are strongly wedded to the traditional view of Smith's writings feel a good deal of impatience. After all, while the familiar view has a clear line of development reaching to the present, one that has been the subject of a good deal of loving attention over the past 200 years or so, this does not appear to be the case with Smith's science of the legislator. Is there not a risk of losing sight of Smith's originality in all this attention to the 18th-century contextual wallpaper? How much light could the parochial language of 18th-century political discourse really shed on Smith's trans-historical qualities? Surely his politics, in any significant sense, is fully described by his criticism of the mercantile system and state; by his espousal of the system of natural liberty; by the importance he attached, both as historian and moral philosopher, to the rule of law; and by his apparent sympathy for constitutional forms of government?

Before dealing with such questions let me mention one major criticism of my book that I had no difficulty in accepting. Some critics who were willing to be convinced that Smith's 'science of the legislator' went beyond and could not be reduced to the standard issues summarised in the literature on laissez-faire and state intervention in economic life felt that I had not dealt adequately with the ethical underpinnings and philosophical foundations of Smith's natural jurisprudence and his conception of what constituted legislative wisdom or prudence (see Forbes, 1978; Kettler, 1979). This was plainly true, and it was with considerable admiration and some relief that I later read Knud Haakonssen's (1981) study of *The Science of a Legislator; the Natural Jurisprudence of David Hume and Adam Smith.* This deals with both the moral and the natural jurisprudential foundations of Smith's approach to knowledge in this sphere, and gives a more satisfying account of just how theory and history are brought together in Smith's treatment of law and government to comprise a consistent body of critical and historical jurisprudence with links encompassing most of Smith's main works, including the new *Lectures on Jurisprudence.* It also provides a less tendentious account of the differences between Smithian and Benthamite jurisprudence than can be found elsewhere.

While I could not have matched Knud Haakonssen over this territory, I felt better equipped, in principle at least, to deal with another

partially justifiable criticism, namely that in the attempt to recover a lost or missing political dimension, I had bypassed Smith's economics and consequently failed to establish the relationship between the two spheres (Dunn, 1978 made this point, as did Hamowy, 1979). Thus while there are plenty of references to the system of natural liberty in the book, I was more interested in the use of the invisible hand metaphor as it appears in the *Theory of Moral Sentiments*, and was not keen to rehearse the familiar issues surrounding laissez-faire and all that, upon which I had little to say that differed from the work of, say, Jacob Viner (1958), Nathan Rosenberg (1960), and Andrew Skinner (1979). As I have subsequently discovered, however, the task of expressing the relationship between Smith's politics and his economics is not as easy as I anticipated, and it could provide the crucial point of access to the problems of modern liberalism mentioned earlier.

IV. CIVIC HUMANISM AND LIBERALISM

It is a common criticism of those who subscribe to the historiographic position adopted in my book, a position that is strongly wedded to authorial intention and the study of texts within contemporary linguistic and historical contexts, that it replaces forward-looking studies of historical figures with less recognisable backward or sideways-looking portraits, thereby severing the connections that must exist between any influential author and his progeny (this point was made in an otherwise very generous review by Cropsey, 1979, and in a more elaborate way by Cumming, 1981). My book was, indeed, rather puritanically historicist, and I accept that those who ply the historical trade in this way have a kind of obligation to pursue what the Germans call *Wirkungsgeschichte* — the study of how seminal works make their way in the world and are transformed in the process. Again in common with Knud Haakonssen, this is something I have attempted to do in later work (see Haakonssen, 1984a, 1984b, 1985; Winch, 1983a; and essays 1-3 in Collini et al., 1983). But there is, of course, a great deal of difference between a genuine *Wirkungsgeschichte* and the manufactured genealogies that appear in so many accounts of the liberal tradition, where most of the work is being performed by definitions.

For example, I doubt if there is much more to be said, by way of historical argument at least, to those for whom liberalism as an ideology is intimately bound up with the concept and career of 'possessive individualism' as originally defined by the late C. B. Macpherson. Along with many others, I have taken issue with this position, and have yet to see any signs of a response that goes beyond repetition of the original claims (for his review of my book, see Macpherson, 1979; see also Winch, 1985a, 1985b). However, another interpretation of

liberalism, one that is primarily associated with the work of Sheldon Wolin and sees it as a form of anxiety and pessimism about the human fate, poses less well-rehearsed issues which I should like to examine by considering the criticisms of my book put forward by Edward J. Harpham. He clearly feels that I have upset or failed to grasp the centrality of Smith's liberalism, which he treats as one of the natural categories of political discourse; and that I have consequently wrested 'Smith's political thought out of the larger vision of commercial society that is found in his moral, political and economic writings' (Harpham, 1984:764).

If true, these would be destructive criticisms; but since they largely derive from a blatant misreading of my position, I am forced to conclude that something else must be at stake. Harpham's mistaken basic premise — that I was advancing a civic humanist alternative to the liberal reading of Adam Smith's politics — has clearly led him to believe that if he can show how a civic humanist reading fails to fit much that was characteristic of Smith's position, he has thereby established that Smith can continue to stand as a monument to everything that constitutes liberal political discourse. As already mentioned, however, far from putting forward such a reading, I thought I had shown how Smith, in common with his friend David Hume, was largely engaged in an enterprise that was in many respects **antipathetic** to that tradition. There is nothing in Harpham's rehearsal of the now familiar evidence concerning Smith's views on commerce, liberty, economic growth, the mercantile system, and what has become known as the four-stages theory, that conflicts with what I and many others have written. A goodly part of my concluding chapter, for example, was devoted to examining the ways in which Smith and Hume share a political perspective that differs from such contemporaries as Adam Ferguson, who can more properly be described as an exponent of 'Machiavellian moralism', the 'Country' stance, 'republican principles', and other synonyms for features that have been assembled under the term 'civic humanism' or 'civic moralism' (for a rehearsal of further doubts about the capacity of civic moralist interpretations to deal with the more important features of Smith's thinking, see Winch, 1983b).

What then seems to have gone wrong? Part of the problem lies in Harpham's rigid dichotomy between civic humanism and liberalism. Both of these are terms of interpretative art that have been applied retrospectively, and any study purporting to have a historical basis might wish to signify this fact by placing quotation marks around them at the outset. For what might appear to be a minor question of historiographic taste conceals, I suspect, a more important difference of opinion that can be brought to the surface by asking a simple question: why should 'civic humanism' and 'liberalism' be considered not only as mutually exclusive, but as the only viable alternatives, such that if Smith can be

shown to occupy one position he cannot possibly be having any truck with the other?

My own answer would begin by rejecting the simple binary choice on offer. Taking for granted (as most students of 18th-century political thought, including Harpham, manifestly do) the continuing reality of a style of political thinking that is usefully captured by some such term as civic humanism, why should we expect everything Smith or Hume wrote to be a flat contradiction of this mode of thought? They are frequently to be found opposing its conclusions and methods of reasoning; but it is part of the evidence for the continuing strength of these ideas that they should have found it both necessary and useful to engage in debate with them. Nor should we be surprised if in the course of debate they adopted the categories and sometimes endorsed republican values, even when doubting or ultimately rejecting their widespread applicability to modern monarchies and commercial societies. We might also become aware, as Harpham does not appear to be, of interesting differences between Hume and Smith on these matters. For example, we might note their differences over public debt or the militia question, where Hume occupied a position closer to that of 'Country' writers.

Harpham attaches great significance to the four-stages theory as a delineating, if not originating, feature of the modern liberal position. He maintains that by subscribing to this theory Ferguson and Millar 'were introducing tensions into their own thought that could not be easily reconciled with their republican values' (Harpham, 1984:769). Since he gives no reasons for this judgment it can only be taken as further evidence that he regards the liberal and civic categories as mutually exclusive. This could explain why he does not consider it necessary to address himself to the more intriguing question of why the four-stages theory does not feature in Hume's writings — a matter of some substance if he wishes to keep his 'liberals' and 'republicans' in sealed compartments. Presumably Millar was introducing another 'tension' into his thought by subscribing to the Hume-Smith idea of deference to authority as an explanation for political obligation. Holding republican values, he should have been more interested, in a way that Smith was somehow obliged not to be, in 'the economic preconditions to effective citizenship'.

I also wonder how many students of Smith's writings will join Harpham in recognising the 'tone of uncertainty and anguish' that underlies Smith's discussion of sympathy and deference in civil society, comparing it with the 'moderately upbeat and self-confident tone found in civic humanism' (Harpham, 1984:770). Ferguson has surely not been alone in reversing this charge by maintaining that Smith took far too cool and contemplative a view of contemporary political anxieties (Kettler, 1977). If Smith was chiefly concerned, as Harpham claims, 'to maintain those conditions most highly conducive to the continuance of

existing authority relations', how can we explain, for example, his attack on primogeniture and entail, those twin supports of the landed aristocracy in Britain? Why must we subscribe dogmatically to the view that certain positions were 'unavailable' to him? I would agree, as I put it in the book in question, that 'Smith does not share the passionate concern for the decline of citizenship that can be found, for example, in Ferguson' (Winch, 1978:175), but that does not mean we have to cast aside the civic features of Smith's diagnosis of the effects on the mass of society of the division of labour, and overlook entirely the civic provenance of his educational and other remedies for the problem — a subject to which I shall return later.

V. THE LEGISLATOR, THE STATE AND POLITICS

A politics of machinery designed to curb and harness the forces of self-interest may have less need for virtuous men, and may adopt a decidedly sceptical view, as Smith often does, towards those who present themselves to the world as possessing special virtue. But this does not imply that public-spiritedness, in common with beneficence in private relationships, does not exist, cannot be encouraged, and has to be shunned or denied when it is present. At no point does Harpham consider the evidence adduced by Haakonssen and myself concerning Smith's conception of the 'legislator' — the man whose deliberations, when compared with 'that insidious and crafty animal', the politician, were 'governed by general principles which are always the same' (Smith, 1976a:468; see also Winch, 1978:12-13, 159-60, 170-73; Winch, 1983a; and Haakonssen, 1981:97, 135, 164, 180, 188). What this evidence shows is that Smith does not belong to the deterministic end of the spectrum at which materialistic forces are held to dominate historical outcomes and 'natural' economic processes leave the legislator with little to do beyond issuing pious warnings about 'artificial' impediments. Nor does he belong with those other 18th-century advocates of the science of the legislator who, in the words of J. H. Burns, saw the legislator as 'a continuously active figure, modifying, regulating, and sustaining the dynamic structure of political life' (Burns, 1967:6). This vision of the legislator as moulder or *machiniste* fits Bentham and his French and Italian predecessors far closer than it does Smith. Like Montesquieu and Hume, Smith conforms more with what Burns describes as an alternative Enlightenment style of 'circumstantial empiricism — a cautious and in the end an essentially conservative approach to social institutions' (1967:12). This certainly fits the famous passages in the *Theory of Moral Sentiments* (1976b) in which Smith contrasts the virtues of the man of 'public spirit' with the 'man of system', and where he speaks of the wise legislator accommodating 'his public arrangements to the

confirmed habits and prejudices of the people', emulating Solon in establishing, if not the best system of laws, then 'the best that the people can bear' (1976b:VI.ii.2.16-17 [233-8]).

Once these matters are brought into play, it becomes possible to ask such questions as: to whom was Smith's 'science of the legislator' addressed? Does the science not presuppose the existence of persons or groups who might, however occasionally, base their conduct on general principles that are always the same, and otherwise embody qualities of public-spiritedness? Legislators might be hard to find in a world dominated by politicians, but there had to be possibilities for encouraging the legislator's point of view, if only by animating 'the public passions of men', and leading them 'to seek out the means of promoting the happiness of the society' (1976b:iv.i.11. [186-7]). Smith tried his hand as legislative expert operating behind the scenes, but he probably expected to have his greatest influence through the slow and irregular process of altering the state of that powerful if nebulous entity called 'opinion', upon which, as Hume argued, all government depended.

To this I would now add something that is clearer than it was to me ten years ago, namely that by serving as an ideal location to which contributions to knowledge or science could be addressed, the concept of the legislator provided a flexible way of speaking about another major abstraction, the state. In Smith's formulation it was more flexible than the later Hegelian and post-Hegelian alternative because it allowed for non-coercive forms of mutual interaction between state and civil society. It did not require rigid assumptions of autonomy, primacy, or parasitism — complete freedom of action by an impartial agency possessing exclusive powers of coercion, a state-centred view of the world on the one hand, or a derivative and conspiratorial view of the state as the agent of the dominant economic forces in society on the other. Smith depicts state and civil society as being almost interchangeable; and his definition of the 'constitution' of a state is sociological rather than legal, more corporatist than individualist.

> Upon the manner in which any state is divided into the different orders and societies which compose it, and upon the particular distribution which has been made of their respective powers, privileges, and immunities, depends, what is called, the constitution of that particular state. Upon the ability of each particular order of society to maintain its own powers, privileges, and immunities, against the encroachment of every other, depends the stability of that particular constitution ... That particular constitution is necessarily more or less altered, whenever any of its subordinate parts is either raised above or depressed below whatever had been its former rank and condition. (1976b:VI.ii.2.8-9 [230-31])

This passage suggests that reciprocal interaction between government and society which should be expected of someone whose lectures on jurisprudence were designed to show how law and government not only 'grew up with society' but represented 'the highest effort of wisdom and prudence'. Smith's rejection of rationalistic accounts of political obligation and the origins of government enabled him to forge links between political institutions and such broader social and psychological phenomena as deference within a society of ranks and the 'powers, priveleges, and immunities' of the 'different orders and societies' that comprise any state. It also made regard for questions connected with the climate of 'opinion', normal or pathological, and whether expressed through representative institutions or not, an important aspect of the life of legislators (see, however, Robertson, 1983, for an interpretation that places greater stress on representation). Such an approach licensed inquiry into a range of institutions capable of mediating between state and civil society, operating in the large space separating the private and public spheres — the realm in which, as Nathan Rosenberg was one of the first to make plain, Smith proved so fertile in advancing institutional expedients.

None of this plays any part in Harpham's defence of Smith's exclusively liberal credentials, and it is equally absent in the Wolinian interpretation of liberalism that Harpham wishes to reinstate. Public-spiritedness, being a quality that is valued only by civic humanists, cannot be part of Smith's understanding. In its place there is something called 'liberal public-mindedness', which Harpham first describes as 'the correct psychological disposition in the minds of policy-makers', later defining it as follows: 'It is a liberal public-mindedness that accepts and, at times, champions, the self-interest that lies at the heart of modern commercial society. It is a liberal public-mindedness that is integrally related to liberal economic theory' (Harpham, 1984:772).

The triple invocation here of the unexplained term 'liberal' amounts to no more than an assertion of what needs to be proved, namely that this term covers everything of importance that is going on in Smith's politics. But the defensive thrust of the argument is clear, and the message is a comforting one to all those who wish to retain the view that Smith's politics and science of the legislator do not encompass his political economy as a special case, but are themselves encompassed by it. In simpler terms, it confirms the idea that whatever political message there is in Smith can be found **within** his economics and is still best described as liberalism, with or without an initial capital. Thus while I believe that Harpham misrepresents my case and proves his own by failing to confront the full range of evidence that is relevant, his position has the virtue of bringing certain issues into sharper focus.

The Wolinian interpretation requires us to believe that Smith's significance to the history of political thought lies in his decisive deflection of things political towards things economic by giving primacy to unintended consequences and the self-regulating processes of civil society (Wolin, 1960:ch. 9; for a more recent and in some respects less qualified statement of this position in relation to Smith, see Wolin, 1981). According to this interpretation, Smith adumbrated a profoundly 'antipolitical' or 'depoliticised' position within which political notions of the common good were replaced by economic goals that could be achieved via mechanisms that made the minimum call either on altruism or on our capacity to construct a political order. At best, this style of thought can be credited with an instrumentalist view of knowledge that excludes *paideia*. It is a mechanistic form of constitutional expertise based on a reductive view of human behaviour — a negative philosophy of checks and balances that is antagonistic to higher and more positive notions of the ends of political life.

I am more concerned with the characterising as opposed to the evaluative aspects of this position, and my first attempt to bring the difference of opinion to a point would run as follows. For someone writing when Smith did, it is possible to attach meaning to a term such as 'economic liberal', but additional evidence is needed to convince me that being an 18th-century **economic** liberal necessarily entails being a **political** liberal in the sense that I take to be implied by the 19th-century term, liberalism. In other words, I lack Harpham's confidence in asserting that Smith's economic theory is 'integrally related to his political thought' in such a way that only liberalism can capture the nature of that relationship. This accounts, of course, for his feeling that I have divorced Smith's economic and political thinking; and I readily confess that any simple one-to-one relationship between Smith's economic and political theory, where the latter includes his jurisprudence, his constitutionalist ideas, as well as his moral philosophy, eludes me. For my part, I am puzzled by the complete absence in Harpham's discussion of the one historical category that, more than any other, helps to describe Smith's philosophical position, namely that associated with a modernised form of natural jurisprudence. And if we have to apply more obviously political labels, I cannot see how or why we should do without a term that served a valuable descriptive/evaluative purpose for well over a century, namely Whig. There is surely a strong case for describing Smith's politics as a variety of the Whig genus — 'Court', Rockinghamite, or 'sceptical'. Indeed, I debated whether a better title for this offering would be: 'Why Smith is a Whig but not necessarily a Liberal'.

VI. SMITH AND PUBLIC CHOICE

To dispel any notion that I am engaged in purely semantic games, I should like to turn to some areas in which the historical Smith seems to diverge from what some of his modern admirers would like to believe is the case, where my object will be to implant the idea that we do not necessarily gain by translating Smith into the most readily available, or favoured, 20th-century vocabulary.

The 'constitutionalist' character of Smith's politics has been recognised in recent years by those who are keen to stress the fundamental affinities between his work and that of modern public choice theory. From my point of view, there seems to be more room initially for closer debate with this position than with that of, say, George Stigler and some other Chicago theorists who would foster onto Smith a fairly crude self-interest model of legal or political behaviour by a deductive process that takes no account whatsoever of the evidence provided by the *Theory of Moral Sentiments* and the *Lectures on Jurisprudence* (for my criticisms of Stigler see Winch, 1978:165-8, 171). Smith is accorded a prominent place in the genealogy of public choice theory advanced by James Buchanan, who maintains that this theory is little more than 'a rediscovery and elaboration of a part of the conventional wisdom of the eighteenth and nineteenth centuries, and notably the conventional wisdom that informed classical political economy. Adam Smith, David Hume, and the American Founding Fathers would have considered the central principles of public choice theory to be so elementary as scarcely to warrant attention' (Buchanan, 1978:18). Buchanan also adds a Hobbesian and Lockean 'contractualist' dimension to this genealogy that will have to be considered in a moment, but I should first like to mention the more detailed historical work undertaken from the same perspective by Edwin G. West (1976) under the heading of what he calls Smith's 'economics of politics' — work with which I find it possible to agree on a number of important points (an 'evaluative survey' of recent work on Smith appears in Thweatt, 1988, together with a commentary by myself — parts of which feature in the next few paragraphs).

For example, West and I agree on the 'constitutionalist' emphasis of Smith's politics, though in addition to the concern with constitutional balance and stability I would draw attention to a matching interest in possible fragility or 'seeds of decay' — an interest in the dangers attending the loss of constitutional stability and legitimacy that is prominent in Smith's reactions to the American and French Revolutions and could account for a feature of Smith's politics that is disturbing to 20th-century civil libertarians, namely his interest in **strong** government. West and I also agree that to Smith one of the main threats to stability lay in the undue influence exerted by extra-parliamentary

interest groups in their efforts to secure exclusive privileges. Such privileges could not be justified in terms of a concept of public interest that combines consideration of expediency and justice, but does not imply anything so hard-edged and single-minded as, say, the Benthamite maximand. We also agree on the 'accommodative' (and hence conservative) features of Smith's view of the legislator's duties, and on the far smaller part played by notions of representative democracy in Smith's work when compared with that of his more *dirigiste* Benthamite successors. Where West and I differ is on whether the categories of public choice theory adequately capture and characterise Smith's overall position. I remain unconvinced that his science of the legislator can usefully be rendered into the language of the Friedmanite 'second invisible hand', 'minimum vote requirements', 'rent-seeking activities', 'contractarianism', and 'the search for Pareto optimal moves' — at least not without significant loss in the process.

Although Buchanan seems prepared to concede (to Hayek?) that the legal or constitutional background against which the pursuit of self-interest does or should take place may be 'morally derived', 'externally imposed', or 'evolved as custom', he appears to have a decided preference for the normative or constructivist attractions of the 'economic' or 'contractarian' approach (Buchanan, 1986:32). The assumptions behind this preference are the well-known ones, namely that the term 'economic' implies that the starting point and building blocks of any model of politics must be individuals (rather than corporate entities) whose prime characteristic is that they possess 'separate and potentially differing interests and values', but need to 'interact for the purposes of securing individually valued benefits of cooperative effort'. According to Buchanan, once these presuppositions are accepted 'the ultimate model of politics is contractarian. *There is simply no feasible alternative*' (1986:240). As he also explains, 'the constitutionalist-contractarian interprets the political process as a *generalization of the market*' (1986:65; original emphasis).

We appear to have returned then via a roundabout route to the conclusion that Smith's credentials can best be established by treating his politics simply as the other side of the coin on which his economics of free markets is embossed. Yet what was said earlier about the 'sociological' and corporatist features of Smith's view of state/civil society relations, especially when taken in conjunction with his flat rejection of contractarian accounts of political obligation and the origins of government in favour of a more naturalistic approach, makes his incorporation within the preferred genealogy of public choice theorists highly problematic.[1] The difficult balance Smith's legislator was

[1] Buchanan recognises Smith's anti-contractarian position on the origin of government, and his failure to employ 'conceptualised contract as a

supposed to aim for and embody under the novel conditions created by commercial society is not, in my opinion, translatable into a calculus centring on the optimum size of the public sector judged from a 20th-century economists' viewpoint.

Another indicative source of disagreement with West can be found in what he was one of the first to discuss as 'alienation' — the problem raised by Smith's discussion of the drawbacks associated with the division of labour (West, 1969). In common with Harpham on this, West is unwilling to recognise the civic or Aristotelian implications of Smith's diagnosis and remedy for the problem. This can be detected in his dismissive remarks on Smith's educational remedies ('the tamest of conclusions'). A different verdict would surely be required if West was prepared to accept that one of the duties of Smith's legislator was the preservation of the 'character' of his people, and once it is recognised that Smith spoke of enforcing 'imperfect rights' (mutual obligations), while at the same time recognising the dangers of action under this rubric (1976b:II.ii.1.8 [81]). Smith's legislator is expected to know and to do less than his Benthamite (or Paretian) equivalent in one sense, yet, paradoxically, to know and to do more in another. Education is only part of the remedy for 'corruption' or loss of 'character' — a case, let it be noted, where an unintended consequence dictates some form of enabling intervention at the local government level — but the participatory dimension to this remedy gets lost when the whole question is reduced to one of deciding, public-choice fashion, how elementary education should be financed.

West has accused me of downgrading the status of laissez-faire in Smith's thinking to that of a 'myth'. I do not think this is so. Within the context of anti-mercantilism, as part of the rejection of Hobbesian or Mandevillian assumptions of non-sociability, and as an antidote to the arrogance of the 'man of system', the slogan may still have its uses — always provided that distinctions between Smith's world and that envisaged by the 19th- and 20th-century debate on the state's responsibilities are observed. Viner may have been wrong, as he later admitted, to see conflict between the *Theory of Moral Sentiments* and the *Wealth of Nations*, but he was surely right to notice that the duties of the legislator under the heading of justice in the latter work open up a potentially wider field of intervention to prevent 'oppression' than one might expect on the basis of the treatment given to commutative justice in the former work (Viner, 1958:237-8). I would also claim that

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benchmark or criterion with which to evaluate alternative political structures'. Nevertheless, he maintains, in a way that is obscure to me, that Smith's 'device of the "impartial spectator" serves this function'; see Buchanan, 1979:121.

recognition of the full scope of Smith's science of the legislator adds interest to a rather tired body of literature by drawing attention to the fact that, for Smith, government in civilised communities had to be strong, adaptable, and probably expanding, even if he hoped its operations would not be extensive and detailed in the economic field.

VII. LIBERTY AND UTILITY

Terence Hutchison (1981) has drawn attention to another important lacuna in Smith's position that would make it difficult to include him wholeheartedly within any modern public choice genealogy. Hutchison has noted that Turgot clearly recognised the irredeemably **subjective** nature of utility, and hence foresaw some of the connections between exchange value and utility later codified by post-marginalist economists, thereby foreshadowing an integral part of the microeconomics that is so important to the modern libertarian understanding of market behaviour. In contrast, Smith's concept of utility was an **objective** one (biological or moralistic), and therefore does not have the kind of proleptic qualities required for membership of the libertarian lineage. Indeed, Hutchison believes that in this respect at least Smith may have given rise to that unfortunate tendency among his later English 'classical' followers of cultivating labour and absolute theories of value. But Hutchison's main charge is one of logical contradiction. Smith's views on utility are, he maintains, 'quite incompatible with [his] libertarian values and the whole ethical and political message of *The Wealth of Nations*. For such a concept of objective utility permits the implication that values, choices, and priorities are not to be decided by the purely subjective tastes and desires of individuals, but by objective qualities of 'usefulness' which experts or officials can more accurately assess and decide for us' (Hutchison, 1981:39).

It would not be the first time that Smith was convicted of having left a confused will and testament: Marxists have been pointing to the divided legacy on the labour theory of value for many years (see, e.g., Meek, 1977). Hutchison has undoubtedly posed an interesting counter-factual problem, but the answer should not, in my opinion, lead to the conclusion that we are faced with 'an unfortunate aberration, quite inconsistent with [Smith's] fundamental politico-economic philosophy' (1981:44). Hutchison assumes that since Smith is a libertarian of a particular stamp, this dictates the combination of ideas that **ought** to be found in his writings. What makes this an interesting counter-factual problem, of course, rather than one derived from a failure to register what positions were genuinely available to a past author, is that Smith, quite as much as Turgot, defended the system of natural liberty by emphasising the 'impertinence' of politicians and the limits to the

knowledge possessed by those who professed to act in the service of the public good. With regard to what was undoubtedly the most sensitive free-market question of the day — the effects, beneficial or otherwise, of the network of controls exerted over the domestic and international grain trade in countries such as France and Britain — there are further ironies in the situation. Thus after the failure of Turgot's attempt as Louis XVIth's Minister of Finances to create free trade in grain in 1774, Smith's strong support for the same policy in 1776 has earned him the reputation for being its 'only standard-bearer' (Hont and Ignatieff, 1983:18). More ironically still, the economist whom Hutchison credits with having the greatest influence over Turgot on the matter of subjective utility, the Abbé Galiani, was also the leading opponent of free trade in grain during periods of scarcity. It begins to seem as though empirical and political assessments of the impact of different policies were at least as important as theoretical rigour to the contemporary participants. It also seems worth noting the risks of slippage in understanding when perception of the 'correct' logical and ideological connections seems to require a process of doctrinal development that reached fruition only some hundred years or so after an author's death.

For this reason too, I would prefer to approach Hutchison's counter-factual proposition by examining more closely the undoubted objectivist features of Smith's position. A good deal can and has been said about those respects in which Smith is, or rather is not, a utilitarian in morals and politics. Here I should simply like to mention a related and equally problematic feature of his position, namely that as a moral philosopher he frequently adopts an objectivist position towards the satisfaction of individual material wants which leads him to condemn 'frivolous utility' and take an ascetic view of the happiness associated with wealth attainment generally (see, e.g., Hirschman, 1982:ch.3). Here the relevant context and contrast is provided not by Galiani, Turgot, and later economic exponents of utility theory inhabiting an intellectual world dominated by given resources and wants, but by Rousseau, Mandeville, and an 18th-century debate on the way in which wants are endlessly generated as a result of the social processes of envy and emulation — a world far removed from Robinsonades and atomistic bargaining exercises. And once this is recognised as the more relevant context for what Smith is arguing, the role in which he cast himself in the debate is perhaps better described not as that of an objectivist in Hutchison's sense so much as that of an anti-utopian or moral and sociological realist.

Rousseau's discourse on inequality was not merely the subject of one of Smith's earliest published writings, but it can be plausibly argued that Smith was responding to Rousseau in the *Theory of Moral Sentiments* when dealing with economic ambition and the beneficial role of the invisible hand in distributing its unequal results (see Raphael, 1985:71-2, 79-80; Ignatieff, 1984:ch.4; and Winch, 1985a:241-2). In

common with Mandeville, whom Smith recognised as the source of the position Rousseau was inverting in his discourse on inequality, Smith accepts the deceptive basis of individual ambition, while commending, on the whole, its social consequences. Although the pursuit of wealth and inequality are inseparable, this need not have the dire consequences predicted by Rousseau. The individual benefits associated with material goods were generally exaggerated, but economic growth was capable of generating rising absolute living standards for the mass of society and of producing 'a gradual descent of fortunes', with less 'servile dependency' in social relationships as another of its beneficial byproducts.

It follows that Smith had no more reason to accept the 'violence' of Rousseau's 'republican' solutions to the problem of containing emulation and inequality than he had to accept the need for mercantile restrictions as a means of increasing national wealth. Constitutional machinery and the rule of law were capable of restraining some of the worst excesses of economic and other striving in a world in which economic progress and inequality went hand in hand, but there could be no guarantee in such matters. A society based solely on rules of commutative justice was less attractive than one based on benevolence and public spirit as well; but it would be a viable form of society. This is what I have called Smith's realism, though Michael Ignatieff, in a perceptive discussion of the Rousseau-Smith contrast, may well be correct in suggesting that Smith relies on a 'stoic hope' that some men at least will always be capable of distinguishing between wants and needs. I certainly share Ignatieff's further conclusion that: 'Smith's vision of progress contained no myth of future deliverance, no fantasy of human self-transcendance through the mastery of the means of production. Progress delivered only one ambiguous good: increasing the freedom of individuals to choose between need and desire. It could not promise a future in which men would be relieved of the burden of stoic choice' (Ignatieff, 1984:127).

VIII. RECOVERY OR RECRUITMENT

The distinction between needs and desires has no place, I take it, in a world where subjective concepts of utility rule; and if Smith's objectivism is to be counted as 'an unfortunate aberration' that could lead to temporary suspension or even exclusion from the preferred liberal lineage, then a historian such as myself must say so be it. All the closed doctrines out of which the grand '-isms' and 'traditions' in the history of political thought are constructed require some such rules of membership based on an uncertain mixture of theoretical purity and moral evaluation. But if the writing of intellectual history is undertaken more with a view to recovery than recruitment, the '-isms' become a

hindrance and an embarrassment, especially when one does not have the testimony of the authors themselves on the categories into which they are being recruited. This is the root of my continuing objection to the inclusion of Smith within a liberal tradition and my preference for a version of something Smith would have readily grasped, namely varieties of the Whig genus.

This would be a weak personal preference, accompanied by no desire to legislate for others, were it not for the tendency among those who wish to debate the nature of liberalism to enforce doctrinal closure by ignoring or denying important or even merely interesting features of Smith's thinking — as I have tried to illustrate above with regard to 'republican' values, the concept of a legislator, 'contractualism', and objective notions of utility. Moreover, if the liberal label requires me to believe that everything that is of interest about Smith's politics can be derived from his economics, the label no longer describes, even in simplistic terms, what the bottle contains. For it is one of the prime features of Smith's outlook, as I understand it, that stoic choices have to be made in a world that does not permit extensive foresight; that neither historical nor competitive economic processes are likely to solve, once and for all, the problems of sustaining a just political order; that while systems of economic reproduction cannot be ignored when discussing the nature of polities, there is no one-to-one relationship between forms of government and economic success, no **necessary** relationship between commercial prosperity and liberty (this is most clearly spelled out in Forbes, 1975:194-201).

It is precisely the absence of such simple relationships between polity, economy, and society in Smith that makes him of continuing interest to later generations operating with the benefit of hindsight. For example, it enables us to consider the circumstances in which Smith's political and economic vision might be placed at odds with one another. Thus we we can ask, as Albert Hirschman (1977:117-35) has invited us to do, whether Smith's apparent belief in the compatibility of economic striving with social and political stability has proved to be unduly complacent. Or, in similar vein, we can ask with John Dunn (1985:66) whether the very dynamic forces released by commercial society could undermine one of Smith's assumptions about political stability, namely that deference within a system of social classes or ranks would persist. Smith seemed to feel that America provided the most propitious circumstances for economic and political liberty to thrive together, free from feudal remnants and an oppressive aristocracy — a belief shared by many contemporary Americans and by some modern historians of Jeffersonian republicanism (see, e.g., Appleby, 1984). Why then were Smith's hopes for America unfulfilled, particularly so far as acceptance of laissez-faire in economic matters was concerned?

Am I wrong in detecting that similar questions are a prominent feature of debates between modern liberals and libertarians? Most liberals accept what Smith upheld, namely that competitive markets require an appropriate legal and institutional framework within which to work properly; and some have argued that, ideally, this framework ought to be one that commands customary or non-rational acceptance. In my opinion, though it cannot be argued here, Smith is less of a 'Burkean' (or Hayekian?) in these matters than is sometimes thought (see Haakonssen, 1981:132). But those who question whether Hayek's economic liberalism can live side by side with his more conservative (Whig?) theory of traditional institutions and the anti-constructivist elements in his thinking; and those who ask whether there is a conflict between the projective and retrospective sides of human nature that are being appealed to in support of the conservative and libertarian theories — surely they are pursuing the same issues? This question, I take it, is the one that most separates public choice theorists such as James Buchanan from anti-constructivists such as Hayek (see, e.g., Buchanan, 1986).

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Jurisprudence and Politics in Adam Smith

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Jurisprudence and Politics in Adam Smith

Knud Haakonssen

I. THE JURISPRUDENTIAL PERSPECTIVE

The level of agreement between William Letwin and Donald Winch is disturbing, not for their common conclusion — that Smith when measured, whether legitimately or not, by the yardstick of modern liberalism fails to make the grade — but rather because of their common premise that Smith's theoretical categories are essentially political and economic. Winch makes this apparent in his debate with Edward Harpham, who maintains that Smith's politics must be seen as an extension of his economics, while Winch argues that they have their own sources and must be seen as a separate factor alongside the latter. Letwin offers us a choice between man as a political animal decisively shaped by the state, and man as an individualist market operator. Smith is portrayed as unable to choose consistently, so that, whereas he generally tends to the former, he reserves the narrowly economic aspects of life exclusively for the latter and so reaches his theory of the system of natural (economic) liberty.

This agreement is disturbing for various reasons. To begin with, it ends any hope I had of being the impartial spectator weighing the rights and wrongs of the question. I am disturbed in my impartiality by my conviction that we cannot adequately address the question of Smith and the liberal tradition, in whatever sense, by proportioning the economic and the political aspects to each other. We need to relate both to a third category, the juridical, which in turn must be seen against the background of Smith's moral philosophy. Winch mentions this at the beginning of his paper, and jurisprudence plays a significant role in his seminal book on Smith. Nevertheless, the fact that both these papers, as well as the literature discussed by Winch, focus so strongly on politics and economics necessitates a fresh explanation and reassessment

of an alternative thesis with a wider perspective. I would argue that the natural jurisprudence that Smith develops from his theory of morals is the framework within which both his political and his economic theory must find their place; it is, in other words, not a matter of equal partnership, but of dependence. This was one of my concerns in *The Science of a Legislator* (1981; see also 1982), and the following remarks amplify the case made there. (For other treatments of this issue see Blegvad, 1982; Hont, 1987; Hont and Ignatieff, 1983; MacCormick, 1981; Stein, 1978, 1979; Teichgraeber, 1986; Winch, 1978:chs. 3,4; Young, 1986.)

II. MODERN NATURAL LAW THEORY

Natural jurisprudence or natural law theory are terms used for so many different chapters in the history of thought that they rival 'liberalism' in vagueness and in the difficulty of identifying a stable, general core of meaning. Still, I suggest that we can do better than the dictionary, which maintains that the only thing common to all the varieties of natural law doctrine is the injunction that good be done and evil avoided. A more useful core definition is the idea that a moral order is natural to humankind. 'Moral order' means that there are no insoluble moral problems or dilemmas, that values and principles of action are unequivocally ranked, and, especially, that there is a perfect correlation of rights and duties. 'Natural' does not mean 'actually existing' among men but, in some sense, inherently possible for humankind given its physical and psychological constitution and its place in the world. By 'natural to humankind' or 'inherently possible for humankind' is meant that men in some sense have adequate cognitive powers enabling them to comprehend the moral order, at least in part, and thus to have it as a directive ideal. Finally, the expression 'natural to' serves to indicate that the moral order is not of human design or contrivance, but is presented to men by some source extraneous to any specific individual or set of individuals, though not necessarily to humankind as such.

This does not, of course, amount to a sharply defined theory, but it is sharp enough to exclude various other theories while locating the crucial foci of dispute within natural law. The factors dividing the natural law tradition into so many different streams, so that it remained a single tradition only in the more superficial sense, were precisely questions about human nature and its place in the world, about the source of our knowledge of natural law, and about the source of natural law itself, its authority and our obligation to it. By comparison, the question of the extent of the moral order made possible by natural law had never been such a central issue until David Hume and Adam Smith made it so. It is my suggestion that this was the determining move in

Smith's political thought. In order to appreciate this, we must locate the premises of Smith's theory, however briefly and approximately.

The 17th and early 18th centuries were the heyday of natural law theory, but this so-called modern natural law tradition was by no means uniform and coherent and in fact harboured all the schisms mentioned above and many more (for a more comprehensive survey of modern natural law theory, see Haakonssen, 1985a). Nevertheless, in addition to the basic idea of a natural moral order, one concern — the concern with **sin** — is common to all varieties of modern natural law theory. Throughout the various Calvinist and Lutheran versions of natural jurisprudence, natural law centred on the idea that man had lost his effective moral powers and needed the guidance of natural law in establishing any moral — including political — institutions. Moreover this also applied to the better-known, modernising natural law of Samuel Pufendorf and his numerous followers, who tried to achieve a natural law doctrine free of confessional allegiances and founded on a broad natural theology. For Pufendorf operates with a Hobbesian view of man as naturally selfish, which is as Augustinian as anything in either of the orthodox confessions (see Denzer, 1972; Krieger, 1965; Laurent, 1982; Schneewind, 1987).

Throughout the 17th and early 18th centuries there was wave upon wave of reaction against this pattern of thought, of which the most important philosophically, before Hutcheson and Hume, was that of the Cambridge Platonists and Richard Cumberland.

III. HUTCHESON, HUME AND NATURAL LAW

Our story begins with Adam Smith's teacher, Francis Hutcheson, who, building upon Shaftesbury, developed a theory of human nature in flat contradiction to the Augustinian view outlined above (see also Haakonssen, 1986; for the connection between natural law and the Scottish Enlightenment see Forbes, 1982; MacCormick,1981:150-66; Mautner, 1986; Medick, 1973; Moore and Silverthorne, 1983; Stein, 1982; on Hutcheson, see Leidhold, 1985; Norton, 1982:ch.2).[1] According to Hutcheson, man was naturally equipped with a moral sense that enabled him to lead a morally good life and to establish the moral and political institutions necessary to it, without the guidance of law. Human nature was inherently shaped for good; this was its natural, i.e. divinely appointed destiny.

To reject the teleological aspect of this line of thought is to undercut the argument for judging human nature inherently good, and a

[1] I am here greatly indebted to many discussions with James Moore and to several of the studies he is currently completing for publication.

completely naturalistic view of the human condition is arrived at. I take this to have been Hume's achievement. Thereafter the task was to explain human morality causally, i.e. without teleology or a divinely instituted natural law, and by making as few and as empirically well-founded assumptions as possible about human nature. Hume's approach to this task is too well known in general outline to need repetition here, but two general features of his theory merit attention. By reducing the number of assumptions about human nature needed to explain moral phenomena, Hume inevitably shifts most of the explanatory burden on to the physical and social conditions in which men live. Although some aspects of human morality may be discussed in general terms, the view of moral phenomena becomes historicised. While Hume himself wrote relatively little about the actual history of moral institutions, the burden of his argument was that such institutions must be dealt with in their historical particularity.

Second, as far as the universal aspects of morals are concerned, Hume achieves a differentiation marking a sharp break with the idea of a comprehensive moral order, which lay at the heart of traditional theories of natural law. This is the distinction between two categories of virtues. The first hold together small groups of people, typically the family, and because they depend upon personal acquaintance they cannot be relied upon in a larger group. They are typified by **benevolence.** The second presuppose only a few general facts about people — mainly a limited self-interest — and are therefore able to regulate relations between individuals unknown to each other, and to order a larger society. The central virtue here is **justice,** the rules of which protect people from injury to their property.

This differentiation between spheres of morals shows the distance travelled from traditional natural law theory and, as we shall see, prepares the way for Smith. The idea of an order covering all aspects of morals and possible, at least in principle, to humankind has been lost. The positive virtues, such as benevolence, are so contingent upon particular circumstances that there can be no certainty of their orderliness beyond a narrow circle. By contrast the negative virtues depend less upon particular circumstances since they must be practised to a certain extent for a social order to exist. The price for this relative certainty is that the rules of justice govern only a limited and comparatively clear-cut area of human relations.

Hume plainly saw his limited theory of justice as a replacement for traditional natural jurisprudence. Indeed he declared that he did not mind the rules of justice, in his conception, being called laws of nature and suggested that his theory of justice was in substance the same as that of Hugo Grotius, who had earlier attempted a differentiation of morals, though without the clear and dramatic result of Hume's effort (see Hume, 1978:484, 1975:307 note; concerning Grotius, see Tuck, 1979:ch.3 and

linkages. What corresponds to this network of associations is the similarly autonomous individual assumed to be capable of taking responsibility for his life. Where this assumption does not operate — as with minors, the incapable, and in a few respects, women in earlier times — this fact will be recognised in law and appropriate limits will be placed upon conduct. It must be recognised that an assumption of capacity for self-management often places severe burdens upon people, and liberal societies have generated a whole apparatus of counsellors, advisers and informal forms of clienthood to supply the guidance that in other forms of life would be provided by traditional authorities. In a liberal society, of course, merely traditional authorities must either rationalise themselves or vanish.

In such a volatile complex in which individuals associate according to an ever-expanding set of roles, there is no possibility that any central plan could satisfy what is demanded by all those many voices. There is no possibility of producing ideal consequences, partly because no one is likely to agree about what ideal consequences would be. This generates a practice dominated by respect for rules. Central to the modern state is a deeply entrenched concern for constitutionality and due process. Liberals may be identified as pre-eminently the custodians of that concern. By contrast, conservatives and socialists who do certainly share this concern are those disposed to press the criterion of *salus populi*, the one in defence of tradition, the other in attempting to benefit the poor.

V. THE LIBERAL ANCESTRY

These reflections on the social contract theory have generated a familiar set of results. Whatever liberalism will seem to be from time to time, it will always be found taking for granted free, independent, fully formed individuals as the constituents of a civil association. The connections of this civil association must not exhaust the life of the society in question. Liberalism is a process in which the traditions of a society come to be rationalised, recombined and developed, generation by generation, into a complex network of autonomous associations of many types.

Two points are worth making about the historical development of this tendency, because they run counter to liberalism's own historical legend. The first is that this complex of practices is of Christian rather than of classical inspiration. This may well seem odd in view of the fact that the heroes of liberal freedom of thought, from Galileo to Darwin, have commonly collided with Christian authorities. The actual religious beliefs of liberals have been various: the politicians, such as Gladstone, commonly were Christians, the theorists, such as Mill and Keynes, often not. But the legend is misleading. It is obvious, of course, that

liberalism has nothing at all to do with Christian dogmatics, but the individualism on which it rests clearly descends from a Christian conception of the soul and its destiny on earth. Such a conception is quite different from the classical idea of humanity, in which individuals participate to different degrees in the divine gift of reason. Just as children, while closely resembling their parents, often quarrel violently with them, so liberalism unmistakably emerges from a Christian matrix, however keen latter-day liberals may have been to invent a better, rather grandparental, classical and rationalist ancestry. To say this is in part merely to note the links that many writers (Weber, for example) have found between versions of Christianity on the one hand, and modernity on the other.

Liberalism is also monarchical rather than republican. This again, while obvious to historians of thought, runs counter to the way in which the spread of liberal ideas over the last two centuries has toppled most of the monarchies of Europe and eviscerated the power of the remainder. But the point is that liberalism rejected the close-knit solidarities of republican virtue as found in small cities. Republicanism became impossible in any civilisation once cities expanded and became more diverse. In these circumstances, as in Rome, some form of monarchy, or government from the top, becomes unavoidable. For similar reasons, republican virtue is an impossibility in modern liberal democratic states. They are too big and plural. That does not, however, dispose of its influence, because classical republican nostalgia can and has taken many, often insidious, forms.

There is, then, a conflict between the actual antecedents of the liberal tradition, and its own legend. The point is most easily made if we accept Hobbes as having grasped in his political philosophy most of the elements crucial to liberalism. It will be remembered that Hobbes has some notable passages giving vent to his disapproval of the influence of classical writers on political understanding, for example, *Leviathan*, ch. 29, where he takes it that classical literature is systematically hostile to monarchy. He believed that classical leanings diffused the false belief that liberty and kingly rule were incompatible. What freedom required, on this classical republican view, was not merely subjection to law rather than to the commands of a master, but being subject to laws that one had, in some sense, made oneself. The history of modern politics is the steady seepage of this principle across wider stretches of space and time. The liberal democratic forms under which we live are amalgams of these influences.

The result has been that new understandings of what it is to be a member of a modern state have become available to us. In Hobbes, civility is purely an association based on common subjection to a sovereign. Those influenced by classical republicanism preferred to emphasise the notion of citizenship as a form of participation not merely

in choosing rulers but in the actual process of rule. With the emergence of questions of economic distribution, members of a modern state were often conceived on the model of shareholders in a firm, each entitled to some of the benefits of the firm's activities.

This aggregation of new ideas of what it is to be a member of a modern state, piled one on top of another, has seen a paradoxical reversion to much earlier assumptions of what a human community ought to be. It has, for example, taken a long period of civil strife to persuade modern states that a shared religious belief was not a necessary condition of civil association. Toleration did eventually become a standard component of modernity. But in totalitarian states (which parody and caricature our past) there is a return to the idea that a state must be composed of right-thinking members. Even in contemporary liberal democratic states, there is a disposition to enforce (as 'education') strongly held improving beliefs about such matters as smoking cigarettes, using alcohol, how one ought prudently to arrange oneself when travelling in a motor car, leading even to such projects as a 'national policy on diet'.

One aspect of modern politics, then, may be construed as a conflict between (an aspect of) Christianity and (an aspect of) classicism, in which classical nostalgia and classical arguments are used to break down the distinction between the authority of civil society on the one hand and the pluralities of society on the other. It should be noted, of course, that there is a great deal more to classical thought than the elements I have mentioned. My concern is with those elements that supply a formulation for the powerful modern sense of social unity, indeed of solidarity. It is deceptively easy to drape the frockcoat of liberalism over the texts of Aristotle. But philhellenism in this area has its dangers. It is a significant irony of nomenclature that what John Gray in his paper calls 'revisionist liberalism' is largely classical in inspiration, while what he calls 'classical liberalism' has nothing to do with the classical world. For it is in classicism that we may find the source of the elitism that takes the task of political life to be the guidance of the masses by a cultivated minority. Socialist egalitarianism is almost always derivative from a classical elitism of this kind.

VI. THE LIBERAL ISSUE

Liberalism is thus a complex tradition, which we can only begin to understand if we take our bearings from a set of different **kinds** of things — the suggestions implicit in what is written by theorists who are in some degree liberal, the concreteness of certain political experiences such as those of Anglo-Saxon countries, and much deeper currents of Western thought. And on this basis, let me suggest that the liberal tradition is a

political practice in which reason is brought to bear upon political and social arrangements so that they can be continuously modified according to what individuals judge ought to be done.

This set of words is constituted of formal features because little of substance is necessarily entailed by liberalism itself. Thus 'what individuals judge ought to be done' might be construed in terms of utility, or rights, or by some other criterion. But liberalism itself forecloses none of these possibilities.

But what actually is foreclosed, I have been suggesting, is how the phrase 'political and social arrangements' is to be construed. Political arrangements are, in liberal terms, those necessary for the constitution of a civil society, a form of association that must not be identified with society itself, of which civil society is but a part, and perhaps not the most valuable part. What this points to in practice, no doubt, is that liberals are normally in favour of less government rather than more. One formulation of conservatism is Viscount Falkland's 'if it is not necessary to change, then it is necessary not to change'. A parallel liberalism might be: 'If it is not necessary to regulate, then it is necessary not to regulate'. But such minimality cannot be incorporated as a constitutive clause of liberalism itself. It is not merely that there can be no absolutely decisive area of privacy specified (as Mill tried to do) from which civil judgment must be excluded; it is rather that in unpredictable circumstances such as war, a highly active government might well be required. This, I take it, is why Hobbes was parsimonious in setting the limits to powers of the sovereign.

Liberalism is, on this view, responsive to individual judgment, and everything must thus depend upon how individuals are construed. In original liberalism, they are creatures composed of shifting desires who act to maintain the coherence of the commitments they make. On the other hand, as critical wills ceaselessly scanning the world in order to make it satisfy their desires more completely, they are forever inventing and modifying their world. C.B. Macpherson (1962) has developed a famous Marxist argument that interprets this restless passion for innovation as the endless pursuit of actual objects of consumption. This is merely a misunderstanding of the modern propensity to be continually improvising one's situation. This is one sense in which liberalism is a critical doctrine, forever encouraging people to ask themselves whether they are happy or comfortable, rather than directing their thoughts to other things. It is this that accounts for the constant responsiveness of liberal democratic societies.

The problem is that the inner impulse of liberalism is to apply this critical dissatisfaction to everything — including the presuppositions of liberalism itself. Now the basic presupposition in this respect is that desiring individuals should have the capacity to stabilise themselves in terms of constancy and commitment. For this to happen, they must

recognise rules and commitments as things authoratively binding irrespective of the current inclinations of the committed individual. But it will be obvious that such commitments may well come to be dissonant with the individual's inclinations. Marriage may find the individual, after a shorter or longer time, committed to someone no longer congenial; civil association may entail military service. Just as manners, morals and the law are at times restrictive and thus violated, so commitments may be found to be barriers to happiness.

This is, of course, a perennial situation in which human beings may find themselves, and it is against this disposition that they respond by binding themselves, as Ulysses had himself bound against the song of the Sirens (see John Elster's *Ulysses and the Sirens* [1979] for an exploration of the logic of this practice). But where Ulysses knew that only thus could he avoid destruction, the modern liberal individual, for whom the distance between the act and the consequence is much greater, is likely to experience the promptings of impulse in a world of conveniently conflicting rationalisations. Just as it was a rule of 17th-century casuistry that an act might be done if even one confessor could be found to give absolution for it, so the individual in the grip of an impulse will always find **some** theory explaining the injustice of what binds him and stands between his desire and its fulfilment. Along these lines, we may discern something like an individualism of impulse tending to succeed an individualism of desire, where 'impulse' means nothing more than the bare inclination of the moment, while 'desire' means something much broader, richer, more fully mediated and with implications more extensively recognised and respected. In following this line of thought I am merely discovering, in a slightly different form, one of those 'contradictions' in the culture of the modern world that sociologists, like Dan Bell in particular, are fond of exploring. And what is a contradiction in a theory of the modern world exhibits itself as a tendency in the actual world we live in.

VII. LEGEND AND TRADITION

I hope I have been able to make it clear, then, why the historical revision of the simple legend of liberalism does not constitute any threat to the liberal tradition. It is only a timeless, formularised or theorised liberalism that is vulnerable to historical revision. The actual liberal tradition is a complex entity, constantly throwing off theories and devices, unpredictable in its direction, and unassimilable to the shifts of party politics. It can with caution be recognised by various signs, but there is always a danger that these can mislead us, as in the application of the term 'liberalisation' to the changing tactics of despotism. It is

always a mistake to identify the liberal tradition with the entire concrete practice of any particular national politics.

From this point of view, it is significant that none of our three 'ancestors' — not even Mill — was asking the question: What is the liberal tradition? Indeed, only one of them could chronologically be in a position to know that he might have some place within such a tradition. These men, curious and inquiring about the world, were certainly liberally inclined in terms of some of their propensities, but they had other things on their minds. To immerse ourselves in these historical particularities may not be to find liberalism, but it does educate us in understanding the soil — the substance, the questions, the issues — in which it grew. There is no short cut to such an understanding. The one virtue impossible for a liberal is — purity.

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TRADITIONS OF LIBERALISM

Edited by Knud Haakonssen

The last decade has seen a remarkable revival of classical liberalism, the political philosophy that places a high value on individual freedom under the law and calls for strict limits on the powers of the state. Liberalism has also started to exert an influence on practical politics; it has done much to legitimise the policies of deregulation and lower taxes that governments in all parts of the world are now adopting. Yet the origins and foundations of liberalism remain much less well-known than its policy prescriptions.

In August 1987 the Centre for Independent Studies held a conference in Sydney on the three key thinkers in the liberal tradition — John Locke, Adam Smith, and John Stuart Mill. Australian and overseas scholars of high international standing gathered to debate the contribution of each thinker to liberalism. The result was to demonstrate that the liberal tradition accommodates a surprisingly wide diversity of intellectual origins, and that the roles played by Locke, Smith and Mill in its development remain controversial and open to conflicting interpretations.

This volume publishes the nine papers devoted to the ancestors of liberalism, along with a concluding paper on the unity of the liberal tradition, and an Introduction by the conference convenor, Dr Knud Haakonssen. Students of political philosophy in general as well as of liberalism in particular will be stimulated by an unusual book that, while it leaves more questions about liberalism unresolved than it answers, records the deepest thoughts of some of liberalism's most formidable intellectual defenders.

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