

“BUSIE HEAD” LIBERALISM

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## ABSTRACT

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Contemporary liberal theory has left us unable to generally understand and respond to the rise of political forces like populism, right-wing authoritarianism, and charismatic demagogues. I argue that the dangerousness of these movements is amplified by the inability of our liberal thinking to adequately grapple with messy “political” reality. My goal is to recast liberalism so as to tell us a more coherent story of our political life. I find this in John Locke’s discussion of the “busie head” in his *Second Treatise*, and in his discussion of the “busie mind” in his *Essay and Conduct*, and finally in his discussion of the “tutor” in his book on education. Though he mentions the busie head only once in the *Second Treatise* (and not again), I argue that understanding the role and character of the busie head is paramount for us to understand a liberalism that does not lapse into an ideal theory. The busie head helps us see just how important the “art of governing” is for liberalism. Locke makes a distinction in politics between the more theoretical and formalistic teachings about the nature and origins of government, and the more dynamic “art of governing,” in which Locke says we ought to follow the teaching of books like Aristotle’s *Rhetoric*. My argument about the importance of the busie head is that this is the guide of the “people,” much like the tutor is to his pupil, and without the busie head liberalism cannot survive. The busie head (just like the tutor) must persuade her audience not by rational demonstrations, but through the fear and suspicion. From my perspective, then, Locke cannot hold—as we do today—that *fear* is bad, but, rather, that fear has its benefit when rightly used.

This dissertation is dedicated to Beverly Boche.

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Of course, even with guidance, there are still errors in this document, and they are mine.

## TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	1
DISSERTATION OUTLINE .....	19
<b>CHAPTER 1: LOCKE’S POLITICS OF TRUST</b> .....	24
TRUST AS RELIANCE .....	27
TRUST AS BASIC TRUST .....	45
LIBERAL POLITICAL TRUST .....	58
CONCLUSION.....	80
<b>CHAPTER 2: CONTEMPORARY LIBERALISM AND THE PROBLEM OF ONTOLOGY</b> .....	91
SCHMITT’S CRITIQUE OF LIBERAL DEMOCRACY .....	94
CONTEMPORARY LIBERALISM—RAWLS .....	101
PIERRE MANENT AND DEMOCRACY .....	122
AGONISTIC DEMOCRACY: HEGEMONY, CONTESTATION, AND POPULISM .....	128
CONCLUSION.....	156
<b>CHAPTER 3: BUSIE HEAD LIBERALISM</b> .....	161
JOHN LOCKE AND THE ONTOLOGY OF FLUX.....	161
CONCLUSION.....	208
<b>CHAPTER 4: DEFENDING THE NORMATIVE EXTRALEGAL MODEL</b> .....	216
NORMATIVE EXTRA-LEGALISM.....	225
THE PROBLEM OF JUDGEMENT.....	234
RESPONSE TO FELDMAN’S TWO CRITICISMS.....	244
CONCLUSION.....	261
<b>CHAPTER 5: LOCKE’S LIBERAL POLITICS OF FEAR</b> .....	268
POLITICAL JUDGMENT AND THE “ART OF GOVERNING” .....	273
UNEASINESS AND THE RATIONALITY OF FEAR .....	290
THE RIGHT TO ALTERATION.....	309
LIBERALISM OF RIGHTS AND THE LIBERALISM OF FEAR .....	318
CONCLUSION.....	322
<b>CONCLUSION</b> .....	332
<b>BIBLIOGRAPHY</b> .....	340

## INTRODUCTION

We do not know how to be afraid. This statement should not be read as *moral* failing on our part, as in: we *should* be more courageous but we fail to be so. Instead, this is a statement that highlights a more “intellectual” or “theoretical” failing on our part: we do not *know* how to be afraid because we do not *know* what fear is good *for*. Our public philosophy today blinds us to the possibility that fear is a thing that could be good for us.

A public philosophy is a set of ideas that are most prevalent in our normal everyday lives. A public philosophy is the “public” presentation of perhaps more “esoteric” philosophical positions, and it is most explicitly seen in a series of well-worn phrases that present themselves as truisms. With regard to public philosophy, the more “public” it becomes, the less it looks like academic philosophy and the less it is questioned or criticized. Obviously, a public philosophy can be enforced dogmatically and powerfully by those with public power, and this certainly happens across the world in various explicitly authoritarian countries. However, in our own “here and now,” our public philosophy operates in a far subtler way: it does not reveal its own power as an assertion of power, but it wins the argument by effectively foreclosing any real alternative perspectives to us. We cannot think otherwise. This is the power of the original understanding of “ideology,” the ideas that we need to organize the world around us.

So, what is our public *political* philosophy or reigning ideology today? “Liberal democracy.” The rule of liberalism, then, does not come from its ability to claim that it is the best or to rule from a position of “right,” but seemingly some version of rule *de facto*: either it was the *inevitable* conclusion to a larger historical process, or it is the reigning regime because it won by *force* (possibly even by *divine decree*, since God usually sanctions the victors). Liberal democracy stands above and beyond the “political,” since it can rest on any number of foundational assertions

for its legitimacy—nature, history, force, or religion. We liberals have nothing to fear because our way of life is the right one, so we ought to be confident.

But, we are not confident. Liberal democracy today is in trouble: it is attacked from all ideological directions—especially the populist or “democratic” Right and Left—and liberalism is seemingly unable to muster within its own ranks an effort to defend itself from these criticisms. The main aim of my dissertation project is to defend liberal democracy, not by critiquing its opponents, but by reevaluating our own public philosophy of liberal democracy—the story we tell ourselves about what it means to be a liberal democrat. Rather than “inevitable,” I argue that liberal democracy is an achievement of judgment, prudence, and activity. In particular, I claim that liberal democracy is won in its engagement with and not avoidance of fear. We *do* have things to fear, and that should not make us second-guess our convictions in liberalism, but strengthen them. Fear is good for us.

So, let us begin from the beginning: we no longer know what fear is good *for*. We only need to think of the words of FDR: “we have nothing to fear but fear itself.” According to this idea, to be afraid is the thing that should be feared—fear or being afraid is not only unnecessary for liberal democracy, but it is perhaps its greatest enemy. To our modern ear, how absurd is the question “what good is fear?” The answer, as the general public would surely say, is: “nothing.”

For more sophisticated respondents, the answer to the question, “what good is fear” is most likely “less than nothing” since fear is perhaps the most *destructive* force within our liberalism today. This is confirmed in numerous media outlets, political commentaries, and even academic writing.<sup>1</sup> Today, we are in the middle of a “politics of fear,” where our passions and anxieties seemingly overwhelm our reason, where fear erodes our trust in one another, making us all even *more* anxious and fearful. The politics of fear is a seeming vicious circle that spins itself out of

control. The assumption is that, insofar as our liberal democracy is one of trust and reason, fear must be considered public enemy number one—the thing we should *truly* be afraid of: we do have nothing to fear but fear itself. The point of liberal democracy, then, is to eliminate fear and make room for reason, trust, and good will among all of mankind.

On some level, we have good reason to believe that fear is the most dangerous thing to our way of life, because we understand our lives as those for which fear should be avoided. It is a major plank in our public philosophy. Where fear is, trust and reason cannot be, and, since liberal democracy is predicated on trust and reason, where fear is, liberal democracy cannot be. How can trust and fear coexist? Is fear not precisely the negation of trust, and trust the eradication of fear? To fear, we could say, is to distrust, to trust is to not be afraid, to be at peace and to be secure. Fear is a feeling of insecurity, and trust is precisely the sense of security. One need not fear a bridge that has reliably carried the load all these years—in one sense, you can “trust” that bridge, and set across it without fear. On this level, then, it seems clear: we have good reason to believe that fear is the most dangerous thing for our way of life because, fear is opposed to trust, and our politics is based on trust, and therefore fear is antithetical to our livelihood almost *by definition*. One could say that, if nothing else, liberalism is predicated on the elimination of fear. So, to what end does fear lead us? Nowhere we would like to go, it seems.

So, we do not know how to be afraid because we believe fear to be a thing we ought not engage with but that thing we ought to eliminate from our lives—fear is corrosive. Indeed, we have no problem seeing our illiberal enemies as those who are either afraid or prone to being afraid, or those who are the harbingers of “fear,” who stoke fear and anxiety. The former cases those “pathologically” fearful or “paranoid” individuals that we would pity if only we knew they were not so dangerous. The latter cases are those “turbulent spirits,” to borrow a phrase from John Locke



(*Second Treatise* 230), who seek only to exploit fear to cause harm or revolution, to change or alter our way of life—presumably, for the worse. We not only fear those people who are afraid because they make us uneasy, but, by extension, we are afraid of those who make others afraid. We have a *phobophobia*—a fear of fear. Fear is destabilizing, and its power rests in using the passions to overpower our cool, calm reason. The turbulent spirits or “fear mongers” ought to be eradicated, and those “paranoid” few should be temporarily hospitalized until their “fever” breaks, or they should be institutionalized, since they are a harm to themselves and especially to others.

Let me pause here to recount the initial question and event that sparked my interest that eventually became this dissertation project. Over the course of my first winter break in graduate school in 2011-2012, I happened upon a few articles about “conspiracy thinking” and “conspiracy theorists.” The presumption in that literature was that “conspiracy thinking” and “conspiracy theorists” are a considerable danger to our modern way of life. The argument went something like this: conspiracy theorists are dangerous because they hold a set of dangerous beliefs or psychological processes, including motivated reasoning or “closed” belief systems that are impervious to countervailing evidence, (dis)confirmation bias, a radical distrust of authority, and an unwillingness to engage with mainstream political practices—like voting, donating, etc. After reading these papers, it struck me that if this set of psychological processes is what defines “conspiracy thinking,” then we today have become—in the age of “polarization”—wildly more “conspiratorial” than ever before: we have moved from an “open” mindset to a “closed” mind, in a matter of a handful of decades. Indeed, even a cursory reading of prevailing theories of mass public opinion and voting behavior confirms the prevalence of motivated reasoning as the primary psychological process of American partisanship today. However, though we generally now understand ourselves to be more “closed minded” or motivated in our reasoning, this did not

prompt us to revisit what exactly separated us from the “conspiracy theorist.” We were still too ready to see the “conspiracy theorist” as a marginalized figure in society with a deviant psychopathology, instead of noting—as I saw then—that the marginalizing label “conspiracy theorist” is more important than the definition. Indeed, the prevailing definition applied to not only myself but the vast majority of people I knew. If “conspiracy theorist” or “conspiracy thinking” was a set of psychological principles that ultimately centered around motivated reasoning and distrust or suspicion of authority, then I wondered who *wasn't* a conspiracy theorist—not who *was*.

I was struck more and more by this academic presentation of “conspiracy thinking” as dangerous to liberal society. Readings of and discussions with other scholars confirmed that fear and conspiracy thinking is seemingly inherently dangerous. The argument was always put forward to me in the following form: Americans believe conspiracies; therefore, America is in danger. The unargued and often implicit premise was precisely the one I wanted to make explicit and demanded an argument for: *conspiracy thinking is dangerous*. Is conspiracy thinking dangerous? Is believing in *any* conspiracy bad? Is there really no benefit to the “paranoid style”?<sup>2</sup> In particular, does the “paranoid style” really pose a threat to liberal democracy? In order to answer these questions, I set out to explore the precise nature of conspiracy thinking and then to evaluate its relationship to liberal democracy to see the extent to which they really are mutually exclusive, as our public philosophy presents so vividly to anyone who asks.

It has been four years since I set out to examine (and hopefully confirm) my intuition that conspiracy thinking is not a “marginalized” or “deviant” psychology, then, perhaps the danger is the wrong diagnosis of our ills, i.e., *the real danger is in claiming that this “paranoia” is a marginal phenomenon and a dangerous phenomenon*. My trajectory split into two distinct but related strands in these years: empirical and normative. First, I set out (with the help of an receptive

and impressively capable set of fellow graduate students), to investigate the *empirical* nature of what I have called the “hermeneutics of suspicion,” which is the core of what I take to be the “narrative” structure of conspiracy thinking.<sup>3</sup> Rather than discussing particular conspiracy theories, we argued that the proper way to understand what is at stake when we talk about conspiracy theories and those who believe in them is not the particular content of such a conspiracy, but the psychological processes and the “hermeneutic” or interpretive lens the individual sets upon understanding various events and agents in an otherwise chaotic political world. At the core of this way of thinking is “suspicion,” which I have defined as a mix of distrust and individualistic skepticism—I discuss it at length in chapter 5. The empirical studies that we conducted confirmed my own suspicion that the psychological processes and the interpretive lens of political suspicion that we typically associate with “conspiracy thinking” or the “paranoid style” are *not* the hallmarks of only the marginalized, alienated, and disenfranchised among the American mass public. Instead, suspicion floats in all of our minds, waiting, it seems, to be called upon.

Second, I needed to address the *normative* side of the problem of fear and conspiracy thinking. This theoretical concern is the backbone of this dissertation. If we follow the original narratives used to explain conspiracy thinking, we are pushed into two mutually exclusive positions. On the one hand, if we hold that conspiracy thinking *is* the irrational thinking of the marginalized, alienated, and disenfranchised, then the rise of suspicion in the mass American public is a sign of the overall marginalization, alienation, and feelings of disenfranchisement gripping the majority of the public. We have, on this view, gone “insane,” and the future of liberal democracy is radically thrown into doubt. We are living in the end times. On the other hand, if we hold that conspiracy thinking is not *necessarily* antithetical to liberal democracy, then we would need to reevaluate the unargued yet oft-repeated assertion that fear and suspicion are detrimental

to our liberal politics of trust. This second option, is the center claim of my dissertation: “suspicion is good.” So, the question that impressed itself on me: why do we pathologize “anxiety” and “fear,” when, as I think, these are perhaps the two most common feelings we have? If these common feelings or passions are antithetical to liberalism, then, how can liberalism survive if its rests on a necessarily alienating height above our most common lived experiences? For an answer to this question, I needed to return to the nature and origin of our public philosophy, which I understood at the time to be found in the work of John Locke.

I should be clear: at the outset of my inquiry, I wanted to mount a *critical* reading of Lockean liberalism, since, as is well-known, Locke’s liberal politics is one of “trust.” Trust, as I have come to see it in our everyday discourse, sets itself up as the diametric opposite of fear or anxiety, which suggested to me in the beginning of my inquiry that Locke was the heart of the alienating disease we still feel today. Indeed, I found early allies in my view that Locke was opposed to fear: Judith Shklar’s famous essay “Liberalism of Fear,” which I discuss at length in the final chapter of this dissertation, argued precisely that Locke was the founder of a “liberalism of rights” which is opposed to the “liberalism of fear.”<sup>4</sup> Fear, it seemed, was good, though precisely *not* for Locke’s liberalism. Insofar as Locke is among those in the “liberalism of rights” camp, he seemingly posits that there are metaphysical doctrines that can guarantee our rights and liberties, and that, if we just came to the proper understanding of these rights and obligations, we could construct a set of principles of justice that would (with the help of carefully constructed institutions) make it so we need not ever worry or be anxious again. This is the caricature of the “liberalism of rights” position as it comes out of the contemporary work of John Rawls, who, at least nominally, is a liberal “social contract” thinker like Locke. So, at least from the outset, it was clear: Locke’s politics of trust and his “liberalism of rights,” modified and amplified through the

work of John Rawls' own liberalism, is indeed the ground of our public philosophy today—one that is diametrically opposed to the “liberalism of fear.”

So, I recognized that I was set against the contemporary liberal public philosophy because it sets out to be expressly opposed to fear, and, since fear and anxiety are fundamental passions and feeling of our lives, we must reject contemporary liberal public philosophy for being wildly and almost irresponsibly “idealistic” or “naïve.” Here, I found allies against liberal public philosophy, particularly those who have argued from a “realist” position. This “realist” position is often shared by those who believe that the “political” facts of life—conflict, us/them distinctions, and affect—have been wrongly abstracted out of “ideal theory” liberalism. The charge from the “realist” camp is simply that most ways we talk and think about liberal political life are woefully (and indeed intentionally) ignorant of the “real” conditions of our lived experiences. And, since liberal theory starts from such a “naïve” position, it necessarily alienates us from adequately understanding in thought and word what is happening to us in our experiences and practices. In other words, to borrow Marx's famous *camera obscura* metaphor, ideal theory liberalism presents to us a world in speech and thought completely inverted from how we actually live and how we actually feel. To whatever extent we already feel alienated in the world, when we try to express this alienation in word and thought within the vocabulary of ideal theory liberalism, we are unable to do so, furthering and deepening our original sense of alienation. This amplification of alienation happens because the way we live and the feelings we have are not adequately captured in the ways we talk and think about ourselves.

The “realist” critique is not simply about words and discourse (though it is largely on that level of “names”), but it is fundamentally a “ontological” critique of ideal theory liberalism. “Ontology” is the branch of philosophy that deals with the study of “being” or what really *is*—

what is *really there*—and so it is concerned most importantly with “reality.” This is commonly understood to be “first philosophy,” since all questions must inevitably point back to or are derived from a set of assertions about “ontology,” i.e. what is really there, what is “real.” The ontological critique is a more focused criticism of ideal theory liberalism gaining considerable traction today. The general drift of that work is that liberal democracy, premised on a faulty ontology or it is bound up in a self-contradiction. For example, liberalism is premised upon the ontological fact of pluralism in political life—people are directed toward different ends, and therefore uniting them is not inevitable but a contingent achievement. Pluralism is akin to an “ontology of flux,” to deploy a clumsy phrase, and this means that the world we live in will always fall short of any attempt or articulation of perfect, demonstrable deductions or “knowledge” of moral truths. The problem, however trivial it might first seem to be, is the following: ideal theory liberalism, particularly that found in the work of philosophers in the “liberalism of rights” tradition, betray the original assertion of flux or pluralism that they set out to grapple with in the first place. If liberalism cannot properly ground itself in a reality of flux, and that we assume reality really is in flux, then ideal theory liberalism is its own worst enemy.

Before turning to my own take on Locke and the outline of the chapters in this dissertation, let me reiterate the following point: questions of ontology are not trivial or merely academic matters that only infuriate only those with tenure. The problem that the “realist” critique sees in contemporary liberalism today is playing out in front of us in real time: the rise of Donald Trump in the United States and the Leave victory in the UK. The real thrust of the “realist” critique is precisely that these problems of how we talk about and think about ourselves *as liberals* plays out in both the classroom and the “real world.” This will require me to revisit and challenge another

unargued assumption at the heart of ideal theory liberalism: that affective group identities are bad for liberal democracy.

I will take it as an animating assumption that how we think and talk about politics is fundamentally determined by our beliefs about politics, and our political life strives to both match our words and speech-images with our practices and our practices strive to mirror our words and representations. Therefore, political life is determined fundamentally by our beliefs about politics and our role in the political world around us. I already outlined the unargued and questionable premise that fear is bad, and I now turn to another unargued and questionable premise grounded in our public philosophy today: the fear of affective group or collective identities, and the fear of conflict that goes along with these affective group or collective identities. Again, the familiar argument goes something like this: today, America is thrown into a “culture war” of competing affective identities, and this puts America in danger. This, of course, is true if and only if affective group identities are dangerous to America—here, understood as the paradigm of modern liberal democracy. Here, I mean “affect” as simply “emotion” or “passion” or “pathos;” and collective or group identities are identities that reach beyond the individual “self.” So, an affective collective identity is an identity that an individual has with a larger entity, drawn largely on affective or emotional bonds with that group or entity. To say these identities are dangerous to liberal democracy is to suggest that we can do without them. For the “realist,” however, political life *is* about affective group identities, and, so, to deny these any place within our understanding of liberal democracy is to not only make our political lives wholly *apolitical*, but in this *apolitical* rendering of reality actually amplifies our sense of alienation. Our words and thoughts do not match our experience.

There is certainly a danger to the clash between affective group identities, and this is what we admitted was at the heart of “pluralism” or “flux” that gave rise to liberalism in the first place: human beings do seemingly sort into “natural” partisans of virtue (republicanism), equality (democrats), and liberty (liberals).<sup>5</sup> This is the view of flux that is at the heart of classical liberalism. Contemporary ideal theory, however, begins with the recognition that flux and pluralism in this sense *is* a matter of fact, but then goes out of its way to *deny* it or *displace* it from our consciousness and our vocabulary. We must recover the view that political life is based upon conflict. The problem with contemporary liberalism, stemming from the assumption that suspicion and fear are antithetical to liberal democracy, is that conflict stems from fear, and therefore conflict, too, should be eradicated. Liberalism is often understood to be the *political* doctrine of public peace, and so it would make sense on some level to eliminate both conflict and the thing that gives rise to it (fear, affect, and collective identities). This means, however, that political liberalism must deny seemingly fundamental facts of our lived experience. For this reason, then, as I have already indicated, ideal theory liberalism itself creates, among other things, alienation and feelings of anxiety. The way we *talk* about politics, the way we *think* about politics in contemporary liberal discourse is *as if* the flux of natural conflict can be avoided, ignored, or eradicated. The ontological or “political” critique of contemporary liberalism is that it produces a *new* level of anxiety and fear that is wholly different and dangerous to liberal democracy, all of which could be avoided if we at least started from the ground of our everyday lives—in the emotions, passions, group identities, etc.

In this dissertation, I engage the work of neo-Marxist philosophers Chantal Mouffe and Ernesto Laclau, both major influences on the contemporary “radical democratic” movement throughout the world—including the Occupy Movement here in the United States and the Podemos



in Spain. For Mouffe, it is the failure of contemporary liberalism to take seriously the fact of conflict and the need for collective identities that lead to the rise of a particularly new form of fundamentalism and illiberal political movements, growing everywhere in the world today. In trying to avoid conflict, ideal theorists like Rawls set up a rigid liberalism that rests on a hard definition of what is “reasonable,” drawn on *moral* grounds, and thereby make any political conflict a *moral* conflict. Liberalism avoids the “political” by moving flux into the realm of morals, hoping to establish political life on the more solid grounds of moral certainty and moral commitment. The goal of contemporary liberalism, then, is to “solve” conflict by making it no longer about power and political identities, but *moral principles* that do not rely on political power for their truth but only “reason.” The public sphere, then, ought to be a realm of neutrality and non-interference, where reasonable people can be reasonable—rational, free, equal, and individual. For Mouffe, the vacuum in our public lives where collective political identities have now been rendered dangerous is precisely the royal road that various nationalistic and right wing authoritarians will exploit against the “reasonable” consensus. The rise of fundamentalism today is due to the public philosophy that wants to make politics a question of individual morality or economic appropriation, hoping to eradicate conflict by displacing and repressing it—all the while making us completely unable to understand or engage with it.

As I was writing this dissertation, and as I am now writing this introduction, the rise of Trump in American and the success of the Leave campaign in Britain has reaffirmed the need for us to take seriously the “realist” critiques of contemporary liberalism. The Trump campaign’s success in the Republican primary functioned, I believe, on three levels. First, Trump’s rise is explicitly nationalistic and xenophobic: “America First.” This alone does not guarantee its success—and, indeed, many counted him out in the Republican primaries precisely because he

was so *explicitly* nationalistic and xenophobic. But, the “power” in Trump’s message of nationalism is in him giving voice to an “us/them” distinction that was largely missing in contemporary political discourse. The us/them message is powerful not only among the marginalized (who often use it as a coping mechanism to deal with their persecution), but has gained widespread appeal because, second, it is tied explicitly to the *rejection* of the “consensus” supposedly at the heart of our politics—what they call the vocabulary of “political correctness.”<sup>6</sup>

In order to understand the rise of Trump, we need to look *past* his explicit racism, sexism, xenophobia, and crass nationalism and see the “logic” he is operating under. At the center of that logic is to anchor discourse in an us/them distinction, and to tie together various identities under one “courageous” idea—the rejection of “political correctness.” Here, Trump relies explicitly on the dominate rhetoric of “ideal theory liberalism” that pathologizes dissent from the consensus: to believe otherwise is only to show either one’s ignorance or moral failing as a human being. Even a cursory glance at the prevalence of the word “conspiracy” in any media search toolbar will reveal, we liberals are more and more fixated on *pathologizing* and declaring *abnormality* as the root cause of the rise of Trump, rather than deal with the unpleasant truth that perhaps our way of talking and thinking about political life is too *narrow* and *alienating*. The power of words and names and labels is conveniently forgotten by ideal theory liberals when they fail to understand what damage is done by calling someone a “conspiracy theorist” or “crazy” when we mean simply that we do not believe as she believes.<sup>7</sup> For the vast majority of people, it matters what we call things. Think, for example, what difference it is to call an event a “terrorist attack” perpetrated by “terrorists,” “radical Muslims,” “Muslims,” or by a “lone wolf” who is a “disturbed individual.” It matters in a non-trivial way what we call things, what we call the perpetrator. To ignore this subtlety, as many liberals today do, is simply to further ignore that words and the act of naming *are expressions of*

*power and not set in stone, guaranteed by the truth of a moral consensus among “reasonable” people.*

Trump’s rise is not only due to the us/them logic that liberalism is unwilling to even engage, and, in fact, relies on “political correctness” to police, but it is due to a more fundamental appeal to *suspicion*, distrust and skepticism of authority or “the establishment.” The “establishment” is guarded by “political correctness,” and has as its source a supposedly moral high-ground that is really just the exertion of coercive power by some small set of the elite. The “establishment” is the public philosophy of ideal theory liberalism today. The real question that has been on everyone’s mind among the liberals I know is: what explains the rise of Trump? In other words: how could this happen? It happened because we made it, because our notion of liberalism—the story we tell ourselves about our political life and the political world around us—is so *alienating* that it produces its own demise: right-wing authoritarianism that seeks only one thing—the expression of “the people,” understood as the *volk*.

But, of course, we need not believe this to be simply America’s problem—Britain has shown us the true power of right-wing authoritarianism as it unfolds *as a response to the public philosophy of ideal theory liberalism*. The “Brexit” campaign was explicitly a nationalistic and populist movement among Britain’s most “conservative” individuals—those in the United Kingdom Independence Party (UKIP), headed by Nigel Farage.<sup>8</sup> The problems unveiled by UKIP were similar to those that Trump has revealed and exploited in the United States: a growing disenchantment with “globalism” and a demand for an us/them identity, a fixation on “multiculturalism” and “political correctness” as the evils of “the establishment,” and an overriding suspicion that things were not simply what they seem and becoming more and more unalterable by the UK public—they were being put under the absolute and arbitrary thumb of

bureaucrats in Brussels.<sup>9</sup> At the center of the Leave campaign is the loss of an identity, of an affective, collective identity, and the focused anger and frustration at those who eliminated the space to even construct or think of that identity. The public philosophy that held passions like fear and the us/them logic of collective identities were “unreasonable” only served to amplify and accelerate the alienation the British people already felt. This led to a “radicalization” of the public. The radicalization comes precisely in the repeated labelling of dissent as “crazy,” “psychotic,” “paranoid,” or “mad.” The lines between the insane and the sane, between the paranoid and the well-adjusted, became simultaneously the most explicitly enforced distinctions in our political discourse *and* the things continually under-defined and eventually obscured.

The Leave campaign surprised the world by winning the vote, thereby mandating Britain to start working on its exit from the European Union. Leading up to the vote, David Cameron, the Conservative Prime Minister, backed Remain, and hoped—indeed, *promised* his Party and the world—that the British people were “reasonable” and immune to the rhetoric and logic of the Leave campaign. He resigned immediately after the Leave vote was confirmed victorious. He had staked everything on the people being *reasonable*. From the radical democratic perspective, there is nothing more dangerous to liberal democracy than precisely this blind faith in the power of “reason” and “reasonableness.” A few days after the vote, Mouffe said, “I expected this result, because during the campaign you only sensed real passion among the ‘Brexiters.’ And I think that emotions play a decisive role in politics.”<sup>10</sup> The difference is that Mouffe is more aware of the power of passion over reason, and recognizes that the true force in our political lives—at least in its most fundamental form—is that of a desire for a collective, affective identity, which is roundly denied by contemporary liberalism. Though she had reservations about voting for Remain, and could understand precisely the logic of the Leave campaign, Mouffe would have nevertheless

voted to Remain. In the interview, she makes clear that, for her, the choice was between remaining in a liberal international arrangement that she spent her entire career resisting, or to leave on the grounds of nationalistic, right-wing fervor. She would choose the lesser evil of the former over the latter.

But, we need not go to the neo-Marxists for this “political” critique of liberalism, but only across the English Channel. Pierre Manent is a French political philosopher who, though has said nothing yet about Brexit specifically, is hypercritical of the public philosophy that underwrites the EU. Taking his perspective as a “liberal” one, we can still recognize the “realist” character of it insofar as he rejects precisely the apolitical nature of the EU. The EU is apolitical because it makes political life nothing but a voluntary mishmash of private moralities or private economic appropriations. Political life, particularly that of the “citizen,” is diminished if not wholly eradicated in the EU. For Britain, Manent would sympathize with the Leave campaign because it was at least an attempt to articulate an affective, collective identity worth fighting for: nationalistic Britain, against the dissolving and diluted notion of “European.” I have much to say about Manent’s view in chapter three, but wanted here to make clear that the “political” or “realist” critique of ideal theory liberalism is not home to simple democratic radicals.

All of this suggests two things that I take to be central premises of this dissertation project: contemporary ideal theory liberalism must be rejected on the basis of its faulty political ontology; and, liberalism must construct a meaningful, affective collective identity—what I will call “the People”—if it does not want to be swallowed up by right-wing authoritarian forces of its own creation. To assess how liberalism can accommodate a non-idealist ontology and affective, collective identities, I must turn back to the work of John Locke, to the original articulation of liberal democracy out of an illiberal world. As I said above, the project originally started out as a

*critique* of Locke for originating the ideal theory liberalism of rights that has now given rise to destructive fundamentalisms and fanaticism. But, as I read Locke, I became aware that underneath the familiar institutional doctrines of separation of powers and a written constitution, and underneath his insistence on a metaphysical certainty, there lay a much more dynamic ontology of flux. So, in turning to Locke, it was no longer to criticize him for holding seemingly implausible expectations of political life, but to understand how he set out to form liberal democracy in a world where certainty and moral demonstrations were presumed to be possible, where innate ideas were not controversial. In short, when I read Locke, I recognized that the problem was not *him* but in our conscious rejection of his liberal teaching (coincidentally, a rejection that I pinpoint in Rawls' explicit rejection of the ontology of flux at the heart of Locke's liberalism).

In turning back to Locke, then, my goal is to recast Locke's liberalism so as to tell us a more coherent story of our political life that still makes it possible for us to be liberals. I find this in Locke's discussion of the "busie head" in his *Second Treatise*, and in his discussion of the "busie mind" in his *Essay and Conduct*, and finally in his discussion of the "tutor" in his book on education. Though he mentions the busie head only once in the *Second Treatise* (and not again), I argue that understanding the role and character of the busie head is paramount for us to understand a liberalism that does not lapse into an ideal theory.

The busie head helps us see just how important the "art of governing" is for liberalism. Locke makes a distinction in politics between the more theoretical and formalistic teachings about the nature and origins of government, and the more dynamic "art of governing," in which Locke says we ought to follow the teaching of books like Aristotle's *Rhetoric*. My argument about the importance of the busie head is that this is the guide of the "people," much like the tutor is to his pupil, and without the busie head liberalism cannot survive. The busie head (just like the tutor)

must persuade her audience not by rational demonstrations, but through the fear and suspicion. From my perspective, then, Locke cannot hold—as we do today—that *fear* is bad, but, rather, that fear has its benefit, when rightly used. The problem today, then, is not as I had imagined it in the beginning of this project years ago—that we are Lockean—instead, I now diagnose us as not Lockean *enough*.

In turning back to Locke, I do so not simply to explore his thought but to bring his thought to bear on questions that concern us today. Perhaps this is an unfair demand on Locke's text, and part of that will come across in my presentation of Locke's teaching. I do not propose here a comprehensive interpretation of Locke's thought, life, or system, but only a particular vision of it starting from what is often understood to be on the margins. In other words, I take the seemingly radical or neglected (or both) aspects of Locke's work and make it central, and proceed from there. While I think this is certainly helpful in correcting some visions of Locke that still survive, I do not presume this to be the final or total picture of Locke's teaching.

Instead, I am content with highlighting a thread of liberalism within Locke's tangled web, and follow it until it ends. That thread begins with taking the "busie head" seriously as an important model or figure we need in a healthy liberalism. This means that fear is not something we can do without, but, cultivate and, under certain circumstances, deploy for the sake of liberal democracy. Moreover, this also means that conflict and collective identities—the things we fear because they bring fear—need not be so feared, but can prove indispensable for the formation and defense of liberalism. Conflict, flux, and fear run through the whole of Locke's liberalism, and this means that minimally, Locke is *not* simply a theorist of the "liberalism of rights," and maximally, that the liberalism of fear and the liberalism of rights are not distinct positions, but are unified in Locke's vision of liberalism.

## DISSERTATION OUTLINE

John Locke's liberalism is often understood as a "politics of trust." The difficulty is understanding what he means by "trust." Contrary to our prevailing view of liberal politics of trust, Locke's liberalism rests on a healthy dose of fear and suspicion, and a set of individuals who are ready, willing, and able to engage the people in such terms for the defense of liberalism. In this chapter, I outline two major philosophical views of trust—trust as "reliance" and "basic trust." Reliance trust stems from Thomas Hobbes' instrumental reason perspective, where trust is established where we have no reason to fear one another because we live in a structured environment that establishes reliable payoffs and consequences for our actions. The "basic trust" perspective makes trust much more normative: it is about duties and affective care toward others, not instrumentally rational utility calculations. I argue that Locke relies on both aspects of trust, since his view is a developmental model of trust: we first find ourselves in a basic trust relationship, and then infuse a reliance view of trust in that basic relationship. At the center of the developmental story of Locke's liberal history is the act of betrayal by the monarch-father. In this act of betrayal, the people are pushed out of the basic trust relationship and into the suspicious instrumental reasoning perspective of reliance trust. The point, however, is not to forget that at its core trust must still have an affective or communal component, though significantly less than the demands placed on individuals within the traditional family. In this way, Locke sets out the uniquely liberal perspective: political power rests in a relationship between "subject and magistrate" which is different from both the relationship between "parent and child" and the relationship between "master and slave." The basic trust between the parent child, and the reliance trust between the master and slave, are rejected. Instead, Locke says that the proper political relationship will emerge between the affective and instrumental types of trust.



I argue that the upshot of this perspective on trust has three parts, which I discuss in the following chapters of this dissertation. First, in the second and third chapters, Locke's fixation on a kind of reciprocal trust relationship as the legitimating force behind liberal political life only makes sense in a world where trust is the thing most needful: in a world of uncertainty and flux. Since we do not have readily accepted foundations in nature or religion, and we resist the tyrannical foundation of brute force, the only option available to us is our historical and customary foundations. This is what Locke will call the "law of opinion," and it will play an important role in Locke's liberal constitutionalism. However, the problem today is that liberalism is often understood as predicated on a foundational ontology—not an ontology of flux. I explore the ontology of liberal democracy, showing that liberalism—particularly that as laid out in Locke's writings—rests on an ontology of flux.

In particular, in the second chapter, I outline the prevailing views of the ontological questions facing both liberalism and democracy—the two components of "liberal democracy." I argue in this chapter that contemporary liberalism has failed to incorporate democracy in a healthy way, because contemporary liberal theorists rely too heavily on a reliance view of trust, and therefore legal institutions and not popular virtue. Popular virtue, indeed, is now considered the core of "democracy," which is supposedly antithetical to liberalism, since to rely on the people is to rely on something less foundational than the law. In the third chapter, I argue that Lockean liberalism is very much capable of blending together the two regimes of liberalism and democracy, often understood to be antithetical to one another. This entails that liberalism, properly understood, must make use of a "democratic" or affective, collective political identity—"the People"—which takes precedence over the more rigid legal institutionalism, often associated with today's liberal thinking.

Second, in the fourth chapter, I argue that the politics of trust is only indirectly related to legal institutionalism. On the one hand, as I have just indicated, Locke's sense of trust does not simply rest on reliance but on a concern for character and community, which diminishes the importance of the law or the "legal." On the other hand, Locke not only diminishes the importance of legal institutionalism because it upholds a certain view of trust—trust as reliance—that Locke only instrumentally relies upon in his constitutionalism, but the priority of the law can often harm constitutionalism. It can harm constitutionalism not only by only presenting one aspect of trust as the definition of trust, but it can also cover over the complicated and dynamic tension needed between the people and the governors over what one should do with the political power. The question of what one should do with political power is not simply a legal question, but it is a question of much larger import—one of virtue and vice, which Locke says is properly the realm of the social. I explore the dynamic tensions of Locke's constitutionalism, defending what has been called the "normative extra-legal model" of the prerogative power from a more theoretical and practical critique. Theoretically, it is alleged that the extra-legal model is insufficiently grounded in a political ontology (here understood precisely as the ontology of flux), because it is largely drawn from the work of Locke (presumably a liberal foundationalist). I deny this allegation. Practically, the extra-legal model does not adequately allow for sound judgment to arise in the people, and so it would seem that liberal constitutionalism is in trouble insofar as it does rest on the judgment of the people to rise against the prerogative. I respond to this objection, first, by arguing that liberal constitutionalism is not for creating a countervailing judgment on legal grounds, but for guiding the people in their collective judgment on social grounds; second, this criticism does not sufficiently accept the role of the busie head or guide of the people.

Finally, in the final chapter, I argue that Locke's judicious mix of distrustful instrumental reason and almost naïve basic or affective trust presents us with a clear example of what fear or suspicion is good for in a liberal democracy: living in a free and equal polity that secures that freedom through individual self-government. In particular, this is achieved in resisting the natural tendency of the people to conflate the relationship between the magistrate and subject with the relationship between parent and child or master and slave. For Locke, we should emphasize fear not to make people obey the sovereign (as Hobbes argued), but because it is the precondition for the emergence of an individuated self. The ground of liberal self-government is a proper engagement with fear, both of other citizens but especially of centralized governing power. The end of this fear, however, is not to overturn the regime, but to protect the people and ourselves from our natural tendency to welcome over-reaches by the sovereign, and the natural tendency of sovereign power to hide from the public's view. And, once we understand the role of fear and distrust in Locke's politics of trust, we see the need for what Locke will call the "busie head": the turbulent spirit that sows doubt and fear not to necessarily cause a revolution, but to correctly guide the judgment of the people. The judgment of the people is central to Locke's liberal constitutionalism, and this makes the guide of that judgment—the busie head—indispensable for maintaining a healthy regime. Contrary to our prevailing view of liberal politics of trust, Locke's liberalism rests on a healthy dose of fear and suspicion, and a set of individuals who are ready, willing, and able to engage the people in such terms for the defense of liberalism.

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<sup>1</sup> The *Huffington Post*, for example, has an entire category of its online news titled “politics of fear,” in which it includes numerous articles from many writers all arguing that fear produces the worst in our politics, and that it is exploited by the worst of our politicians (<http://www.huffingtonpost.com/news/politics-of-fear/>). Academics, particularly those in social psychology, have been forthright in pathologizing “fear” as a mark of illiberal tendencies within a democracy, in particular we need only look at the landmark text by prominent Marxist and critical theorist, Theodore Adorno and his colleagues in *The Authoritarian Personality*, Oxford: Harpers 1950. The message is simple: to be afraid is to be irrational; there is no rationality in fear.

<sup>2</sup> See Hofstadter, Richard *The Paranoid Style in American Politics*, Vintage Books, 2008 [1964]; and Pigden, Charles “Conspiracy Theories and Conventional Wisdom,” *Episteme: A Journal of Social Epistemology*, 4:2 2007, 219-232. Hofstadter is often understood as presenting the “paranoid style” as a “pathological” problem, whereas Pigden is careful to show that whatever the particulars of the “paranoid style,” it is much closer to “normal” psychology than it is “abnormal” psychology. Indeed, Pigden goes so far as to argue that one simply cannot understand politics without some “paranoid” claim about what is or is not “intentional” or an “accident,” and history itself is filled with examples of *actual* conspiracies, anyway. So, to claim that thinking like a conspiracy theorist is “abnormal,” then whole history and political science departments are filled to the brim with conspiracy theorists who set out to find out what is “really” going on under the surface, and often against the official positions of the authorities.

<sup>3</sup> We have a number of papers under review at the moment, but I especially refer the reader to the following references: Enders, Adam, Steven Smallpage, Robert Lupton, and Chris Hare, “Suspicion and Conspiratorial Thinking in the American Mass Public,” *unpublished* 2016; Enders, Adam, Steven Smallpage, and Robert Lupton, “Are all ‘Birthers’ Republicans?: On the Relationship between Conspiratorial Thinking and Partisanship,” *unpublished* 2016.

<sup>4</sup> I discuss Judith Shklar’s work extensively in chapter 5.

<sup>5</sup> For a typology of the various mixes of liberalism, republicanism, and democracy, as well as for a review of this literature, see Kautz, Steven J. *Liberalism and Community*, Ithaca NY: Cornell University Press, 1995.

<sup>6</sup> After writing this introduction, I became aware of Stanley Fish’s new book on argument, where he has a long section on Trump that makes similar points to what I am outlining here (Fish, Stanley, *Winning Arguments*, New York: HarperCollins Publishers, 2016), The book is dedicated to Richard Rorty, with the lines: “There is no such thing as a non-discursive access to truth,” a sentiment I address in chapter 3.

<sup>7</sup> The power of naming or “labels,” as they are also called, is especially clear when it comes to the name or label “conspiracy theorist” (Husting, Ginna and Martin Orr, “‘Conspiracy Theorist’ as a Transpersonal Strategy of Exclusion,” *Symbolic Interaction* 30:2 2007, 127-150). The negative connotation of the word “conspiracy theorist” has been deployed more often today, in the age of partisan polarization, which is curious because one would imagine that precisely at this moment where the parties are understood to be so opposed to one another as to be vivid in the eyes of the American voter, rather than call one another by their partisan label (i.e., “Republican” or “Democrat,” “conservative” or “liberal”), partisans are wielding the phrase “conspiracy theorist” instead. I do not know the precise empirical character of this in the mass public, but my guess would be the following. In an age of difference, where political disagreement has moved to a more antagonistic realm (i.e., no longer *simply* about partisan identity but something more), the term “conspiracy theorist” captures the intense negative affect associated with the outgroup. The more Republicans reveal to me their reasoning for being a Republican, the more I associate their beliefs with “conspiracy thinking” which is antithetical to “reasonableness.” The rise of the phrase “conspiracy theorist” in the age of partisan polarization is due, I believe, to the rhetorical and symbolic fact that “conspiracy theorist” is understood by most people to be a radically disparaging label of unreasonableness and, perhaps, insanity.

<sup>8</sup> For an academic perspective on the United Kingdom Independence Party, see: Tournier-Sol, Karine, “Reworking the Eurosceptic and Conservative Traditions into a Populist Narrative: UKIP’s Winning Formula?” *Journal of Common Market Studies*, 53:1, 2015 140-156.

<sup>9</sup> For more on the rise of UKIP from the perspective of someone within UKIP, see: Etheridge, Bill *The Rise of UKIP*, Bretwalda Books, 2014. Etheridge, who has recently announced his candidacy to replace Farage, argues in this book that the rise of UKIP is due to an explicit rejection of the left-right ideological spectrum that animated Tories and Labour, instead focusing on an us/them identity that is thoroughly anti-establishment.

<sup>10</sup> Mouffe, Chantal. “A Salutary Shock?: Chantal Mouffe on Brexit and the Spanish Elections,” Verso Books, 27 June 2016. Web. 27 June 2016: <http://www.versobooks.com/blogs/2732-a-salutary-shock-chantal-mouffe-on-brexit-and-the-spanish-elections>

## CHAPTER 1: LOCKE'S POLITICS OF TRUST

In the contemporary literature on trust, there are largely two competing notions of trust, and these two notions are trust as “reliance” (trust is ultimately about reliability and predictability) or “basic trust” (trust is an affective and normative interpersonal relationship that avoids calculative reason).<sup>1</sup> I will discuss both of these “models” of trust below in greater detail, because I want to situate John Locke’s notion of political trust as a fragile balance between these two models. The turn to John Locke’s political thinking may seem a bit of a historical stretch—what can Locke’s political thinking about 17<sup>th</sup> century England tell us today? John Dunn, who wrote a famous essay outlining what is “alive and dead” in the thought of John Locke, claims that it is precisely Locke’s fixation on the centrality of trust to modern political life that makes him relevant to us today (Dunn 1990; cf. Casson 2011; Ward 2010).<sup>2</sup> Since modern political life is a politics of trust, and Locke is the first to articulate the importance of trust for politics, it would in fact be natural to start with Locke’s political philosophy. However, this may well simply mean that we should *begin* with Locke’s insights, but we need not *end* with them—we have presumably advanced well beyond Locke in our understanding of trust. Part of my intention in this chapter is to illustrate that much of the contemporary literature on the philosophy of trust has not moved past Locke’s initial insights, and, in fact, has dangerously obscured the notion of political trust altogether. Locke’s work is a necessary corrective—both academically and politically.

The main intention in this chapter is to illustrate the concept of political trust that I see underwriting Lockean liberal constitutionalism. The fixation on institutionalism, legal formalism, the threat of demagogues, and charismatic leaders I argue, are a failure of correctly understanding the nature of liberal political trust. It is not enough to simply say that liberal constitutionalism rests on “trust.” Instead, we must be clear—as clear as one can be—on what that trust entails. I argue in

this chapter that Locke's politics of trust is of a certain kind: a politics of suspicious trust, where trust is neither a wholly distrusting, instrumentalism, nor is it a naïve, natural or familial trust. Locke goes to great lengths to suggest that this suspicious type of trust can properly ground his liberal constitutionalism. The extent to which liberal constitutionalism is convincing rests, ultimately, on the persuasiveness of Locke's conception of a suspicious trust.

The following chapter is divided into four sections. In the first section, "Trust and Reliance," I outline the predominant view of trust as mere reliability. This notion of trust stems largely from the work of Thomas Hobbes who presents the problem in familiar game-theoretic terms: I cannot trust another without external coercion to guarantee fidelity to the contract. This type of trust has the political consequence of a liberal absolutism, where the subjects understand that the rights and obligations they enjoy in civil society are a function of quiet obedience to the sovereign power, who must have absolute control to secure the conditions of cooperation. In the second section, I outline the alternative view of trust that is prevalent in the contemporary literature on the philosophy of trust: "basic trust." Basic trust rejects the social contract as too rigid a model of trust (the primary model of the Hobbesian reliance view), and instead argues that the parent-child relationship is more akin to what really amounts to trust. Trust, on this view, is an "accepted vulnerability" and an affective (nonrational) care. Locke never held this view of trust, and actively resisted the conflation of the trust relationship between parent-child with the political relationship between magistrate and subject. In the third section of this chapter, the either/or character of the predominant views of trust must be overcome in order for us to understand the nature of liberal trust as Locke has it in his political writings.

The liberal trust I outline here is properly a political trust that arises in Locke's politics of betrayal, where the basic trust of the family *is* betrayed, and therefore limits are placed on the

natural trust. The point is this: the instrumental reason or “individualistic distrust” at the center of Hobbesian reliance trust is a needed correction to the “basic” trust relations that we find ourselves when we are thrown into this world in families, communities, etc. For Locke, then, where the contemporary views of trust have entrenched themselves into two warring camps, Locke’s vision of trust is a judicious mixture of the two, aimed at fostering the proper trust relationship: political power can only legitimately rest in the subject-magistrate relationship, not the relationship between master and servant or the relationship between parent and child. This reflective or mature political trust, which Locke calls “reciprocal” and grounds his theory of political legitimacy, is a trust that has at its core a level of suspicion: trust cannot be something unreflectively given, and therefore must have some critical or skeptical doubt. I revisit the relationship between Locke’s account and some contemporary models which outline this suspicious trust. In the concluding section of this chapter, I argue that the type of trust that Locke places at the core of his liberal constitutionalism is one that has anxiety (uneasiness), fear, and suspicion as necessary psychological preconditions. Therefore, the “liberalism of rights” is properly grounded on the “liberalism of fear.”

The major implication I draw from reexamining Locke’s political trust is that liberal constitutionalism must have an active, *suspicious* factor that counteracts the natural trust of the people: this is the unique role of the “busie head.” The role of the busie head—to question and to contest authority—is not simply a revolutionary, marginal, or infrequently called-upon role in liberal constitutionalism. On the contrary, I conclude that liberal constitutionalism must always rely on the busie head to guide and navigate the people away from either competing alternatives of trust—the reliance or basic trust relationships—which both have absolutist political consequences. Because a particular type of trust is needed for liberal constitutionalism to resist absolutism, the suspicious busie head is indispensable.

## TRUST AS RELIANCE

Any sharp definition of trust is particularly difficult to trace, largely because common usage of the word “trust” has many meanings, depending on context. I will begin with common usage—which, to borrow a phrase—means that, insofar as I achieve a definition for the word trust, it is only a fuzzy one, or a “family resemblance” (Harré 1999, 254). The general conceptual neighborhood that trust resides is somewhere between reliance on the one hand and basic trust on the other, as I will discuss below.

For many, the philosophy of trust begins with the “Hobbesian paradox” (Lagerspetz 2015, 12). In Thomas Hobbes’ political philosophy, individuals in the state of nature need trust to overcome the state of nature and consent to the social contract, but the state of nature is precisely the place where such trust cannot obtain. The question then arises: How can we trust anyone? This is a fundamental problem for political philosophy, particularly those that maintain expressly or tacitly a Hobbesian contractarian approach?<sup>3</sup> Hobbes’ political thought haunts us, and make us question the nature and character of trust. Trust, on Hobbes’ rationalist view is merely an expectation of *reliability* (1994, chapters 10 and 14).<sup>4</sup> Trust or reliability is wholly missing within the state of nature for Hobbes (ibid. chapter 13). As any game theorist will tell you, the short term benefits of defecting will normally always trump any long term motivations to cooperate. Reason here is missing or rather mute: long term cooperation is good for everyone on the whole, but not the individual in the short term. So, the argument goes, the only way to “correct” the individual level calculus is to introduce external coercive punishments that alter the payoffs, promoting cooperation and diminishing defection (Lagerspetz 2015, 27).

Only with known, absolute, and certain external coercion is the Hobbesian state of nature remedied. Let us turn to Hobbes’ thought more directly. Hobbes begins his analysis of human



psychology by anchoring the most pressing power in fear. Specifically, for Hobbes, we fear each other in the state of nature because we are free and equal to each other, and there is a natural tendency toward domination in the human being. “The cause of men’s fear of each other lies partly in their natural equality, partly in their willingness to hurt each other. Hence we cannot expect *security* from others or assure it to ourselves” (1994, 25-26). For Hobbes, our natural freedom and equality in the state of nature make it possible for us to do harm to one another indiscriminately, but does not guarantee that we will. However, other structural aspects of the state of nature conspire against us to force our hand. First, some of us are ambitious, which makes us motivated by “vainglory”—the view that we deserve more because we are superior to others (though this is denied by Hobbes in the state of nature)(1994, 26). Disagreement, Hobbes says, further amplifies our potential to harm each other, since disagreement and doubt placed against us strikes at the root of our conviction that we are superior (1994, 26). Second, aside from the ambitious of vainglory and its sensitivities, we are pressed into conflict due to scarcity—due to our desire for one and the same thing (1994, 27). In this conflict the justice of the state of nature is revealed: might makes right, which is to say there is properly no “justice” here (1994, 27). The natural state is “war,” irreconcilable and existential (1994, 28-29).

In order to transcend this state of war, we ought to “promise” by “contract” an “agreement” that one party will do an action and the other party will do another. The temporal aspect of the contract is what makes it an “agreement.” For example, the action of the subject is obedience, conditional on the act of the sovereign to create the conditions of security missing in the state of nature. Security is understood in Hobbes’ system as the ability to *rely* on each other to fulfill our contracts and agreements (1994, 36). Trust is reliance. The center of Hobbes’ system is that security requires the elimination of fear between subjects—“there will be no reasonable ground

for fear” (1994, 77). If one still fears in civil society, something is wrong with them and they are a danger to themselves and others.

The fear that Hobbes’ system sets out to eliminate is the variability of not only of another’s actions but of their opinions too, since those guide their actions. So, for Hobbes, we must eliminate all standing or authority for private judgment, replacing that with “civil laws” which are but “commands” of the sovereign as to what will be named “mine,” “yours,” “just,” “unjust,” etc. (1994, 79). The sovereign, in order to maintain peace, which is understood to be security through the elimination of fear, must be “absolute,” since it must have complete jurisdiction over the individual (1994, 83). For Hobbes, absolute power should not spark fear among the subjects—though he admits it inevitably will. Instead, of fearing absolute power we should recognize that it is perhaps absolute power is an inevitable part of any regime available to us that is capable of claiming our obedience, even if the sovereign himself is corrupt:

One cannot deny that a prince sometimes may have a mind to act wickedly. But suppose you had not given him absolute power but enough power to defend you from injury by others, which you must do if you wish for your own security, do you not still have all the same things to fear? For he who has enough strength to protect everybody, has enough to oppress everybody. There is no hardship here, beyond the fact that human affairs can never be without some inconvenience. And this inconvenience itself arises from the citizens, not from the power of government. For if men could rule themselves by individual self-government, that is, if they could live according to the natural laws, there would be absolutely no need of a commonwealth, nor to be kept in check by a common power” (1994, 84).

For Hobbes, the fear between individuals—the distrust between subjects—is so pervasive that it should not only be understood as the basis of our political problem and therefore the justification of the sovereign in the first place. People are quarrelsome and ambitious and distrustful of each other, which makes life unbearable without some stronger power to guide us away from our fearful and distrusting natural tendencies. Hobbes’ defense of absolute power is this: since we are things for which security and peace are the most important things and the most needful things, yet we are

ourselves the cause of the fears that give rise to the tumultuous state of war of all against all, then what we need is a power capable of overpowering all of us so as not to spread and act on destabilizing fear. Absolute power is justified on the grounds that there is no hope for individual self-government and that the people are incapable of being counted on to act for their collective good.

At the root of Hobbes' view of trust as reliance is his view that individual distrust and fear are the stumbling blocks to our peace, security, and liberty. Liberty, for Hobbes, is explicitly the lack of fear: "essential to happy lives of citizens" is "that they have nothing to fear but penalties which they can anticipate or expect" (1994, 151). And, our liberty also consists in our ability to "enjoy without fear the rights which is granted by laws" (1994, 152). Reliable laws that clearly indicate what is acceptable and unacceptable, the payoffs and penalties associated with any action, are the crux of our "happy lives." The thing most needful is certainty, predictability, and stability in our political system, because without the political system—without the sovereign to command and enforce the laws, we would be thrown back into our distrustful and fearful state of nature.

On this view, attending to contracts, however, is not a *moral* concern but a purely prudential calculation of interest for both parties (Lagerspetz 2015, 28). Political or collective life is only possible with reliable enforcement of punishments against defecting, and only under these (institutional) conditions can I, as an individual, trust another to do as they say they will. Trust here is nothing more than reliability, and reason is merely instrumental calculation of interest given the potential payoffs in any given (yet stable) environment.

If we hold that human beings can, in fact, do otherwise, then the problem of reliability (and therefore trust) will always be present. In fact, trust and uncertainty seem to be contradictory, as when someone says "I trust you" it means acting *as if* one were certain (though one really is not)

(Lagerspetz 2015, 29). This view of trust, though, never really escapes the Hobbesian system: trust is now just faith or non-rational (ibid., 30-36). The argument here is that reason is just a calculation of probabilities given a set of possible outcomes, not in setting up the conditions for assigning those outcomes. In other words, one of the flaws in the game theoretic model is precisely that cooperation is *assumed* as a possibility, rather than as precisely the thing that needs explaining (ibid., 36).

This view of Hobbesian trust is individualistic, rationalistic, and wholly instrumentalist. The goal is to establish institutional environments that make certain the potential outcomes, rendering trust a “rational trust,” a subjective probability of one possible event occurring over another (Lagerspetz 2015, 38-39). Trust is not a normative concept, since it is exclusively concerned with utility maximization and fulfilling already-crystallized interests. The tension is precisely the presumption that one’s interests (and therefore the reason that fulfills them) are asocial constructs, things that emerge only internally and independent of others. In other words, the concept of trust is the background condition for the prisoner’s dilemma, since cooperation is always presumed (Lagerspetz 2015, 41). For example, the famous “tit-for-tat” strategy that starts with “cooperating” in most prisoner’s dilemma games, while extremely successful in winning the most utility for both parties over repeated trials, is little more than assuming the conclusion: cooperation is better than defection, therefore if we assume cooperation, this is the best strategy. This is a closed deductive system that tells us nothing that we already did not know (Lagerspetz (31-37). Instead of investigating the nature of trust, Hobbes starts from a narrow vision of it as reliability and then makes the reasonable choice of cooperation not *the* rational strategy but one of many possible strategies, and, indeed, perhaps the worst strategy if you are dealing with someone who thinks

instrumentally like you do! Reliance makes sense in a world of distrustful, individualists—maybe not even humans.

But, what happens if the hyper-rationalist and individualistic assumptions that underwrite Hobbes' political theory are softened? As Lagerspetz notes, once we introduce a certain level of sociality and lighten the mechanical human psychology a bit, the demand for an all-powerful, external Leviathan diminishes significantly (2015, 29). The sociality and non-mechanical psychology are two key ingredients to a more robust definition of trust, and, so, by adding "trust" into Hobbes' state of nature, the whole edifice of the Leviathan begins to breakdown: if people are "moderate" in their freedom and equality, unwilling to infringe on another's wellbeing, the collective power needed to keep us from distrusting, fearing, and eventually killing each other is significantly weakened. Trust softens the importance of reliability, but at the expense of introducing more moral or normative concerns to the discussion. In other words, if we start from the position that individuals *are* willing to cooperate even in the realm of possible betrayal, what happens to Hobbes' fixation on stability of payoffs, the sole justification for an absolute sovereign? The question is no longer simply how to alleviate risk (though, of course this will always be an important aspect of trust), which is a central question to the instrumentalist reason at the heart of Hobbes' game-theoretic approach, but what *ought* we do? This moves trust from merely a psychological expectation of reliability, to a normative question of potentially robust rights, duties, and obligations between individuals.

The work of John Locke will always be viewed in light of Thomas Hobbes', since the *Second Treatise* is often understood to be a response to Hobbes' *Leviathan* (Dunn 1988, Laslett 2003). The connection between Locke and Hobbes, however, isn't merely adversarial: they are perhaps more friends than enemies. Hobbes and Locke, as I indicated above, are *modern* political thinkers,

and therefore share much common ground. For example, as is commonly known, Hobbes and Locke have a distinctly *liberal* and *democratic* tone: both reject the classical view of human beings as strictly “rational animals”; both, therefore, also agree that government ought not to be directed toward a more robust virtuous, happy life; and, finally, they both begin from the *individual* and conceive of proper political legitimacy to be a product of a “social contract,” the consent of the people. We can clearly see the shared liberal and democratic foundations: individualism, natural rights against the community, and democratic consent of the governed.

In fact, in the 1660s, Locke held the view that the sovereign should have absolute power over things that did not explicitly go against divine decree (Dunn 1988). This absolutist view, as found in his *Two Tracts*, was written in a time where religious upheaval had destabilizing political consequences, and follows much of the Hobbesian spirit. Though in the *Two Tracts* Locke does not begin from the premise of a state of nature where all human beings are free and equal—as Hobbes does in his *Leviathan* and Locke later will do in his *Two Treatises*—Locke nevertheless holds an absolutist position where, in order to retain peace and stability, individuals should wholly give up their private judgments and should trust that the sovereign will make the world a predictable place. For example, consider Locke’s lines in the beginning of the preface to his *First Tract*, where he explicitly sides with the sovereign over and against the quarrelsome people: “But I hope I shall deserve no more blame than he that takes arms only to keep the peace and draws his sword in the same side with the magistrate, with a design to suppress, not begin a quarrel” (1997, 6). Locke is clearly siding with the magistrate against those who dispute about the limits, ends, and nature of sovereignty. Indeed, Locke goes so far as to say that his wish is to *suppress* discussion, not exacerbate it. The effect of discussion and debate is only to erode authority:

I could heartily wish that all disputes of this nature would cease, that men would rather be content to enjoy the freedom they have, than by such questions increase at once their own suspicions and

disquiets, and the magistrate's trouble; such discourses, however cautiously proposed, with desire of search and satisfaction being understood usually rather to speak [of] discontents and doubts, and increase the one rather than remove the other (1997, 6).

Discussion serves only to give voice to discontent and sow the seeds of doubt. Discontent and doubt are antithetical to sovereign authority.

In another famous passage from Locke's *First Tract*, he argues that this is akin to being caught in a "storm" and the only thing capable of protecting the individual is the shelter of sturdy sovereign authority (1997, 7). Private judgments stem from discontent and usually the ambitious who seek to "pull down well-framed constitutions," so that "out of the ruins they may build themselves fortunes" (1997, 8). For Locke, the point is clear: we ought to stop discussing things because it leads either to tyranny or anarchy, for when any private opinion wins the day tyranny is bound to spring up, and where there is no clear winner, all authority is dissolved into anarchy. The best government is the stable one, and stability is won by having a sovereign who "must necessarily have absolute and arbitrary power over all the indifferent actions of his people" (1997 9). Absolute and arbitrary power is necessary because individuals are distrustful, ambitious, and quarrelsome, and the people are too willing to follow suit. Much like Hobbes, Locke repeats the need for an absolute and arbitrary power due to the freedom and equality of individuals:

That supposing man naturally owner of an entire liberty, and such master of himself as to owe no subjection to any other but God alone..., it is yet the unalterable condition of society and government that every particular man must unavoidably part with this right to his liberty and entrust that magistrate with as full a power all over all his actions as he himself hath, it being otherwise impossible that anyone should be subject to the commands of another who retains the free disposal of himself, and is mater of an equal liberty (1997, 11).

Locke clearly follows Hobbes' argument—perhaps too crudely put—that the absolute power of the sovereign arises from the need to overcome our own natural equality and liberty in the state of nature. For Locke, once we begin from the natural equality and liberty we have to all things, in order to escape such a condition we must give up or "entrust" our individual power to the

magistrate. What does “entrust” here mean? We should be careful not to read it as identical to the trust Locke will later deploy in his *Second Treatise*. Instead, we should recognize it as a giving up unconditionally our power to resist or alter the government. Entrust here means simply to deposit or forfeit our liberty and equality, not engage in a reciprocal relationship.

In order to get a bearing on this sense of trust, let us turn briefly to Locke’s *Second Tract*. Locke repeats and bolsters his rhetoric against private opinion, which he believes now to be a false claim to “liberty” and “conscience,” both words used only to evade or go against the sovereign. “Liberty” and “conscience,” Locke says, are “those two watchwords” of the anarchic spirit of “excessive license” and those licentious people who “assert that each may do what he will” (1997, 55). These ideas of liberty and conscience, unbridled by authority, become the ideological “arms of the ignorant and passionate multitude” that so “often kindles ablaze among the populace capable of consuming everything” (1997, 55). The right to resist or alter the government—especially on claims of “liberty” and “conscience”—is so central to the later *Second Treatise* that it is shocking to read how vehemently Locke rails against these ideas here in the *Second Tract*. The conclusion of the *Second Tract* reveals just how far Locke goes down the absolutist path: the magistrate ought not be resisted *at all*, and, instead “the subject is bound to a passive obedience under any decree of the magistrate whatever, whether just or unjust, nor, on any ground whatsoever may a private citizen oppose the magistrate’s decrees by force of arms, though indeed if the matter is unlawful the magistrate sins in commanding” (1997, 61-62). Just like in the Hobbes’ absolutism, the right to resist or alter the government is denied even in the cases where the sovereign *ought* to take care of the public good of his citizens but does not. For Locke and Hobbes, the maltreatment of the people by the sovereign is a matter between him and his God.<sup>5</sup> Of course, if the body politic



atrophies, then the sovereign head, too, will perish. So, there is a self-interest in the sovereign to take care of his people.

To end the problem of private and religious pluralism that is contaminating the public realm and sowing disquieting seeds of dissent, Locke argues that the political power should take precedence over the religious power, and therefore the discretionary power of the sovereign to guarantee peace and stability should be univocal and absolute. The message is clear: certainty in political life is the thing most needed, and it can only be guaranteed through external coercive force.

Underwriting this absolutism is the Hobbesian view of trust—the psychological fabric that holds society together—as simply a question of interest maximization. The interest in question is private, and the point of cooperation is individual gain—nothing more. To secure cooperation in a world of private actors who are motivated simply by individual subjective (and independent) interests, trust must be guaranteed by a coercive external force. This external coercive force is in control of the public space that orders the individual level “payoffs,” through institutions backed by reliable threats of force for defection. The interest of the people should wholly be relegated to private concerns, therefore leaving the public space a realm of sovereign exception *by necessity*. Here trust is not affective but coldly instrumental: if peace and security are the ends of legitimate power, then the power to legislate that end is only ever the power that must be forfeited to the sovereign, who remains above the law precisely to wield the power needed to enforce the law among subjects. Since there can be no affective or basic trust that can guarantee cooperation in the state of nature, it is reasonable for subjects to forfeit their political power to the sovereign to secure their private ends at a public cost.

As I have said, Locke's early work in the *Two Tracts* holds this Hobbesian view.<sup>6</sup> The public realm is a realm of exception from the law, and is arbitrary. There is no avenue of resistance, since the people have no public identity—no political “voice.” Their voice is simply that they are sovereigns of the private realm. Locke's absolutist phase here is one of trust that the sovereign will use the absolute, discretionary power to stabilize the public sphere by being the sole voice of authority. Locke's absolutism stems from a particular vision of individual human nature and the goal of the government in light of this vision. Locke says that it would be great if people were so educated as to not try to do more than one can, to not push harder against authority than one should, but most people are too driven to topple governments based on their own private judgments of what is right and wrong. This drive is either naturally in people, so as to be an inextricable part of our psychology or instincts—some people are “born that way”—or it is a product of a poor education in the consequences of actions, a poor education of our situation in the world. Since Locke takes the position that this is akin more to our instinct than our education, then, because the people are fickle and stupid, the only alternative open to us is obedience to an authority capable of ruling with the rod and capable of using whatever is needed to stabilize the ignorant and ambitious masses. Trust between magistrate and subject is not reciprocal, but ends up being a one-sided oath: I will obey. Of course, there is a small caveat or condition to this obedience: I will obey so long as you make me secure. The open ended nature of what it means to be secure, however, is troubling for two reasons: first, the absolutist is quick to say that “security” is akin to stability and reliability, such that whatever is conducive to our stability demands obedience. The thing most conducive to our security is the absolute and arbitrary power of the sovereign. Second, the potential for fear has not been removed but only delegitimized—discussion is only to voice doubt and discontent. This, second point is not troubling for the absolutist, but it should strike the non-absolutist as quite

shocking. At any rate, Locke repeats Hobbes' position: obedience is guaranteed so long as stability obtains. The need to counter the anarchic forces presumed always present at all times justifies the sovereign's demand for absolute and arbitrary power. The trust as reliance view, left only here, makes the public space a completely amoral or non-normative place: I obey you so long as you make the trains run on time.

Though there is much shared between them, it is nevertheless important to draw out their differences because Hobbes and (the later) Locke arrive at nearly opposite conclusions about the reciprocity between the governed and the governor: Hobbes produces a *liberal absolutism*, while Locke arrives at a *liberal constitutionalism* (Kleinerman 2009). Therefore, getting straight the seemingly narrow, yet precise difference between Hobbes and Locke has considerable political consequences. In the following section I argue that, while Locke does succeed in arguing on Hobbes' own grounds of reliability that constitutionalism is more likely to lead us to security than absolutism, Locke also disagrees with the Hobbesian view of trust as simply reliability. Instead, I argue, Locke is indeed concerned with the *intentions* of the actors who have been entrusted with the care of the commonwealth that goes beyond mere reliability. Indeed, to run ahead, Locke's justification for revolution is *not* simply any mismanagement of public affairs, which presumably carries with it the consequence of unreliability, but, rather, the *design* or *intention* of the governor to properly care for our public good. This makes the trust relationship between subject and magistrate more mature, reciprocal, and more normative: we should all be in discussion over *how* we go about securing our peace and security, not leaving this up to the sovereign "experts." Locke's response to Hobbes, then, is not simply that he was wrong in concluding absolutism from his premises of reliance, but that simple reliance is not the be-all-end-all of our trust relationship between subject and magistrate.

The problem that Hobbes presents to us is that the logic of security that he deploys pushes the subjects in an apolitical direction. Political questions are no longer about the *end* of public life and political power (eliminating fear and securing a reliable environment), but simply the *means* to do so. Political questions are “mechanical” questions about securing peace. Insofar as absolutism is a powerful means for securing this peace, from the perspective of security, we ought to perhaps welcome it—or, at least, seriously consider it. Absolutism seems more and more reasonable, in fact, precisely because it *does* have an energy and decisiveness that allows it to adequately meet the flux of human affairs that the clumsier parliamentary framework cannot *reliably* respond. Liberalism that aims at security, understood as eliminating fear, distrust, and unpredictability, can establish security, reliability, and an environment of predictable expectations pretty well with an absolute sovereign. The sovereign can be arbitrary, too, if we understand arbitrary to be a function not of what is “truly” just, but only what is just according to the command of the judgment of the sovereign. From the image of liberalism as simply aiming for reliability or reliance, we can not only see how absolutism is not only *not* incompatible but perhaps is inevitable. Indeed, the more that liberalism succeeds—even when functioning through a web of institutional mechanisms—the more that the relationship between individuals and government as reliance prepares the people to accept absolutism.

Of course, Locke’s response to Hobbes’ level of the argument is that we ought not only be afraid or distrustful of individuals but the government itself. In other words, if it is the plurality of voices in the state of nature that is causing a cacophony, then a univocal power is the only remedy to the state of nature.<sup>7</sup> For Locke, at least in this view, the rule of law that emerges in civil society is not one that constrains the behavior of the sovereign to his subjects but only constrains the actions of the subjects themselves:

For if it be asked, what Security, *what Fence* is there in such a State, *against the Violence and Oppression of this Absolute Ruler*? The very Question can scarce be born. They are ready to tell you, that it deserves Death only to ask after Safety. Between Subject and Subject, they will grant, there must be Measures, Laws, and Judges, for their mutual Peace and Security: But as for the *Ruler*, he ought to be *Absolute*, and is above all such Circumstances: because he has Power to do more hurt and wrong, tis right when he does it. To ask how you may be guarded from harm, or injury on that side where the strongest hand is to do it, is presently the Voice of Faction and Rebellion. As if when Men quitting the State of Nature entered into Society, they agreed that all of them but one, should be under the restraint of Law, but that he should still retain all the Liberty of the State of Nature, increased with Power, and made licentious by Impunity. This is to think that Men are so foolish that they take care to avoid what mischiefs may be done them by *Pole-Cats*, or *Foxes*, but are content, nay think it Safety, to be devoured by *Lions*. (ST 93)

The point of contention between Locke and Hobbes is that Locke holds out the possibility of taming the cacophony or at least living within it, and therefore does not quickly equate the state of nature with the state of war. For Locke, pluralism is not itself dangerous—or, rather, pluralism does not necessarily demand absolutism. The instrumental reason that underwrites the Hobbesian individual in the state of nature amounts, for Locke, to an absurdity: in order to escape the arbitrary power in the state of nature, we would agree to a much more concentrated and nevertheless arbitrary power in political society (Simmons 1993).

But how far does this fear of the government get us, if we are still animated by the overarching desire to live in a place without fear, where stability and reliability are set at a premium? The elimination of fear and the promotion of security need not *necessarily* lead us to absolutism, but the complicated machinery that Locke will later propose does not *guarantee* that we have transcended the siren call of absolutism, either. For Locke, stability and reliability can be won by “settled” and “standing laws,” unbiased judges, the separation of powers, and the like (xx). One could presume that, once the proper variables are in place and correctly weighted, the turbulent forces of the people and their private judgments will not disturb the functioning of our reliable machine. But, even with the emergence of the “legal” that now absorbs the absolute power of the community—the “rule of law”—modern constitutionalism cannot wholly exorcize the

natural tendency toward liberal absolutism. The natural drift is due to popular judgment being simultaneously called upon in order to potentially “check” the creeping power of the sovereign “prerogative,” yet also precisely *incapable* of seemingly judging against this prerogative since the only criteria is presumably the ability to maintain the public peace. The prerogative power does not get questioned if it makes us prosperous and our world more reliable, and if fear between subjects is not a pressing concern. The more people are content, by whatever means, the less they are willing to check the prerogative power. People are not willing to take to the streets if they are prospering and content. The more successful the liberal constitutionalist “reform” of Hobbes’ absolutism, the more it clears the ground for the reemergence of absolutism. This is the paradox facing liberal constitutionalism.

So, where did all of this go wrong? From my perspective this paradox is animated by the narrow view of trust as mere reliability or reliance, further defined as the elimination of fear, particularly between subjects. The problem of popular apathy and the aim to eliminate fear go hand in hand: if fear is the original spring of reason, then the elimination of that fear, or the attempt to blur it into the background of our lives, serves only to loosen the tension and awareness of human agency. Security cannot be defined simply as the elimination of fear, and trust cannot simply be rendered mere reliability, since these are the two missteps that make it so that absolutism can simply weight in the shadows of even the best designed liberal constitutionalism. The whole project of securing peace cannot be abandoned, either, of course, but those lines need to be redrawn. Trust is then something more than reliability: a reasonable or suspicious disposition that is grounded on and aims for self-government and not merely the elimination of fear. Liberal constitutionalism and republicanism cannot be broken apart: we must be “busy” and “trust, but verify,” both concepts I follow Locke in arguing are central to our self-government.

As individuals, we are guided by our consciences and our reason (ST 8). However, while Locke will clearly argue that the state of nature is not equivalent to the state of war, he nevertheless reveals difficulties in his own distinction between the two states. According to Locke, human beings are bad judges in our own cases (and those of our friends), which is to say that our private judgments may be biased (ST 13). The state of nature may then quickly devolve into “confusion and disorder,” which are more epistemological terms than statements of material conditions—i.e., war and destruction (ST 13).<sup>8</sup> I focus here on the epistemological difficulties of the state of nature rather than the material chaos that tends to follow a more familiar, Hobbesian sense of the state of nature doctrine, because Locke makes clear that individuals are not supposed to give up wholly their own judgment or autonomy in light of this “confusion.” If the state of nature was like the state of war, there would be more than enough reason to wholly forego one’s claim toward autonomy and therefore sign up for Hobbes’ *Leviathan*, an absolute and arbitrary sovereign. The question posed to Locke is that, since the state of nature is an inconvenience, why would an individual not consent to follow someone who could restore stability and reliability? Hobbes makes this point, and further argues that the only way to remedy the war of all against all is if the sovereign is not constrained by the people who have consented to his rule. But this may be a conflation of epistemological confusion and material chaos and destruction—which is why Locke’s reticence here should not be taken as simply an expression of his bourgeois sentiments: if the state of nature begins as merely an epistemological confusion, then there may be a potential remedy for it—like education, for example. However, if Locke’s talk of “inconvenience” is just code for something like Hobbes’ war of all against all, then the hope is less on individual level education toward reason and more on erecting an absolute and arbitrary power that can secure reliable conditions.<sup>9</sup>

One would consent to Hobbes' *Leviathan* largely because it makes the social world more stable: the sovereign guarantees a power sufficient to mete out the punishments attached to the laws of the country (both dictated by the sovereign), and the individual citizen is able to plan accordingly. For Locke, this is a wholly illegitimate type of government that participates in this type of reasoning.<sup>10</sup> The argument for absolute monarchs, borrowing largely from Hobbes, amounts to this: for the sake of stability and protection, I agree to follow the dictates of an individual (sovereign) understood now as having absolute and arbitrary power over me, and, since the rest of the individuals in the state of nature (excluding, of course, the sovereign) have decided to do so, too, there can be peace.

Locke makes clear that mere reliability in one's surroundings is not good enough to nurture consent (ST 13). At bottom, trust is a *moral* relationship and not something that is simply a product of crude, individualistic utility calculations. Locke denies one of Hobbes' fundamental premises: we are not asocial, i.e. distrustful agents—at least not in the beginning (*Essay* 3.1.1).<sup>11</sup> If Locke held onto individualism, he would arrive at the Hobbesian paradox. So, rather than try to solve a seemingly unsolvable puzzle—which Locke points out is unsolvable because it is likely confused—Locke makes people social creatures, but not *political animals*. We are social creatures for two reasons. First, theoretically, Locke says that we have the twin obligations to care for ourselves and for the “rest of mankind” (ST 6). Second, if we move past the hypothetical doctrines of the state of nature, Locke has a very robust understanding of the development of human communities, and at the center of this development is the emergence of individualism out of affective social relations—most notably, the family. For Locke, trust is akin to care, which makes it a function not only of the particular actions conducive to that care but also the intentions of the caregivers.



We can see this in Locke's definition of the "state of war," which has considerable influence on his later doctrine of legitimate resistance. What matters for us, Locke says, is the *intentions* of others, which indicates both an other-directedness, and a view that contrary to the hypothetical state of nature, human beings—though rational, free, and equal in the abstract—nevertheless enter this world radically dependent and vulnerable. Indeed, it is precisely the *intention* or "design" of the other that determines if we are in a state of war (ST 16). For Locke, by speech or deed, an individual has declared himself no longer part of our community—in the state of nature, understood as a "human being" who has reason and is governed by the law of nature—but is a "noxious Creature" (ST 16). For Locke, we do not have the right to punish someone who, by "a passionate and hasty" intention has infringed upon my person. Of course, on the simplest level this action has certainly revealed something to me about the "passionate and hasty" person, but not that they are a "noxious creature." Certainly if I were in the world of Hobbes' state of nature, where the fear between each other is simply a function of everyone's ability to be free and equal, the difference between "hasty and passionate" and "sedate and settled design" would not obtain: both are dangerous to me because they both present a level of uncertainty that supposedly is unbearable. The state of war, however, does not come about through any simple "mismanagement," but only through the discovery of a "sedate and settled design" revealed through "an Intention" to "attempt to enslave me" (ST 16-17). The intention or the design is the most important aspect of determining when one has been betrayed, when one has the power to resist, and therefore, when trust has been broken.

Consider the application of this to Locke's right of resistance, where this view that trust is not merely reliability but a betrayal on a moral or normative level.

Secondly, I answer, such *Revolutions happen* not upon every little mismanagement in publick affairs. *Great Mistakes* in the ruling part, many wrong and inconvenient Laws, and all the *slips* of humane frailty will be *born by the people*, without mutiny or murmur (ST 225).

For Locke, the point is not simply that people want reliable government. If this were the case, then the mismanagement or even the “great mistakes” of governing would pose serious concerns for the absolute sovereign. If the sovereign cannot reliably make people secure, then obedience will dwindle and another power will inevitably arise, bringing the needed security with the newfound power. Instead, Locke is well aware that people are willing to take on numerous inconveniences for another reason that transcends reliability. For Locke, the breach of trust is not tied to reliability but the intentions of the governor.

Therefore, trust must be something more than mere reliance and reliability for fulfilling subjective interest. Hobbes’ reliance model of trust is very *consequentialist*, whereas Locke’s view is now moving past simple consequences and into the realm of *intentions*. The goodness of the action is no longer if it simply produced a good outcome, but if the action was spurred from the proper intention. The difference between “passionate and hasty” and “sedate settled design” is important for Locke in a way that it is not important for Hobbes. Locke’s alternative is a concept of trust that is distinctly *normative* or *moral*. Trust here is *normative* or *moral* since it has a claim on goodness and badness that isn’t merely subjective interest. But, this requires something more than mere reliability.

## TRUST AS BASIC TRUST

I have now argued that Locke’s sense of trust cannot simply be equated with the reliance model (though, of course, it shares a great deal with it). Now I turn to the competing vision of trust which generally sets itself up as that which is wholly *against* any instrumental reasoning among free, equal, and rational individuals. This notion of trust is called “basic trust” because it starts

from the paradigmatic relationship of vulnerability and dependency found explicitly in family relationships between parent and child. I turn to this model not because I think this is where Locke's notion of trust necessarily leads us, but because it helps reveal the landscape of trust so we can better navigate precisely what is at stake in Locke's notion of political trust. To run ahead a bit, just like Locke's criticism of Hobbes' reliance model suggested that he went too far away from the normative aspect of trust (focusing too much on consequence and stability), Locke's view will ultimately be that the "basic trust" view, where it does not collapse into a self-contradiction, is simply too *naïve* and places too much emphasis on the pre-reflective, affective aspect of trust. The point, as I said in the beginning, is to aim in between these two views of trust.

A more robust sense of trust is limited to interpersonal relationships between at least two human beings. There is trust *between* A and B with regard to X. As Lagerspetz says,

But there seems to be something missing from this [reliance] account of trust. If we construct trust exclusively as a result of inductive reasoning, it will be nothing more than the kind of reliance we can have on machines or on natural phenomena. The regularity in the squirrel's conduct makes me trust that the squirrel will show up again. But it does not establish trust *between me and the squirrel*. For instance, there is no room for the notion of breach of trust. I can, of course be disappointed when the squirrel one day, contrary to my expectations, does not show up in its habitual place. However, the squirrel would not have broken my trust. (Lagerspetz 1992, 4)

A more complete sense of trust requires a relationship between individuals. This is revealed, according to Lagerspetz, when the trust relation is in fact defeated—when the expectation is not met. On the reliance account, I may be disappointed but not *betrayed*. "Breaches of trust, including breaches of promise, involve more than just an inconsistency between word and deed" (Lagerspetz 1992, 5). A sense of betrayal reveals that mere reliance does not capture the full sense of trust. Instead, trust must rest on a non-trivial (but, as we will see, not dominating) sense of affective "shared life" between the trustor and the trustee (Lagerspetz 1992). This shared life is what I call a "community."

On the simplest level, community is derived from the Latin *communis* and refers to something that is common or shared between individuals. The communal aspect of trust is wholly missing from the instrumentalist reliance account. But, as Lagerspetz and others argue, trust itself—even on the instrumentalist account—relies on a sense of community, often implicit, in every interaction, and especially in the trust-relation. Following Wittgenstein, the trust relationship that elevates the communal can be clearly seen in the *familial* relationship between child and parent. The child trusts initially and completely in the “world picture” that the parent paints through word and deed. The emergence of doubt and uncertainty can only happen *after* the child has trusted in the parent.

How does this affect the instrumentalist view? From the perspective of this familial or affective trust relation, the instrumentalist or self-interested trust relation is wrongly emphasizing the subject-oriented rational calculus of decision making, thereby undercutting the extent to which trust can be recognized in the first place as the glue or background shared between agents A and B. In other words, the shared background—the *communis*—is not a product of self-interested, rational calculation, but the affective conditions by which self-interested, rational calculation can even occur. The community constitutes the trust between A and B, and betrayal is a sign of more than simply individualistic disappointment but a sign of something lost—a loss of an identity, a shared orientation to the world. As Locke will later say, the aggressor who puts us in a state of war with each other quits their humanity, which is a statement I take to be indicative of something more than mere disappointment.

The canonical definition of trust is the one articulated by Annette Baier (1986). Baier’s definition of trust is a “three-place predicate” that is familiar: A trusts B with valued thing C. For Baier, though, as we shall see, contrary to the reliance and purely affective alternatives, the key concern

is the dynamic relationship between A and B in the constitutive care of C—a relation Baier calls “entrusting.”

If we try to distinguish different forms of trust by the different valued goods we confidently allow another to have some control over, we are following Locke in analyzing trusting on the model of *en-trusting*. Thus, there will be an answer not just to the question, Whom do you trust? but to the question, *What* do you trust to them?—what good is it that they are in a position to take from you, or to injure? Accepting such an analysis, taking trust to be a three-place predicate (A trusts B with valued thing C) will involve some distortion and regimentation of some cases, where we may have to strain to discern any definite candidate for C, but I think it will prove more of a help than a hindrance. (1986, 236)

Following Locke, Baier claims that trust entails a familiar three-part equation, but that the three parts as a whole produce a set of unique and qualifying questions about the extent and agent of trust. Put differently, trust is rightly for Baier (and Locke) a question of constraint or qualified power.

Trust, then, is a “judgment, however implicit, to accept vulnerability to the potential ill will of others by granting them discretionary power over some good” (Warren 1999, 1). The first structural aspect of any trust relation is *vulnerability*. Vulnerability comes from the Latin *vulnus*, which means simply “wound” or “injury.” In this sense, any trust relation begins with the trustor’s (A) being in a position or situation of vulnerability. A’s recognition of vulnerability is a necessary condition for the emergence of trust, since it would make no sense to trust someone in a position of invulnerability. While it is important for us to recognize that trust emerges from A’s vulnerability, it is also important to focus A’s relationship to B in light of vulnerability. A trusts B insofar as B is willing, competent, and able to address or respond to A’s vulnerability. A’s vulnerability need not be total or even substantial—i.e., it need not be literally a “life and death” situation—but, it must be something that B (or at least on A’s judgment) can do something about.

Vulnerability is here not merely risk, since to define vulnerability as *merely* risk is to begin down the Hobbesian path of managing (and eliminating) risk. As Baier points out, “We can still

rely where we no longer trust” (1986, 234). The difference between trust and reliance is the difference between disappointment and betrayal: “The trusting can be betrayed, or at least let down, and not just disappointed” (Baier 1986, 234). Betrayal is a *moral* or *normative* concern—it is breaking a *norm*—in the way that reliability is merely a disappointment. The example Baier gives is of the ever punctual Kant walking by a neighbor’s window at the same time every day. But, what happens when he sleeps in one day and does not cross the neighbor’s window at the same time? Is that neighbor to feel betrayed by Kant? Does it matter if we imagine that the neighbor, that day, had set a roast to be done at the time that Kant would walk by the window. Kant is late, and the roast is ruined. Would this relationship between Kant and the neighbor be anything other than mere reliance? The fact that the neighbor could not sensibly feel betrayed but only disappointed (in himself for relying on Kant that day), tells us that it is only reliance and a not more normative sense of trust at stake here. For Baier, the point is that trust properly understood entails a dependence on the action but, more importantly, the *good will* of the trusted toward me (ibid).

I should note here the extent to which I accept Baier’s criticism of the paradigmatic “contract” view of trust. While I think there is something to her view that trust is a moral or normative concept, it is unclear that even she is willing to make trust wholly “irrational” or “unreasonable.” In other words, I find no reason to think that her perspective of “accepted vulnerability” is *missing* in the contract model, though it certainly may be underemphasized. The relationship between reason and a non-rational basic trust need not be antithetical, as Baier suggests. Indeed, the sharp distinction is considerably softened even on her own account. For Baier, accepted vulnerability is precisely the fact that, in the act of trusting, I am accepting the vulnerability that comes attached to it. “Where one depends on another’s good will, one is

necessarily vulnerable to the limits of that good will” (Baier 1986, 235). More fully stated: “Reasonable trust will require good grounds for such confidence in another’s good will, or at least the absence of good grounds for expecting their ill will or indifference. Trust, then, on this first approximation, is accepted vulnerability to another’s *possible* but not expected ill will (or lack of good will) toward one” (1986, 235). Since this view of trust is about *accepting* rather than *negating* the vulnerability that attaches to any trust relation, Baier argues that we should move away from the cold model of the “contract” between equals and focus on the familial relationships which are more recognizably the site of vulnerability, trust, and dependency that is not strictly self-interested (1986, 241; Lagerspetz 2015, 48-49).<sup>12</sup> However, while Baier suggests that we should move away from the contract model and return to a more affective trust relationship, there seems to be no real reason to do so. In fact, as I will argue in the next section, it is precisely Baier’s halfway solution that both reveals itself to be *too* “rational” for theorists like Lagerspetz, yet, being historical and concrete rather than theoretical is a mark in favor of her position. Her view, though she consciously disavows it, is very Lockean.

Once we move away from the contract as the paradigmatic case, we see how quickly vulnerability, trust, and dependence come to the fore. For most people, the first and primary relationship between child/parent is an example of trust that does not easily fit the mold of a contract either insofar as each party is simply cooperating to maximize independently contrived utilities, nor are they equal to one another in terms of dependency and power (Baier 1986, 245). The trust between child/parent is “a primitive or basic trust” (ibid). As Baier says, “Philosophers who remember what it was like to be a dependent child, or know what it is like to be a parent, or to have a dependent parent, an old or handicapped relative, friend, or neighbor will find it implausible to treat such relations as simply cases of comembership in the kingdom of ends, in the

given temporary conditions of one-sided dependence” (1986, 248). The contract model often assumes equality and freedom of individuals, who exist wholly outside of a context of dependence, and therefore make the mistake of enshrining that type of trust the paradigmatic case. Trust is not about managing risk between equal players in a game to best maximize individual interest. Instead, trust is the non-self-interested acceptance of vulnerability of care, and most importantly the dependency on good will (Baier 1986, 251).

At the core of even the paradigmatic contract, trust is the unspoken expectation of good will in that the entrusted and the trustor will not insist on the “letter of the agreement, ignoring the vague but generally understood unwritten background conditions and exceptions” (Baier 1986, 251.). There is always a degree of uncertainty and vulnerability in the trust relationship, for Baier, because the trust relationship is a three-part statement: A trusts B with the care of C (Baier 1986, 236). Here the care of C is important, since what it means for A to trust B is that B has discretionary power over C:

When we are trusted, we are relied upon to realize *what* it is for whose care we have some discretionary responsibility, and normal people can pick up the cues that indicate the limits of what is entrusted. (Baier 1986, 236)

The discretionary power over C is a fundamental condition of every aspect of trust, even that of the social contract. To trust B with the care of C is to put yourself in a position of inescapable vulnerability to be harmed (as well as benefited). The main thing, as Baier repeatedly states, is that the dependence on the good will—not simply in doing some action, but in the care of C—is something that cannot be avoided but is often ignored in contemporary views of trust that focus on the paradigmatic case of a contract of independent equals.

Here we have Baier’s examination of the concept of trust, which argues against the idea that risk and risk-management are central to trust, instead replacing interest with vulnerability and care.



Rather than a hyper-rationalistic or individualist conception of trust, Baier outlines a conception of trust that is normative and seemingly “basic”: trust is not a product of reflexive thought—a child is not reflexively aware of the reasons to trust or not trust her mother.

For Lagerspetz, who radicalizes Baier’s view, trust is truly a basic trust—a trust that does “not expect betrayal” and does “not take precautions” (2015, 100). Lagerspetz sees that vulnerability is not something that should be avoided but truly embraced as a “true community,” an expression of “closeness” and “intimacy” (2015, 64-72). To take precautions against the potential harm the other may cause you is to close off oneself from the other by both taking a view of the other as someone who could betray (which is to take a third person perspective), and to therefore act in a way that distances oneself from the other.

For Lagerspetz, trust has a character of “dys-appearance”: trust is only “seen” when it has disappeared—in the moment of betrayal (95). The phenomenon of dys-appearance is most clearly seen when thinking about times one is sick and when one is healthy: what it means and feels like to be healthy is clearly revealed only when I am ill. So, too, trust is revealed in the act of betrayal. This leads Lagerspetz to claim that, paradoxically, when I say “I trust you” I am revealing that the usual trust background is missing. Imagine a friend and I were sitting at a crowded coffee shop one afternoon. I have a backpack with valuables in it sitting next to my chair. I say that I am going to the restroom. As I get up to leave, I say to my friend “I trust you with my backpack.” What Lagerspetz here wants to say is that I have given voice to trust precisely because I am not sure that we are in a familiar trust environment, i.e., trust is already missing. To see this clearly, compare this example with a friend, but replace the friend with your mother, father, or spouse. Lagerspetz’s intuition here is that, contrary to the mere acquaintance in the first example, saying that “I trust you with my backpack” to someone who you are intimately familiar with is at best redundant and

at worst harmful to the trust relationship (Lagerspetz 2015, 100). Basic trust for Lagerspetz is a fundamentally affective, pre-reflective first person perspective that does not readily admit the possibility of betrayal. The paradigmatic example of this view of basic trust is the parent-child relationship—the intimate, vulnerable, trust between family members is not instrumental nor is it individualistic. Family is the foundation of basic trust.

Since at least 1659, Locke had recognized the importance of trust in guiding human affairs. In a letter to a friend, Locke writes, “men live upon trust and their knowledge is nothing but opinion molded up between custom and interest, the two luminaries of the world, the only lights they walk by” (quoted in Dunn 1984, 284). Human life is inextricably bound up in trust relations, and these relations are usually the products of either custom or interest—i.e., either someone’s own interest or the crystalized interests of others. This dependence on trust pushes individuals away from the realm of knowledge and into the realm of opinion—either their own opinions, or someone else’s. The dependence on trust and the need to trust others, however, is not a wholly irrational thing, though it does question fundamentally both the claim that human beings can obtain knowledge (and not mere opinion) (Casson 2011), and individual epistemic autonomy (Zagzebski 2014). The latter issue is at the heart of the debate between Locke and Sir Robert Filmer on the status of natural freedom and the political power and right of fatherhood. I will leave the epistemological discussion of Locke’s distinction between knowledge and opinion for a later chapter. Here I will focus on Locke’s confrontation with patriarchal political thinking, since the model of trust that is an alternative to Hobbesian trust is seemingly the relationship between child and parent, the core of Filmer’s political absolutism.

Locke follows contemporary philosophers of trust in rejecting the cold, instrumental view of trust as mere reliance. For Dunn, Locke recognizes the inherently moral and normative aspect of

trust, and the extent to which trust is seemingly a non-rational thing: perfect knowledge is not available, so knowledge as solid demonstrative and deductive proofs are not possible for us in the human realm (Casson 2011). Since we cannot have this level of certainty, and trust in the Hobbesian sense is rational reliability, then we cannot have rational reliability, and therefore trust is nonrational. Since we live in a world of only opinion, trust is less and less simply a subjective estimation of a possible outcome or event, and more and more a deeper expression of something nonrational—a deeper recognition of vulnerability and dependence. The *moral* (non-instrumental) sense of trust can be seen when it is not obtained: we feel *betrayed*, and not merely *disappointed*.

The most obvious alternative to the reliance view of trust is “basic trust,” as I have outlined above. Here, the most important aspect of the relationship is not individual interest but affective *care*. If we remember that trust is ultimately a question of what one has good reason to do, the basic trust relationship of parent-child puts much of the authority to act in the parent. The good reason to act is, ideally, the care of the child, which is determined *by the discretionary power of parenthood*. The parent is the decider. The utter dependency of the child on the parent makes the care for the child a squarely asymmetrical one. Moreover, the child is not simply a bundle of ready-made or self-authored interests, and so the trust that exists between the parent and child is not one that is rational. There is no reflective space or distance between the child and the parent: the child is going to be molded by the parent, the parent’s interest and possibly the community or custom. From the perspective of basic trust, the familial relationship completely reorders the agency of the reliance model. But, as Locke will point out, basic trust still accepts the same absolutist political conclusion as the reliance model. The parent has sole discretionary and absolute power over the child, and the good reason for this to be the case is simply the natural dependence of children on their parents. The basic model of trust posits that human beings are not born free.

As many scholars have pointed out, Locke recognizes precisely the authoritarian consequences of the basic trust relationship. Dunn, for example, says that the basic trust relationship, in making clear the utter dependence we have on others in practically all aspect of our lives, has made it seem all-too-reasonable that we would accept political power of almost any variety, if it can promise safety and security (1988). Basic trust would make it impossible to attempt to curtail political authority, since this would entail curtailing parental authority, which is a near absurdity since the dependency and vulnerability—the asymmetrical power relationship—between child and parent is a natural one. The child, on this mistaken view, would have good reason to understand the natural hierarchy and asymmetry between subject and magistrate, since the child and the parent are not naturally equal. Tarcov, has examined the nature of this affective relationship between parent and child, and concludes that it is perhaps the single most destructive force facing liberalism, largely because Lockean liberalism *does* have to rely on a normative conception of trust, and recognize that the parent *does* have “natural government” over the child (1984). Though Tarcov and Dunn believe that basic trust can be defeated, the point here is simply that, for Locke, separating political power from the family analogy (while avoiding hyper-individualism) is a *constant* political project for liberal constitutionalism. The natural tendency to revert to the basic trust will always be possible because, as we will see, Locke’s liberal constitutionalism must fundamentally admit some degree of “basic trust.”

Rather than mere reliability, Locke argues that legitimate use of political power rests on the *intentions* of the governor—or the person with political power (ST 16). For Locke, non-domination—understood as living under non-arbitrary power, and the protection of property (robustly understood)—are necessary goods for all human beings who are in the state of nature, free and equal (ST 23, 26, and 27).<sup>13</sup> Legitimate power recognizes these goods as non-negotiable.

Political power used without the intentions of good will, those that are dominating, constitute a state of war (ST 19). By separating the state of nature from the state of war, Locke makes clear that mere reliability is not something that individuals can legitimately consent to, since it would not demand that the governor rule with good will. As we saw, Locke divides the state of nature from the state of war to introduce a moral concern to government. This moral concern for the actions of the other put obligations on both the governor and the governed.

The care for children by parents is an appealing alternative, according to Locke. Rather than focusing on mere reliability, the affective care that is missing in the Leviathan is present in the relationship between parent and child. In fact, Locke says, parents have a duty to care for their children (ST 55, 56, 58). From the perspective of the child, Locke says that the child may “trust” in the parent, precisely because the parent makes possible the “necessities of life, the health of his body, and the information of his mind” (ST 61). This is a type of “basic trust.” The parent is charged with the duty to care for the child—to nourish and educate—and this could seemingly give the parent a title to rule (ST 65, 69).

This is a confusion, though, Locke argues, of the right of the parent to govern the child (during childhood) and the lifelong honor that the child owes to the parent (upon a successful education) (ST 67, 68). For Locke, it is the belief that the child always remains under the “natural government” of the parent that makes some wrongly conclude that the parent-child relationship analogous to the governed-governor relation. This is not merely a conceptual confusion, but a sociological or historical one: Locke admits that government commonly began in the family, and the father ruled as a monarch (ST 105). For Locke, this is a delicate matter since, properly speaking, the father ruled on trust:

He was the fittest to be trusted; paternal affection secured their property, and interest under his care, and the custom of obeying him, in their childhood, made it easier to submit to him, rather

than any other. If therefore they must have one to rule them, as Government is hardly to be avoided amongst men who live together; who so likely to be the man, as he that was their common father; unless negligence, cruelty, or any other defect of mind, or body made him unfit for it? (ST 105)

The conflation of the political power with the parent-child relationship is actually *amplified* by the concept of basic trust: the children trust their parents wholly. How could they do otherwise? Monarchy is indeed a suitable form of government, and it seems to have been precisely the product of *consent* and trust. The discretionary power that is vested in the father while the child is still under his care in a “natural government,” is carried over into the political realm.

According to Locke, the monarchy of the father rests in a moment in time when political society was itself just in its “infancy,” so, analogously, like a child ruled by the care of the father for a particular time and for particular ends, so, too, is political society governed by the care of the monarch for a particular time and for particular ends (ST 107, 110). The precise end of these early monarchies is almost exclusively protecting the community from without—against foreign invasion. Moreover, Locke notes, the existence of monarchical fathers who rule mainly by discretion, while based on trust, is primarily secured by affection. The Golden Age did not face the problem of tyranny—bad fathers who are cruel or negligent (ST 111). Indeed, for Locke, it is only after the threat (or awareness) of potential tyranny that the political society curtail the discretion of the monarch. The political battle, as stated here, is one between a people who now want to constrain and curtail the discretionary power of the magistrate (presumably through institutions), and the magistrate who wants to stretch the use of the prerogative. For Locke, it is because we can no longer trust so simply the power of the prerogative that the Golden Age is far behind us—liberal politics must be a “mature” politics.

Now let us turn to the precarious sense of trust that underwrites Locke’s view here on the natural history of monarchy. Locke has argued that the conflation of the familial relationship

between father/child and the political relationship between magistrate/subject is present in the Golden Age of human society, and this means that the rule of the father is predicated on consent and merely on natural ties. Here the issue is that part of Locke's reasoning why the children agree to be ruled by the father itself rests on "custom." Indeed, as Locke points out, one may object altogether that the children consented to the political rule of the father (ST 113-114). "*All Men, say they, are born under Government, and therefore they cannot be at liberty to make a new one. Everyone is born a subject to his Father, or his Prince, and is therefore under the perpetual type of Subjection and Allegiance*" (ST 114). This is Filmer's position: "Sir R.F.'s great Position is that *Men are not naturally free. ... Men are born in subjection to their Parents*, and therefore cannot be free. And this Authority of Parents, he calls *Royal Authority, Fatherly Authority, Right of Fatherhood*" (FT 6). What is at stake is precisely the view that we should understand ourselves as free and equal, which is brought about only in education—a duty supposedly given to parents, that terminates when the child and father understand themselves as equals (ST 59). The belief that parent/child relationship terminates when the child becomes free and equal, is not guaranteed in a world where individuals could be bad judges in their own cases (particularly parents who never want their children to leave the house). The conflation of political power with familial rule will rest on the emergence of something that jars the individual out of the familial mold—a different, non-affective trust. But, to be clear, Locke's argument here is a historical one, and therefore a contingent one. Basic trust must be admitted but eventually overcome—there must be a development, an education, a maturity.

#### LIBERAL POLITICAL TRUST

The two types of trust outlined above emphasize two different aspects of the potential relationship between A and B with respect to C. The reliance account emphasizes the rational or

cognitive component of an individual subject toward another agent (human or non-human), for the sole purpose of alleviating uncertainty, maximizing predictive outcomes. Trust on this view is purely instrumental, and trustworthiness is the extent to which one can fasten one's plans to, or make possible an environment conducive to inductive inferences. The alternative view is the familial basic trust relation, and it emphasizes the affective and interpersonal human relationship, because it ultimately is about the shared horizon or community between agents. Trust is a relationship that is not instrumental to but constitutive of subjectivity. The individual cannot meaningfully transcend the subject position—a child in a parent-child relationship, for example—since to do so would point beyond a shared horizon that constitutes precisely the parent-child relationship. So, too, the reliance account takes for granted the shared horizon that makes even the most contractual or mechanical trust possible (one must know what it means to be a buyer and what it means to be a seller, before even the most consensual transaction).

At the center of Locke's conception of trust is vulnerability, mutual recognition, and the ontological fact of uncertainty since the governor could always do otherwise with the entrusted power. Part of the rhetorical genius of Locke's liberal constitutionalism is to cast political power as a trust relationship between the governed and the governor. Seeing politics as a matter of trust points to the near absurdity of conceiving it, as Filmer does, as an illiberal relationship. But, so, too, does it seem absurd to believe that the trust between governor and governed can be merely one of an institutional stability as it is in Hobbes' *Leviathan*. In the following section, I will focus my analysis of Locke's conception of trust by closely following one chapter of Locke's *Second Treatise*: chapter 15.

Chapter 15 follows Locke's chapter on prerogative power, where he makes clear that the natural political power to execute the "law of nature" for the public good cannot be eliminated by



the laws, however well devised. Instead, the best hope of liberal constitutionalism is to recognize not only the necessity of a discretionary power in the hands of the executive, but also the necessity to resist that power if needed. I will return to this idea in more detail in the following chapters of this dissertation. However, of primary importance here is that Locke's politics of trust is centered squarely on the prerogative power as vested in the executive. The problem for liberal constitutionalism, then, is not the existence of a discretionary power, but the way we conceive of that discretionary power. In chapter 15, immediately following the discussion of the prerogative, Locke feels it necessary to return to the opening assertion of his *Second Treatise*. In the opening lines of the *Second Treatise*, Locke says that we too often misunderstand and conflate the political power into other relationships, most notably domestic ones—like parent-child, husband-wife, master-servant (Chapter 1). The point of the *Second Treatise*, Locke tells us, is to separate these particular powers, and to be clear where the “political power,” the one between the magistrate and the citizen, properly arises. In chapter 15, Locke makes explicit the differences between these different conceptions of the origin of political power. Locke compares three conceptions of political power: the paternal/parental, the political, and the despotic. For Locke, the properly liberal constitutional ground can only be the political relationship, which means he must reject the other two alternatives.

It is obvious that human beings are born “weak and helpless, without knowledge or understanding” (ST 56), and therefore the end of parental authority is “education,” which is the discretionary power granted to parents to order and guide the child to recognize his own freedom, equality, and the dictates of “reason” (ST 61). As Locke says, the point that cannot be denied is the inherent vulnerability and contingency of the child arriving at this state of rationality—not because of a lack of capacity, but because of a lack of guidance: “Thus we are born free, as we are

born rational; not that we have actually the exercise of either..." (ST 61). The "duty" of parents is to get the child to exercise these capacities. The ground of this parental authority is not consent, but nature, Locke argues: "Nature gives the first of these, viz. paternal power to parents for the benefit of their children during their minority, to supply their want of ability, and understanding how to manage their property" (ST 173). Parental power is grounded on a natural "affection and tenderness" of the parents toward their children (ST 170). The familial bond is surely great, and the power parents have over their children is properly speaking a "natural government," but it is not truly political, because it does not have room for consent. It is prior to consent—only after the parents have made the child free and rational, can consent be possible, but this would be precisely where the "natural government" of parenthood ends. Here we can draw the following implication: individualism—freedom, equality, and rationality—must be something that looks beyond the familial and affectual when it conceptualizes proper political trust. This individualism cannot emerge naturally—i.e., without education and intervention. And, since we are born within families, this is the proper end of parental power: to make us rational—to make us leave the family.

But, if the familial does not reach the truly political—because political power is derived from consent it requires some space for individualism—the despotic goes far beyond what is reasonable. Here despotic power is not political in the proper sense because it is avowedly "absolute, arbitrary power" predicated not on nature, but "force" (ST 172). Since it is an expression of the rule of force, the despot is properly seen as the aggressor that renders the state of nature into a state of war. To quote Locke:

For having quitted reason, which God has given to be the rule between man and man, and the common bond whereby humankind is united into one fellowship and society; and having renounced the way of peace, which that teaches, and made use of the force of war to compass his unjust ends upon another, where he has no right, and so revolting from his own kind to that of beasts by making force which is theirs, to be his rule of right, he renders himself likely to be destroyed by the injured person and the rest of mankind, that will join with him in the execution

of justice, as any other wild beast, or noxious brute with whom mankind can have neither society or security. (ST 172)

It is important here that Locke marks out that, even outside the family, there must be a community for individuals *as* individuals. This is a moral community, too, which is revealed precisely in the act of betrayal by one of its members. This moral community is properly “mankind,” or as we could say “humanity.” The use of force instead of reason shows that the aggressor or the despot has totally given up any notion of sociality between him and others. The family has been transcended, but so too has any concern for anyone else. Locke is warning us that, in rejecting the familial, we ought not lose our humanity—which would be something like a radical distrust and doubt of all social connection as valuable, and thereby rendering ourselves ruled not by reason but only by bare interest or simply force. We must be able to recognize that, in rejecting the familial, our individualism cannot—though it potentially could—lead us to renounce our common affective bond to a community, albeit a faceless “humanity” (Kautz 1995).

So, we arrive at the legitimate ground of political power: consent, agreement, assent, or simply trust. Where parenthood and nature did not reach consent (because it terminates precisely at the moment when consent is possible), and where despotism is power without right (since it is amoral and wholly self-interested), political trust for Locke must be some mean between these two extremes of nature and force (ST 173). Political trust is possible only by denying the power of nature and renouncing the desire for force, establishing a tenuous but normative and moral commitment to other individuals, treating them as free and equal. This liberal consent is decidedly “reciprocal”—a back-and-forth (ST 4). The back-and-forth aspect of reciprocity is an expression that expresses that at one moment one agent may be more powerful than another, only to have the power switch sides in another. Reciprocity is dynamic, like an entertaining game of evenly matched opponents in a tug-of-war. The consequences of Locke’s reciprocal relation of at the

center of political trust is that politics is dynamic, always moving between agents—for example, between individual and community, or between legislative and executive. The way to understand reciprocity in a trust relation is that, first, there is an accepted vulnerability when A trusts B, giving B discretionary power over the care of C; but, this discretionary power to care for C is not wholly outside the purview of A. Instead, the care of C is in a way open to negotiation, an ongoing deliberative process between A and B. This is not to say that A and B are equal in the everyday care of C, but it must remain a possibility that A and B are in a dialogical relationship. The possibility of dialogue necessitates freedom and equality among participants. Dialogue is not possible in either the familial or the despotic case, a clear sign that they are not reciprocal. The question, then, is how does this liberal trust emerge? Here, we turn to history and education—a history of betrayal and an education in suspicion.

Basic trust is nonrational and primary—it is basic and it is a function of the dependency within the family between the child and the parent relationship. Trust is nevertheless the “ethical foundation of everyday life,” where it represents a mutual recognition of both vulnerability, helplessness, and responsibility between people—that what it means to be a human being is that one has standing as a thing that is mutually constituted in a world of trust relationships (Bernstein 2011). While trust is first seen in the healthy parent-child relationship (where the child is brought to recognize itself as a thing that will be a member of an interdependent trust relationship between members of a community), trust is not properly speaking this basic, natural, or essentially affective love between parent and child—but this basic, natural, or essentially affective love is the necessary starting point of a more robust or mature trust. Trust is really a “mature” trust, where the affective trust is closely “monitored” by reason (*ibid.*).

As Bernstein notes, the designation of “mature” trust is not accidental: proper trust requires a “developmental story” (Bernstein 2011). The developmental story is of a fall from the natural trust relation, but not a total distrust—which would be akin to the mentality of the Hobbesian subject in a state of war—but to some intermediate space between a wholly disenchanted distrust and a blind or naïve affectionate basic trust. This space between distrust and basic trust is what I have called the realm of “suspicion,” and it is the work of a reason that emerges from basic trust. Bernstein outlines the character of what I have called “suspicion,” which is the distancing of the subject from basic or affective trust, not in order to remain forever outside or at a distance from others, but to provide psychological or cognitive space for a more reflective or reasonable trust to take hold. This view of suspicion, relies on a certain vision of basic trust and its relation to reason, which I will examine in this section of the chapter.

Bernstein talks about suspicion often by using the word “distrust,” which is unfortunate since distrust suggests too much of the negative power of reason—distrust is properly the lack of trust, but not the space between trust and distrust, “suspicion.” So, I will recount his notion of “distrust” as a model of suspicion. For Bernstein, distrust or suspicion is a highly cognitive, reflective orientation, which counters the unreflective and affective nature of basic trust. Since human beings, for Bernstein, are more animated by pain than pleasure, the reflective nature of suspicion emerges in the failure of trust to obtain, in the event of betrayal. Reason or doubt, suspicion or skepticism, is not a natural starting point for human beings, since we are often in a familial relationship of basic trust. However, suspicion or reason are naturally occurring moods or modes insofar as they naturally emerge out of the breakdown of basic trust: “Trust, one might say, is subject to rational correction and modification, but not to rational installation; reason is the caretaker of trust, not its creator (or ground)’ (Bernstein 2011, 404). For Bernstein, we are born

capable of reason, though our condition within the family at first presents an obstacle to our development into rational creatures.

Basic trust is a fundamental “primary attitude that does not require antecedent justification; on the contrary, as a primary orientation, trust is best conceived of as a primitive and original relation to the other, how others first appear to us, and hence part of the original physiognomy of social interaction” (Bernstein 2011, 405). The basic, affective trust orientation that “first appears to us” is a *temporal* claim about the development of human psychology. Basic trust is in the orientation in the beginning, but it will eventually be shaken. Since the basic trust will inevitably be betrayed—either accidentally or intentionally—the development out of affective trust is the route of providing *justification*. Affective or basic trust can only gesture toward the freedom and equality of the other as an “other,” but this project of individualizing and equalizing can only be the product of justification and reason-giving, which is to say, through the power of reason. Trust that rests on justification is already a nonaffective or reflective and cognitive trust (Bernstein 2011, 405). Here the concept of adult or “mature” trust takes precedence over basic or infantile trust: “One could then assume that adult trust develops out of the innocent trust that infants are required to have in caregivers, and hence that trust is not an optional stance to the world but the attitudinal commitment of coming to have a world at all.... Distrust is the corrective and refinement of trust. In learning to distrust we are (forever) learning an adult, reflective form of trusting, to trust conditionally rather than unconditionally, and hence to moderate, qualify, segment, and localize our trust. ...” (Bernstein 2011, 406). The world rests on a trust that comes to us, not as it does as infants—as an expression of love and affection and unconditional trust—but through the judicious mix of suspicion or distrust and reason, that contextualizes the affective trust relationship. Trust is properly “mature” or suspicious trust.

As Bernstein is presenting it here, we can understand trust—a mix of trust and suspicion—through an analogy with how contemporary analytic epistemologists understand “knowledge” to be a product of doubt. Once we move beyond the view of knowledge as a statement of certainty about certain things that universally and inescapably are true always and forever—the type of knowledge that Descartes sought, and the definition found in Plato’s theory of the forms—we quickly realize that what we typically mean by “knowledge” or to “know” something is that I no longer have doubt about it. Knowledge, in other words, cannot make sense where there is never has been doubt, and where doubt can never return (Lagerspetz 2015). Similarly, the notion of mature trust only emerges in a world of suspicion—one where original, basic trust has been betrayed. Mature trust makes sense only in the background of suspicion, the overcoming of suspicion—which makes trust necessarily conditional, and always subject to revision. In this way we can better appreciate Bernstein’s comment about reason being the monitor of trust: rational trust is one that has been tempered by reason, which is to say has forever broken from being purely affective, subconscious, and unconditional. Trust is not certain, and we should never search for certain trust—one that cannot be doubted. Suspicion, doubt, and skepticism are indispensable to the formation of mature or rational trust that emerges out of familial or basic trust. But, this means that mature trust must recognize itself as conditional, and give up the belief that trust is a question of uncritical certainty—something that escapes suspicion. So far from being antithetical to it, suspicion is actually the background constitutive condition for rational trust.

The developmental story—the emergence of rational trust out of basic trust—is the core of Bernstein’s view, and I argue it is for Locke as well. Here I follow a handful of scholars who have outlined Locke’s “historical anthropology” sections found in the latter half of his *Second Treatise* (Batz 1974; Grant 2012, 1987, 1988; Kleinerman 2008, 2009; Tarcov 1981, 1983, 1984). *Political*

*trust only emerges in the history of betrayal.* Many have commented that Locke is at great pains to show that freedom, equality, and rationality are conditions that belong to all human beings as a function of some derived innate natural right, as revealed through a hypothetical abstract state of nature (see Zuckert [2002] for a review of the debate). This is a dubious argument on numerous grounds: the state of nature is obviously not a historical condition of mankind, and as a hypothetical it seems to imply a doctrine of innate ideas wholly antithetical to Locke's own epistemology (Waldron 1989). I will address these two points in the chapter on the prerogative power, because I think that Locke's view of the state of nature is more nuanced than has typically been understood. Part of my response to this highly abstracted state of nature doctrine is, in fact, to point to it not as a *deductive* argument from first principles but as an *inferential* argument from historical conditions (which, makes it a fundamentally *contingent* argument—which I pick up in the chapter on contemporary criticisms of political liberalism). The point is that Locke's concept of trust is similarly predicated on a developmental story. This has to be the case: we are born radically dependent beings, and this has important consequences. Chief among the consequences of our radical infantile dependency is the contingency of actualizing the freedom, equality, and reason promised by the law of nature. Locke would not write books on psychology, politics, and education—all of which have a decidedly voluntarist and provocative tone—if he thought human beings would naturally achieve freedom, equality and rationality (Grant 2012). Challenging the *a priori* truth of the law of reason is not my target here—just that Locke recognizes that this law of reason is hardly “consulted,” which makes it essentially non-effective, or simply contingent. One of the reasons why the laws of nature are not consulted is precisely that children have a basic trust toward their parents that can spill over into political life. Here the trust relation never matures, and, given such a tight connection between the rule of the father and the rule of an absolute monarch,



there is a natural tendency to view sovereignty through the lens of basic trust. Locke, in other words, admits that strictly speaking though society ought to be based on a mature trust—one that is reasonable and recognizes the freedom, equality, and rationality of others—it may be obscured or eradicated by the natural or basic trust. Here is the reason that Locke says people, even in civil society, are too quick to trust and trust unconditionally the sovereign's use of the prerogative power: natural, familial, basic trust (ST 223).

The developmental story of basic trust being overcome by reason and suspicion is a necessary fact of the human condition since all people are indeed born, and not created like Adam. The developmental story also suggests the importance of history, since it is the historical fact of betrayal that is a precondition for the emergence of a rational trust. One fails to arrive at mature political trust by covering over the historical contingency of this emergence and that suspicion or distrust are indispensable to maintaining it once it miraculously has emerged.

For Locke, the solution, though messy, is the emergence of the child's disappointment in the political rule of the parent, or the subject's disappointment in the rule of the monarch.

And therefore, though perhaps at first, ... someone good and excellent Man, having got a preeminence amongst the rest, had this Deference paid to his Goodness and Virtue, as to a kind of Natural Authority, that the chief Rule, with Arbitration of their differences, by a tacit Consent devolved into his hands, without any other caution, but the assurance they had of his Uprightness and Wisdom: yet when time, giving Authority, and (as some Men would persuade us) Sacredness to Customs, which the negligent, and unforeseeing Innocence of the first Ages began, had brought in Successors of another Stamp, the People finding their Properties not secure under the Government, as then it was, (whereas Government has no other end but the preservation of Property) could never be safe nor at rest, *nor think themselves in Civil Society*, till the Legislature was placed in collective Bodies of Men, call them Senate, Parliament, or what you please." (ST 94)

Though Locke makes clear that the precise content of the education that the father is supposed to secure for his child is supposed to guarantee that the child will come to recognize the role of his consent in grounding the political relationship that transcends the familial relationship, Locke

nevertheless holds that this type of education arises from history. More specifically, political history is one where the familial, affective trust relationship that tends to ground political power in the natural authority or “natural government” of the father over the child, must be replaced with another notion of trust. This notion of trust, moreover, emerges only when the people understand themselves as people, which further entails a political conception of trust and consent as the motivating factors of legitimate government, and all of this presents itself only in the departure or disappointment from the affective, familial trust that empowered the father’s discretionary rule. For Locke, then, there is a public or political education needed to jar many out of the natural sense of trust, which makes the claim that Locke’s politics is predicated on “trust” that much more complicated.

We typically think of trust and suspicion as antithetical to one another. However, in light of the forgoing remarks, we should be more precise as to *which* sense of trust we are discussing when we say that suspicion is antithetical to trust. I have argued above that, for Locke, liberal constitutionalism cannot survive on a type of reliance trust or on an affective basic trust. Instead, I have argued that trust for Locke *must* be a more mature or distanced trust, and this means that trust must have some degree of *suspicion*, here understood as a product of a *third-person* perspective that demands the relentless reminder that *things could be otherwise*. It is only on this suspicious ground—the sober recognition that things could be otherwise—that Locke builds liberal trust.

But, before turning to Locke’s explicit statements, I want to show that this argument of liberal trust—the narrative story—is still hotly debated. Lagerspetz takes exception to this developmental narrative of trust held by Baier and Bernstein. As we have seen, basic trust is cast as an “innate” or “primordial” thing that is “groundless” is nevertheless a “protective cocoon” that,

at least in the beginning of the developmental story, guarantees that society will function (Lagerspetz 2015, 131). This view of basic trust is only a “remedy to internal problems on the rationalist-cum-individualist picture of agency,” which is why reason is the skeptical “counterweight” to a nonrational, native and naïve trust that must be presupposed, lest we fall into the Hobbesian picture of a distrustful war of all against all.

There is a “deliberative paradox” in the rationalist presentation of basic trust (Lagerspetz 2015, 133-134). If trust is a basic, primordial disposition it must be nonrational since, to ask someone if they have good reason to trust something or someone would necessarily entail that the rational act of reason giving for trust is somehow antithetical to the affective, non-cognitive trust. Deliberation is impossible within basic trust. As Lagerspetz writes, “If I start to look for reasons for trusting, the game is already over. I am already looking at the other with suspicion, perhaps in the same way as I would already consider her a liar if I thought reasons are needed for believing she is telling me the truth” (2015, 134). The type of trust that emerges out of Baier and Bernstein—the view of “entrusting,” which entails a developmental story that culminates with a view of trust as being predicated on “good reasons” to do so—is *not* basic trust, but some other middle ground between basic trust and pure distrust, which Lagerspetz seems to think is not possible. Or, at least, it is not the paradigm of basic trust.

The trust that Baier and Bernstein propose is one that begins with a recognition of the ontological insecurity, the radical vulnerability that reason and suspicion reveal against the background of basic trust—here understood as the illusionary ontological security blanket of infantile, affective trust. “What these approaches to basic trust have in common is a strong sense of the inherent vulnerability of the human condition, together with a conception of basic trust as a cognitive shield against the full implications of that insight” (Lagerspetz 2015, 136). The shared

approach of Baier and Bernstein makes basic trust look like a “self-deception”: “The implication seems to be that basic trust is either due to an intellectual deficiency of some kind or else it is a form of self-deception. If we were fully rational thinkers we could only conclude by giving up the stance of [basic] trust; the only reason why we keep it is that doing otherwise would be *psychologically unbearable*” (Lagerspetz 2015, 136). On this self-deception view, clinging to basic trust is a failure to properly gauge the vulnerability and uncertainty that is always already present—to deny this vulnerability and uncertainty is to fall back into an infantile trust that is comfortable precisely because it covers over the ontological fact of flux and uncertainty.

From the perspective of Baier and Bernstein, this escape from freedom—from the recognition that we live in a world of uncertainty and vulnerability, and therefore we must be aware and vigilant, and the trust is conditional—is a failure to properly develop. For Lagerspetz, the problem here is the narrative of overcoming basic trust altogether, which means that Lagerspetz rejects the rationalist-cum-individualist presumption that reason is a skeptical or suspicious attitude that must always take the form of a “third-person perspective” doubt. The third person perspective is the one outside of the interaction—the third person observer—who, from this vantage point must necessarily conclude that any trust interaction must contain a level of risk. From the third person perspective, trust and risk are forever intertwined. “In the debate, the normal attitude of the individual in society is characterized as trustful. It is characterized with an allegedly *objective* general perspective—the perspective from which the social world appears to be a very dangerous place” (Lagerspetz 2015, 138). The “objective,” third-person perspective is the perspective of reason, which necessarily dictates that any interaction of trust must admit a degree of vulnerability such that, trust is not the denial of risk, but an action taken in light of the vulnerability and risk inherent in the ontological fact of the world. The ontological fact of the

world being a place of uncertainty, risk, and vulnerability is guaranteed by the third-person perspective of reason.

Lagerspetz rejects the primacy of the third-person perspective, and in this rejection he follows many philosophers—particularly Wittgenstein. As we have seen, the third person perspective renders basic trust as something that needs to be overcome by suspicion and tempered into a more “mature” or reflective (read: reasoned) trust. For Lagerspetz, the problem with this model is that the third-person perspective, where doubt and suspicion are “context free” and therefore seen as always a possibility. If the third person perspective is denied, then the universal possibility of risk, and the demand for the priority of suspicion, will likewise be denied. Lagerspetz demarcates a difference between ethical and factual possibility where Baier’s and Bernstein’s third-person perspective sees only *ethical* vulnerability. Lagerspetz sees only *factual* vulnerability: factual possibility is the first-person perspective that recognizes only actual possibility “for me,” rather than the ethical vulnerability which posits that vulnerability is *always* a possibility for *anyone* (and hence, *everyone*) (2015, 54-56). In the third-person perspective, the “possible” is a context-free probability that, strictly speaking, is not the perspective of the individuals in the trusting relationship: “Baier’s reasoning here seems to be based on conflation between the third and first person perspectives. From the fact that trust is internally related to betrayal she draws the illegitimate conclusion that *the person who trusts* must suspect betrayal. But while it is true that an observer typically would not *describe* a relationship as one of trust unless he or she can imagine a risk of some kind in connection with it, it does not follow that I must believe I am taking a risk when I trust a friend” (Lagerspetz 2015, 59). The conflation of the third and first person perspectives does not simply overstate the case of the likelihood of betrayal, but rather it reorients our whole thinking about the nature of trust as a thing that must always contain risk. Basic trust

(the kind that Baier and Bernstein hold as that which denies the possibility of risk, vulnerability, and uncertainty) must be avoided and transcended, but this is to deny the first-person perspective, which necessarily *does* entail a trust that never raises the possibility of risk. Baier and Bernstein prioritize the third-person perspective over the first-person perspective, while Lagerspetz denies the third-person perspective and argues that the first-person perspective (that of “basic trust”) is the only way to conceptualize trust.

What does Lagerspetz’s view say about the status of reason and trust? Remember, in the rationalist-cum-individualist perspective, reason is a monitor of trust—a suspicion that guards against trust slipping back into the basic, unreflective trust. For Lagerspetz, reason is simply not the antithesis of trust, as it is for Baier and Bernstein. Reason, understood as a context-free perspective of the third-person observer who sees that all possible interaction of trust must entail some form of riskiness, must be replaced with a notion of reason that can emerge *within* trust and not from *without* it: reason is made into “reasonable.” For Lagerspetz, the rationalistic view of reason is akin to *paranoia*—a groundless, universal suspicion or doubt. This type of reason or suspicious doubt can certainly emerge on the first-person perspective, but it does so only *within* a social context—what it is *reasonable* to doubt. The social context—one already predicated on first-person trust—delineates what can and cannot be reasonably doubted. This is why questions of trust and suspicion inevitably fall back into claims about “sanity” or “insanity,” “normal” or “abnormal” or “paranoid” psychologies (Lagerspetz 2015, 141). The claim of “reasonable doubt” or suspicion is not universally given but socially constructed by context—but the realm of the social, the community, the shared background.

An example will help illuminate this point about the relation of reasonableness and paranoia. Imagine two friends are dining at a restaurant. One friend voices the belief that the food

could be poisoned. What could the other friend say to this? Perhaps the friend would respond by saying something like, “why do you believe that your food could be poisoned?” To which his suspicious friend may reply, “Because, there is always a chance that food could be poisoned.” The second friend responds, perhaps a bit shocked or even indignantly: “That’s not true.” Or, perhaps the friend wants to help reason with his suspicious friend and so he says, “but, why would anyone want to poison your food?” Here the suspicious friend could respond, “I don’t know, but it could happen—the probability may be unlikely, but there is still a chance.”

The difference between the suspicious friend and the non-suspicious friend is precisely that the suspicious friend is conflating the third-person with the first-person perspective: because it is possible for anyone, it is possible for me, too. The non-suspicious friend is not here trying to engage with his suspicious friend’s calculus, but trying to reorient his thinking altogether; he is trying to move the suspicious friend from a third person perspective to a first person one— “why do you believe your food is poisoned?” The second friend is here showing that he doesn’t think it is *true* that his food is poisoned, not as a matter of “objective” probabilities, but simply because it is not a *possibility* that the food is poisoned. The suspicious friend says that there is always a possibility of being poisoned, whereas the second friend would simply deny that possibility as a fact. The suspicious person here, Lagerspetz would say, is not wrongly identified as “paranoid” precisely because he holds the third-person perspective, while the other diner is simply “sane” or “reasonable.” The moral of the story is that there is no reason to entertain doubt in certain contexts, and to do so would be unreasonable precisely because it has departed from the social context that must ground all of notions of possibility, probability, and therefore reason.

We can now hopefully better see Lagerspetz’s attack on Baier and Bernstein’s view of trust—they are “paranoid.” For them, insofar as the third person is conflated with the first person

perspective, the act of “entrusting” will always have a degree of suspicion or doubt that transcends the social context and, therefore, it will always be “paranoid.” Suspicion and doubt, or simply reason may indeed raise questions about why one trusts something or someone, but these doubts or suspicions emerge only if we consider things as possible *within* a social context, not outside of it. “A wider understanding of the concept of reason acknowledges that at its core lies the idea of *reasonable* questions, arguments, and suggestions. These are ideas embedded in our lives with people. Whether it is reasonable of me to expect those in my vicinity to try to harm me is something I will have to address *in situ*, not *in vitro*” (Lagerspetz 2015, 141). The third person perspective of the *ethical* vulnerability has been supplanted by a personal perspective of what it is reasonable for *me* to doubt or suspect. There is no outside perspective of reason.

The debate over basic trust has revealed a deep divide in the contemporary literature on the nature of trust, one that follows a deeper debate about the status of reason, suspicion and trust. On the one hand, Baier and Bernstein have argued that basic trust is a primordial or innate or natural disposition, but that this type of trust is insufficient and must be overcome and made into a more “mature” trust, which involves inculcating a degree of suspicion and doubt—i.e., trust monitored by reason. On the other hand, Lagerspetz follows many postmodern critics of the rationalist perspective that underwrites Baier’s and Bernstein’s model of entrusting, arguing that trust must only ever remain within the realm of “basic trust,” since it can only ever be a first-person perspective—a question not of reason but of reasonableness, understood as a realm dictated by the social context and not the individual’s own psychological inferences. The debate, in other words, is between reason and reasonableness, the possibility of a meaningful third-person perspective or simply the recognition that there is only the first-person perspective of basic trust.



I argue that this tension can be reconciled by moving to the distinctly *political* context. It is the political context that, as I argue, reveals the need for a trust that does conflate the third and first person perspectives, which means that Lagerspetz's argument for trust as only the first person perspective is incorrect. However, Baier and Bernstein's perspective is not completely saved from Lagerspetz's criticisms—only that, when it comes to political trust, Baier and Bernstein are on firm footing. In other words, and in another place, one could argue that Baier and Bernstein are wrong in their arguments about the nature of basic trust. The point here, however, is that when it comes to political trust—trust in distinctly political contexts—Baier's and Bernstein's notion of “entrusting” fits, but perhaps not when it comes to fully explicating basic trust. This should strike the reader of Baier's work in particular as strange, considering I am arguing that John Locke—a social contract theorist par excellence—shares her conception of the vulnerabilities inherent in political trust; after all, one of Baier's intentions in her canonical piece on trust was to illustrate that precisely the social contract theory covers over the intricacies and subtleties of trust. Be this as it may, I suggest that the way to begin seeing politics as precisely the context where the first and third person perspective conflate is by recognizing that politics is properly the ongoing negotiations about what *is* reasonable—i.e., what counts as paranoia or madness and what does not. This helps illuminate the dynamic relationship between the first and third person perspectives, an interplay that best captures political trust.

Let us turn back to Lagerspetz's example of two diners at a restaurant enjoying possibly poisoned food. As we saw in that original example, the third person perspective was seen as decidedly paranoid: just because there is a possibility out there, does not mean that it is possible for you. The diner who was anxiously pondering whether his food was poisoned did so for no particular reason, other than it is possible that the cook could poison his food—which is to reveal

that the inner-working of the third person perspective is inherently paranoid. For Lagerspetz, the point is that what is reasonable in this case is not *reason*, understood as the third-person perspective, but doubt that is contingent on the context. The context, in other words, grounds the distinction between reasonable/paranoid. Therefore, context-free suspicion is actually a detriment to trust, since it always casts it in a light of suspicious possibilities—even if these possibilities are not in fact the case.

But, if the context shifts, how does this demarcation between paranoid suspicion and trust move with it? Consider the more political context. Lagerspetz gives an alternative scenario, which I will further modify. Imagine that one of the two diners is a journalist working for a newspaper that supports the political opposition to the leader in an autocratic regime. One of the diners expresses the opinion that the food may be poisoned. Is this a reasonable suspicion now? If the reporter voices it, then we could say that perhaps this matches with his first person perspective: it is possible for him to be poisoned by the cook (who could be connected in some way to the autocratic regime). If the reporter expresses this opinion, and if the friend agrees, are they both paranoid? Or are they reasonably aware of the possibility of being poisoned—i.e., it is a possibility for *them*.

But, more interestingly, let us imagine that it is the friend who first brings up the question of poisoned food. On what grounds does the friend bring up the possibility of poisoned food? Not from his first person experience—why would he have to worry about poisoned food? Perhaps he has extended his perspective to his friend’s perspective: he reasonably thinks he journalist friend should be cautious because the food may be poisoned. So, imagine now that the journalist shrugs off the comment, and says that he is not worried—he doesn’t think it is possible that he will be poisoned, “there is nothing to worry about.” On Lagerspetz’s view, the friend should accept the

journalist's assurance, and order his food. But, the friend is perhaps not assured by the reporter's comment, and maybe he thinks the reporter is too trusting or too naïve. Where is the possibility in Lagerspetz's account for naivety? His friend may press the point, saying that it may be possible that the food is poisoned, but he does that by appealing to a third person perspective. Would we say that if the friend pushed the issue that he is being unreasonable? Paranoid? Or, would we think that the political journalist with publicly avowed opposition to an autocratic regime should be more aware and less naïve?

The point here is that, even if we follow Lagerspetz, the standard of reasonableness is not itself immune to the third person perspective—and, indeed, at least in political contexts, may welcome it. There is no ability for Lagerspetz to resist the charge that his concept of trust—by making it wholly a function of the first person perspective—has inoculated basic trust from any suspicion, by making it indistinguishable from naivety.

The debate is now how to navigate between trust and suspicion, and, at least when it comes to the political context, the interplay between trust and suspicion is often covered over. Political trust is the messy interplay between the third and first person perspectives, which means it is a debate about what is *reasonable* to do, and this entails holding both the suspicious perspective of reason and the naïve perspective of basic trust. Too quickly, we hold that trust/suspicion are antithetical, and this is because, from the perspective of a hyper rationalistic perspective (one that can be found in Hobbes' *Leviathan*) reason is the suspicious distrust of others—trust is a vulnerability that is liable to get you killed or taken advantage of in the state of nature; or, from the perspective of basic trust, trust cannot transcend the first person perspective, and reason and suspicion are antithetical third person perspectives. For Locke, Baier, and Bernstein, the simple

dichotomy between suspicion/trust must be overcome before we can properly understand the nature of (liberal) political trust.

I will make more explicit this notion of political trust by focusing on what Locke calls “worldly wisdom” in his *Some Thoughts on Education*, written in the later part of his life. Worldly wisdom is something that Locke cherishes in the child’s education, and it is something that is a *virtue* of the “tutor,” the child’s teacher if the parent is unable to fulfill Locke’s liberal education. Worldly wisdom, Locke says is something that cannot be easily learned—though histories help—but it is indispensable with tempering a child’s liberal education. (Tarcov 1984).

Locke is unusually explicit and longwinded when describing the particular characteristics of the child’s tutor. But, his thoroughness is appreciated, because it is here that Locke is most explicit about the constitutive role suspicion has in creating the proper *type* of trust—the trust befitting a liberal education in freedom. Suspicion—here, understood as the sober recognition that things could be otherwise, that appearances are not what they seem—is *essential* to the child’s education, and the key ingredient in formulating sound judgment.

Besides being well-bred, the *tutor* should know the world well: the ways, the humors, the follies, the cheats, the faults of the age he has fallen into and particularly of the country he lives in. These he should be able to show to his pupil as he finds him capable, teach him skill in men and their manners, pull off the mask which their several callings and pretenses cover them with, and make his pupil discern what lies at the bottom under such appearances that he may not, as inexperienced young men are apt to do if they are unwarned, take one thing for another, judge by the outside, and give himself up to show and the insinuation of a fair carriage or an obliging application; a governor should teach his scholar to guess at and beware of the designs of men he has to do with neither with too much suspicion nor too much confidence, but as the young man is by nature most inclined to either side to rectify him and bend him the other way. He should accustom him to make as much as is possible a true judgment of men by those marks inside, which often shows itself in little things, especially when they are not on parade and upon their guard. He should acquaint him with the true state of the world and dispose him to think no man better or worse, wiser or foolisher, than he really is (Locke 1996, 66-67).

The above suggests that Locke's educational system negotiates how much suspicion one should employ to help the child see "the true state of the world." Clearly, liberal trust is not antithetical to suspicion, but, in fact, the two are intimately connected: the one helps produce the other. The proper *liberal* trust, the true "fence" to our liberty, is produced through negotiating suspicion and trust—not excluding the one for the other.

In this section, we can clearly see that Locke is fully aware that a proper liberal education is one that requires a considerable degree of suspicion—both of others' intentions and of our own. Suspicion is the worldly wisdom that we have fallen into a world where we must pull the masks off the pretenses and feigned designs of others, who often hide behind false claims of trust and expertise, in order to arrive at a clear judgment about the bottom of their intentions—to have the proper disposition of confidence or suspicion toward the other. Locke is also clear that, usually, children have a natural tendency to trust, which makes suspicion all the more pressing. This worldly wisdom is, to borrow a contemporary term, the "third person perspective" of skepticism, reason, or suspicion. It is the standing order to always have a critical distance—not to necessarily distrust, but to properly trust. It is because suspicion and trust are so important to Lockean liberal constitutionalism that worldly wisdom gets such extended treatment. Liberal constitutionalism requires a suspicious trust, and this is something that must be at the core of our education to jostle us out of our natural tendencies to trust, which are residues from the familial or basic trust.

## CONCLUSION

Political trust is complicated, and it is difficult to define. This is unfortunate because it presents an added layer of difficulty for liberal constitutionalism, since liberal constitutionalism rests on securing and maintaining political trust. As I have shown in this chapter, the trust that underwrites liberal constitutionalism is not any type of trust, but a trust of a particular kind: a

rational or suspicious trust. This is the type of trust that Locke sets at the center of his politics. Not only is this understanding of political trust itself particularly novel in terms of contemporary understandings of the philosophy of trust, but Locke's understanding of trust is a product of measured reflection on the types of trust that fail to be suitable grounds for a liberal politics—the radical distrust of Hobbesian rationalism, and the affective and familial basic trust of Filmer. These two types of trust are still present today, though perhaps more sophisticated. However, as I have shown, Locke helps see past these alternative types of trust, and sets out to outline the type of trust he does rely on for his liberal constitutionalism.

Liberal political trust is a suspicious or rational trust. Suspicion and reason are intertwined with one another because they emerge in the third person perspective. This third person perspective cannot be automatically assumed from the beginning—as it does in Hobbes' liberal absolutism—because then it would amount to a type of trust that would make it reasonable to submit to any institutional arrangement that would make long term cooperation possible, even if this meant signing up for an absolutist regime (in fact, absolutism is the only regime that is capable of securing such reliability in the face of the chaos of radical suspicion, Hobbes would point out). So, Locke's trust must not go that far. But it must still differentiate itself from the more affective and familial trust—basic trust. Here the danger is that the first person perspective, while helpful in curtailing radical third person perspective suspicion, it cannot be simply a willful ignorance or naivety, as it essentially is. Here, too, absolutism is likely, since the community—the social context—governs almost completely in the first person perspective. Without critical psychological distance, there is no “individual” and the good will of the sovereign (father) is rarely if ever doubted. So, here again, Locke's political trust must not go that far. So, Locke's political trust is somewhere in between—a very tenuous position, indeed.

It may strike one as odd to see the importance of suspicion given that Locke's politics has famously been called "the politics of trust" (Dunn 1988). I am still arguing that Locke's politics *is* a politics of trust, but that the trust as Locke understands it is one of suspicion, too. The theme of suspicion, in fact, is not a theme alien to Locke—though it has not properly characterized his politics: Locke's epistemological and psychological writings are very suspicious. Since Locke denies innate knowledge, and, in fact, recognizes that most knowledge claims are opinions often inherited and taken on trust, the proper posture we should have toward our own understanding *is skeptical suspicion*. In fact, claims of knowledge are often the most impressive way to gain political control, since Locke both recognizes that our understanding needs to be carefully cultivated *and* that trust is the basis of much of our knowledge. Locke is a very suspicious person.

It should be odd, then, that scholars who have reached to Locke's epistemological writings to help illuminate his liberal politics have not elevated the important role suspicion plays in his politics of trust (Nacol 2011). In this section, by way of conclusion, I want to outline briefly a set of political consequences for liberal constitutionalism that I draw from my long discussion of the nature of trust.

First, the fact of vulnerability and uncertainty cannot be denied: political life takes place in a world of flux (ST 157, Conduct 30). This is an *ontological* fact—a first principle about the nature of the world, and something that is central to Locke's political thinking. Without this foundational claim, Lockean liberalism would be either irrelevant or insufficient—what good is trust in a world of certainty? In other words, because the world is in flux, trust is the most important political bond in society. Trust is the key political relationship. However simple this sounds, as I show in another chapter, it is precisely this political ontology which is denied by the paradigm of contemporary liberalism, and it is the road that contemporary critics of liberalism are happy to frequently travel.

The main point I want to make here, however is this: since the world is in motion, since it is in flux, true knowledge—certainty—is not available to us, so we must fundamentally trust each other, and, given that we are in political society, we have no choice but to be in a trust relationship with political power—the power over life and death (ST 159). The importance of trust—the interpretive relationship between what it is reasonable for the people and the sovereign to do—diminishes proportionately the importance of institutions, the rule of law, as a thing that can effectively govern. This is not to say that institutions are worthless, but that their value lies in precisely maintaining and encouraging the proper trust relationship—not in overcoming the need for trust, which could only lead to disaster. There must always be political trust between the people and the sovereign—understood as precisely the person entrusted with the political power, that has the authority to correct or go against the laws where flux has rendered them incapable of fulfilling the end of society (ST 159). By placing trust at the center of liberal constitutionalism, Locke has, paradoxically it may seem, pushed our focus away from institutionalism and toward the political culture and psychological features of the people. At the center of liberal constitutionalism, then, is not a gold equation of institutional constraint, but the interpretive relationship between the people and the prerogative—a judgment of trust.

Second, Locke's politics of trust not only is one of ontological flux, but it is one of ethical vulnerability—the recognition of the possibility of betrayal cannot be denied. The possibility of betrayal is the key difference between the first and third person perspectives, as we saw in the sections on Lagerspetz and Baier and Bernstein. Locke recognizes that the distinction between suspicion and trust, or paranoid and reasonable, is an ongoing *negotiation*. This open-endedness is something that also follows from Locke's ontological flux. For Locke, cultivating third person suspicion is particularly important given the natural tendency for the people to think in the first



person—i.e., naively about their relationship to political power. The line between sanity/madness is not stagnant nor is it determined in nature—it is a specific social construct that reflects a specific social context. This cannot be denied. However, the question of what it is reasonable to believe is one that must always remain open. Of course, practically speaking, decisions made will always (albeit temporarily) close the question of what is and what is not reasonable, but it would be wrong to say that this is a function of anything other than an expression of power. Trust further emphasizes that the answer to what is reasonable cannot simply be drawn from the legal, but that it is at least always in some way an expression of the social—the shared horizon, individually interpreted at times (Grant 2012). As Grant points out, Locke is especially aware of the power of “custom” or the social in guiding our lives—contrary to our capacity to reason (2012). Indeed, the real tension within Locke’s political thought is how the power of the social or reputation can be sufficiently overcome such that we *can* exercise our rationality, which inevitably goes against custom. As Grant says,

The power of reputation remains unchanged: social disapproval is a powerful force in suppressing belief and behavior even when its target is irrational belief and behavior. Or consider the problematic transition from childhood to adulthood. Children begin by submitting to the authority of their parents, but they must later become adults who can govern themselves according to reason. As children, we develop habits of submission. We acquire opinions and beliefs initially through implicit faith in our parents and often unselfconsciously. ... How do such docile children gain the independence necessary to question their parents’ beliefs or to challenge prevailing fashions when they become adults? (2012, 625).

The center of Locke’s teaching is on negotiating the boundary between rationality and reasonableness—between the first and third person perspectives. But, the third person perspective is a hard won victory, and it is perhaps bittersweet. The social is a world of customs that must be moved and negotiated, and it is a world where the rational may look like the “paranoid.” But, one thing is for certain, what Locke is constantly belittling is the legal, which is the realm of the municipal laws— “the fantasies and intricate contrivances of men, following contrary and hidden

interests put into words” (ST 12). This is why Locke will put the public good as the new focus of the individual while in civil society, and, as we shall see, that the power of the “busie head” is precisely that he connects the individual injustices into a larger fabric that comes to be a reflection not of the individual but of the “people.” Again, this does not mean that the social and the legal are always opposed to one another, but merely that the political line of what is reasonable is a question ultimately decided by political power—either the one authorized to the sovereign, or the one exercised by the people. This is to take place largely in the social, where the question will always be one of a shared negotiation between first and third person perspectives.

Third, aside from the ontology of flux and the importance of the social over the legal, Locke’s notion of political trust demands that the relationship of liberalism and fear be reevaluated. As I have already indicated, there is a simple view that trust/suspicion is a diametrically opposed dichotomy. This Locke rejects. The third person perspective that prioritizes the potential possibility of vulnerability and betrayal cannot but be viewed as “paranoid” and dismissed by the basic trust, first person perspective. If you think fear is ultimately tied to a suspicion that something is always possible, then fear, suspicion, and reason all would be rejected from the basic trust perspective. But, this just further tightens the point that fear (like reason and suspicion) is central to the ethical basis of liberal constitutionalism—both the anxious security of individual rights and the tempered trust that must occasionally be relied upon in contests between the people and the sovereign rely on fear not being seen as “unreasonable.” The uneasiness, anxiety, and fear of the liberal subject, far from being a weakness to liberal constitutionalism is in fact its ground (Mehta 1992; Terchek 1997). The constitutive role of suspicion in a mature trust is through an education in fear and anxiety or uneasiness.

As I will argue in the final chapter, though the groundwork here is substantial, liberal constitutionalism (typically called a “liberalism of rights”) is predicated on—and therefore not mutually exclusive from—a liberalism of fear. In other words, Lockean liberalism is not a product of rational deductions from an innate “law of Reason,” but inferences from historical and contingent empirical facts about the human condition—particularly moments of betrayal. These moments of betrayal, for Locke, not only suggest that politics is ultimately about trust but that this trust is always already something that human beings strive for as social creatures. The developmental story of moving from childhood to adulthood, from a familial trust to a mature trust, is repeated by Locke in the political history of mankind—from father-monarchs to a republic of brothers. The sociality of human beings—that betrayal is a feeling for us—suggests that trust is more than mere reliance, and therefore that the state of nature is not simply a state of war because we do have a certain sociality in us. The developmental story, then, is not merely an added rhetorical device, but the core of Locke’s liberal constitutionalism. It is the only way that he can genuinely hold a type of political trust that rests between familial basic trust and Hobbesian rationalist distrust. Fear, then, plays an instrumental role in the beginning of development—for both society and the individual—in moving out of basic trust and into a more mature trust, monitored by reason. Where there is no fear, there is no constitutionalism.

Finally, the discussion of trust and suspicion in liberal constitutionalism highlights two aspects—the inherent danger at the center of liberal constitutionalism, and the new role of statesmanship in correcting and monitoring this danger. First, the danger uniquely facing liberal constitutionalism is the precariousness of the political trust relationship as a judicious mixture of (basic) trust and (rational) suspicion. This mixture is the key ingredient of liberal constitutionalism, but it is also its rarest and most fragile. As I will show in another chapter, contemporary liberal

theory often ignores trust altogether—and where it does mention it, it is of the Hobbesian kind. It ignores trust because, ultimately, it denies the ontological fact of trust: flux. By denying flux, trust seems to be an afterthought of institutionalism—a momentary lapse in institutional efficacy reveals the importance of trust. Trust is radically undertheorized and underspecified in liberal theory. This is surprising considering the emphasis Locke places on trust (and suspicion) in grounding his liberal constitutionalism. The failure to adequately account for trust is a (valid) weakness in liberal theory today, and it is one that is continuously poked by critics of liberalism. So, the first problem facing liberal theory today is that it does not recognize that it has a problem with trust. I show in the next chapter that it does.

The second aspect that this discussion of the trust relationship in Locke's liberal constitutionalism illuminates builds off the first: once we recognize the problem of trust, we must then outline ways to promote, cultivate, and activate it (when necessary). This means that there is a central role for judgment in liberal constitutionalism, and with judgment comes an expanded role for statesmanship. Since politics is not about knowledge, it must rely on judgment (and opinion), and more precisely liberal constitutional politics rests on judgments of liberal democratic statesmen who properly understand the dangers facing liberal constitutionalism. This statesmanship does not seek the great politics of old (Kautz 1995), but it must still produce collective identities—particularly that of the “people” and the “public good.” This statesmanship, moreover, must not shy away from producing anxiety or uneasiness, suspicion, or fear in the people—because, often this is the only remedy to their natural tendency to trust too much and too quickly. Obviously, there will always be a possibility of too much suspicion or fear or anxiety, but my argument is that suspicion, fear, and anxiety must nevertheless not only be present in a *healthy* liberal constitutional political culture, but that it may be the job of liberal democratic statesmen to

artificially instill it (Kautz 1995; Tarcov 1981). As I will argue in the last chapter of this dissertation, the proper liberal subject—one keenly aware of the precariousness of liberal trust, and capable of doing something about it—is what Locke calls the “busie head.” The busie head is the liberal guide for an often too-trusting public.

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<sup>1</sup> My discussion of political trust will revolve around normative political philosophy. For a range of views in empirical political science and sociology, see Hetherington 1998, 2004; Warren 1999.

<sup>2</sup> In particular, Dunn defines political trust—which he thinks Locke is the first modern to fully appreciate, in the following terms: “Because in politics the most fundamental question is always that of what particular human beings have good reason to *do*, and because what they do have good reason to do depends directly and profoundly on how far they can and should trust and rely on one another, I take the central issue in political philosophy (properly so called) to be that of how to conceive of the rationality of trust in relation to the causal field of politics” (Dunn 1988, 279).

<sup>3</sup> This is a very simple presentation of the common “game theory” collective action problem, which I will discuss in more detail in this chapter.

<sup>4</sup> As Lagerspetz notes, trust-as-reliance is an important aspect of trust since it provides a realm of predictability—even if it is drawn from ascribed or earned trust (2015). However, reliability is valuable to individuals (and society) insofar that it provides certainty, which makes it valuable only instrumentally. On this view of trust-as-reliability, the value of trust is that it produces a level of epistemic predictability. The world needs a certain level of predictability, and, certainly as an individual, being able to fulfill one’s life-plan requires knowing the likelihood of certain events occurring. Though trust-as-reliability can be understood as Harré explained, both a product of ascribed or earned trust, there is a sense that Lagerspetz is right that reliability is ultimately tied to *a posteriori*, inductive or earned trust. Reliability is important epistemically—as a background condition for individuals to have a certain level of consistency, predictability, and expectation regarding some event of interest. From this perspective, without even this level of reliability, I have nothing: I cannot even reasonably derive meaning from empirical regularities. On the political level, as we shall see, in a world where such uncertainty exists, I may well trust in another precisely because they promise to make the trains run on time—i.e. to make the world intelligible in terms of instrumental predictability.

<sup>5</sup> Of course, one immediate response to this is that if the sovereign is so bad at his job of maintaining peace that his people are no longer secure, then he has lost the only right to govern that he held: protection. The failure to keep people secure is the common good that the sovereign—even the absolute and the arbitrary—ought to pursue. How these absolute and arbitrary sovereigns go about securing the people is left unsaid, which makes this liberal absolutist argument either negligent in not revealing its own moral commitments or it is completely amoral in allowing any means justify the one end of security.

<sup>6</sup> Though, it should be noted that he does depart somewhat from this cold instrumental reason in his *Letter on Toleration*, written just after the *Two Tracts*—but well before the *Two Treatises*. According to Dunn, in the *Letter on Toleration*, Locke softens the finality of the decision to forfeit power to an absolute sovereign, and will eventually soften the scope of the sovereign’s discretionary power, too. The private life of the subject is, in other words, elevated to counteract or constrain the sovereign power, if only minimally. Locke protects the private life of the subject on two grounds. First, that the end of political power is not concerned with the content of private life choices, but simply public actions. Theologically, Locke now admits that the salvation of the soul is a relationship between the individual and the deity, and is not nor could it be, the end of the sovereign’s political power. Second, building off of this first reason, Locke argues that the end of political power does not extend to the private sphere completely because, in a non-trivial way, it is impossible to command belief. Locke recognizes that on the one hand, theological doctrine (precisely the Protestantism he will vigorously defend in later life) is an intimate relationship between believer and God, which makes the sovereign powerless here; and, on the other hand, psychologically the sovereign cannot command belief, which makes the realm of what to believe something that escapes the sovereign’s naked decrees. It should be noted, though, that even though Locke softens certain aspects of his early absolutism, it is nevertheless an absolutism: political power is discretionary power. Locke does note though, that the *end* of power can provide a constraint to power—i.e., power is limited by its rightful end. This will be the avenue he capitalizes on in the *Two Treatises*. Dunn is quick to point out that, at least in this early stage of Locke’s political thinking, the trust relationship of Hobbesian reliance necessarily limits the sovereign’s ability to infringe within the private lives of the subjects, but does not limit political power as being anything but the discretionary whim of the sovereign.

<sup>7</sup> The move to voices, while intended largely metaphorically, nevertheless does suggest that political power and the power to speak or “name” are closely linked. I pick up this thread in later chapters, particularly in chapters 3 and 4. I also refer the reader to Philip Pettit’s (2009) book on Hobbes and his philosophy of language, where he makes the connection between political power and voice explicit, and argues that Hobbes (and I will say Locke, too) *did* imagine the state of nature as something like a cacophony that needed a maestro to direct the plurality of voices.

<sup>8</sup> Though, of course, later in the *Second Treatise* Locke does indicate that the state of nature does involve more than mere inconveniences.

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<sup>9</sup> That Locke and Hobbes are identical, and that Locke is simply more willing to water-down Hobbes' absolutism, is a view argued for by Strauss (1953).

<sup>10</sup> As we shall see in the last chapter of this dissertation, Locke says that the only legitimate regime is the one based on right and not through de facto possession of the throne, or through divine right (which is the same as holding the throne de facto). The legitimacy of the regime is located in the simple yet powerful assertion that it remain *alterable* by the people, which is expressly denied in both divine right and the logic of the *Leviathan*. This is certainly a tall order for legitimacy, see Waldron 1989.

<sup>11</sup> Locke, Essay. I quote it by book, chapter, paragraph.

<sup>12</sup> "The great moral theorists in our tradition not only are all men, they are mostly men who had minimal adult dealings with (and so were then minimally influenced by) women. With a few significant exceptions (Hume, Hegel, J. S. Mill, Sidgwick, and maybe Bradley) they were a collection of gays, clerics, misogynists, and puritan bachelors. It should not surprise us, then, that particularly in the modern period they managed to relegate to the mental background the web of trust tying most moral agents to one another, and to focus their philosophical attention so single-mindedly on cool, distanced relations between more or less free and equal adult strangers, say, the members of an all-male club, with membership rules and rules for dealing with rule breakers and where the form of cooperation was restricted to ensuring that each member could read his *Times* in peace and have no one step on his gouty toes" (Baier 1984, 247-248). Since Baier explicitly mentions Locke throughout the paper, certainly he is included in this batch of great modern moral philosophers on trust. While I cannot make much of the others so accused, my project is explicitly to rescue Locke from the charge that he was solely concerned with trust as she has so described it. Locke's personal history may well damn him, but his philosophical writings may redeem him yet.

<sup>13</sup> Of course, if Locke's position is in fact a blend of the two aspects of trust here discussed, then it will look like both a reliance trust in constraining the actions of others for the sake of the individual, but, so, too, it will look like an affective community of individuals who are reliable and constrained because they have a deeper commitment to the care of both themselves and others.

## CHAPTER 2: CONTEMPORARY LIBERALISM AND THE PROBLEM OF ONTOLOGY

I have spoken of the paradoxical relation of suspicion and trust at the heart of Locke's theory of liberal constitutionalism. Let us leave aside the particular notion of trust for now. Instead, let us focus on the more compelling "realist" critique of liberalism today. For some, liberal democracy rests on yet another paradox that seems to be a contradiction in need of resolution into one of its two constituent parts: liberalism and democracy. This argument is put forward forcefully by Carl Schmitt, who puts individualistic *distrust* at the center of liberalism and communal or basic *trust* at the heart of democracy.<sup>1</sup> Liberalism is distrustful and always necessarily in tension with and seeks to eradicate the trustful democratic elements. There is nothing more dangerous in the liberal's eyes than the passionate masses being riled from their apathetic slumber—trust among the people can only lead to disaster. It is a fundamental distrust that drives liberalism in constructing the frustrating mechanisms of parliament. Democracy also pushes against liberalism, by proclaiming a fundamental identity—a basic trust between every member of society—it is the *vox populi*, which wants to be the basis of government. Popular sovereignty is dangerous for liberalism. Liberalism defends the individual, while democracy champions the community.

We have moved quickly from a concern for trust directly (which I will recover in the next chapter), and now moved to the realm of "ontology," or what is really "there" and what should be given priority. The ontological differences between liberalism and democracy map on nicely with the distinction that Locke draws between competing notions of trust—Schmitt's liberalism is that of a trust-as-mere-reliance, which has its basis in power, its archetype being the master/servant relation; while Schmitt's vision of democracy is that of basic trust, where the community or the family reorders the individual not as an individual but as a member, which is to take the archetype



of the political relation as that of parent/child. For Locke, both of these themselves are incapable of being the proper political relationship, and, if these alternative relationships are ultimately tied to competing notions of “ontology,” then we should rightfully demand: what is the ontological ground for Locke’s political relation of magistrate/subject? In order to properly see this answer, however, we must first carefully examine the ontological grounds that give rise to the un-Lockean alternatives.

The following chapter is divided up into three parts. In the first part, I outline Schmitt’s presentation of the contradiction between liberalism and democracy. Schmitt’s perspective is not explicitly about trust but “ontology,” which is simply the perspective of what is *real*. For Schmitt, liberalism denies what is real or necessary. This focus on ontology is helpful for my purposes because in the previous chapter I outlined how Locke’s notion of mature trust rests on a fundamental ontology of “flux.” The ontology of flux is akin to what Schmitt will call the “political.” Schmitt’s criticism of liberal democracy is that one component is “political” (democracy) whereas the other is anti-political (liberalism). For Schmitt, the political is a particular relationship between us/them, and this identity grounds the state and gives substance to the nation—to a democracy. For Schmitt, democracy must be homogenous, which would be like a community that is defined by basic trust. The political critique is then a democratic critique of liberalism because liberalism is distrustful—it denies the us/them identity. In this section, the point is clear: Schmitt argues that the paradox of liberal-democracy is actually a pressing contradiction in terms that demands a resolution. From this Schmittian perspective, liberal-democracy is impossible.

Before turning to Locke’s defense of liberal constitutionalism (in the next chapter), I will present two other liberal responses to Schmitt’s presentation of liberal democracy here. In part 2,

I outline the work of John Rawls. Rawls explicitly set out to address the tension between liberal and democracy that Schmitt outlines by giving a robust theory of liberalism. Rawls' hope is that he has convinced others that liberal democracy is not only viable but morally just. In this part, I also outline the alternative liberal perspective of Pierre Manent, who sets out to address the tension between liberalism and democracy—assuming, as Schmitt does, that the march of democracy has made liberalism seem questionable. In outlining these two perspectives, I show that Rawls' liberalism collapses into a liberal absolutism and culminates in a sense of trust as that of mere reliance—like slaves to a master, or passengers to a captain. Rawls, insofar as he is able to respond to Schmitt, saves liberalism only by radically denying democracy. I also show how Manent is actually a radical democrat who rejects liberalism, and therefore falls into a view of trust as basic trust—a homogenous community of members. Having drawn out the absolutist consequences of failing to properly understand the importance of a particular sense of trust, these liberals have failed to defend liberal democracy from Schmitt's critique.

In the third part of this chapter, I outline a “post-foundationalist” defense of liberal democracy that does seemingly engage and correct Schmitt's ontological or political critique of liberalism. This is the “agonistic” model, as put forward by neo-Marxist philosophers Chantal Mouffe and Ernesto Laclau. In this section of the chapter, I work through their concepts of hegemony, populism, and agonism, and argue that they are successful in warding off Schmitt's criticisms. However, at the conclusion of this chapter, I raise the question: while it is clear that most contemporary liberalism is incapable of responding to the Schmittian criticism, can classical liberalism respond to the ontological challenge? If so, does it follow the “post-foundationalism” of Mouffe and Laclau? To address these questions, I turn to the thought of John Locke, who has—as we have seen in the previous chapter—something to say about an “ontology of flux.” The

exploration of Locke's thought will be in the next chapter; this chapter's goal is to outline some of the major strands of the contemporary literature on liberal theory, and motivate the ontological critique of contemporary liberalism.

## SCHMITT'S CRITIQUE OF LIBERAL DEMOCRACY

Carl Schmitt was the self-proclaimed jurist of the Nazi regime, joining the party in 1933 when Hitler officially dissolved the Weimar Republic. Aside from his dubious political opportunism, Schmitt was a decisive, almost surgical critic of liberal-democracy. I turn to Schmitt because his legacy has effectively shaped contemporary debates about contemporary liberalism—on both the ideological right and the left. Therefore, in order to gain some clarity about the soundness of these critiques, we must turn to their intellectual origins in Schmitt's work.

In the following section, I will outline his critique of liberalism, drawing from two of his most famous works: *The Concept of the Political* and *The Crisis of Parliamentary Democracy*.<sup>2</sup> In turning to Schmitt's work, I will attempt to do two things. First, I want to make clear Schmitt's critique of liberal democracy; second, I will address the soundness of this criticism by recasting it in terms of political trust between the people and the government. As I will show below, Schmitt's criticism of liberal democracy is that it seemingly oscillates between two mutually exclusive poles: on the one hand, liberalism argues for a trust as reliance—given that we should distrust others—while democracy argues for a more affective, basic trust of the community—since we should understand ourselves as an “us” versus “them.” Schmitt's critique is that liberal democracy has seemingly two separate and mutually exclusive aims. As I will address in the next chapter, getting clear on the type of trust relationship that liberal democracy or liberal constitutionalism demands is important both in order to defend it and to properly critique it.

Carl Schmitt draws heavily from the work of Thomas Hobbes.<sup>3</sup> Indeed, Schmitt often understood himself as the 21<sup>st</sup> century Hobbes, as he was the champion of the “realist” political perspective.<sup>4</sup> This realist perspective can best be summed up as “political.” For Schmitt, the “political” is a particular type of concept—one independent of other domains like aesthetics, religion, morality, ethics, and economics. The political is the existential antagonism between friend and enemy (Concept of the Political, [CP] 26). These other domains of ethics and economics and the like may well participate in achieving existential antagonism between friend and enemy, but this would mean that these domains have become political. The religious, for example, can become political when the difference between those of the ‘divine’ community and those of the ‘sinful’ community become the basis of war and conflict. For Schmitt, this marks the political as a realm distinctly of potential or actual conflict (CP 33).

Schmitt famously argued that the concept of the state presupposes the concept of the political.<sup>5</sup> Understood properly, the basis of the state rests on the political, which is not one of many associations but the superior domain—the domain of life and death, of friend and enemy. The fact of conflict or the always real possibility of war indicates the presence of the political, which in turn entails the priority of the state as the thing that operates wholly within the political domain. Where there is no possibility for conflict, there is no need or possibility for the state. The state unifies the people along the lines of friend/enemy or us/them (CP 46), and so without the state there is no “people.” The priority of the political and the elevation of the state is achieved only by deflating the “legal,” since the legal is a realm of stability that necessarily denies instability, flux, and conflict (CP 46). Where there is conflict, where the political is brought to the fore, the legal is silent. The political views the law, then, only as command, which Schmitt takes from Hobbes’s *Leviathan*: the basis of the law is the decision of the sovereign that the law should

apply, which is to say that the basis of the law is an authority outside of itself—the political.

Schmitt is drawing directly from Hobbes:

And first, it is manifest that law in general is not counsel, but command; nor a command of any man to any man, but only of him whose command is addressed to one formerly obliged to obey him (*Leviathan*, 26.2).<sup>6</sup>

The law, then, is ultimately derived not from truth but from authority—*auctoritas non veritas*.<sup>7</sup>

The fact of conflict, of the political, makes the justification of the state one of protection which demands obedience (CP 52). The relationship between the sovereign and the law is command, and the relationship between sovereign and subject is protection and obedience.

For Schmitt, the state must be strong, and it must be univocal: the commands of the sovereign must be obeyed, as dissent is dangerous because it challenges the ability for the state to adequately respond to the fact of the political—to respond to the existential threat of one's enemies. For Schmitt, the political and realist perspective holds the view that all individuals are understood as “evil” (CP 58). This is the core of Schmitt's “realism” (CP 65): people are evil, cannot be trusted, and are weak. This grounds his view of the ontological fact of the political: we will always be thrown into a world where conflict is a live possibility because of the pluralism and cacophony of voices that claim power. For Schmitt, the political is a necessary opposition and antagonism between friend and enemy. But, it is precisely this that is denied when one claims the possibility of a global, moral community—a “humanity” (CP 54). Humanity can have no “other,” which makes it inherently apolitical. We can all just get along; we are not “evil.” Moreover, for Schmitt, the concept of a moral community that escapes the political cannot be the basis of the state, since the state presupposes the political distinctions between us/them, friend/enemy. The state demands exclusion, but the concept of humanity denies it. A political thought based on the concept of a moral human community that transcends the boundaries of the political is not, Schmitt would say,

“political.” As Schmitt makes clear in his book, *Crisis of Parliamentary Democracy*, apolitical thinking is not without dire consequences.

Schmitt’s concept of the political—the constitutive exclusionary distinction between friend/enemy—is consciously drawn from the “realist” perspective of Hobbes, who himself rejected constitutionalism and argued famously for an absolutism.<sup>8</sup> Insofar as Schmitt follows Hobbes, we should expect Schmitt to do the same. For Hobbes, the pluralism of religious sects and creeds had radically destabilized Europe, and plunged England into a civil war. Pluralism, for Hobbes, was a fact that must be admitted as always possible but nevertheless overcome. It is overcome by establishing a univocal sovereign who is absolute because any limitations to his authority would constrain his ability to meet the existential threats that potentially face us at all times. Again, protection demands obligation, so, insofar as the individual can be protected better under the sovereign than alone in the radical pluralism of a “state of nature” which is a “state of war,” the individual owes the sovereign total obedience. It is only with the establishment of an absolute sovereign that can guarantee protection.<sup>9</sup>

Schmitt recognizes that the political fact of always possible conflict has not been overcome, and is a part of the human condition. To his horror, then, he sees this pluralism embraced. Embracing pluralism is only weakening the political, because embracing pluralism is only possible in the denial of that pluralism as irreconcilable. This denial is only possible if one has either become ignorant of the state of the world, or if one has been educated into a system of politics that denies the fact of the political. For Schmitt, the latter is the doctrine of “liberalism,” and it is this that he wants to dismiss and replace.

Schmitt is often cast as illiberal and at times as a “democrat.”<sup>10</sup> His illiberalism is easy to understand, given that he sees liberalism as a vampire of the political, but his “democratic”

character must be carefully understood. For Schmitt, remember, the concept of the state is tied to the concept of the political (us/them), which entails a “people,” an “us” (CP 19). The friend/enemy distinction is the most important relation to a people. As Schmitt says, “every actual democracy rests in the principle that not only are equals equal but that unequals will not be treated equally. Democracy requires therefore, first homogeneity and second—if the need arises—elimination or eradication of heterogeneity” (*Crisis of Parliamentary Democracy*, [CPD] 9). Democracy rests on the political, if one understands that one should treat friends equally and enemies unequally. So, for Schmitt, there is a tight equivalence between democracy and the political: they both are constituted mutually by the other. When Schmitt defends the “political,” then, we can say he is also defending “democracy.” Indeed, if we return to the deflation of the law entailed by the political, we can see the “political” clearly in a democracy. At the center of democracy is the notion of “popular sovereignty,” which means to equate the will of the people—the will of friends, of the “us”—with the law, or the animating principles of justice within the state. The law is the *command* of the people. Democracy is inherently political.

Now that we have a better grasp of Schmitt’s democratic leanings, we can now anchor his interpretation of liberal democracy. For Schmitt, liberal democracy is a contradiction in terms: liberalism denies the political, while democracy necessarily affirms and is constituted by the political, so liberalism denies democracy (and democracy conversely denies liberalism) (CPD 2-3). How is liberalism apolitical or anti-democratic? For Schmitt, liberalism is a “metaphysical system” that is anchored by the notion of “humanity.” Liberalism for Schmitt is a “consistent, comprehensive, metaphysical system” that posits a particular relationship to the “truth,” which is guaranteed through a particular set of principles and procedures of checks and balances, openness, and discussion. These are the key principles of liberalism: openness and discussion, which Schmitt

says is only to be bought at the expense of denying the inevitability of decision—liberalism is the “eternal competition of opinions.” These principles are all guided by the singular notion that the differences between individuals can be overcome in the final recognition of the “truth.” All of these principles produce an institutional system of mechanical procedures of checks and balances and the separation of powers, the rule of law, and individualism. For Schmitt, all of these are premised on the metaphysical system that fundamentally denies the ontological fact of flux or the political—it rests on the perspective of a universal moral community, a “humanity.”

The “liberal rationalism” that underwrites political liberalism must be rejected as dangerous and obsolete. Historically, Schmitt says, the march of equality has revealed the connection between liberalism and democracy to be contingent and ultimately an unnecessary one: democracy and liberalism were able to form a political friendship in opposition to monarchical absolutism, but with the death of the enemy the relationship dissolves (CPD 17, 23). Theoretically, liberalism and democracy are even more antagonistic to one another: democracy relies on a people, politically constituted against others, while liberalism must admit a moral community that does not draw the antagonistic political boundaries (CPD 10-11). Insofar as liberalism denies the distinctions between peoples, it denies the political. For Schmitt, this denial is not an actual achievement of a particularly heroically impossible deed, but an achievement of self-forgetting: “Liberalism ... has attempted to transform the enemy from the viewpoint of economics into a competitor and from the intellectual point into a debating adversary” (CP 28). The ignorance of the political is self-imposed: we have denied the independence of the political domain, hoping to sublimate it into one of the others—ethics or economics. Liberalism is simply a displacement of the political. This displacement can only be done or hoped successful if the individual is understood as a plurality of identities instead of one political *identification* (CPD 40-41, 44). In



other words, the only way that liberalism can succeed is if it attempts to reconstitute the human being as one that is no longer a member of a community—a people—but a member of a cosmopolitan community that transcends all communities (CPD 44).

This all leads to a certain notion of trust. The liberal individual is a metaphysical construct, and this individual is held by liberalism to take precedence over any other particular political identification. Only in this way can liberalism hope to neutralize the political—displacing it into other domains, denying the precedence or priority of the political identification for the individual’s “self” concept, and in rendering the state one of many associations. Liberal rationalism holds that the individual is the “*terminus a quo*” and the “*terminus ad quem*,” which is to say the beginning and the end of political life (CPD 70). The liberal individual is too “distrustful” of sovereign power, which makes the principles of openness and discussion primary: to reveal and possibly resist political power. And, not only are these liberal individuals distrustful, but liberalism holds that individuals can act against the state—the individual can retract consent when it no longer “entrusts” the government with the power over life and death (CPD 71). Since the people hold themselves as the beginning and the end, the only way they can believe that they can be protected without a sovereign power with sufficient (read: absolute) political power is to deny *a priori* that there is flux or conflict in the reality of the world. Put another way, in the spirit of Schmitt’s Hobbesianism, the liberal denies that life outside of the state would be nasty, brutish, and short. This faith in the apolitical nature of the world is naïve and dangerous, Schmitt says, since it denies the historical fact that “only a weak people will disappear” (CPD 78, 53).

Schmitt’s challenge to liberalism is clear: find a new intellectual foundation—one that does not involve a naïve political rationalism that denies the “political”—or fall to the march of democracy, be it fascism or communism. Schmitt does not believe that such an intellectual

enterprise is possible, and so liberalism must be discarded. We live in the world where individuals are now coming to understand themselves *as* peoples and not as one among humanity.

## CONTEMPORARY LIBERALISM—RAWLS

The political thought of John Rawls needs no introduction: his work has defined the field of mainstream political philosophy for over 40 years.<sup>11</sup> In this section, I will not attempt to summarize the expansive literature that has combed over every aspect of Rawls' thought, nor will I attempt to present the equally expansive critiques of his thought, penned by communitarians, republicans, anarchists, and libertarians.<sup>12</sup> I will refer to secondary sources where appropriate for my focused needs, as the circumstances arise. My particular focus will be in Rawls' response to Schmitt's challenge to ground liberalism on something other than liberal rationalism. To this end, I will focus on two aspects of Rawls' thought as it comes out in *A Theory of Justice* and *Political Liberalism*: his metaphysical individualism and his notion of "reasonable pluralism." These two broader concepts are indicative of his "ideal theory" perspective. I will outline each of these concepts broadly speaking in sections 2.1 and 2.2, respectively.

In the conclusion of this section (2.3), I argue that Rawls fails to address the political critique of liberal democracy that he set out to do. I conclude that Rawls' conception of liberalism therefore not only rightly is criticized for being radically apolitical, and therefore naïve and potentially dangerous (which I draw out in detail below), but he should be criticized even by liberals, too. Rawls' liberalism is a liberal absolutism, which makes no room for liberal constitutionalism—which, I have argued rests on viable and meaningful contestation. Rawls' ideal theory of justice amounts to a defense of stability first and foremost, and this itself has radical consequences for political life. For Rawls, stability is guaranteed by making justice a moral concern. This moralizing of politics makes dissent and contest not only a moral battle (one between

good and evil) but it denies, at the crucial moment, even the right to contestation in the name of justice itself. Moreover, Rawls' moral political justice also denies in the last instance a meaningful pluralism that gives rise to liberalism in the first place. As we shall see, these contradictions and troubling consequences need not bury liberalism—contrary to the claims of Schmitt and other radical illiberals—but only extend to the type of ideal liberalism that Rawls puts forward. This ideal type of liberalism, Rawls himself admits, is an attempt to overcome a messier, more political liberalism—that of Locke's liberal constitutionalism (a *modus vivendi* liberalism), which I will expound in the next chapter.

Before turning to some particular aspects of Rawls' political liberalism, it may seem out of place to make Rawls speak to Schmitt's particular criticisms of liberal democracy. Perhaps Rawls was not animated by the radical political critique that Schmitt set against his own liberal constitutionalism in Weimar Germany. Rawls could conceivably be more concerned with outlining a theory of justice for liberals, by a staunch liberal, and so it would be wide of the mark to think that Rawls would try to mount a rejoinder to anti-liberals in the first place.

However, while Rawls certainly had multiple intentions in laying down his political liberalism, one particular intention was to respond to the crisis of parliamentary democracy in Weimar Germany. In this way, Rawls is presenting his work as a potential response to Schmitt—or, at least, reflections on the nature of liberalism in light of the collapse of the interwar period. In the closing paragraphs of Rawls' introduction to his *Political Liberalism* (cited in text as PL), he explains the historical motivations of his work:

If we take for granted as common knowledge that a just and well-ordered democratic society is impossible, then the quality and tone of those attitudes will reflect that knowledge. A cause of the fall of Weimar's constitutional regime was that none of the traditional elites of Germany supported its constitution or were willing to cooperate to make it work. They no longer believed a decent liberal parliamentary regime was possible. Its time had past. The regime fell to a series of authoritarian cabinet governments from 1930 to 1932. When these were increasingly weakened by

their lack of popular support, President Hindenburg was finally persuaded to turn to Hitler, who had such support and whom conservatives thought they could control. (PL, lix-lx)

Here Rawls wants to reinvigorate and stabilize liberal democracy, since he sees precisely that liberal democracy must be defended from dangerous elements outside by providing a new way to believe in liberal justice. Rawls' liberal theorizing is motivated by a fear that what happened in Weimar Germany may happen in the United States—namely, people believe that liberal democracy is not possible, that it cannot be defended from the illiberal alternatives. Once this is admitted, liberal democracy's time has passed. Therefore, when we turn to Rawls, we must be very clear to whom he is responding: Schmitt.

For Rawls, liberal democracy must be defended not through institutional mechanisms but through providing convincing arguments about the grounds of liberalism: it has to engage with how we should think about politics. Rawls begins his account of liberalism by admitting the fact of the Schmittian “political”: “Political liberalism starts by taking to heart the absolute depth of that irreconcilable latent conflict” (PL xxvi). The fact of antagonism and conflict cannot be denied, and, for Rawls, it is the starting premise. The political is often talked about as “pluralism,” which we will discuss in detail below and in section 2.2. For Rawls, the truth of “irreconcilable latent conflict” is guaranteed by historical facts—and the history of liberalism is an attempt to negotiate antagonism, particularly early modern liberalism that dealt with warring religious sects and established the principle of toleration. Rawls' liberalism, at least as he starts out, is historically grounded which means it takes seriously irreconcilable conflict, and therefore *does* seem uniquely up to the task of responding to Schmitt's “political” critique of liberalism. Schmitt claims that liberalism cannot survive with “political” premises, and, yet, Rawls sets out to build a liberal theory on the historical fact of irreconcilable antagonism.

Let us turn, then, to some of the intricate parts of Rawls' conception of political liberalism. The first concept is the "original position." Rawls has been widely criticized for this notion—criticisms that he himself attempts to address in *Political Liberalism*.<sup>13</sup> The original position is a thought experiment that strives to reveal to us the intuitive sense of justice that we all share: liberal notions of freedom and equality (PL 22, *Theory of Justice* [cited in text as TJ] sections 3 and 4). The "original position" is not unlike the general understanding of a "social contract": "the fair terms of social cooperation are conceived as agreed to by those engaged in it, that is by free and equal citizens who are born into the society in which they live their lives" (PL 23). We must begin by understanding ourselves as free and equal. This would be to understand ourselves as individuals first—as individuals who are free and equal as all other individuals who are themselves free and equal *as* individuals. If Rawls left it here, we may object to the peculiar starting spot, but we would not depart much from the original insight of irreconcilable conflict—how could there not be conflict in a world of free and equal individuals understood as free and equal only insofar as they are free and equal? One way out of this situation, though difficult but not impossible, is to arrive at an agreement among individual parties to ease us out of such radical and potentially antagonistic pluralism. Society would be founded on an agreement that never forgets the fact of radical pluralism or the potential of conflict—which would make this a truly "political" agreement. As I will discuss in the next chapter, this would make the basis of liberal politics a *modus vivendi*.

For Rawls, the *modus vivendi*, however, is itself unstable and contingent.<sup>14</sup> We must, Rawls will argue, try to find something more *stable*. Rawls invokes the "veil of ignorance" to help us escape the potential prejudices that would guide us to a *modus vivendi* and not something more stable. The idea is that a *modus vivendi* is the only agreement that can occur when the parties have some knowledge of their relative advantages and disadvantages over and against the others. If

these advantages and disadvantages are not bracketed or constrained, then they will inevitably be crystallized in the terms and conditions of the social contract. By placing us behind a “veil of ignorance” in the “original position,” Rawls wants us to be not only individuals who have a recognized shared self-understanding as free and equal and that we recognize the other as free and equal, but also that the parties to the political agreement will not know their own standing within the society they create.

For Rawls, only under these conditions can we guarantee that the agreement will be purged of the random noise of a tradition, a history, or a family—which all must be understood as more or less obstacles to our intuitive understanding of justice—because they represent contingent domains and relations of power or influence. We must purge these identities and relations when we think about justice because these relations potentially destabilize the agreement.

The reason the original position must abstract from and not be affected by the contingencies of the social world is that the conditions for a fair agreement on the principles of political justice between free and equal persons must eliminate the bargaining advantages that inevitably arise within the background institutions of any society from cumulative social, historical, and natural tendencies. These contingent advantages and accidental influences from the past should not affect an agreement on the principles that are to regulate the institutions of the basic structure itself from the present into the future. (PL 23)

The “veil of ignorance” is added to the original position to fully extract out any and all already existing conditions of any already existing society. For Rawls, the way to proceed can only be in positing an “ideal” perspective that empties out “the background” of human life—understood as the site of contingency and accident—since the true perspective of the human being must be just that we are free and equal as free and equal individuals who only have freedom and equality as individuals who understand just that they are free and equal as individuals. This is the highly abstract notion of the human being that Rawls discovers in his “ideal” theorizing.

Rawls has no problem with this description of the human being, and, further, sees no necessary “metaphysical” undercurrent in this ideal projection (PL 27). For Rawls, “the veil of ignorance, to mention one prominent feature of that position, has no specific metaphysical implications concerning the nature of the self; it does not imply that the self is ontologically prior to the facts about persons that the parties are excluded from knowing” (PL 27). Of course, Rawls does have to note that, while not *prior* in a temporal sense, the concept of the “self” as revealed in the veil of ignorance has certain aspects that are given *priority*.

What does Rawls prioritize in the original position? The veil of ignorance does *necessarily* prioritize some features of the self: the self is not to be understood as historically bound or culturally embedded but abstract. Since the human being in the original position and under the veil of ignorance is only a thing that is free and equal to all other things free and equal, Rawls can only point to the rational faculties—the things that recognize ourselves and others as free and equal. The two faculties—or “moral powers”—are first, that we understand ourselves and others as directed toward some chosen “good,” that we determine on “reasonable and rational grounds” (PL 19, 30). Second, we have an innate “capacity for a sense of justice,” which is to say we are willing to cooperate with another who has a rational sense of the good (PL 19). The political identity of Rawls’ liberal citizen is tied to fundamentally moral concepts of “reasonable” and “rational.” I turn to discussing this point in the next section below. Now, however, it is enough to say that Rawls’ claim that he does not necessarily give “ontological” priority to a particular “metaphysical” self must be denied: the human being must be “reasonable.”

Of course, the question of “reasonable” may be contingent, which would perhaps save Rawls here insofar as he would not have to say definitively what “reasonable” is aside from “it is what we have agreed it to mean.” If “reasonable” is a definitively “political” decision—if it arises

out of the contingent and historical flux of life—then Rawls may indeed not be normatively inflating the concept of “reasonable”—giving a certain conception of the human being priority—but, perhaps, merely describing actually existing societies: “reasonable” is often held by those who hold political power. This would mean that Rawls would be making a descriptive statement about the “reasonable,” and not a normative prescription of what “reasonableness” is. But, this descriptive perspective, however, is not Rawls’ perspective, because this would make the concept of reasonableness (which rests at the center of our political lives) something contingently derived. Instead, Rawls’ view is the normative one: we *should* ground our politics on a *certain* conception of the reasonable, which *should* be shorn of all historical contingency, and therefore we *should* understand “reasonable” to not be a contingent agreement of terms but an ontologically stable deduction—something *prior* to the “historical” or “social.” Rawls is clearly operating on a metaphysical register, and his concept of justice is fully—even if unwillingly—committed to a highly abstract metaphysical notion of the self as “prior” to history, culture, and so forth.

The charge of metaphysical transcendentalism was widely levelled against Rawls by his so called “communitarian” critics. The general thrust of the criticism is that, in *A Theory of Justice*, Rawls sought a conception of justice wholly devoid of historical and social context—it began from a highly abstract notion of the “self” that loses most of its touch with real, existing human beings. If it begins by departing from the human condition, one could argue, how can it tell us anything important about how we should live in this world—especially about our sense of justice, something inextricably linked to our human condition and our social and historical context? Rather than trying to establish what individuals would agree to in a context-free environment, communitarians argued that we should focus on what we think is “reasonable,” which takes as its starting point our context and situation, a limited view of what we can do here and now.



These initial communitarian criticisms of Rawls' project in *A Theory of Justice* were addressed by Rawls in his book *Political Liberalism*. *Political Liberalism* is an attempt to address and remedy the problems of his ideal theorizing in *A Theory of Justice*. Rawls tells us that *Political Liberalism* will attempt to "contextualize" the principles of justice he uncovered in *A Theory of Justice*. By contextualizing *A Theory of Justice*, *Political Liberalism* placed the theoretical ground not in the structure of reality (like a natural scientist would attempt to do), but in *our* reality as a 21<sup>st</sup> century liberal democracy. Rawls followed a Kantian "idealist" procedure in *A Theory of Justice* that tried to deduce the necessary structural aspects of our political life as such; in *Political Liberalism*, Rawls will follow a Kantian "idealist" procedure that will deduce the necessary structural aspects of our political life in the here and now. By making this shift in focus, Rawls hoped to respond to many of his critics by acknowledging from the beginning that he was going to start from our shared, historical context, not against it.

The methodological shift in focusing on context does entail a more substantive shift. Rawls is no longer going to discuss the principles of justice, since we can now assume them as largely settled in our historical context. So, instead, the real problem is stability: "how is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines" (PL 4). Though I will discuss Rawls' view of stability in detail below, I want to make the following argument explicit now. Rawls' ideal theory procedure will "idealize" our historical context and, in so doing, will cover over the inherent flux in our political and social traditions. Since Rawls is no longer uniquely focused on outlining the principles of justice, his goal is now to establish the "political" character of this liberal justice. By "political," we must understand Rawls to mean not tied to a particular "comprehensive doctrine," like a religious or philosophical view of human nature. Rawls' aim is

to establish stability that does not rely on universal claims about human nature and the “good,” and therefore will try to find a solid ground elsewhere. He will find it in his concept of an “overlapping consensus,” which I will discuss briefly in this section. The problem, as I see it, is that Rawls does not fully give up the “foundational” character of his liberalism in his shift from *A Theory of Justice* to his later *Political Liberalism*. In this section, I will defend this by showing the absolutist tendencies in his concept of “overlapping consensus” in *Political Liberalism*, and, in the following sections, by showing that his concern for foundation stability indeed underwrites his *A Theory of Justice*, too. We must reject Rawls’ demand that liberalism have a foundational stability, and uncover an alternative liberalism that allows for a contested yet stable polity.

Rawls’ conception of an “overlapping consensus” is to replace his rational reconstruction of liberal justice in *A Theory of Justice* as the foundational stabilizing element of society. Rawls recognized that he cannot simply assert the rational character of the human being as he did in *A Theory of Justice*, since it would either have to admit to being so abstract as to be practically useless for us in this world, or, since Rawls obviously did think his theory was useful, it must entail a commitment to a comprehensive doctrine. Rawls’s “overlapping consensus” helps him avoid both of these problems.<sup>15</sup> The overlapping consensus posits that there exist reasonable and unreasonable conceptions of the good, and Rawls’ notion of liberal justice rests in the overlapping consensus of the reasonable or rational doctrines—though the principles themselves, Rawls assures us, do not themselves entail any specific doctrine (PL 144). However, in order for there to be an “overlapping consensus” of “reasonable” doctrines, Rawls must radically alter his meaning of pluralism as “irreconcilable conflict”: “The crucial fact is not the fact of pluralism as such, but of reasonable pluralism” (PL 144). For Rawls, the “overlapping consensus” is derived from all reasonable yet seemingly conflicting comprehensive doctrines, and therefore is not necessarily

allied with any one comprehensive doctrine. Also, since the “overlapping consensus” is derived from already existing comprehensive doctrines, Rawls begins with his feet firmly planted on the ground. Rawls claims that all “reasonable” comprehensive doctrines hold a set of political principles that are shared by all other reasonable comprehensive doctrines, though they disagree on many other things. For Rawls, the principles of freedom and equality and the interpretations of these principles are the basis of the overlapping consensus. All reasonable doctrines hold to shared interpretations of these principles (and not merely the principles themselves). Liberal political justice is established, then, not through a universal deduction of “Reason,” but through theoretically analyzing our historical, contingent, political traditions. For Rawls, the stability of the regime is guaranteed not by an appeal to any single comprehensive doctrine, but by the political principles that float behind and within all reasonable comprehensive doctrines in the overlapping consensus.

Let us be clear how Rawls’ project in *A Theory of Justice* has changed in *Political Liberalism*. In *A Theory of Justice*, Rawls set out to establish a set of principles of justice that would be true for all rational agents, with the right rational capacities, regardless of historical context. In *Political Liberalism*, Rawls shifts from this context-free rational deduction to ideal theorizing from within a shared historical context. Since we can assume that our society has a functioning theory of justice already, the job Rawls sets for himself in *Political Liberalism* is to make clear the overlapping consensus of our theory of justice, thereby providing us with a stable political center. For Rawls, liberalism can only be stable if it is grounded on the “right reasons,” which is to say *not* on the ground of power and interest but principles, ethics, and morality (PL xxxix). Stability, as Rawls understands it, can only be won through theoretical “certainty,” or “foundationalism.” The overlapping consensus cannot be challenged because it is the basic

structure of our political lives (PL 244). Rawls must reject *modus vivendi* liberalism on the grounds that it defends liberalism for the wrong reasons. Instead, liberalism must rest on an unobjectionable and unalterable foundation. This is what Rawls means by “stability,” and it is a view that I will reject below and in the next chapter, because it leads to “absolutism.” For now, however, let us focus on Rawls’ political conception of justice that centers on an overlapping consensus of reasonable comprehensive doctrines.

Rawls’ method in *A Theory of Justice* was to deduce the structure of political justice from context-free reason. In *Political Liberalism* his method is to derive it from the context of comprehensive doctrines. The procedure, even in this first step, attempt to force social or “simple” pluralism into a “reasonable” pluralism, excluding some and including others. On the one hand, Rawls recognizes that social life *is* pluralist: there are many competing and seemingly exclusive comprehensive doctrines of religion and philosophy and morality. On the other hand, Rawls must immediately presume a deeper order to this pluralism if he wants to have theoretical stability of an “overlapping consensus,” which has to be more than an agreement among conflicting parties (as the *modus vivendi* model would allow). Rawls must shift from simple pluralism to reasonable pluralism. The original “political” pluralism that Rawls had mentioned in the beginning of *Political Liberalism* is now fully dismissed, replaced by a “reasonable pluralism.”<sup>16</sup> This distinction already reveals the extent to which Rawls has to truncate or narrow the dynamic realm of contested values within the social world. The overlapping consensus that underwrites reasonable pluralism needs to exclude other “unreasonable” comprehensive doctrines. But, how can it do this? Only if the grounds of exclusion have moved from the political (power and interest) to the “reasonable,” which is a deeper ground of “morality.” To hold a politically “unreasonable” comprehensive doctrine is to reveal the extent to which one is not only outside the contemporary

articulation of power and interest, but, on Rawls' view, a mark of one's rejection of the basic framework of society. The historical and political contingencies of our political and social lives have been made "essential" in Rawls' attempt to establish stability through an overlapping consensus of reasonable pluralism.

I need to be clear here: Rawls' view does *not* rely on a comprehensive doctrine of morality (which he explicitly denies). He says his view is a "political" conception of justice. But, my point is that we need to look underneath the name, and see how his conception of justice operates. I argue that it operates *like* a comprehensive moral doctrine, not that it *is* one. The overlapping consensus is "moral" insofar as it is the ground of grounds for all reasonable comprehensive doctrines: to reject the principles revealed in the overlapping consensus is to reject the overlapping consensus for Rawls. There is, I believe, a shift in the priority in Rawls' presentation of the overlapping consensus: the legitimacy of the overlapping consensus rests on its adherence to the principles of justice he outlined in *A Theory of Justice*, and not in the actual agreement between parties. In other words, Rawls the overlapping consensus is legitimate because it adheres to the principles of justice. There is no dynamic, reciprocal relationship between our social and political lives and the principles of justice. The overlapping consensus is stable because it rests not on the agreement between parties, but because all the parties (if they are reasonable) already agree because their comprehensive doctrines contain the principles of liberal political justice. Contrary to Rawls' assurances, the abstract formalism that haunted his *A Theory of Justice* still animate his *Political Liberalism* by having an overlapping consensus that tells us who is or is not reasonable insofar as they allow for the liberal principles of justice in the first place.

My argument is not against Rawls' particular articulation of the principles of liberal justice, but against the way he arrives at them and the priority he bestows upon them for stabilizing our

political lives. Rawls' focus in *Political Liberalism* is not justice but stability. I do not reject the importance of stability in a political regime, but I do reject Rawls' insistence that this stability be derived from an overlapping consensus rather than political, prudential agreement between parties. The overlapping consensus makes dissent a question of "reasonable" and "unreasonable" people, which is destructive to stability, I claim. Rawls' view of stability—that something must go beyond our prudential, political agreements of power and interest—betrays the historical and contextual facts that he supposedly wanted to begin from in *Political Liberalism*.

The problems of Rawls' revised theory, in the end, seem to arise from an insufficient understanding of the contingency of political foundations and of the constitutive character of social reality. Rawls hoped to transform a theory that was previously abstract and unconnected to human reality by founding it unambiguously on the existing institutions, structures, and assumptions of liberal democracy. Unfortunately, in his desire to establish unambiguous foundations, Rawls reified this context arbitrarily, adopting a particular point in time with limited perspectives and possibilities as the universal standard against which the justice of society will be evaluated forever. Taking a particular interpretation of a particular context and making it unchallengeable (at least within the hegemony of its own 'reason') reveals an attempt to derive certainty from contingency, clarity in the face of ambiguity (Wigenbach 2011, 177).

Even though Rawls admits this particular historical arrangement is contingent in the beginning of *Political Liberalism*, his ideal theorizing method necessarily makes the historical, dynamic, and contingency inherent in our political traditions become static, rigid, and non-reciprocal. Rawls inadvertently lays out in his *Political Liberalism* a false dichotomy between an uncontestable stability or a contestable, dynamic anarchy and chaos. I reject this false dichotomy.

We should not reject liberalism, but only the view that liberalism can be won on these uncontested ground of an overlapping consensus. Instead, we should revisit the view of liberalism as a *modus vivendi*, not only because it is perhaps truer to our historical reality, but because I believe it can win even on the ground of being more stable. We, of course, need not fully dismiss Rawls' liberal principles of justice—he does provide us with clarity about our liberal commitments in our particular moment. But, we should avoid his attempt to make this particular articulation of

liberal justice the be-all-end-all of liberal justice. I also reject the notion that Rawls' fixation on stability only emerged in his *Political Liberalism*, with his discussion of "reasonable" pluralism and overlapping consensus.

My qualm is not with Rawls' deductions from his clearly liberal rationalistic and individualistic grounds, but only that these grounds are being continually assumed and enshrined in an ever-deepening notion of "reasonable." Rawls set himself up to respond to the Schmittian challenge of defending liberalism in a world that does not presuppose liberalism as true, where liberalism is not taken for granted. Rawls, though seemingly recognizing this problem, nevertheless only presents compelling arguments to the already converted, which was *precisely* the problem in Weimar: liberals and illiberals were completely talking past each other, and, when push came to shove, there were more illiberals than liberals, so the liberal constitutionalism collapsed. In light of Schmitt's analysis of liberalism and democracy, we can see clearly that Rawls—in order to defend liberalism—jettisons all "democratic" or "political" aspects of political life, leaving only a liberalism that is stable because everyone was always already a liberal.

Rawls, of course, would never call himself a liberal absolutist, but he also said he was not privileging a conception of the self, and that his view of pluralism was "irreconcilable conflict," not "reasonable pluralism." By "liberal absolutism" I mean the view that begins with a familiar liberal premise of individualism that, in large part due to this individualism, gives rise to a need for a coercive state apparatus that enforces and commands—polices. The most visible liberal absolutist is Thomas Hobbes, as the image of the leviathan is almost synonymous with the notion "liberal absolutism." Briefly stated, Hobbes' theory runs from individualism to absolutism in the following way. First, human beings should understand themselves as things that exist outside of a community and outside of a state, where there are no effective constraints. These individuals

recognize themselves and others as free and equal by virtue of their shared statelessness. However, now left to their own devices, individuals are inevitably drawn into conflict with one another, and this makes the “state of nature” equivalent to a “state of war.” The only way out is by each individual forfeiting the right to live under lawless liberty, and to submit to the “Leviathan” because it produces security in the world wholly lacking in peace. The legitimacy and the relationship between the individual and the sovereign is grounded on protection and obedience. There is no political power of the people because there is no “people” in the state of nature, just individual utility-maximizers who seek only stability and peace.

The image of utility-maximizing individuals is a predominant theme in Rawls’ *A Theory of Justice*. Indeed, the book has many diagrams of cost-benefit curves: “The theory of justice is a part, perhaps the most significant part, of the theory of rational choice” (TJ 15). Though Rawls posits that individuals are moral, which one would assume would lead to them being in some sense social, they often are not in Rawls’ theorizing. This means that, for Rawls, one of the most pressing questions is to solve the collective action problem at the heart of a social contract theory: why would an individual agree to the conditions of the contract in a world without enforced outcomes? In fact, for Rawls, one of the most important aspects of the rule of law is not its expression as a moral concept—that all are to be understood as free and equal—but its crude mechanical coercive power to construct and guarantee “payoffs” for cooperation (TJ 211). The coercive use of force is used to secure individual fidelity to contracts, and this alone would justify the sovereign, Rawls argues (TJ 211). Rawls explicitly recognizes “this proposition and reasoning behind it” to be Hobbesian (TJ 211). The full Hobbesian character of this statement about coercive power can be summed up in the following way: “The establishment of a coercive agency is rational only if these disadvantages are less than the loss of liberty from instability” (TJ 211). The central deliberative



rational calculus all liberal citizens should engage in, according to Rawls, is to gauge all actions relative to the potential loss of liberty (utility) if there were no sovereign. This argument toward stability is classic Hobbesianism.<sup>17</sup>

It is not by accident, then, that economic models and rational choice play an important part of Rawls' theorizing. The Hobbesian calculus of rational action as that which does not alter the fundamental stability of institutional payouts is explicitly invoked by Rawls, who correctly recognizes this as both Hobbesian and the core of the "prisoner's-dilemma" (TJ 238). Since the end of liberal government is to secure the conditions under which one can pursue some rational good, there is an inescapable need for an "effective sovereign, or even the general belief in his efficacy" (TJ 238).

The problem here, for Rawls, is that the individualistic and rational choice perspective only obtains—as Hobbes himself admits—in a trust-free environment. These individuals in a stateless environment must understand themselves as wholly "private," or asocial, and therefore distrustful (TJ 457-458). To care for another would be to bring in a sociality—a mutual trust—that is lacking in Hobbes' theory, and would call into question the whole enterprise of solving a collective action problem of competing private individuals: trust makes the desire to cooperate something that need not be externally coerced. Rawls, however, refers to precisely this sociality and draws this exact consequence (TJ 303-305). Rawls makes clear that the two moral powers of the rational individual overcome the Hobbesian paradigm (TJ 305). The act of promising, Rawls says, is powerful enough to overcome the collective action problem because there is a *shared moral background* that is presupposed—because the individual is ultimately not an individual but a member of a community (TJ 305).

So, we see that Rawls now has two competing perspectives: that of the individual in the original position, shorn of his membership in any community, guided by only his moral powers that seek to maximize his rational plan of a good life, and, that of the individual nevertheless tied to a moral community that produces cooperation. While these two positions seem counter to one another, I will show that they are in fact one in the same: Rawls has replaced the Leviathan with a moral community, thereby replacing one absolutism for another. This is because at the center of both of these perspectives is the insistence on peace understood “stability.” I will show in this section that Rawls will, at the end of the day, even elevate stability over justice, cementing his absolutism.

Rawls argues that stability is won not, as Hobbes saw, in the state but in the morality revealed in the original position (TJ 435). The liberalism Rawls now presents is stable because all individuals hold the same moral powers, and therefore the same rational principles of justice. As Rawls writes,

As I remarked earlier, Hobbes connected the question of stability with that of political obligation. One may think of the Hobbesian sovereign as a mechanism added to a system of cooperation which would be unstable without it. The general belief in the sovereign’s efficacy removes the two kinds of instability. Now it is evident how relations of friendship and mutual trust, and the public knowledge of a common and normally effective sense of justice, bring about the same result. (TJ 435)

To be clear, Rawls means by “the public knowledge of a common and normally effective sense of justice,” his two principles of justice derived from the moral powers. The point here is that Rawls has not challenged the absolutist notion that stability ought to be central to our political community. It is on the basis of stability that Hobbes was able to move from individualism to absolutism, and it is becoming clear that this is the path Rawls is on, too.

To make Rawls’ absolutism clearer, I will focus on two sections of Rawls’ *A Theory of Justice* where I argue he makes clear that he has elevated stability over justice, thereby following

wholly the Hobbesian paradigm of liberal absolutism. The first example is drawn from his discussion of civil disobedience in a near-perfect society. I will argue that, as is the case with all absolutism, Rawls' liberal justice denies at the crucial moment the right to dissent or resist injustice.

Rawls is a staunch defender of majority rule because, in a well-ordered or near-perfect society, it would be a reflection of the moral community, which means the two principles and the two moral powers are properly grounding political life (TJ 312-313). Where there is a majority there is necessarily a minority. For Rawls, the minority—insofar as they follow their reason—ought to have a “natural duty of civility” (TJ 312). In the section on disobedience, as opposed to almost everywhere else in the whole of Rawls' *A Theory of Justice*, Rawls makes explicit reference to the “real world,” one would say, and admits that things may not be ideal. For Rawls, what it means to have a “natural duty of civility” is that we “simply recognize” and therefore be “willing to work within the limits imposed by the circumstances of human life” (TJ 312). When it comes to the application of the principles of justice, we must accept the “limits imposed by the circumstance of human life,” but not when we are constructing the “self” or when we are devising a “overlapping consensus” of “reasonable pluralism.”

The “duty of civility” is further “a due acceptance of the defects of institutions and a certain restraint” (TJ 312). When it comes to civil disobedience, we must recognize the limitations and defects of real life. This can only mean that we have a duty to obey on some other principle than even the principle of justice, ideally defined. As Rawls continues, “Thus in a state of near justice at least, there is normally a duty (and for some an obligation) to comply with unjust laws provided they do not exceed certain bounds of injustice” (TJ 312). The citizen must calculate how much injustice they are willing to take on, the amount of injustice they are willing to suffer, not to be

exceeded by some unmarked threshold. The precise line is itself not a product of justice, since presumably the search for justice is the animating concern for politics in the first place. So, what principle draws the line between accepting and rejecting unjust laws? In other words, we now see the duty of civility to be an obligation to *not* revolt and resist the state, which is now admittedly unjust: “I assume there is a limit on the extent to civil disobedience can be engaged in without leading to a breakdown in the respect for the law and the constitution, thereby setting in motion consequences unfortunate for all” (TJ 328). At the core of Rawls’ thinking is a prudential calculation about the utility gained by resisting—even *on the grounds of justice shared by the community as dictated by the overlapping consensus*—and the utility potentially lost to all if the system falls (because it is unjust). Therefore, the “ideal solution” is to have the minorities “cooperate” and “regulate” the “overall level of dissent,” so it never reaches the threshold of toppling the system (TJ 328). The point is not that the principles of justice are contested (which Rawls has no room for since the principles are a product of morality), but that these principles have not obtained and we seemingly have a desire to install them, regardless of the utility of doing so. But, it is precisely this claim of justice to be actual that Rawls will resist, and he does so not on moral or just grounds, but only on the grounds of utility and stability. Dissent, if it is even possible, should be a coordinated enterprise among all reasonable minorities facing an injustice, and aimed at not fixing a gross structural injustice but to receive some form of incomplete justice within the already established system. Stability is more important than justice.

Finally, I turn to an example that not only makes explicit Rawls’ absolutism, but shows precisely how his absolutism is connected to his notion of trust. In the later sections of *A Theory of Justice*, Rawls discusses some of the particular institutional consequences of his principles of justice. One, which I will focus on here, is that the virtue of self-government—so important for

some liberals—is something that has little intrinsic value. Rawls reveals that, completely consistent with the sense of liberal justice as he understands it, there may be an argument for “plural voting,” the doctrine that some should receive more than one vote (TJ 203-204).<sup>18</sup> Coupled with his view of majority rule, this inevitably amounts to the rule of the few, which may strike us as odd given the intuition in the original position is that we are free and equal. The idea of plural voting is inherently unequal—as Rawls points out, following John Stuart Mill, plural voting rests on the “natural order of human life” that “the say of everyone should not be equal” (TJ 204). The equality central to our own liberal original position is, as we move into political society, radically diminished: “The judgment of the wiser and more knowledgeable should have superior weight” (TJ 203). The claim to rule is not, it seems, truly consent or agreement—as it is for liberal constitutionalists—but a superior claim of knowledge or, in this case, expertise in the principles of justice. We are naturally unequal in this knowledge, and this lack ought to be reflected in our political society. As Rawls says, this view shows us “why political equality” or “self-government” is not essential to liberal justice (TJ 205): following the same principles of justice, as understood by the moral community that does not allow for dissent, we ought to just let the experts handle politics. This is clearly a view that has lost all concept of the “political” and is now simply a question of administration. And, since it is a question of administration, there is little reason for individuals to be actively involved, much like passengers on a ship do not sail the boat.

Government is assumed to aim at the common good, that is, at maintaining conditions and achieving objectives that are similarly to everyone’s advantage. To the extent that this presumption holds, and some men can be identified as having superior wisdom and judgment, others are willing to trust them and to concede to their opinion a greater weight. The passengers on a ship are willing to let the captain steer the course, since they believe that he is more knowledgeable and wishes to arrive safely as much as they do. There is both an identity of interests and a noticeably greater skill and judgment in realizing it. Now the ship of state is in some ways analogous to a ship at sea; and to the extent that is so, the political liberties are indeed subordinated to other freedoms, that, so to say, define the intrinsic good of the passengers. (TJ 205)

Once we assume that the government is indeed directed toward the common good of all, which we have to understand here as something that can be attained without certain political liberties, we should be happy with the goods that belong to passengers on a ship: presumably private, comfortable accommodations. In this ideal theory, we have arrived at the bald confession that political activity is as absurd as a bunch of passengers trying to claim to steer the ship, when a seemingly ready, willing, and able ship captain with superior knowledge is available. Rawls repeats the spirit of Hobbes' line that the proper way to interpret the relationship between ruler and ruled is by the ability of the sovereign to protect us from harm—to guide the ship of state ably through choppy waters. Though Hobbes does not claim that the ability of the Leviathan is due to a particular knowledge, but the absolutist implications of Rawls' appeal to expertise still follows.

For Rawls, liberal justice leads to an asymmetrical, non-reciprocal relationship between magistrate and subject, between passenger and captain, and this is to repeat the absolutist position. What could trust look like here other than strict obedience? Rawls has assumed or abstracted away all politically relevant questions about the intentions and actions of the captain, things that Locke, as I will describe below, is keenly aware of when constructing his liberal constitutionalism. Where there is no viable space for trust, there is no viable claim of liberal constitutionalism.

By way of conclusion, my treatment of Rawls' theory of justice has served two purposes. First, I wanted to make clear that Rawls does not, contrary to his stated intention, mount an adequate response to Schmitt's "political" critique. At the decisive moments, Rawls retracts completely the "political" premise of "irreconcilable conflict" as a constituting feature of his liberalism. Second, I wanted to make clear that Rawls' liberal theory of justice is not even persuasive to liberals of all stripes. Rawls' liberalism repeats the absolutist tendencies that are always lurking in the shadows of any liberal thinking that begins with a brute individualism. Rawls,

of course, does not advocate as bluntly for a Hobbesian Leviathan, though the image of the captain and his passengers should make it clear that liberal absolutism need not follow the 16<sup>th</sup> century script too closely. All of this is to say that Rawls' liberalism is not only rightly criticized for failing to live up to the "political" critique, but it also succeeds in presenting a troubling liberal absolutist regime. In turning to Rawls, the important point is that the public philosophy that comes out of his *A Theory of Justice* and his *Political Liberalism* is perhaps as dangerous as it is naïve, or, rather, it is dangerous precisely because of its apolitical naivety.

A second broad conclusion to draw is that Rawls' failure is due in large part because he attempted to move past the *modus vivendi* by moralizing the liberal theory of justice.<sup>19</sup> The point is not that liberals need to be amoral, but that their prudence must always recognize that we always are in a non-ideal world—that the best we can hope for is the "near-just" society. However, if we begin with the premise that justice in this world can only be that which we liberals would tolerate, and then come to recognize that very few places in the world come close to living up to this sense of justice, we are pushed into two seemingly immoderate conclusions: either we begin the revolution, toppling the system and try to "get it right," or we follow Rawls' "duty of civility" and submit to patently unjust laws. Perhaps this is a false choice, but if it is, it has to be because of how we started thinking about politics in the first place. There will always be a place for the ideal theorizing, but the pressing concern is to address the political question facing liberalism: how do we avoid the march of absolutism—liberal or illiberal?

## PIERRE MANENT AND DEMOCRACY

In the following section, I will evaluate Pierre Manent's defense of liberalism, and rejection of democracy, through two lenses. To anticipate the conclusion, first, I will read him as a *radical democrat* on the ideological right. Pierre Manent is not often understood to be a philosophical

“radical,” so I will need to do some careful work to put him here. Further, it would be shocking to call Manent a radical *democrat*, since “democracy” is often the singular political concept he himself sets out to critique. Second, at the end of my discussion, I will interpret Manent’s thought in terms of political trust—something he says little about explicitly, but becomes immediately apparent upon closer examination. From my perspective, Manent is not a defender of liberalism, since he denies the importance of consent, humanity, and individualism—all things of paramount importance to any liberalism. However, as I noted above, Manent is often understood as a liberal who is attacking democracy. I argue the opposite—following Schmitt’s distinction between liberalism and democracy—Manent is a *democrat* who rejects *liberalism*. Accordingly, in order for me to make clear what I take to be Manent’s radicalism, I will focus on his treatment of “democracy,” found in his *Democracy Without Nations* (cited in text as DWN).

As he usually does, Manent follows Tocqueville in seeing our age as the latest articulation of the nearly endless march of democracy, of equality (DWN 11).<sup>20</sup> For Manent, we are now “moved and even carried away by an idea that is also a sentiment and even a passion: the idea that humanity is proceeding toward its necessary unification” (DWN 4). The democratic age has pushed the equality of conditions to become more and more equal, to the point where we now “see the other as the same as ourselves” (DWN 4). The march of democracy has been the march of inclusivity, overcoming constitutive differences—to a political “humanity”: “a vision of the world in which no collective difference is significant” (DWN 7). The democratic age is therefore an ever-increasing sameness, enveloping the whole world—what Manent calls the “global middle class” (DWN 8).

The march of equality, as Manent understands it, is the march of unification under the equalized and thoroughly apolitical banner of “humanity.” The rise of this global middle class has



eroded the strength and legitimacy of the “nation” as a political concept, worthy of allegiance (DWN 11-16). The slow destruction of the nation is due to the intellectual history of liberalism (the title of another book by Manent). According to Manent, liberalism gave the individual rights against the community, and constraining politics and the functions of the state to enforcing and respecting those rights claims. These rights claims were immediately put to use through artificially equalizing everyone within the state: “the sovereign state is the necessary condition of the equality of conditions” (DWN 16). The nation-state emerges from the liberal tradition, but it is used and then abandoned by the democratic process. First, Manent argues, liberalism pushed for politics to be redrawn between the people and the government, softening the pathos of distance between them (DWN 17). “In this context, the current widespread hostility to power can be understood as a prolongation and radicalization of the ‘liberal’ distrust, which fortunately has accompanied the modern state since its birth.” (DWN 17). Second, since the state has been erected around promoting equality, once this equality of conditions has been achieved, we can move from laws to mores. Finally, contemporary democracy is now fully against the state, since it is ultimately a reminder of a condition of difference—even in its slight elevation of representatives over the represented (DWN 18).

For Manent, democracy holds up the dream of a stateless and nationless society, where difference has been overcome, and we are governed (and we govern) by “humanity,” a fundamental “unity.” But, while this has been a couple hundred years long development of Western political thought, Manent is quick to point out that “the events of September 11, 2001, revealed the existence of another wall: the mutual impenetrability of human communities, despite the ever-growing ease of communication” (DWN 28). We are not in a position of global unity, but, as 9/11 showed us, we are in a “much more profound, much more intractable separation than

we thought” (DWN 27). For Manent, the democratic view of a global humanity was only ever an “aesthetic vision,” and now we are “recalled to political reality” (DWN 28).

Our political reality today is that communities are not so quickly equalized, and difference is not something that can be so quickly overcome. Instead, we now realize that “human communities are dense, compact, hard to penetrate; each one is endowed with a distinctive perspective of the world” (DWN 28). The poetic language Manent uses here is integral to his argument: a political community deserving of the name is not something so easily moved, nor is it something so easily entered into or even understood from the outside. Difference here is a hard thing, both in substance and in form. It is rigid because it carries with it something that cannot be so easily diluted, softened, or molded willy-nilly. The community is not merely an aggregate of individuals, but, as Manent says, it is a way of life in the old sense of the term: “Human communities take hold of their members at a level so deep that even the powerful instruments and contagious pleasures of modern life are unable to create a truly common life among them” (DWN 28). Here, we must understand Manent to be saying that the moral concept of “humanity,” so dear to the democrat, is soft, a contagious pleasure, blurry, sprawling, undefined, and fleeting. No argument is made that this is what humanity is for the democrat, but only that it is something that cannot “take hold” of us, as Manent wants.

So, what is the core of Manent’s criticism of—not democracy, but “the liberal, progressive opinion” of a united peoples? What is his basis for rejecting the liberal project? From the basis of the community and the classical understanding of the human being as a thing that must be—and is only intelligible as—a member of a community, as citizens first. Here he follows Aristotle and demands that the liberal project be rejected as a politics of decisively non-political animals: “Man as a free and rational being cannot fulfill himself except in a political community, with all the

consequences (not all of them pleasant) that this entails” (DWN 79). So, Manent, says, “We need to think differently—it is not simply or always a question of obeying or disobeying morality! More precisely, the requisite morality is simply that of recognizing political reality, which means the objective character of political bodies and, more generally, of human communities” (DWN 44).

For Manent, then, the liberal confusion and the erosion of the nation and the state is due to our departing from a sense that the community is the anchor of our worldview, of our way of life. For liberals, the moral and political community must on some non-trivial sense be grounded in the concept of “humanity.” But, it is precisely here that Manent repeats Schmitt’s criticism of liberalism: “Equal rights and equal justice have no meaning, and moreover are not possible, except among citizens of an already existing community organized in a democratic regime” (DWN 45). Here, Manent’s point is that, paradoxically, the democratic belief that “humanity” grounds one’s politics just covers over the fact that, as a political community (which requires some contrast-class of “excluded”) they have no community.

For Manent, this insight is drawn from classical political philosophy, which denies the initial break of liberal thought in the seventeenth century. “In ancient politics, however, democracy presupposed the city, that is, a form, a specific framework, a definite circumscription of humanity” (DWN 75). Or, again, the “democratic principle does not define the framework within which it operates” (DWN 76). Democracy—or, as we should be clear, the liberal hope for humanity is a paradox, and a dangerous one since it creates a void within the hearts of everyone, as we are all Aristotelian rational animals who need community. For Manent, we need to talk more about how we identify with the community, and not about our individual identities (DWN 80-81). One’s identification in community is a recognition and reorientation of the individual not as an individual but as a citizen. So, to speak of identities is the opposite of identification: we see ourselves as

individuals who can pick up or put down particular group attachments, citizenships, etc. For Manent, this is the heart of the problem: the liberal (democratic) individual is an individual first, which denigrates the importance of the community. We must take Manent seriously when he turns back to Aristotle's rational animal: "my perspective is political. Whatever man's latitude to define and to produce his conditions of existence, he is not the sovereign author of the human world" (DWN 83). There is something pushing against the human—nature—which demands to be heard, and, if ignored, produces radical instability and danger for all human beings. The basis of political legitimacy, then, is not liberal consent, but a deeper telos of human fulfillment. We must reorient our lives around the idea of identification-with the community, because it is only there that we can feel truly at home.

For my purposes, Manent represents an ideological right or conservative critique of liberalism.<sup>21</sup> Indeed, I would categorize his critique, following Schmitt, as a right or conservative democratic critique of liberalism. We can typically understand liberalism to be comprised of three notions: a moral or ethical concern for "humanity," respect for individual rights, and that political identity is not the most important identity that we have as individuals. Schmitt and Manent both see these propositions as central to liberalism. And they both reject them. Both Manent and Schmitt hold that liberalism demands the moral and political horizon of "humanity," at the expense of democracy that ultimately demands an us/them political horizon. Manent's fixation on the political community as a way of life that is irreducibly one of difference, and to cover this up is a de-politicization, is literally Schmitt's argument in *Crisis of Parliamentary Democracy*. Finally, we should notice that Manent repeats Schmitt's defense of the nation-state as more than merely an instrumental apparatus for dispersing and defending individual rights.

The difference between Schmitt and Manent, insofar as there is one, rests in the following. For Schmitt, we can say that there is a confusion or ambiguity at the heart of his “political critique” of liberalism: is the rejection of liberalism that it no longer allows for a reliable sovereign (a neo-Hobbesian argument); or is it the more ancient or illiberal position of the democratic community as being primary (a neo-Aristotelian rejection of individualism)?<sup>22</sup> For Schmitt, depending on the target, it is both. However, for Manent, it is clearly the latter. Manent rests on thoroughly illiberal ontological grounds: human beings are by nature political. This demands that any healthy community recognizes that the relationship between the governed and the governing, or the citizen and the government, is one of identification and not identity. For Manent, we should see the liberal project as being too distrustful, too individualistic.<sup>23</sup> If we couch Manent’s identification in the city as a citizen, then we can see that “trust” and consent—so important for a liberal constitutionalism—are effectively jettisoned. Insofar as it even makes sense to talk about trust, one would say in Manent’s view, that trust should not be an individualistic trust (something akin to identity) but a faith in the community. Since “trust” is a way for us to understand the nature of citizenship within a political system, Manent has a very peculiarly premodern notion of citizenship: full devotion to the common good.<sup>24</sup> This is a radical critique of liberalism because it explicitly rejects almost all of the uniquely liberal aspects of political life—individualism, consent, and trust. Instead, Manent follows right-leaning thinkers like Schmitt in rejecting liberalism precisely on democratic grounds: the us/them logic underwriting any meaningful political community must resist the liberal horizon of “homogenized,” “universal” “humanity.”

#### AGONISTIC DEMOCRACY: HEGEMONY, CONTESTATION, AND POPULISM

So far, we see that Schmitt has revealed that liberalism and democracy have two opposing aims: liberalism seeks to construct a community of “humanity,” while democracy seeks to

construct a community based on the political “us/them” relation. The basis of Schmitt’s distinction is “realism,” which is understood to be a claim on the fundamental fact of “flux” or antagonistic conflict that radically challenges any hopeful or ideal notion of a universal consensus, the seemingly important ingredient for any “humanity.” Liberal democracy rests on two different ontological presumptions: liberals believe in some sort of idealistic “foundationalism,” which is the view that there can be direct access to the truth and that this will win the day; democrats believe that such foundationalism is hopelessly naïve, and that politics is a game of power, flux, and antagonism. Schmitt’s challenge is for those who want to defend liberal democracy, to reconcile the two warring vocabularies, grammars, or logics that underwrite both.

Rawls sought out to address precisely this sort of ontological criticism of liberal democracy. By starting from intractable antagonism, he hoped to reveal the royal road to liberalism that could persuade even the most illiberal democrat. I have outlined his view above. He does not allow for flux, contestation, or dissent at all. He quickly demands a clear demarcation between “reasonable” and “unreasonable” that essentially guarantees his conclusion that liberalism is reasonable to all (who are reasonable because they are liberal). In short, he does not adequately engage Schmitt’s ontological critique of liberal democracy, and therefore we must be wary of following Rawls’ theory. The other alternative I briefly outlined was Manent’s seeming defense of liberalism. I showed, however, that, while Manent is keenly aware of the ontological or realist critique of liberal democracy, he does not actually resist it but adopts it. In other words, Manent defends a version of liberalism that is not, in fact, liberal. Schmitt’s ontological critique of liberalism has not yet been overcome. I turn now to two neo-Marxist “radical democrats” who claim to save liberal democracy from the Schmittian critique: Chantal Mouffe and Ernesto Laclau. I do so, not simply to pile more criticism upon contemporary liberalism, but to reveal that liberal

democracy can be saved, though we have to alter some fundamental propositions floating behind liberal theory about the nature of liberalism. In particular, if we are to follow Mouffe and Laclau, we must understand liberal democracy to be a regime based on an “ontology of flux,” or *contingency*. Below I will outline their positions. I conclude this chapter by asking if it is indeed possible to have a liberalism based on flux or contingency. In order to answer this, in the next chapter I turn to the work of Locke because, as outlined in the previous chapter, he at least presents his liberalism as a function of a trust that is premised on some sort of contingency or flux.

Drawing from the work of John Rawls, contemporary mainstream liberal political theory is decidedly “ideal theory.” Ideal theory is a type of theorizing that sets as its object to establish ontological or metaphysical claims of truth, and this entails numerous philosophical debates about epistemological concerns about how we can know these metaphysical first principles, and then to derive the political institutions and social relations we should accept based upon these epistemologically justified first principles. Ideal theorizing, then, starts (as I will show below) from the claim that consent as the animating and authoritative principle of society is itself too “unstable” if it is not grounded on one of the foundational metaphysical principles like nature, reason, or evolutionary biology. Politics must, from the perspective of ideal theory, rest on an ultimate principle or foundation.

Contrary to “ideal theory” liberalism is the “realist” strand that argues against this metaphysical search for demonstrably certain principles that can ground our politics. The realist strand, insofar as it engages ideal theory directly, does so by either adhering to an “anti-foundationalist” or a “post-foundationalist” perspective. Both perspectives argue that “ideal theory” amounts to an argument from an asserted first premise since, in order to mount an argument a first unargued premise is presupposed as the necessary precondition of an argument.

So, the basis of politics is not as the idealist would argue a product of foundations but simply power or interest. The task, then, for political theory is not to establish proper foundations, but to “unmask” these foundational claims as precisely non-foundational. The difference between the “anti-foundationalist” and the “post-foundationalist” is outlined next.

### Anti-Foundationalism and Post-Foundationalism

Anti-foundationalists, like Martin Heidegger, Richard Rorty, and Jacques Derrida—to name only the most famous contemporaries of this position—set out to expose the foundational claims many make in arguing from ideal theory.<sup>25</sup> They do so in order to liberate themselves from the oppressive foundationalism, since, for the anti-foundationalist, all foundationalist claims are themselves contingent, and, as contingent, they are illegitimately exclusive. According to Derrida,

...the entire history of the concept of structure...must be thought of as a series of substitutions of center for center, as a linked chain of determinations of the center. Successively, and in regulated fashion, the center receives different forms or names. The history of metaphysics like the history of the West is the history of these metaphors and metonymies. Its matrix...is the determination of Being as *presence* in all senses of this word. It could be shown that all names related to fundamentals, to principles, or to the center have always designated an invariable presence—*eidōs*, *arche*, *telos*, *Energeia*, *ousai* (essence, existence, substance, subject), *aletheia*, transcendentality, consciousness, God, man, and so forth. Quoted from Bernstein (1992, 175).

Or, as Rorty says:

The quickest way of expressing this commonality is to say that philosophers as diverse as William James and Friedrich Nietzsche, Donald Davidson and Jacques Derrida, Hilary Putnam and Bruno Latour, John Dewey and Michel Foucault, are antidualists. This does not mean that they are against binary oppositions; it is not clear that thought is possible without using such oppositions. It means rather that they are trying to shake off the influences of the peculiarly metaphysical dualisms which the Western philosophical tradition inherited from the Greeks: those between essence and accident, substance and property, and appearance and reality. They are trying to replace the world pictures constructed with the aid of these Greek oppositions with a picture of a flux continually changing relations. (1999, 47)

For the anti-foundationalist, foundations are to be unmasked and overcome. Anti-foundationalists seek to expose and reject foundations, hoping to be in a liberated, unconstrained space of expression and creativity—once the oppressive foundations have been removed.



Post-foundationalists do not seek to merely expose or unmask the contingency at the center of all foundationalist claims, but, they seek to reform these foundations. The difference between the anti-foundationalists and the post-foundationalists is the recognition of the latter that foundational claims will always be important for political life—a “public philosophy” that orders the relationships between individuals, giving substantive content to the form. As one commentator put it

what came to be called post-foundationalism should not be confused with anti-foundationalism. What distinguishes the former from the latter is that it does not assume the absence of *any* ground; what it assumes is the absence of an *ultimate* ground, since it is only on the basis of such absence that grounds, in the plural, are possible. The problem is therefore posed not in terms of *no* foundations (the logic of all-or-nothing), but in terms of *contingent* foundations. Hence post-foundationalism does not stop after having assumed the absence of final ground and so it does not turn into anti-foundationalist nihilism, existentialism or [radical] pluralism, all of which assume the absence of any ground and would result in complete meaninglessness, absolute freedom or total autonomy. Nor does it turn into a sort of post-modern pluralism for which all meta-narratives have equally melted into air, for what is still accepted by post-foundationalism is the necessity for *some* ground. (Wigenbach 2011, 8)

The post-foundationalist perspective is subtler than the anti-foundationalist position. Just as the anti-foundationalist, the post-foundationalist argues that foundationalist claims are exclusive and potentially oppressive since there is no *ultimate* ground, but does not have to admit the anti-foundationalist conclusion that there is no ground at all. The post-foundationalist does admit that there is a ground, but that this ground is contingently articulated. What the post-foundationalist denies—against the anti-foundationalist position—is that there is no emancipated non-foundational space available to us, as the anti-foundationalists hope in the idea of “play.” The post-foundationalist perspective avoids the “emancipatory” narrative of the anti-foundationalists (Wigenbach 2011). For the post-foundationalist, we should be honest about political life: while we must live within a foundationalist environment (what would it look like not to?), this does not make the foundations truly foundational—the basis of any foundational claim in a society is not

“truth” but “power.” Foundations are a product of power. Post-foundationalism emphasizes the contingency of all articulated foundations, denying their ontological or metaphysical truth, and instead refocuses our attention on power. Political life is about power, not foundational ontological first principles.

This last point needs to be emphasized. As opposed to the anti-foundational perspective, the post-foundationalist argues not that there are no fundamental truths in the world—which is exactly what the anti- and post- designate—but that these foundational truths cannot be the ground of political life. In politics, these foundational truths do not obtain. Politics, for the post-foundationalist, is one of consent—understood as an agreement not guaranteed by metaphysical first principles that make such an agreement inevitable. Political life is fundamentally determined by flux or radical, irreconcilable pluralism. In this world, consent is a *modus vivendi*—a tenuous, fragile, agreement that nevertheless has authority given by those parties included in the ceasefire. The post-foundationalist claims that the foundationalist “ideal theory” perspective is not political, if “political” is understood as the sober recognition of the real possibility or actual existence of conflict due to conflicting conceptions of justice and the good. Ideal theory, by grounding politics in a first principle that cannot be denied, denies then the legitimacy of dissent and conflict. What is there to fight about, if the truth has already been revealed? In a world of demonstrable first principles, “politics” is more like “administration”—or, as we shall see later, “policing.” Post-foundationalism, however, embraces the contingency of consent as the necessary “foundation” to political life, but, only as an authority that is potentially always under revision. Any particular articulation from consent is never wholly unobjectionable, since it is not ontologically or metaphysically guaranteed, and the claim from consent is itself an expression of power (though, often masked as unobjectionable “truths”). From the post-foundationalist perspective, unlike that

of ideal theory, power is at the center of political life not ontological or metaphysical first principles.<sup>26</sup>

One may always object to such abstract thinking along the following lines: how, exactly, can one claim there are no foundations without having to admit that this statement of “foundationlessness” is fundamentally a foundational claim? Is this not a contradiction? For the anti-foundationalist, is there not a foundational teleology behind the narrative of “emancipation”? For the post-foundationalist, too, is there not a foundational claim about the contingency and flux of the world? In other words, why is the “political” and the flux or pluralism central to our political lives? For the anti-foundationalists, these criticisms may be apt—and, these are criticisms levelled against anti-foundationalists by both the ideal theorists and post-foundationalists alike. My focus is not on anti-foundationalism, but post-foundationalism, so I will leave these criticisms sitting for the anti-foundationalist. For the post-foundationalist, these criticisms start with the presumption that to deny the foundations in the political world is equivalent to denying them in entirety. The post-foundationalist’s claim, however, is subtler than then radical denial: the presumption that reality does not exist—that there is no “out there”—need not be central to the claim of the political. The flux of political life is guaranteed by the nature of political life almost descriptively speaking: conflict and the possibility of conflict *are* our reality. But, perhaps, further, the claim the post-foundationalist makes is to suggest that whatever truth in the nature of things “out there,” there is no direct correspondence between those and the social world: truth and reality in the social world are constructed through language, not the things themselves. The way we talk about things—the words themselves—alter the “natural” things, and make the direct correspondence of the foundations in, say “nature,” and the foundations of our social and political world far from guaranteed. Again, to be clear, the post-foundationalist simply needs to say that, strictly speaking,

conflict and its potentiality are facts of our lives, and these will always push against the direct correspondence of a foundational claim “out there” and the foundational claims acceptable in our social and political lives.

The post foundationalist perspective, then, does not necessarily deny the possibility of a reality “out there,” but only that there is a direct correspondence between the natural and political foundations—the line that ideal theory demands be more than contingent. The foundation in social and political life, according to the post-foundationalist, is consensus or consent. Remember this is precisely the foundation that is ultimately denied by ideal theory liberalism, since it seeks a foundation that is more than contingent, but inevitable. Power in politics is denied also by the ideal theorist. From the post-foundationalist perspective, denying political power is not to negate it but to hide its influence. Once unmasked, politics becomes less the inevitable outcome of our natural or rational selves, but an expression of power or interest. Political power always sets itself up *as* foundational—as something that is true “by matter of course,” or “naturally so,” or as “how it has always been.” These expressions are common refrains, and they present political power as precisely not *power*, and therefore contingent, but “more” than just power: as an apolitical first principle. Power has the natural tendency to present itself apolitically—as something uncontestable. Contestation, then, is important not merely for reforming the political space—present a competing set of interpretations—but is the *precondition* for the emergence of the political space itself. If contestation is denied, it is because power has been equated with an unobjectionable “thing”—either as a first moral principle or the command of a leader.

So, who are these “post-foundationalists”? The two most famous and relevant to contemporary liberal theory are Chantal Mouffe and Ernesto Laclau. Together, the two wrote an immensely important work on radical democracy—*Hegemony and Socialist Strategy: Towards a*

*Radical Democratic Politics*, originally published in 1985—that has influenced many later continental political theorists.<sup>27</sup> This original strand of work drew from post- or neo-Marxist ideas, particularly the work of Antonio Gramsci’s concept of “hegemony,” which they applied to political dynamics of the Cold War (1985, viii). Their argument, put simply, was to focus on the “articulation” of power, which is to render it contingent, instead of taking the categories and relations of power (as Marxists so often did with economic concepts of class) as fixed (1985, x). Instead, all power is “articulated,” contingent, and therefore “discursive,” a function of discourse and not something hard, fixed, or purely empirical. This, they say, marked an “ontological” shift in analyzing politics, which had been already occurring in other intellectual circles:

This is the point at which, for our analysis, a notion of the social conceived as a *discursive* space—that is, making possible relations of representation strictly unthinkable within a physicalist or naturalistic paradigm—becomes of paramount importance. In other works, we have shown that the category of ‘discourse’ has a pedigree in contemporary thought going back to the three main intellectual currents of the twentieth century: analytical philosophy, phenomenology, and structuralism. In these three the century started with an illusion of immediacy, of a non-discursively mediated access to the things themselves—the referent, the phenomenon of the sign, respectively. In all three, however, this illusion of immediacy dissolved at some point, and had to be replaced by one form or another of discursive mediation. (1985, xi).

For Mouffe and Laclau, they inaugurated the post-foundationalist perspective in contemporary political thought by bringing in the notion of “hegemony,” which is the “discourse” that orders the “symbolic” relationship of any particular regime that anchors and “founds” that regime. I will discuss these concepts and the implications of these concepts below in more detail. I want to stress here, only that the post-foundationalist perspective is best championed by Mouffe and Laclau’s work, and that this is intimately tied to many of the strands of anti-foundationalist thinking, though it retains a very “realist” commitment to the fact that we must always be “within” a “hegemonic” “regime.”

In this early work on hegemony and radical democracy, there is no reference to Carl Schmitt. Instead, the influence of Carl Schmitt was felt much later, as Mouffe and Laclau (but Mouffe in particular) sought to understand the nature of the hegemonic regime of “liberal democracy.” Obviously, this was in some sense important in the era of the Cold War, but it took on a particular need after the fall of the Soviet Union. It should not be surprising, then, to find that Mouffe’s work on Carl Schmitt’s attack on liberal-democracy was picked up in post-1992: *The Return of the Political* (1993), *Dimensions of Radical Democracy: Pluralism, Citizenship, Community* (1996), *The Democratic Paradox* (2000), *On the Political* (2005), and *Agonistics* (2013).<sup>28</sup> Given their pressing concern for hegemonic power, they follow Schmitt in his diagnosis of liberal-democracy is essentially a contradiction in terms, Mouffe says in her influential *The Democratic Paradox*,

A central argument in this book is that it is vital for democratic politics to understand that liberal democracy results from the articulation of two logics which are incompatible in the last instance and that there is no way in which they could be perfectly reconciled. (2000, 5)

At the heart of liberal-democracy is a contradiction: a logic of liberalism which excludes the logic of democracy, and a logic of democracy that excludes the logic of liberalism. If liberalism and democracy are conceptually mutually exclusive of one another, then any attempt to “perfectly reconcile” them necessarily entails violence to one or the other, in the name of one or the other.

This conceptual understanding of the contradiction between the two logics, which I will discuss in more detail below, is not benign to everyday political life, according to Mouffe. Contemporary politics aims at the one thing denied: consensus between the two warring logics of liberal-democracy. When politicians and the public understand the goal of politics to be a perfect reconciliation, frustration and disappointment are necessarily outcomes. In the popular political psyche, the goal of liberal-democracy is not only peace, but also quiet: political antagonisms

between individuals and groups are not to be tolerated. For Mouffe, this consensual view of liberal-democracy necessarily entails that political strife is not only a sign of an unhealthy politics, but, in fact, eradicating antagonisms is what it means to make liberal-democracy healthy. For Mouffe, we must recognize that liberal-democracy requires a certain level of contestation between the two logics of liberalism and democracy, and that this must distinctly political space must always be left open. If that space is closed, as we will see, then the political contestation takes on a particularly moral or economic character, which actually threatens the whole of liberal-democracy as a regime.

For Mouffe, liberal-democracy is a “regime,” understood as a “symbolic ordering of social relations” (2000, 18). From a classical perspective, regimes were the way through which one determines who is to rule, the rights and duties of the citizens and the governors. Rather than talking about who gets what office (a very proceduralist or legalistic perspective of “regime” or “constitutionalism”), we should understand the ways that the symbolic social and political relationships of citizen or subject and governor or magistrate are construed. That is to say, what we should examine is the way that we tell the story of the relationship between governed and governor.

In this way, the liberal-democratic regime has a problem: it is comprised of two “logics” or ways of seeing and articulating the relationship between citizens and other citizens, and citizens and governors. On the one hand, liberalism articulates the order in terms of the rule of law, humanity, and the separation of power; on the other hand, democracy articulates the symbolic political order in terms of popular sovereignty—understood here as a particular articulation of an us/them relationship. Let us focus first on Mouffe’s view of the logic of liberalism. For Mouffe, liberalism pushes against democracy since it demands that the difference at the heart of a

democratic us/them relationship be dissolved: the “we” identity at the heart of popular sovereignty needs to be eradicated. Public life on this liberal view is, then, a discourse or logic of essential similarity—humanity—that aims at consensus, and therefore, all disagreement is considered defective reasoning, or simply “madness” (2000, 20). For Mouffe, the logic of liberalism rests on an “ontology of presence,” where there is presumed to be a direct correspondence between perception or idea and the thing-itself. In other words, there is an ability to ground the consensus, to uncover the essential unifying feature of all humanity, to dissolve all particular difference as merely accidental—to have a unique perspective through which one has certainty. From Mouffe’s perspective, liberalism understood in this way denies the very thing that it first assumed: real pluralism. In denying this pluralism, it actually moves from liberalism to absolutism. This is why she is a “Schmittian.”

Following Schmitt, Mouffe holds that democracy and liberalism are two contradictory “logics.” Democracy is an expression of a “homogeneity” in the “people” constituted by a fundamental equality between ruler and ruled. But, this homogeneity is drawn from an exclusionary us/them distinction, what Schmitt and Mouffe refer to as “the political.” Democracy is constituted, then, politically and this is to say that it is defined by an identity that has a hard distinction between an “us” and a “them,” a citizen and a barbarian, etc. At the center of liberalism, however, is the concept of “humanity,” which is not drawn from the political us/them relationship, but seeks to overcome the political identification altogether. Humanity has no contrast class. Humanity is a “dissolving liquid” of the democratic political identity: individuals have rights insofar as they are individuals and share in a shared rationality, and not due to their particular memberships in various communities (2000, 39). From this perspective, Rawls is clearly a “liberal.”



Democracy is inherently *political*, since politics entails distinctions between peoples and groups (Mouffe 2000, 18). Humanity and liberalism soften these distinctions. Citizenship is a primary concern for democrats precisely because of the concern for the political distinction between us/them (ibid, 36-37). Democracy is ultimately tied to popular sovereignty—the will of the people, or citizens—and this can only be drawn from actual political distinctions (ibid. 38-39). Liberalism and humanity then resist these notions of citizenship derived from the political, arguing that the rights and obligations we have are primarily the product of some more universal—and therefore apolitical—notion (ibid, 49-53).

From this brief analysis, we can see what Mouffe is here driving at: the war between the two logics of liberal-democracy is familiarly told as the tension between liberalism and its focus on institutions, against the messier and rambunctious populism that seeks to overturn or overstep these institutional constraints. Liberalism and its mechanical “neutralizations,” as Schmitt calls them, of populism and democracy are all directly opposed to populist demands, and indeed is constructed in order to frustrate or at least temper the episodic and fickle will of the democratic masses. For some liberals, like Rawls, nothing is scarier than “the demos.” Of course, the legitimacy of these liberal-democratic institutions themselves rest on some non-trivial concession to popular sovereignty—an expression of the people. Indeed, the ground of the liberal institutionalism is none other than the very populism it seeks to constrain or tame. For Mouffe, with this, we have arrived at a clear view of the paradox at the center of liberal-democracy: an apolitical liberal logic of inclusion, and the political democratic logic of exclusion.

The resolution of the liberal-democratic paradox, however, often looks like an attempt to further disenfranchise and alienate the people—to set up a liberal institutionalism on some other ground than consent of the democratic people. For Mouffe, this is exactly what Rawls has tried to

do (2000, 17-35). The basis of political liberalism is no longer the contingent assent of the people, but the universal truth of the principles of justice derived from the rational faculties of an abstract mind. This liberal resolution to the paradox between liberalism and democracy can only prove to further alienate dissent, which spurs potentially more radically destabilizing “unreasonable outside forces.” Therefore, Rawls himself even must admit, in the name of stability, the government must exercise coercive power to maintain the just principles against “the people.” The democratic resolution of the paradox, Mouffe notes, is the one Schmitt himself chooses: give up liberal constitutionalism and let popular sovereignty reign. Of course, shorn of the liberal constitutional prejudices against centralized power, the full democratic position would have to admit that majority rule may be replaced by a set of those with the knowledge of the popular will. The numerical majority could be replaced by the qualitative minority.

Let us remember how Rawls set out in his *Political Liberalism*: to build a liberalism from the “irreconcilable conflict” at the heart of political life. As I showed in the previous chapter, I think he fails in doing so. Mouffe agrees, and goes further: “To negate the ineradicable character of antagonism and to aim at a universal rational consensus—this is the real threat to democracy” (2000, 22). We can see clearly that eradicating the political and establishing a universal “overlapping consensus” of reasonable and rational people is precisely the Rawlsian project. For Mouffe, the demand for a “neutral” set of political principles—one supposedly guaranteed through intricate procedural and institutional mechanisms—is more than an attempt to arrive at peace and security. The Rawlsian liberal project seeks to secure peace and stability through making politics essentially about morality, i.e., making the dear distinction between “reasonable” and “unreasonable” political categories filled with moral content. The attempt to solidify the distinction in moral discourse—to make reasonable and unreasonable both the basis of political rights one of

moral capacity—is only possible, Mouffe argues, if Rawls holds a certain “ontology.” Only by this ontological commitment—itself unargued—is it possible that Rawls can feel confident in his direct access to the thing in itself, an understanding of political truths that is not influenced by the contingent, accidental influence of real life. Dissent is a moral failure, in Rawls’ scheme, as it simply suggests that individuals have failed to grasp the truths of liberal justice. Mouffe is not persuaded by this argument, nor does she feel any one else not already committed to liberalism would be persuaded by this argument: “[Rawls’] political liberalism can provide a consensus among reasonable persons who, *by definition*, are persons who accept the principles of political liberalism” (2000, 26). For Mouffe, Rawls’ liberalism has little “room for dissent” (2000, 29). Where there is no dissent, there is no antagonism, and with no antagonism there is no distinctly political ground: “politics” has been replaced by “administration” or “police” (ibid.). Rawls has just repeated the apolitical liberalism that left liberal democracy in the Weimar Republic without any defenses, and without any allies—only a bunch of “unreasonable” people.

For Mouffe, Rawls’ liberal rationalism makes him commit to a position that dissent or discord of almost any kind is legitimate if and only if it exists in the private sphere, but all discord or dissent in public life is generally illegitimate because it is destabilizing. I outlined some of this above in my section on Rawls, but Mouffe’s point is the same. Pluralism of opinion is then pushed down into the private sphere—of what particular rational plan for the good life one wants to maximize—thereby eliminating the actual public antagonism. This is not a benign shift: “Once the controversial doctrines have been relegated to the sphere of the private, it is possible, in [Rawls’] view, to establish in the public sphere a type of consensus grounded on Reason (with its two sides: the rational and the reasonable). This is a consensus that it would be illegitimate to put into question once it has been reached, and the only possibility of destabilization would be from an attack from

the outside by unreasonable forces” (2000, 28). By holding out the view that a neutral, objective public reason is possible, Rawls necessarily makes dissent a product of “outside unreasonable forces.” Antagonism and conflict arise not from the nature of the political world, but from individual idiosyncratic factors that disrupt seemingly reasonable and rational calculations. Dissent is a personality defect (2000, 25). The neutral core of Rawls’ public reason holds a privileged position where it places the stability of public peace on the “truth”—a truth that is universal, atemporal, and capable of certain knowledge by anyone with the proper moral capacities. The world is not in flux, dissent is simply the product of “outside unreasonable forces,” and there are knowable certainties about political morals.

This is absolutism. For Mouffe, Rawls’ “well-ordered society is a society from which politics has been eliminated” (2000, 29). In light of Rawls’ assertion of a possible neutral, universal basis of political justice, all constitutive deliberation and all legitimacy to dissent have been nullified. There can be no open dialogues about the nature and end of public life. Rawls “eliminates the democratic struggle among ‘adversaries,’ that is, those who share allegiance to the liberal-democratic principles, but while defending different interpretations of what liberty and equality should mean and to which kind of social relations and institutions they should apply” (2000, 30). The flux of interpretations within the private sphere *about* public life, the real antagonisms present even in political society, is denied any real standing. For Rawls, according to Mouffe, liberal justice is so thickly tied to the moral that politics is replaced with administration. The moral element produces an all-or-nothing logic that itself closes all connection to the political and democratic element. Insofar as one thinks of Rawls’ project as a response to Schmitt, we would say that Rawls is able to save liberalism at the expense of jettisoning all aspects of democracy. Rawls, too, thinks liberal-democracy is a contradiction in terms.

As we saw, the problem today is that Rawlsian liberalism has become predominant, and this means that the belief that we can “resolve” the liberal-democratic paradox by pulling the liberal thread is pervasive. This is dangerous, and it must be resisted. It is here that Mouffe presents a defense of what she calls “agonistic democracy.”

It is a mistake, Mouffe argues, to try to resolve the paradox of liberal democracy at all. Though Mouffe is certainly a Schmittian, she ultimately rejects his radical democratic conclusion. “We can accept his insight perfectly well without agreeing to the conclusion he does” (2000, 44). Instead of resolving the conflict, Mouffe argues that the truly political solution to the paradox is hold onto the tension between the liberals and the democrats. “Indeed, such an articulation can be seen as a locus of a *tension* that instills a very important dynamic, which is constitutive of the specificity of liberal democracy as a new political form of society” (2000, 44). Mouffe accepts the contradictory logics at the heart of liberal-democracy, but does not follow Schmitt’s analysis that this contradiction demands either a liberal or democratic resolution. Mouffe reasons that, if held in a constitutive tension, democracy and liberalism provide what each other lacks and what the other denies. Democracy provides the logic of substantive inclusion, while liberalism provides a way to soften the corresponding substantive exclusion.

Contrary to other projects of radical or participatory democracy informed by a rationalistic framework, radical and plural democracy rejects the very possibility of a non-exclusive public sphere of rational argument where a non-coercive consensus is a *conceptual* impossibility, it does not put in jeopardy the democratic ideal, as some would argue. On the contrary, it protects pluralist democracy against any attempts at closure. Indeed, such a rejection constitutes an important guarantee that the dynamics of the democratic process will be kept alive. Instead of trying to erase the traces of power and exclusion, democratic politics requires us to bring them to the fore, to make them visible so that they can enter the terrain of contestation. (2000, 33)

The result is certainly messy, but it is not incoherent nor is it impossible. What is incoherent and dangerous is trying to pull either thread to resolve the tension one way or the other. The desire to resolve the tension, then, is the true problem facing liberal democracy today, which Mouffe argues

is simply the view that we cannot live in a conflictual, messy, or adversarial environment—that politics is not fit for us.

For Mouffe, we must begin from the ontology of flux, which is simply the forceful recognition that “things could always be otherwise and every order is predicated on the exclusion of other possibilities” (2013, 2). It is precisely this ontology of flux that Rawls seemed to accept, but then systematically denies. As Mouffe says, “Indeed one of the main tenants of this kind of liberalism is the rationalist belief in the availability of a universal consensus based on reason,” which entail that things could not be otherwise (2013, 3). This is an ontological presupposition. “Here the main problem with liberal rationalism is that it deploys a logic of the social based on an essentialist conception of ‘being as presence,’ and that it conceives objectively as being inherent in the things themselves” (2013, 4). This rationalistic perspective grounds two types of mainstream liberalism, both founded on the work of Rawls: “aggregative” and “deliberative” liberalism. For Mouffe, both strands either view individuals as merely utility maximizers (aggregative) or as carriers of “Reason” (deliberative). The former makes politics economics, while the latter makes it a matter of morality. Both must be rejected as insufficiently aware of the affective, populist necessities of properly maintaining the balance between democracy and liberalism.

Mouffe’s radical democratic critique of liberalism must be carefully defined and traced. She certainly denies the theoretical and conceptual grounding of contemporary liberalism, understood as some product of Rawls’ naïve rationalist ontology. In this way she certainly is a radical democrat—as are both Manent and Schmitt. But, her radical critique should not be overblown: she is actually setting out to *defend* liberal-democracy: “liberal-democratic institutions should not be taken for granted: it is always necessary to fortify and defend them” (2013, 4). Mouffe’s critique is not that liberalism *as such*—the logic of humanity, individualism, and the rule

of law—should be dismissed. Instead, what should be denied is a liberalism drawn from the shallow grounds of a defunct ontology—liberalism must be understood as a choice, a product of consent, and therefore of power, which makes it a radically contingent enterprise. Liberalism must always remember its political ground of flux: it could always be otherwise. By moving liberalism out of a “naturalized” or “inevitable” discourse that denies that it could, in fact, be otherwise, Mouffe is making liberalism self-reflective of its own grounds and revealing the path necessary to “stabilize” it in a non-absolutist way. Mouffe is also making clear that, in order to properly defend and fortify liberalism, we must first soberly recognize the ever-growing illiberal tendencies of the globalized world. As Mouffe notes, the “only ones denouncing the ‘consensus at the center’ are the ‘right-wing populists’” (2013, 7). The neutralization of politics is not truly a “neutralization” but only a repression, which will inevitably erupt when people, “having lost faith in the traditional democratic process,” become “easy targets for the demagogues on the right” (2013, 7). The right wing authoritarianism of today is not a naturally occurring articulation of a primitive democratic or republican partisanship, but a peculiar consequence of the neutralization of politics caused by contemporary liberalism. Injecting democratic dissent, contestation or, as Mouffe calls it “agonism,” Mouffe hopes to change the end of liberal-democratic politics from being a “search for an inaccessible consensus to an ‘agonistic confrontation’ between conflicting interpretations of the constitutive liberal-democratic values” (2013, 9). Mouffe injects political contestation into the core of liberal-democracy, then, not to produce a radical democracy but to bolster the agonistic element within the tension between liberalism and democracy in order to save the liberal-democratic regime. Far from being a critic of liberal-democracy, Mouffe seeks to defend it. But, this means she must do the radical democratic critique.

Here we must shift gears. Mouffe does rely on a more nuanced view of democracy that is not simply an unbridled crowd. For this, we turn to the work she wrote with Ernesto Laclau—*Hegemony and Socialist Strategy*—and Laclau’s own *On Populist Reason*.<sup>29</sup> As we have seen, Mouffe’s direction post-*Hegemony and Socialist Strategy* was to engage with the paradox of liberal democracy, and to articulate and defend it on the same political grounds that Schmitt attempted to dismantle it (and that Rawls failed to adequately address). While Mouffe was doing this, Laclau was focusing on the inner workings of a hegemonic or discursive politics—what he will later call the “rhetorical foundations of society”: the nature of the hegemonic articulation and the emergence of the counter-hegemonic power, “populism” or the “people.”<sup>30</sup> In the following section, I will briefly outline the “agonistic” political relationship between the hegemonic power and the counter-hegemonic power. Put simply, we can see a bit better the division of labor between Mouffe and Laclau: Mouffe set out to talk about the particular *regime* of liberal democracy, while Laclau is talking about the *general* hegemonic/populism relationship. In turning to Laclau’s work on hegemony and populism, we will have the conceptual tools necessary to truly understand Mouffe’s “agonism,” which we must now understand as not an *alternative* to liberal-democracy, but the needed democratic (or populist) correction to an absolutist liberalism, securing the liberal-democratic regime itself.

For Laclau, the problem defining populism is a function of the perspective of rational theory. Populism is “excluded a priori” (2007, 16) as “imprecise” or guideless, aimless, or simply pathological dissatisfaction. But, this is just to suggest that—contrary to the view of it being without substance—it is in fact the empirical ground of what is considered “reasonable.” As Laclau says, rational theory “seems to aim, on the contrary, at separating what is rational and conceptually apprehensible in political action from its dichotomous opposite: a populism concerned as irrational



and undefinable” (2007, 16). For Laclau, populism is the conceptual opposite that rational theory posits for itself. So, from the rational perspective, of course it is essentially a “vague” concept because, if it were comprehensible it would have to be in some sense “reasonable” which would make it unfit for being a characteristic of populism but, instead, a characteristic of reason. To put it another way, as we will see below, Laclau is leaning on the view that language is a series of words that themselves only have meaning in contrast to other words and concepts. Therefore, if we want to properly “see” what populism is, we must move out of the rational perspective, since this will always confirm that populism is literally synonymous with the irrational, abnormal, or madness.

This entails understanding where the rational perspective went wrong. For Laclau, the rationalist perspective went wrong in misunderstanding the nature of the political world, or, as we have come to understand it, rational theory started from faulty ontological assumptions. For Laclau, we must restart our investigation of populism from a proper understanding of political life as that of flux. But, this changes, then, the nature or priority of populism and its opposite—liberalism:

That is: instead of counterpoising ‘vagueness’ to a mature political logic governed by a high degree of precise institutional determination, we should start asking ourselves a different and more basic set of questions: ‘is not the vagueness of populist discourses the consequence of social reality itself being, in some situations, vague and undetermined? And, in that case, wouldn’t populism be, rather than a clumsy political and ideological operation, a performative act endowed with a rationality of its own—that is to say, in some situations, vagueness is a precondition to constructing relevant political meanings? (2007, 17-18)

For Laclau, once we understand the political world as a realm of flux, then the priority of populism emerges. Instead of a perspective of tight concepts, perhaps legal and institutional, political life emerges vague, blurry, and undetermined. Therefore, the logic or rationality of populism is “performative,” which is to say that it is an expression that, in the act, ties together and makes

coherent otherwise independent and incoherent parts. It is from the social, understood as vague or in flux, that politics emerges—not top-down from a perspective outside of our lived experiences.

The performative aspect of populism is a direct consequence of the concept of “naming,” and the nature of language. For Laclau, there is no direct correspondence between signified and signifier—between the word and the image (2007, 22). The long tradition in psychology, linguistics, and the philosophy of language has come to the recognition that there is no direct relationship between the words we have and use and the supposed reality or things they are meant to refer. Laclau describes the philosophy of language as marking the “progressive autonomy of naming,” by which he means the ever expanding arbitrariness of the relation between signifier and signified. Take for example, the “descriptivist” position that “every name has a content given by the cluster of descriptive features” (2007, 101). If we take, for example, the name Abraham Lincoln, we can suggest that there is a tight correspondence between the name and the man who lived. We could, on this descriptivist account, seemingly come up with the cluster of descriptions that properly delimit where Abraham Lincoln begins and where it ends.

The intuition that our words have clear descriptions—that there is a tight correspondence between the words and the things that they refer to—is incorrect. As soon as we sit down to mark out definitive boundaries of a given word, we are immediately struck by the “plurality of descriptions which can attach to the same objects” (2007, 101). This suggests an “anti-descriptivist” position, shared by Saul Kripke, who argues that “words refer to things not through their shared descriptive features, but through a ‘primal baptism’ which does away with description entirely” (2007, 102). Here, the name is a “rigid designator” that need not actually refer to anything “out there,” but has meaning in discourse. To put it perhaps more simply, Laclau says that “what the descriptivists are doing is to establish a fixed correlation between signifier and signified; while

the anti-descriptivist approach involves emancipating the signifier from any enthrallment to the signified” (ibid.).

Laclau is an anti-descriptivist. The relationship between the words we use and the things to which they refer are notoriously blurry—where does a “corner” end, exactly?—but this does not make words and speech meaningless. In fact, for Laclau, when we talk about the ontology of flux or post foundationalism, what we are ultimately referring to is precisely the fact that naming or anti-descriptivism is the fact of language (2007, 25). “Since this is the way things are, we cannot simply differentiate the ‘true’ meaning of a term (which would necessarily be permanent) from a series of images connotatively associated with it, for the associative networks are an integral part of the very structure of language” (2007, 26). If we turn back to the concept of populism, we can see now why populism takes on such an elevated position: it is the articulation or performative act of naming otherwise unconnected things into a signifier.

Any productive role of populism is often denied by the rational theory perspective. Here, populism is irrational crowd psychology. It presumes that, since “rationality belong to the individual,” when put into a crowd—where some sort of animalistic regression to the mean intellect occurs—the individual “loses many of his rational attributes” (2007, 34). For Laclau, this is to see the crowd as some sort of irrational “contagion” that fundamentally alters one’s rationality as an individual. At a minimum, crowd psychology confuses and makes inoperative one’s rationality, at worst it completely annihilates it. But, this view of populism-as-irrational-crowd rests on what we have already denied—any fixed point of reference to a stable “thing” called “reasonableness” or “rationality”:

At this point in the argument, it should be clear that the whole discourse of crowd behavior had come to depend so much on drawing a clear line of demarcation between the normal and the pathological that it was in an increasingly ancillary position vis-à-vis medical science—especially (but not only) psychiatry.” (2007, 35)

From the perspective of Laclau, that Rawls ultimately psycho-pathologizes dissent is unsurprising—it was *expected*. It is expected because the whole liberal rationalism rests on a claim that we can know, definitively, to what the word “reasonable” and “rational” refer. Once this is granted, the medicalization or psychologizing of dissent is inevitable. But, again, this is due exclusively to Rawls’ ontological commitments.

Let us now continue bringing the philosophy of language into political theory. As we have seen, the common understanding of language is that it is a set of words that have no intrinsic or fixed meaning, and therefore the meaning is often relational: a discourse is what establishes the identities of concepts and names through their negative relations (2007, 68-69). Or, following Saussure, “there are no positive terms in language, only differences—something is what it is only through its differential relations to something else” (2007, 68). This is the principle of constitutive difference—the identity of a thing is always made up of what it is not or what it negates. We have already seen this concept translated into the political domain: it is Schmitt’s concept of the “political” and specifically his understanding of the logic of democracy. The us/them relation is always constitutive of each identity *as* the antagonists. However, we must be aware of a particular political problem: politics is usually understood as having a “center,” a foundational claim that anchors the whole. As we saw in the beginning, the uniquely post-foundationalist perspective is keenly aware that first, actual foundations are forever elusive, but, secondly, all political societies assert as a matter of practice a center. The foundationalist thinkers say that there is definitively an anchor that positively connects the signs or signifiers with the signified—that our words are directly correlated with the things themselves. But, even insofar as our political world is inextricably bound up in language, there is simply no direct connection with the “Real,” as Žižek calls it (2000).<sup>31</sup> The center will always itself have a difference that it constitutes itself against

(Laclau 2007, 70). This articulation of the political center is itself, however, contingent though authoritative. Indeed, its articulation is precisely an act of authority or performative power: it is the foundational act of constituting the network of signs as relevant. For Laclau (and Mouffe) this authoritative performative articulation of an identity is a “hegemon.”

Where there is a hegemon, there must be an excluded identity. This is the set of identities or relations that are not brought under the hegemonic relations. For Laclau, the counter-hegemonic power is properly called “populism” (2007, 73). Populism stems from a request or a demand that eventually becomes a claim of recognition (ibid.). The claim of recognition is to be included or to reform the hegemonic power relations such that inclusion is possible. The identity of the counter-hegemonic force is the “people,” which constitute themselves through establishing a “chain of equivalences” among the excluded identities that the hegemonic power constituted itself against. In other words, populism or democracy requires “the formation of an internal antagonistic frontier separating the ‘people’ from power; and an equivalential articulation of demands making the emergence of the people possible” (2007, 74). The “people” emerges out of those excluded identities as each particular claim or demand is generalized and universalized from the particular claim of any one individual or identity to a several and eventually a bloc. Here we can point to the emergence of such identities as “worker” as the prime example of this. To what does a “worker” refer? Ultimately, it refers to the equivalent identities that have been subsumed under it, all united against the hegemonic identity of “capitalist” or “Wall Street.” This is a crude, but hopefully illustrative example. For Laclau (and Mouffe) the fate of liberal democracy rests on recognizing “populism” as the necessary feature of the “political” that can be brought into liberalism.

For Laclau, the populist logic denies the “part of a whole” view of political power, and it instead takes the “realist” perspective that, any government or anyone who holds political power

holds it under the principle that it *is* giving voice to the whole— “the part as a whole” (2007, 225). It is in this realistic perspective that politics emerges as a series of power relations that all compete for a hegemonic priority—which always carries its differential “other”: bourgeoisie/proletariat, American/British, Democrat/Republican, etc. These identities do not refer to something “out there,” but are expressions of power relations that strive to assert dominance. Not only do we now recognize the political foundations of political life, but we also recognize the ontology of flux that underwrites the whole enterprise. This is seen most clearly in the power of naming within a language understood as a set of differential identities that require a performative articulation to center them. Naming is that power—perhaps *the* political power. Finally, the most important thing we come to see here is the emergence of a concept of the “people” that has long been denied by contemporary liberal theorists. Contrary to Rawls’s view that we ought to accept the subject position of an obedient passenger on a ship, Laclau and Mouffe make it clear that dissent and contestation are necessary for the survival of liberal democracy. Self-government and activity—making claims and demands, constructing identities—are the ingredients for a healthy liberal-democracy.

We can now start to see the core theses of Mouffe and Laclau’s “radical democratic” critique of liberalism. Following these “radical democrats,” power operates “hegemonically,” which is to say that it is the “leading” voice of what is or is not to be accepted, what is or is not “normal,” what is or is not “reasonable.” The contingent articulation of power, at the moment of decision, takes on a hegemonic form—it is “univocal.” The decision is what the boundaries are between identities, and who is included within which identity. For example, what counts as reasonable or unreasonable, and who is capable of carrying one or the other identity. This is a debate about the relationships between us that define us—between master/slave, parent/child, and

magistrate/subject. The hegemonic nature of political power is inevitable in any political society. Foundational claims—the existence of a hegemon—are unavoidable. But, this does not mean that it ought not be resisted, nor that it should operate *as if* it is not a contingent articulation. For the post-foundationalist, there must always be contention and contest to keep open the view of power as contingent, as premised on consent, as non-foundational, all things that power itself seeks to cover over and negate.

The defining feature of post-foundational politics is “contestation” between the “hegemonic power” and a “counterhegemonic power,” often called “the people.” The political field in the post-foundationalist perspective, then, is populated on the one hand by the hegemon that, as the articulation of the distinctions and boundaries of identities—and therefore the rights, obligations, and duties of various persons—is contingent but strives to negate that fact; and, on the other hand, a counter-hegemonic power that always strives to “unmask” and “reform” the current hegemonic articulation. The counter-hegemonic power will, as I show in the next chapter, be the agent called “the People,” which we must understand as something more than mere *demos*, and something that is itself contingent—brought about by the actions of what Locke calls, the “busie head.” The people are the counter-hegemonic power, and this often referred to as “democracy,” which conflates it with the more partisan *demos*. I will here not differentiate the two, as I will do so only in the next chapter, so I will refer to the people and democracy interchangeably, until noted otherwise. The act of decision—the hegemonic articulation—is always necessary in political life, but it pushes against the openness of democracy, ending the debate of conflicting interpretations. The people are not constituted by a social contract in the most literal sense—since this would entail a teleological narrative at the center of the “people,” which would be a certain kind of foundationalism. Instead, the people itself is a continually shifting entity, often unmolded and

inoperative in everyday political life. Therefore, any articulation of the people will always be itself contingent and explicitly in opposition to the hegemonic articulation. The nature of the liberal “people” will be discussed in the next chapter.

We can now better understand the “agonistic” nature of post-foundational political theory. As we have said, post-foundationalism is a version of the “realist” or “political-ontological” critique of contemporary liberalism. In particular, it is known as the “agonistic” or “democratic” critique of liberalism. Agonistic democracy is “agonistic” precisely because its main focus is in resisting the apolitical tendency of political power. It is “democratic” insofar as it relies on a counterhegemonic force— “the people.” This battle between the hegemon and the people is a constitutive relationship that must never attempt a reconciliation or a final solution—either in the name of the hegemon or in the people. Violence is therefore always possible, since reconciliation or final articulations are seen as inevitable or desired. For example, the liberal hegemonic view of a universal consensus meant to specifically curtail the democratic element (which is its natural enemy) must participate in violence as it approaches absolutism. It must police the moral consensus, and this means eradicating dissent, democracy, and the “political.” Likewise, the democratic impulse to unify and exclude as a community against the liberal machinery of discussion and compromise—an all-inclusive moral community of “humanity”—can only succeed through violence: it must exterminate the notion of a liberal humanity, leaving only the crystalized notion of us versus them—a tyranny of the community over both the individual and other communities. The threat of tyranny or absolutism is always a possibility, and agonistic democracy strives to keep both poles within a manageable orbit.



## CONCLUSION

Schmitt's view of the contradiction between liberalism and democracy, or a politics of distrust and a politics of trust, seems to be an inescapable one: either we posit the basis of our politics on individuals who are distrustful individuals and then accept the liberal absolutism that follows, or we believe there to be a fundamental teleological trust community and accept politics as drawn between affective lines of "us" and "them." These are not idle positions, either: they are still being presented as viable alternatives today—but under the guise of defending liberal democracy.

Rawls sets out to defend liberal democracy, but falls almost completely into a Hobbesian liberal absolutism—he presents the political relationship as that between a passenger on a ship and the more expert captain. There is no self-government here, and this is due to Rawls' view of us having to essentially forfeit ourselves to the overlapping consensus—which is the nonnegotiable morality of the community. One wonders if this notion of trust is really, then, not just "force" (*Second Treatise* 169-174). And, if it is force, then why would the individual subject agree to the sovereign in the first place? Rawls can only seemingly suggest that the alternative is a state of flux, uncertainty, and potential danger—a state of nature. But, even this view of the state of nature would be insufficient: it would have to be the Hobbesian state of war, and we would have to be so radically distrustful that any security is better than nothing. Manent sets out to defend liberal democracy (or at least just liberalism), but falls into a radical democratic perspective of a wholly encompassing (teleological) community. Manent repeats the view that essentially we are not born "free" in a truly existential sense, but as individuals who have a teleology. Politics, then, for Manent is drawn not based on individuals or consent—which he roundly denies—but that of

“nature.” Here, Locke would quickly point out that Manent has conflated the political with the familial, perhaps largely due to the desire to escape from “distrustful” liberalism.

Both Rawls and Manent failed to save liberal democracy. In large part, their failure is due to their ontological foundationalism (Rawls’ “reasonable pluralism,” and Manent’s valorization of “nature”). However, one alternative that I spent considerable time outlining here is presented by supposedly “radical democrats”: “agonistic democracy.” At times in the previous sections, I have tried to emphasize the aspects of their work that do really seem to align with liberalism (perhaps over democracy). The main point is not to show their commitment to liberal democracy—which is seemingly explicit at times, and will be the subject of the next chapter—but how the successful engagement with Schmitt has seemingly altered liberalism. In short, the liberal democracy “saved” by Mouffe and Laclau is “post-foundationalist,” which is often understood to be antithetical to liberalism—which is based on perhaps thick metaphysical concepts like “humanity.”

One may rightly ask, “If we follow Mouffe and Laclau’s post-foundationalist agonistic liberalism, have we given up too much of our classical liberalism?” Can classical liberalism be truly founded on “flux” or “contingency,” as Mouffe and Laclau seem to believe it can be? In order to examine precisely this question, I propose to reevaluate Locke’s work. Locke is particularly important since his classical liberalism is, as I argued in the previous chapter, a politics of trust, which, if properly understood, demands a certain sense of “flux” as these post-foundationalists have presented it. This is the argument of the next chapter.

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<sup>1</sup> I would like to make clear here at the outset that “distrust” is used as the lack of trust (which is also understood as “basic trust”), which I stressed in the previous chapter (and will do so throughout the rest of the dissertation) that properly speaking, liberalism does not rest on *distrust* but *suspicion*, and that *trust* should not be confused with *basic trust* or *reliance*. These distinction, however, is not Schmitt’s. So I will often refer to distrust and suspicion or suspiciousness, and trust and basic trust/reliance, synonymously throughout this chapter. Of course, where it is important for my argument to differentiate suspicion from distrust, I will mark it out explicitly.

<sup>2</sup> References to Schmitt’s *Concept of the Political* will be abbreviated in in-text citations as simply (CP) followed by the page number; references to Schmitt’s *Crisis of Parliamentary Democracy* will be abbreviated in in-text citations as simply (CPD) followed by a page number. References to John Rawls’ *A Theory of Justice* will be abbreviated in in-text citations as simply (TJ) followed by a page number; and references to John Rawls’ *Political Liberalism* will be abbreviated in in-text citations as (PL) followed by page number. Finally, citations to Pierre Manent’s *Democracy Without Nations* will be abbreviated in in-text citations as (DWN) followed by page number. The editions for the texts can be found in the bibliography.

<sup>3</sup> Schmitt and Hobbes. Schmitt makes constant reference to Hobbes in all of his works, but Hobbes is the center of study in Schmitt’s *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*. For a review of the literature on Schmitt’s indebtedness to Hobbes, see John P. McCormick, “Fear, Technology, and the State: Carl Schmitt, Leo Strauss, and the Revival of Hobbes in Weimar and National Socialist Germany,” *Political Theory* 22:4 (1994), 619-652; and John P. McCormick, *Carl Schmitt’s Critique of Liberalism: Against Politics as Technology*, Chicago: University of Chicago Press (1999).

<sup>4</sup> Thomsen, Jacob Als. “Carl Schmitt—the Hobbesian of the 20<sup>th</sup> Century?,” *MARS/Social Thought & Research*, 20:1-2, (1997), 5-28.

<sup>5</sup> It is in this statement that Leo Strauss would try to show how Schmitt, rather than trying to transcend liberalism, stays within the liberal horizon (see McCormick’s “Fear, Technology, and the State”).

<sup>6</sup> Hobbes, Thomas. *Leviathan, with selected variants from the Latin edition of 1668*, edited with Introduction and Notes by Edwin Curley, Indianapolis: Hackett Publishing 1994.

<sup>7</sup> For a more sustained analysis of Schmitt’s concept of law, see John P. McCormick’s *Carl Schmitt’s Critique of Liberalism*, chapter 5.

<sup>8</sup> Here I understand absolutism to be an “account of political power which derive the ruler’s authority either from a direct gift or an irreversible grant, and which license the ruler to override all human laws in what he believes to be cases of necessity” (quoted from Van A. Mobley, “Two Liberalisms: The Contrasting Visions of Hobbes and Locke,” *Humanitas* 9:1 (1996), 6-34.

<sup>9</sup> The following paragraph draws heavily from Hobbes’ famous portrayal of the “state of nature” as found in *Leviathan*, chapter 13.

<sup>10</sup> See Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*. Cambridge: Cambridge University Press, 2008.

<sup>11</sup> See Anthony Simon Laden, “The House That Jack Built: Thirty Years of Reading Rawls,” *Ethics* 113:2 (2003), 367-390.

<sup>12</sup> The criticisms, expansions, and defenses of Rawls’ theory are too long to list. However, I suggest Stephen Mulhall and Adam Swift, *Liberals & Communitarians: Second Edition*, (Oxford: Wiley-Blackwell, 1997), and Chandran Kukathas and Phillip Pettit, *Rawls: A Theory of Justice and its Critics*. Stanford: Stanford University Press, 1990, for a review of the literature. The lines I trace through Rawls’ thought are similar to those put forth originally by most “communitarians,” see especially Charles Taylor in his *Sources of the Self: The Making of Modern Identity*, Cambridge: Cambridge University Press: 1989; and Ronald Beiner *What’s the Matter with Liberalism?* University of California Press, 1995.

<sup>13</sup> There has been much written about Rawls’ notion of the self, but I will note here a few things. As Stephen Mulhall and Adam Swift in “Rawls and Communitarianism,” (in *The Cambridge Companion to Rawl* edited by Samuel Freeman, Cambridge: Cambridge University Press 2003) point out, Rawls himself eventually concedes that his conception of the self needs to be revised. On the one hand, the hypothetical position of taking a step back cannot guarantee that we should see moral intuitions that are not immediately those of our community—and to deny this would have to be giving priority to something other than the phenomenology of our everyday lives. On the other

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hand, Rawls must admit too that the ends for which we move are inextricably bound up in social life. We are not “individuals” if by that one means atomistic, asocial beings.

<sup>14</sup> I will turn to this in detail in the following chapter.

<sup>15</sup> See Miguel Vatter, “The Idea of Public Reason and the Reason of State: Schmitt and Rawls on the Political,” *Political Theory* 36:2 (2008), 239-271.

<sup>16</sup> I will discuss below the work of Chantal Mouffe, which forcefully makes this point. However, see: Roberto Alejandro, “What is Political about Rawls’ Political Liberalism?,” *The Journal of Politics* 58:1 (1996), 1-24.

<sup>17</sup> For a long review of the concept of stability in Rawls’ *A Theory of Justice* and his *Political Liberalism*, see: Brian Barry, “Review: John Rawls and the Search for Stability,” *Ethics* 104:4 (1995), 874-915; and Alexander Kaufman, “Stability, Fit, and Consensus,” *The Journal of Politics* 71:2 (2009), 533-543. The preoccupation Rawls had with the question of stability is not confined to his later *Political Liberalism*, but was at the center of his original theory in *A Theory of Justice*.

<sup>18</sup> See Gerald F. Gaus, “The Convergence of Rights and Utility: The Case of Rawls and Mill,” *Ethics* 92:1 (1981), 57-72. Gaus suggests that Rawls’ support of plural voting creates a contradiction with his thoroughgoing equality. As for Rawls’ general diminished sense of self-government, see: Frank Lovett, “The Republican Critique of Liberalism,” in *The Cambridge Companion to Liberalism*, edited by Steven Wall. Cambridge: Cambridge University Press, 2015. For Lovett, Rawls is at the end of the liberal neutrality principle which, coupled with the principle of non-interference, has greatly diminished any value to the principle of self-government, opting instead for a more institutionalist perspective that can provide the mechanisms and objectivity necessary to stay true to non-interference and neutrality. As I will show in the next chapter, liberalism need not jettison the principle of self-government (which does imply, however, diminishing the importance of institutionalism and the rule of law).

<sup>19</sup> I return to and expand on this point in the next chapter.

<sup>20</sup> See Pierre Manent, *Tocqueville and the Nature of Democracy*, Lanham, MD: Rowman & Littlefield (1996).

<sup>21</sup> For more on the “conservative” critique of liberalism, see: Skorupski, John, “The Conservative Critique of Liberalism,” in *The Cambridge Companion to Liberalism*. Cambridge: Cambridge University Press, 2015, 401-422.

<sup>22</sup> On this point, see John P. McCormick’s *Carl Schmitt’s Critique of Liberalism*, Part 3. There McCormick rightly argues that Schmitt never was able to fully transcend the Weberian categories of modernity—the bureaucratic instrumental rationalism of liberalism and the traditional, “democratic” political impulses of charismatic tribalism. Instead, he oscillates between them almost incoherently: Schmitt’s defense of the political state is then both drawn from a hyper-rationalistic liberal reasoning (as found in Hobbes’ *Leviathan*), or it is guaranteed by the march of democratic spirit, which is just the resurgence of a distinctly neglected or repressed irrational tendency of peoples coming to conscious self-government. This contradiction in Schmitt’s work, while devastating, nevertheless reveals real challenges to our understanding of liberal democracy anyway.

<sup>23</sup> On these two points—that human beings are political and that liberalism is too “individualistic,” Manent repeats very familiar charges of the “communitarian” critics (see: Skorupski [2015]). While this does suggest that Manent is a neo-communitarian, it also suggests that perhaps the word “communitarian” is improperly too wide a term to be of any help categorizing views. On this last point, see Ronald Beiner’s nice discussion of the term in his *What’s the Matter with Liberalism?*, chapter 2.

<sup>24</sup> One would wonder how far this is from the more *democratic-republicanism* of Rousseau and other radicals. On the distinction between liberals, republicans, and democrats (and the various derivatives, see Kautz, *Liberalism and Community*, 111-118. On Manent’s view of Rousseau, see: Pierre Manent, *An Intellectual History of Liberalism*. Princeton: Princeton University Press, 1995, chapter 6 and “Conclusion.”

<sup>25</sup> On Heidegger, see his *Being and Time*, edited and translated by Joan Stambaugh, Albany: State University of New York Press, 1996; his essay, “What is Metaphysics?,” in *Martin Heidegger: Basic Writing* edited by David Farrell Krell, New York: Harper & Row, 1977. On Heidegger’s view of the tradition, see Marx, Werner, *Heidegger and the Tradition*. Evanston: Northwestern University Press, 1971. On Rorty’s relationship to Heidegger, see: Rorty, Richard, “Overcoming the Tradition: Heidegger and Dewey,” in *Heidegger and Modern Philosophy* edited by Michael Murray, New Haven: Yale University Press, 1978. On Rorty’s anti-foundationalism more generally, see his *Philosophy and the Mirror of Nature*. Princeton: Princeton University Press, 1979; and his *Contingency, Irony, Solidarity*. Cambridge: Cambridge University Press 1989; and his *Philosophy and Social Hope*. New York: Penguin Books 1999. Finally, see Derrida’s *Rogues: Two Essays on Reason*. Palo Alto: Stanford University Press, 2005; and on Derrida’s anti-foundationalism, see Bernstein, Richard J. “Serious Play: The Ethical-Political Horizon of Derrida,” in *The New Constellation: The Ethical-Political Horizons of Modernity/Postmodernity*. Cambridge: MIT Press, 1992; and on Rorty, see Bernstein, Richard J. “One Step Forward, Two Steps Backward: Rorty on Liberal Democracy and Philosophy,” in *New Constellation: The Ethical-Political Horizons of Modernity/Postmodernity*. Cambridge: MIT Press, 1992. “Ideal theory” here is foundational metaphysics. Heidegger, Rorty, and Derrida are

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clearly against foundational metaphysics—and, largely, this is due to a shared affinity with Nietzsche’s general project of “philosophizing with a hammer” (the subtitle of Nietzsche’s *Twilight of the Idols*). See: Nietzsche, Friedrich *The Portable Nietzsche*, edited and translated by Walter Kauffman, New York: Penguin Books, 1985.

<sup>26</sup> From the post-foundationalist perspective, while political life is ultimately about power via consent, this does not change the fact that there may indeed be ontological truths. On the one hand, one could say that this is simply an agnostic or skeptical position brought from private life to public life. In this way, it would suggest that the post-foundationalist position is *itself* contingent. Though I deal with a version of this point above, this does suggest a certain sense in which—regardless of the possible claim of logical contradiction—political life must take on a more “pragmatic” character. This would put front and center not knowledge but judgment, which I discuss in chapter 5 in detail. On the other hand, one could say that this proves only that the battlefield is open for interpretation, and, therefore, in the post-foundationalist view, politics is precisely about interpretations of potential first principles duking it out, though potentially never ultimately winning. This entails that, far from denying the importance of first principles and the political interpretations of these principles, the post-foundationalist recognizes that it is precisely the irreconcilable difference between competing interpretations that constitutes politics. As I show below, the need for an interpretation of justice is central to Locke’s notion of a “liberal partisan” who must compete within the realm of politics—against partisans of the left and the right. It is the political character of liberalism that the post-foundationalist perspective shows us as missing in the ideal theory versions written about in the numerous Rawlsian circles.

<sup>27</sup> Mouffe, Chantal and Ernesto Laclau, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. New York: Verso Books, 1985.

<sup>28</sup> Mouffe, Chantal. *The Return of the Political*. New York: Verso Books, 1995. Mouffe, Chantal. *Dimensions of Radical Democracy: Pluralism, Citizenship, Community*. New York: Verso Books, 1999. Mouffe, Chantal. *The Democratic Paradox*. New York: Verso Books, 2000. Mouffe, Chantal. *On the Political*. New York: Routledge, 2005. Mouffe, Chantal. *Agonistics*. New York: Verso Books, 2013. Referred to in text as “A” followed by the page number.

<sup>29</sup> Laclau, Ernesto. *On Populist Reason*. New York: Verso Books, 2007. Laclau has expanded on his work on the “logic” of collective identities in his *The Rhetorical Foundations of Society*. New York: Verso Books, 2014.

<sup>30</sup> Perhaps the clearest way to understand the core logic of Mouffe and Laclau’s “agonistic” politics is to understand that antagonism has two modes: logical contradiction (A and not-A) and “real opposition” (A and B) (2014, 102-103). For Laclau (and, presumably for Mouffe, too) the foundational metaphysics of contemporary liberalism ultimately understands antagonism (to the extent it does at all) as a form of logical contradiction—which is similar to a “dialectic,” where the particulars of the pluralism are whittled down to a set of logically coherent principles. This is how Rawls is able to justify the notion of “reasonable” pluralism, instead of “real” or “simple” pluralism: our pluralism can be understood as a failure to accurately perceive our always already liberal principles underwriting our “comprehensive” doctrines. There cannot be, for Rawls, a serious antagonism of A and B, since that would radically question the “overlapping consensus,” revealing that “reasonable” and “unreasonable” are not expressions of metaphysical deductions but power (cf. Mouffe 2005, 18-26). For Laclau, and his turn to populism, is to try to understand what it could possibly mean (and how it could possibly come about) that we have an antagonism between A and B that does *not* simply repeat the dialectical opposition of A and not-A (2014, 139-179).

<sup>31</sup> Žižek, Slavoj. “Class Struggle or Postmodernism? Yes, Please!” in *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* edited by Judith Butler, Ernesto Laclau, and Slavoj Žižek. New York: Verso 2000.

### CHAPTER 3: BUSIE HEAD LIBERALISM

The following chapter is comprised of two parts. In the first part I outline the importance of understanding Locke's political ontology, in light of the previous chapter where the ontology of liberalism has now become the battleground of criticism from "radical democrats." I argue in this part that Locke's political ontology—a mix of empiricism and nominalism—is thoroughly "political," i.e., an ontology of flux. In the second part of this chapter, having laid out the demand for contestation and populism from post-foundationalist, I explore if classical liberalism—drawn largely from Locke's work—can adequately accommodate these concepts. I show that Locke's thought not only can accommodate these, but actually relies upon them, and even provides us with a name for the particular figure that will save a uniquely political liberalism: "busie head." This chapter confirms the centrality of a "suspicious trust" (Chapter 2) as the virtue of liberalism, lays the groundwork for defending the agonistic "extra-legal" model of the prerogative powers, central to Lockean liberal constitutionalism (Chapter 4), and, finally, provides a primer for understanding Locke's liberal political psychology (Chapter 5).

#### JOHN LOCKE AND THE ONTOLOGY OF FLUX

Human beings often want to know the truth.<sup>1</sup> As Locke says, "[w]hat is truth was an inquiry many ages since; and it being that which all mankind either do, or pretend to search after, it cannot but be worth our while to examine wherein it consists, and so acquaint ourselves with the nature of it, as to observe how the mind distinguishes it from falsehood" (Essay 4.5.1). We are a being that seeks the truth—or at least pretend to do so. If we start here, our intuitions about the truth tell us something else about the character of truth, which helps us guide our search by helping us figure out what it is we are even looking for in our inquiry into the truth. In particular, we often assume that the "truth" is something that is stable and unchanging, and is something that is generally

accessible to us—to our understanding, even if it requires some severe level of cultivation of the mind on our part. We assume that, armed with this unchanging, yet accessible truth that we can properly ground our understandings—that only then can we really begin to understand or have real knowledge.<sup>2</sup> In other words, we assume that understanding begins and ends with the truth, understood as something solid, certain, and unchanging and it is on this firm ground of the truth that we can proudly claim to “know.” This is a very traditional understanding of what knowledge means, and, while it has a certain commonsense appeal, it will eventually be rejected by Locke.

This view of the truth is often called “foundationalism,” which means that some proposition or belief is needed to secure the connection between our particular belief system and “reality” “out there.”<sup>3</sup> There have been many types of foundationalisms—nature, historical spirit, and revelation immediately come to mind—that all promise to be the cornerstone of our belief systems that guarantees that we have something more than mere opinion. Upon this firm foundation, we can build a solid web of propositions and beliefs about the world that are not subject to radical doubt. Descartes’ rationalism is a clear example of this search for foundation: doubt everything until you come across something that cannot be doubted—for Descartes, the famous *cogito ergo sum* is that proposition. Though one may well challenge Descartes’ particular conclusion, his method of radical skepticism and doubt in order to find some foundation has largely determined the methodology of modern epistemology. To resist a thoroughgoing skepticism of all things, one imagines that the only way out must be a ground that escapes all doubt, is available to us, not particular to us, and is solid and certain. Descartes’ traditional search for *scientia* instead of mere *opinio*, is a scholastic or classical metaphysical distinction—one that perhaps matches our commonsense or natural notions of truth.<sup>4</sup>

We should be surprised, then, to find that Locke rejects Descartes' rationalist project of searching for foundations.<sup>5</sup> Locke is the first great British empiricist, and he is a nominalist, which, I will argue in this section, place him not in an *anti*-foundational camp, but in a *post*-foundational position. Locke does not have time for radical skepticism:

When we know our own strength, we shall the better know what to undertake with hopes of success: and when we have well surveyed the powers of our own minds, and made some estimate what we may expect from them, we shall not be inclined either to sit still, and not set our thoughts on work at all, in despair of knowing anything; or, on the other side, question everything and disclaim all knowledge, because somethings are not to be understood. ...Our business here is not to know all things, but those which concern our conduct. (*Essay* 1.1.6.)<sup>6</sup>

For Locke, he takes for granted that there are things that are knowable, and things that are not. This disqualifies him from the radical methodological skepticism of Descartes because he already says that the truth of all things is not accessible to us. This does not put us in a realm of “despair,” as if, without a certain demonstration of its absolute truth, we can claim to know nothing. Locke's aim is to establish as best he can what it is we can know, holding out the possibility that “true” knowledge may be knowable to some lucky few, but the vast majority of people exist in a space that does not affirm or deny any particular foundationalism.<sup>7</sup>

Locke is commonly understood to be an “empiricist,” which I take to mean that he begins from the senses and everyday experiences and observations, which he claims that there is literally no reason to doubt: “If we persuade ourselves, that our faculties act and inform us right, concerning the existence of those objects that affect them, it cannot pass for an ill-grounded confidence: for I think nobody can, in earnest, be so skeptical, as to be uncertain of the existence of those things that he sees and feels” (4.11.3). For Locke, our senses and our experiences form the solid base from which we can move forward. We should be clear here on how Locke's standard of certainty is shifting: he is not engaging—and indeed immediately forecloses—any discussion about radical doubt of our sense. This is not because he has established that sense-experience *is* the foundation,



but that our everyday lives and therefore our conduct and existence—the things that actually concern us—demand no more than our senses. For Locke, our senses are “not only as great as our frame can attain to, but as our condition needs,” which indicates that we have moved from a purely philosophical or abstract notion of foundations to some other standard beyond the certainty that escapes all doubt: “For our faculties being suited not to the full extent of being, nor to a perfect, clear, comprehensive knowledge of things free from all doubt and scruple; but to the preservation of us, in whom they are; and accommodated to the use of life; they serve to our purpose well enough, if they will but give us certain notice of those things, which are convenient or inconvenient to us.” (*Essay* 4. 11.8) Locke begins with sense experience not because it is true (understood as the conclusion of a Cartesian radical skepticism) but because it will serve us well moving forward. Locke is particularly concerned with avoiding unnecessary distinctions, “dwelling” where he does not long have to be (*Education* section 94).

Locke’s empiricism makes it so that he can have some connection to “reality,” though this connection does not approach the kind of philosophical certainty that we have come to expect. Instead, Locke’s thoroughgoing empiricism leads him to the view of “nominalism,” which means that he denies as a matter of course the existence of a direct connection between our ideas and the world—specifically when it comes to “abstract” or “general” ideas. Together, Locke’s nominalism and empiricism provide a coherent way to understand the ontology of flux that he sees as constituting the things that matter to us—including our social and political lives. His empiricism and nominalism also help reveal the particular need for consent and trust, which, if not for the ontology of flux, would be generally meaningless or redundant. The ontology of flux is a “post-foundational” ontology, and this makes Locke and supposed contemporary radical critics of liberalism much closer to one another than would first appear. Indeed, it is through this post-

foundationalism that both contemporary critics of liberalism and the classical liberalism derived from Locke's work provide a suitable response to Schmitt's "political" or "ontological" critique of liberal democracy.

This section is largely about "ontology," which is broadly speaking a branch of metaphysics that is concerned most with examining the "being" or "existence" of things—of what is (or is not) "really there." Though this may seem a bit far afield from political life, let me return to the opening arguments of this section. It was assumed that human beings are largely directed toward some aspect of the truth, which we saw brought with it a slew of other assumptions about the character of that "truth," even though the substance of the truth was not yet established. In other words, we assume that the truth is unchanging, universal, or certain. This is already to be "doing" ontology: what is *really* there, or, what is it *really*? The truth—or the "foundation"—is presumably an "abstract universal," which we can immediately contrast with a concrete particular. To say that "abstract universals" exist out there is an ontological claim about the nature of reality (namely, that we exist in a world where things that are abstract universals exist [and are knowable]). The commonsense view we outlined above also carried a further assumption: something is true the more it approaches the abstract and the universal—i.e., the less it is particular and concrete. This is a very traditional understanding of "reality," and it is one that gives "ontological priority" to the abstract and universal as opposed to the concrete and particular.<sup>8</sup>

Though this brief discussion of ontology may seem perhaps too technical and itself abstract, we should be aware that this does have practical, political consequence. Indeed, as I have made clear, this ontological ground is precisely where Schmitt levels his critique of liberal democracy—about what is *there* in the political world. For Schmitt, liberalism promotes a certain ontology and democracy another, and these are not compatible: liberalism promotes an ontology

where it promises that the abstract universal of the truth about politics—about justice—can be completely known and applied; while, democracy, denies any ground outside of the particular will of the people—a political identity (us/them) that denies precisely a world of meaningful abstract universals (like “humanity” or “justice”). For Schmitt, there is only the particular democratic nation, an us/them. The truth of this is guaranteed by his fundamental ontology of “flux,” uncertainty, or antagonism.

Let us also not forget that Rawls sought to respond to Schmitt on this ontological ground of flux and antagonism. However, Rawls fails to do more than explicate a liberal system of justice that is predicated on the same abstract universalist ontological ground that Schmitt says is incompatible with democracy. Rawls’ liberalism is not only an inadequate response to Schmitt’s ontological critique, but it only tightens the view that liberalism must jettison the “political” (and therewith democracy) if it is to remain coherent. Rawls, we will have to say, in deed and not in word agrees with Schmitt: liberalism and democracy are incompatible. Nor should we forget Manent’s supposed defense of liberal democracy. In the previous chapter, in order to respond to the political ontological critique levelled by Schmitt, Manent accepts that liberalism and democracy do seem to have a different set of “ontologies” or “logics.” But, as we saw, in order for Manent to reconcile the contradiction between these antagonistic ontologies, he actually adopts the *democratic* perspective *against* liberalism. Manent valorizes the nation of the nation-state, and laments the loss of precisely a meaningful us/them relationship that pushes against the universal and abstract liberalism that has diluted the “political” identities of the people. Manent is not a defender of liberalism, but a radical democrat—again, in deed though maybe not in word. The point is clear, in order to respond to the political critique of Schmitt, we must try to ground a liberalism that is not diametrically opposed to the political ontology of “flux.”

I have used the word “flux” often, and it is a term I draw from Locke’s own description of the nature of reality. Locke makes clear that “flux” cannot be denied in the social and political world:

Things of this world are in so constant a flux, that nothing remains long in the same state. Thus people, riches, trade, power, change their stations; flourishing cities come to ruin, and prove in time, neglected desolate corners, whilst unfrequented places grow into populous countries, filled with wealth and inhabitants. (*Second Treatise* 157)

For Locke, the world is in flux, which we will understand here as being in motion—*flux* being derived from the Latin for “flow.” The nature of the world, the material conditions—trade, power, riches—and the immaterial conditions that grow up around them—what Locke will call in that same passage “custom” or tradition and privilege—is in flux. On the simplest level, political and social life can only be grounded—to the extent that it can be—on a shifting terrain.

But, for Locke, flux is more than a trivial statement about the march of time in political life. On the one hand, political flux here extends deeper into the fabric of reality—there is no calm plateau of rest, where one can catch one’s breath and contemplate about the world from some elevated position. For Locke, there is only always flux in political life, and to reach beyond that for something else is to be confused. This psychological confusion, however, is not itself something to ignore or dismiss, as the human psyche is the other domain of Locke’s recognition of flux in our lives. On the other hand, flux extends deeper into the fabric of our own consciousness: “there is a constant succession and flux of ideas in our minds” (*Conduct* 30). Here, Locke indicates that flux is internal, and something that cannot possibly be benign. The flux of our thought-life demands a certain recognition that there is no inevitable end—no natural tendency—to have a certain set of ideas, which Locke will call “innate.” This could be because nature did not provide them, or because they were covered over by faulty education. However, for Locke, the

fact of our psychological flux makes political flux and the general sense of confusion and disorder more and more a fact of what it means to be a human being in the world.

Locke also discusses this same phenomenon of “flux” when he uses the word “busie.” Though I will discuss Locke’s “political psychology” in more detail in chapter 5, I want to trace here some of his thinking about flux in order to better illuminate how precisely Locke’s thinking is saturated in the ontology of flux. If flux is central to Locke’s thinking in general, we should expect to see it in his liberalism in particular. Locke frequently refers to the “busie” mind of man,<sup>9</sup> and draws from the flux in our consciousness that, without intervention (education or guidance), human beings are indeed—like their thoughts more generally—“restive and ungovernable,” prone to “enchantment,” and vulnerable to enslavement and tyrannical designs (*Conduct* 45). Not only can the “busie” mind become distracted, Locke says, but it is to some degree wildly malleable—human beings can either be a truly rational or perfectly beastly.

Thus far can the busie mind of man carry him to a brutality below the level of beasts, when he quits reason, which places him almost equal to angels. Nor could it be otherwise in a creature, whose thoughts are more than the sands, and wider than the ocean, where fancy and passion must needs run him into strange courses, if reason, which is his only star and compass, be not that he steers by. *First Treatise*, 57

Though Locke here seemingly elevates “reason” above what he will later contrast with “passion” and “imagination”—a distinction that I will discuss briefly below, but especially in chapter 5—my point here is that Locke is very much aware that flux is a fundamental aspect of the human mind, and, therefore, the human condition. If flux exists in this world, it primarily exists within the human mind. Nor is this to say that flux is only a problem of the busie mind, or that the problem of the busie mind is not a political problem: the busie mind of man guarantees the political flux of pluralism and antagonism. For Locke, then, flux is the only ground we can safely build upon,

unless we want to deny a fundamental feature of the human condition—the “flux” of the “busie mind.”

When I speak of the “ontology of flux” I am referring to a state that holds central the flow or motion of the social and political world and is at the center of what it means to be a human being. For Locke—and as we shall see with contemporary political theorists—“flux” reveals itself in all sorts of ways. In the material realm of time and history, where there is no discernable pattern to the rise and fall of cities and countries, to the fact of war and conflict among people, and the sense of accidents and general uncertainty of life. And, as we have seen above, in the immaterial domain, too, flux is ever-present. For Locke, our human consciousness—the thing that will ultimately designate us a “person”—is itself a battleground of warring ideas. Flux is central to the busie minds of human beings. Not only, however, is it in our minds, but it is also in our language—which I will discuss below.

All of this is to show that Locke is keenly aware of the role of flux in the structure of reality. I will now turn to addressing more directly the question: how does flux enter into Locke’s theory of liberal democracy? This is an important question precisely because the ontological critique levelled by Schmitt denies the possibility of flux and liberal democracy. The ineradicable conflict between individuals necessarily leads to a political life of flux, which liberalism strives to suppress or deny. The pluralism at the bottom of the “political” is a consequence, one might say, of precisely the view that human beings have “busie minds.” Here, then, we can begin to see how Locke and Schmitt agree: flux *is* central to political life—they share the same political “ontology.” The question, then, is how can Locke hope to build liberal democracy on this political ontology of flux?

Locke is famously the “first” of what has been come to be known as the “British empiricists.” Locke never uses the word “empiricism” to describe his theory of the nature of

knowledge (in fact, “*empiric*” for Locke was a reference to a type of doctor) (*Essay* 4.20.4). We understand Locke today as an “*empiricist*” not (only) because he was himself a doctor, but because he held central that the notion that all of our ideas—the stuff of our understanding—happens through our senses and our experience.

Let us then suppose the mind to be, as we say, white paper, void of all characters, without any ideas; How come it be furnished? Whence comes it by the vast store, which the busy and boundless fancy of man has painted on it, with an almost endless variety? When has it all the materials of reason and knowledge? To this I answer, in one word, from *experience*: in that, all our knowledge is founded; and from that it ultimately derives itself. *Essay* 2.1.2

For Locke, the roots of our ideas are our experiences, observations, and senses.<sup>10</sup> Locke is able to elevate the importance—the priority of experience—because he has radically deflated (and will ultimately reject) the notion of “*innate ideas*” (*Essay* 1.4.25). Though I need not retrace this well-trodden ground, I will focus on one aspect of Locke’s dismissal of innate ideas: confusion over the role of socialization in the production of knowledge and our ideas (*Essay* 1.4.7-9).<sup>11</sup>

For Locke, then, the danger of innate ideas takes on a specifically *political* color: innate ideas are those ideas or propositions that are held up to be “*inevitable*” and therefore “*uncontestable*” or unquestionable, which, for Locke, is to say that there are ideas that we hold above and beyond rational examination (*Essay* 1.3.25). This is not something that guarantees their truth, but only their power as something that will be taken as an unexamined authority. For Locke the empiricist, innate ideas and principles are not “*innate*” but more likely the product of childhood socialization, that, upon reflection in adulthood, one does not know why one believes certain things and so regards them as “*innate*” (1.3.23-24).<sup>12</sup> Though we may disagree with Locke on the basis that his view of experience and observation tell him that—seeing children grow up into adulthood

believing the things told to them as children are “innate”—innate ideas do not, therefore, exist, we cannot deny the phenomenon as Locke describes it. In other words, perhaps Locke here has gone too far in his criticism, or extended the conclusion farther than his evidence will allow, but this is to differ with Locke only by a matter of degree and not in kind. The practical postulate of Locke’s liberalism is that, even if there are abstract general ideas, they are not innate but hard fought in the choppy seas of the busie mind. The struggle, however, is part the limits of our reason and the dominating powers that try to overcompensate for these limits.

Locke’s empiricism sets out to find the “things themselves” (*Essay* 1.4.23. 24; 2.12.2; 2.22.9; 2.30.2; 3.3.10, 14; 3.6.11; 3.9.7; 4.6.3, 5, 9, 11). However, the “things themselves,” while in principle available to us through experience and observation, nevertheless are mediated (and therefore potentially obfuscated) by our language—our words. This problem is at the center of Locke’s intention in writing the *Essay*, as he announces in the epistle dedicatory of that work:

I shall always have the satisfaction to have aimed sincerely at truth and usefulness, though in one of the meanest ways. The commonwealth of learning is not at this time without master-builders, whose mighty designs in advancing the sciences, will leave lasting monuments to the admiration of posterity; but everyone must not hope to be a Boyle, or a Sydenham; and in an age that produces such masters, as the great — Huygenius, and the incomparable Mr. Newton, with some others of that strain; it is ambition enough to be employed as an under-labourer in clearing the ground a little, and removing some of the rubbish that lies in the way to knowledge; which certainly had been very much more advanced in the world, if the endeavours of ingenious and industrious men had not been much cumbered with the learned but frivolous use of uncouth, affected, or unintelligible terms, introduced into the sciences, and there made an art of, to that degree, that philosophy, which is nothing but the true knowledge of things, was thought unfit, or incapable to be brought into well-bred company, and polite conversation. Vague and insignificant forms of speech, and abuse of language, have so long passed for mysteries of science; and hard and misapplied words, with little or no meaning, have, by prescription, such a right to be mistaken for deep learning, and height of speculation, that it will not be easy to persuade, either those who speak, or those who hear them, that they are but the covers of ignorance, and hindrance of true knowledge.

Chief among the problems facing the development of the experimental science being developed by the members of the Royal Society is language—specifically, the nature of words. To the



problem of language and the abuse of words, Locke devotes an entire book of the *Essay*, and, indeed, given this note to the reader, we would not be too far amiss to understand this book to be of the highest importance. To get clear our understanding, we must recognize the limits of our understanding, and one of the limits to even seeing the limit to our understanding is language itself. What is Locke's problem with language?

The problem with language, Locke says, is simply that it makes us think that we know too much and, paradoxically, too little. It presents a false dichotomy—similar to the one of traditional ontology presented above—that either we have knowledge of the real things themselves (which devalues the role of words altogether) or, if one says words are important in constituting knowledge, then it assumes that we cannot have knowledge of the things themselves at all. We oscillate between two extremes—a naïve realism or rationalism, that assumes a direct correspondence between our ideas and the things themselves, or a radical skepticism that denies any knowledge or certainty because words are disconnected from the reality of the world. For Locke, the problem is that we either assume a direct correspondence or foundation between our ideas and the world, or we fall into a radical skepticism that doubts everything. The course is to navigate between these two extremes of assumed order and assumed chaos. But, this requires a thorough analysis of the relation of language or words to our (limits of) understanding.

Locke is an empiricist, which means he begins with the premise that all knowledge is drawn from experience. Experience does not provide access to “abstract general” things or ideas, but only particular and concrete (simple) ideas. This is what we would call a “nominalist” position. Nominalism is the view that all there *is* are particular, concrete things, and that the categories and sorts of things into more general or abstract groups is not a reflection of the categories and sorts in the world, but a function of the mind. Nominalism, then, inverts the traditional ontological priority

of the general and particular: we only have access (and therefore can guarantee as “real”) the particular, not the abstract or general. For Locke, the universal and abstract do not reveal themselves to us in our experience: “All things that exist being particulars” (*Essay* 3.3.1). Abstract and universal ideas or words are, then, the combination of some set of particulars, which makes them *meaningful*, but does not secure them as having any relationship to the “real”:

To return to general words, it is plain, by what has been said that General and Universal belong not to the real existence of things, but are inventions and creatures of the understanding, made for it by its own use, and concern only signs, whether words or ideas. (*Essay* 3.3.11)

Traditionally, when we say a word like “justice” or “cat” we tend to be referring to something that is general and abstract—that has its own “essence” or being. Put another way, the word “cat” is often understood *not* to refer to any particular cat (*that* cat) but some “thing” that refers to all “cats.” This “thing” is called an “essence,” and it helps make sense of the word—it provides a definition, for example. The “essence” of the word helps us make sense of the word, that the word has a meaning or a definition, that facilitates clear communication between speaker and audience. Typically, we understand general words like “cat” to refer to an essence that is not *merely* entailed in the definition alone. For example, one could imagine that, collecting all the cats in the universe, and cataloging them, we could, as Aristotle had tried to do, come to some general aspect that each particular cat more or less participates in—a *genus*.<sup>13</sup> Once we have this genus, we would assume that our general word “cat” has a definition that traces the real world. This is all an attempt to secure that that “general” and “abstract” are to be elevated as more “real” than the “concrete” and “particular.” But, it is precisely this elevation of the general and abstract as more real than the concrete and particular that Locke denies.

Are there, then, no “essences”—no truths, no solid ground upon which to build our understanding? Locke’s answer is to replace the traditional notion of “essences” (which he calls

the “real essence”) with another kind that is compatible with his nominalism: “nominal essence” (*Essay* 3.3.15-16). For Locke, we cannot pierce into any deeper level of the “essence” than to understand that the general word we name an object is a seemingly arbitrary connection between objects and their qualities (which we observe as simple sense experience).<sup>14</sup> General words are the product of an active mind, and their content (being “complex,” or a combination of simple sense experiences) are not passively received through the senses. The qualities we assign to things—the things we “draw” out as important—are themselves functions of our understanding and suggest a level of creation that is simply not dependent on “nature” or the “real.” Concepts like “weight” and “color,” the general ideas that we then assume to exist in the world are but our own impositions on nature. The example of “gold” is a recurring one throughout the *Essay*, and Locke’s point is that the word “gold” has meaning insofar as it is connected to a web of other words and signs and significations, all of which we impose on the object to better communicate our ideas with others (*Essay* 3.3.18).<sup>15</sup> For Locke, the general idea or word is a product of the “busie mind,” since it requires an active agent to construct the “complex” ideas of the connections between particulars. Judgment is central to our understanding, not as simply the product of a well-rounded understanding, but as the precondition for it. Judgment, however, well informed in the busie mind, does not guarantee the connection between the “real essence” and the “nominal essence,” but only that the word is intelligible if it has a “nominal essence”—a definition.

This does not mean that the words we use are necessarily unstable and therefore not solid grounds upon which we can say we “know” something. On the contrary, for Locke, this proper understanding of language and the nature of words makes the world and our understandings capable of stability, provided that we consent to standing definitions of general words (*Essay* 3.2.8):

Words by long and familiar use, as has been said, come to excite in men certain ideas so constantly and readily, that they are apt to suppose a natural connection between them. But that they signify only men's peculiar ideas, and that by a perfect arbitrary imposition, is evident in that they often fail to excite in others (even that use the same language) the same ideas we take them to be the signs of: and every man has so inviolable a liberty to make words stand for what ideas he pleases, that no one hath the power to make others have the same ideas in their minds that he has, when they use the same words that he does. And therefore the great Augustus himself, in the possession of that power which ruled the world, acknowledged he could not make a new Latin word: which was as much as to say, that he could not arbitrarily appoint what idea any sound should be a sign of, in the mouths and common language of his subjects. It is true, common use by a tacit consent appropriates certain sounds to certain ideas in all languages, which so far limits the signification of that sound, that unless a man applies it to the same idea, he does not speak properly: and let me add, that unless a man's words excite the same ideas in the hearer, which he makes them stand for in speaking, he does not speak intelligibly.

In a story of the all-powerful Roman emperor Augustus, Locke makes clear that the words we use actually provides a limit, a stabilizing limit to power. The point Locke makes is captured nicely in the opening line of the next chapter, "All things that exist being particulars, it may perhaps be thought reasonable that words, which ought to be conformed to things, should be so too; I mean in their signification: but yet we find the quite contrary" (*Essay* 3.3.1). Words arise from "reason and necessity," in our way of life and not through "chance."

Since the world is particular, it is therefore prone to flux—our words do *not* trace the things as they are—but the words we abstract and generate ourselves never lose their "nominal essences."

At the heart of flux, we can have stability, though on different ground. Stability is in words, not the world:

That such abstract ideas with names to them as we have been speaking of, are essences, may further appear by what we are told concerning essences, viz. that they are ingenerable, and incorruptible. Which cannot be true of the real constitutions of things, which begin and perish with them. All things that exist, besides their Author, are all liable to change, especially those things we are acquainted with, and have ranked into bands, under distinct names, or ensigns. Thus that which was grass is tomorrow the flesh of a sheep, and within a few days after, becomes a part of a man: in all which, and the like changes, it is evident their real essence, i.e., that constitution, whereon the properties of these several things depended, is destroyed and perishes with them. But essences being taken for ideas, established in the mind, with names annexed to them, they are supposed to remain steadily the same, whatever mutations the particular substances are liable to.

If we are honest with ourselves, the world as we see it and feel it is inescapably one of flux—of motion. To say that we can have ideas of the “real constitution” of things, and not even the nominal or real essences of things, is simply too much for Locke to admit. Here, Locke makes clear the massive burden that one would have to shoulder to claim that we can have such knowledge.

The nominalist perspective here grounds Locke’s view that the *names* of things—if properly established through consent (tacit or explicit) and historical use—are more stable than any claim to the know the real constitution or the real essence of things. In fact, Locke goes even further and denies that even if we knew the real essences of things, this knowledge would only be of the particular. The only way out, Locke says, is to claim that your sense and experience do not ground your knowledge, which is to then claim some other standard—perhaps revelation—which, would be to retreat solely into one’s private judgments. Certainty and truth are relocated to the names of things, which are necessarily contingent on the definitions of words and names. But, for Locke, this does not cause instability but actually reinforces the stability and necessity for community and the primacy of consent. Instability or “confusion” and “great disorder” arise not from Locke’s nominalism but those who ignore the nature of language and seek to establish a foundational correspondence between the world and their own words (*Essay* 3.9.21). This is to set up some sort of “enthusiasm,” which Locke thinks is an aggressively groundless and unreasonable claim to knowledge and certainty (*Essay* 4.19). This, for Locke, is the product of an attempt to do away with the whole edifice of reason and sense-experience, the whole notion of community and consent, but to find certainty in one’s individual—inexpressible—revelation. But, this is not the work of divine revelation but confusion (and perhaps helplessness). The search for certainty in “real essences” and not in “nominal essences” is a mark of confusion about the nature of language as a constitutive mediator between us and the “real” world (*Essay* 3.9.21). Our words constitute

our understanding, and they are the ground of all claims to certain knowledge—which, though it does not relate to “reality” (whatever that means), certainly reaches far enough for our concerns.

Locke’s relationship to foundational metaphysics or formal ontology is an act of reversal, not necessarily a denial. He does allow for the occasional intuition of real essences by those that are particularly in tune. However, the general thrust of his empiricism and nominalism is to shift from supposed “real essences” to “nominal essences,” thereby stabilizing an otherwise unstable “reality” in our words. We can see Locke’s ontology of flux better now, since we see that the denial of innate ideas is premised on a thoroughgoing empiricism and nominalism, all of which point to the public declaration of words—especially abstract and general words—as grounded on the “social” or the “community” and “consent.” Locke, for example, says that dictionaries should be studied (*Some Thoughts Concerning Reading and Study for a Gentleman*), which would reveal something about the natural history of the words necessity and reason have sought fit to consecrate in our community (*Essay* 3.2.8; 3.3.3). Stability is not in our private judgments, but in our language, which is necessarily lodged in the community.

For Locke, the core of our language is for the direction of communication with others, for the sake of our own wellbeing and theirs, and, while it provides a stable space upon which we can construct “knowledge,” it does not mean that we are wholly submerged in a web of relations that render us incapable of independent thinking (*Essay* 3.1.1). For Locke, while we necessarily find ourselves within an already constituted space of communal meaning—since our words are usually learned first, and then the ideas afterward (*Essay* 3.5.15)—we nevertheless retain the power of judgment and naming by matter of course (3.6.44-51). For Locke, we are radically always individuals—our sense-experience is the basis of our ideas—but, if we wish to be a part of a community, we adopt a way of speaking—specifically, the names of more general terms. This

does not mean, again, however, that reform or revision of these general terms are impossible, but only difficult since, as it happens, the community itself may not recognize that these ideas are not “innate,” but the product of consent and experience.

If we return to Locke’s insight that power often attempts to christen an idea “innate,” not reason, Locke is well aware that revising language is not so simple a matter of proposing a new definition. It has the potential impact of altering our way of life, of the implicit or hidden power structures that guide our understanding:

This is evidently the case of all children and young folk; and custom, a greater power than nature, seldom failing to make them worship for divine what she hath inured them to bow their minds, and submit their understandings to; it is no wonder that grown men, either perplexed in the necessary affairs of life, or hot in the pursuit of pleasures, should not seriously sit down to examine their own tenets; especially when one of their principles is, that principles ought not to be questioned. And had men leisure, parts, and will, who is there almost that dare shake the foundations of all his past thoughts and actions, and endure to bring upon himself the shame of having been a long time wholly in mistake and error? who is there hardy enough to contend with the reproach which is everywhere prepared for those who dare venture to dissent from the received opinions of their country or party? And where is the man to be found that can patiently prepare himself to bear the name of whimsical, skeptical, or atheist, which he is sure to meet with, who does in the least scruple any of the common opinions? And he will be much more afraid to question those principles, when he shall think them, as most men do, the standards set up by God in his mind, to be the rule and touchstone of all other opinions. And what can hinder him from thinking them sacred, when he finds them the earliest of all his own thoughts, and the most revered by others?

Locke’s point here is that reflection itself is often understood to be a politically dangerous activity, because it punctures the very foundation of society to question the “innate” and “inevitable” beliefs. This is to suggest that society (and therefore we) should always be based on some sort of foundation—some sort of “real essence” or certain knowledge about the “real constitution” of things. For Locke, as we have seen, this is an impossibility. This is not a benign impossibility, either, since it produces two dangerous types of people: those that unreflectively submit to authority; and those who revolt against authority for wholly idiosyncratic reasons (“enthusiasts”). If we live under the ontological regime of traditional metaphysics, we should be afraid of

questioning core beliefs because without that stability to the “real world,” because, without that certainty or reliability we have nothing. And, if we live under a political regime that does admit of knowledge of “real essences,” what do we say to the individual who has come under the sway that she alone has access to the truth? Combined, do we not now have a set of “quietist” individuals who are too afraid to resist, and those individuals who have rebelled absolutely? For Locke, it is precisely this ontological presumption that we can have some direct access to the truth that is destabilizing and dangerous—not his empiricism or nominalism (which, we can now understand as *politically* motivated).

Once we have moved away from the ontological assumptions of “presence”—or, the traditional metaphysics of believing that we can have unmediated access to the “real essences” of things—we are left with an ontology of flux that demands both individualism *and* social trust. It is precisely because Locke inverts classical ontology—by making our certain knowledge at best of particulars—that *trust* emerges as the thing most needful for human beings. As I indicated before, trust has no place in a world without flux. Trust is also the core political concept of liberal democracy, which I will explore below. Now, however, I want to mark out a few of Locke’s passages about trust in the *Essay* as this will illuminate how Locke takes trust to be an active element of virtuous self-government, instead of the passive acceptance of or blind faith in authority.<sup>16</sup>

Insofar as one can say that the *Second Treatise of Government* places trust at the center of liberal democracy, one can say that in the *Essay Concerning the Human Understanding* Locke tries to marginalize it in our lives. The problem, of course, is that Locke recognizes the danger of “trust” understood as blind faith—the submissive, unreflective acceptance of an authoritative



claim or command—which he thinks is completely damaging both politically (as he says in the *Second Treatise*) and personally (which is the focus here in the *Essay*).

There is scarce any one so floating and superficial in his understanding, who hath not some revered propositions, which are to him the principles on which he bottoms his reasonings; and by which he judgeth of truth and falsehood, right and wrong: which some, wanting skill and leisure, and others the inclination, and some being taught, that they ought not to examine; there are few to be found who are not exposed by their ignorance, laziness, education, or precipitancy, to take them upon trust. *Essay* 1.3.24

Here Locke says that the vast majority of us are in a position where, upon self-examination, we hold a set of beliefs that, if pressed, we would have to admit are believed because of some other reason than our own due examination. In other words, for Locke, we all do in fact want some rudder by which we can steer our thoughts, but these positions and beliefs are frequently the product of a more “bottom” or fundamental belief that we accept from some authority—which is to say, we accept based on trust. Locke is explicitly contrasting due-examination with *basic* trust, which we would have to consider one *normatively* better: it is better for us to have opinions examined than accepted on trust. This particular conclusion, while partially correct, will need to be carefully examined throughout the rest of the *Essay*.

We have seen that Locke is explicitly contrasting self-examination with trust: to self-examine our beliefs is to *not* accept them on trust. Locke now makes clear that trust, as he is understanding it here, is no better than “blind” or “implicit faith,” which he says cannot be adequate grounds for our beliefs.

The great difference that is to be found in the notions of mankind is from the different use they put their faculties to; whilst some (and those the most) taking things upon trust, misemploy their power of assent, by lazily enslaving their minds to the dictates and dominion of others in doctrines, which it is their duty carefully to examine, and not blindly, with an implicit faith, to swallow. 1.4.22

For Locke, taking things on trust is akin to “misemploying” our human faculties, and therefore must be rejected. Our faculties demand self-examination—reasoning—and this is seemingly

completely antithetical to trust. Trust is “lazily enslaving” one’s mind to the “dictates and dominion of others” which we have a “duty” to not follow “blindly, with an implicit faith, to swallow.”

So far, we have seen Locke’s view of trust and the even more intense command that we have a duty to resist and reject trust. For Locke, so far, we see that trust should be rejected like slavery should be rejected by a free people. Trust is enslavement, it seems. But, while there seems to be a distinction between those who are “lazy” and those who are perhaps more “industrious,”<sup>17</sup> Locke’s argument is about what we could call the “environmental” conditions that also lead to people being submissive and too trusting:

This being once received, it eased the lazy from the pains of search, and stopped the inquiry of the doubtful concerning all that was once styled innate. And it was of no small advantage to those who affected to be masters and teachers, to make this the principle of principles, “that principles must not be questioned:” for having once established this tenet, that there are innate principles, it put their followers upon a necessity of receiving some doctrines as such; which was to take them off from the use of their own reason and judgment, and put them on believing and taking them upon trust, without farther examination: in which posture of blind credulity, they might be more easily governed by, and made useful to, some sort of men, who had the skill and office to principle and guide them. *Essay* 1.4.24

Of course, there are always going to be people who perhaps do not want to know (which is part of Locke’s point), but the main message here is that people trusting too quickly and inappropriately is not a simple natural tendency: it is fostered by “those who [are] affected to be masters and teachers.” The doctrine of innate ideas is clearly an expression of power—specifically, of domination of the leader (teacher) over the follower (student). The doctrine of innate ideas is particularly dangerous because it keeps the asymmetrical relationship between master/follower always asymmetrical: the followers are “upon necessity” in a submissive position of simply “receiving” the claims of knowledge from the master, “upon trust, without farther examination.” This clearly is an education system—whatever its actual truth (which, of course Locke doubts)—

that is radically dangerous to the principle of self-government or self-examination, so important for Locke. The doctrine of innate ideas—which is related to traditional metaphysics—is a politically suspect doctrine: they make the people “more easily governed by, and made useful to, some sort of men, who had the skill and office to principle and guide them.” As we shall see, the conception of citizenship drawn from this perspective is precisely that of blind trust (what I have called ‘basic trust’). Locke thinks this ‘basic trust’ is dangerous, and the doctrine of innate ideas and its traditional metaphysics is the core corruption.

We now can see clearly that trust—a blind trust akin to faith—is completely antithetical to the epistemic self-government that Locke demands. From these passages, we might come to the conclusion that we should be simply distrusting, self-interested doubters. Rational examination must entail the full exposure and critical review of all of our positions, no? We would need to expose all of our beliefs to radical doubt, in the hopes of finding something more certain that we can then build our beliefs. As much as it seems like Locke has put us in this “Cartesian” position, he makes clear that even this radically skeptical ego is not possible—or, rather, not that it is not possible, but that the certainty sought after in the skeptical reduction is not attainable.

And if he be one who takes his opinions upon trust, how can we imagine that he should renounce those tenets which time and custom have so settled in his mind, that he thinks them self-evident, and of an unquestionable certainty; or which he takes to be impressions he has received from God himself, or from men sent by him? How can we expect, I say, that opinions thus settled should be given up to the arguments or authority of a stranger, or adversary? especially if there be any suspicion of interest or design, as there never fails to be, where men find themselves ill-treated? We should do well to commiserate our mutual ignorance, and endeavor to remove it in all the gentle and fair ways of information; and not instantly treat others ill, as obstinate and perverse, because they will not renounce their own and receive our opinions, or at least those we would force upon them, when it is more than probable, that we are no less obstinate in not embracing some of theirs. For where is the man that has incontestable evidence of the truth of all that he holds, or of the falsehood of all he condemns; or can say that he has examined to the bottom all his own, or other men’s opinions? The necessity of believing, without knowledge, nay often upon very slight grounds, in this fleeting state of action and blindness we are in, should make us more busy and careful to inform ourselves, than constrain others. *Essay* 4.16.4

For Locke, we must be wary of trust being too uncritical, but we must also recognize that radical doubt does not get us certainty. What we have, then, in this passage is the mix of tolerance, moderation, reflective self-government, and social civility. All of these distinctly *liberal* notions arise not by eliminating or overcoming flux—by establishing some certainty about the “real essences” that cannot be doubted—but by living within “this fleeting state of action and blindness we are in.” If we take seriously the fact of our condition, we must “do well to commiserate our mutual ignorance,” lift the obstacles to “information,” and not “treat others ill.” The moderation comes in when we recognize that, while blindly trusting in another is not enough, radical individual doubt does not get us certainty. We must, then, stop the search for certainty, and only then—when we have moderated our claims of knowing the “truth”—can we start down the road to the familiar liberal virtues.

To be clear: while it seems that trust means only blind trust or faith in the beginning of the *Essay*, which Locke rejects, trust becomes both more self-aware and needful by the end of the *Essay*. In other words, once we have eliminated the search—the desire—for certain knowledge, we must necessarily do two things: trust others, but trust carefully. It would be a mistake to think that Locke thinks the “busy mind” is dangerous. Here, Locke says, staring into a world where we soberly recognize we cannot have the certainty that we thought we needed, we have two choices: either we can quietly escape this newfound responsibility and freedom, and fall into a blind, lazy trust; or, we can become “more busy and careful to inform ourselves,” but nevertheless still trust or assent (though not uncritically). The space between blind trust and radical doubt or distrust is where Locke leaves us. We are told that, to be good people, we should be “busy.”

*Modus Vivendi* Liberalism

In a set of posthumously published lectures on the history of political philosophy, John Rawls concluded his section on John Locke's political thought by marking a transition point in the history of liberalism: there is the classical liberalism of John Locke's constitutionalism, and then there is the later liberalism of Mill and Kant (*Lectures* 155). Rawls says that his own conception of "justice as fairness" is of the later branch of liberalism, not the classical strand. In the lecture on Locke, Rawls sets out to defend Locke from the charge levelled by C.B. MacPherson that Locke's political thought is necessarily an apology for the class state. Rawls argues that the flexibility of Locke's social contract makes it so that the class state is possible, but not necessary: the particular distribution of the powers and advantages of each party in the social contract influence the likelihood that the government will be a class state, a mix or some other frame. So, Rawls says, we have rescued Locke from the critique that he was merely a capitalist apologist.

But, Rawls reports that he has unwittingly "uncovered a disturbing feature" of Lockean liberalism: it is historically contingent, prone to disturbances of real life, and influenced by power advantages of interests (*Lectures* 155). For Rawls, one of the distinguishing features of his later liberalism is the "original position," and in particular the "veil of ignorance," as have saw in the previous chapter. Locke does not deny something like the "original position," but he does deny the "veil of ignorance":

When people agree to the social compact he [Locke] views them as individuals who know their particular social and economic interests as well as their position and status in society. This means that the justifications citizens give to one another in arriving at the social compact take these interests into account. (*Lectures* 155)

Unlike Rawls' liberalism, Locke's is seemingly grounded in actually existing conditions where we know our situations and we advocate for our interests. Indeed, our public reason—the justifications we give for our public positions—is intimately tied to interest. Moreover, the interest and advantages that one has do play a role in the makeup of the social contract. We can see that Locke's

politics is clearly more realistic than Rawls', even if they both start from a hypothetical "state of nature" or "original position." But, this small difference of the "veil of ignorance" has significant consequences. For Locke, politics is always inextricably bound up with interest. Rawls denies this.

Rawls argues that, if the social contract is about compromising known interests, then there will be a degree of contingency and instability—imperfection—at the center of the liberal social contract, since every articulation of that agreement will itself be contingent on historical power distributions among the parties in the social contract. This would mean that "[n]ot only does it make citizens' rights and liberties depend on historical contingencies in ways we would like to avoid, but it also raises the question of whether the constitutional settlement should not be reconsidered after each important shift in the distribution of political and economic power" (*lectures* 155). For Rawls, Locke's liberalism is far more unstable than he would like it to be. For Rawls, contingency and uncertainty—flux—ought to be avoided, not embraced. As I have shown above, and here Rawls makes explicit, the central concern for Rawls is stability: "It would seem that the basic freedoms and opportunities of a constitutional regime should be fixed far more solidly than that, and not to be subject to such changes" (*Lectures* 155). We now see two things important for Rawls. First, that there is something more "solid" out there than consent among known individuals; and, second, that the ideal constitutional regime is unchangeable. The thing "out there" that is supposedly more solid and that is incapable of change would be a universal, transcendent principle of justice, drawn not on interest but morality. Rawls is now solidly in the naïve rationalist ontology where he is assuming a foundation that can anchor our political world. For Locke, Rawls recognizes, there is no need to go this route: what we have is agreement, and that is all there can be. Locke's liberalism is a "political" liberalism in precisely the way that

Rawls' liberalism is not political: Locke accepts and embraces the pluralism or flux that exists in everyday life, while Rawls denies it.

Rawls turns away from Locke because Locke does not rest on the rationalist ontology that Rawls thinks is needed. Rawls also turns away from Locke because he believes that our contemporary situation is different than Locke's situation, i.e. that "our problems are not his problems and they call for different solutions" (*Lectures* 155). Here Rawls defends his rejection of Locke's ontology of flux on the grounds that, historically, our time is not his. Rawls follows explicitly the historicist Collingwood. Our questions are not the same as Locke's, we are not going through the "Exclusion Crisis," whereas he was. So, we need new answers to our new questions.

But, are our questions different than Locke's? Is not Locke's problem more than the Exclusion Crisis? Isn't Locke concerned with establishing liberalism within an illiberal world? Isn't liberalism facing the same illiberal forces that seek simultaneously to discredit and provide an alternative for liberalism? Are these not Locke's problems, too? Is not the problem today a noticeable lack of religious and secular toleration? Has the threat of absolutism and tyranny been eradicated? How are our questions new, and how are our answers going to be different?

Perhaps Rawls would respond simply by pointing out that our problem today is not the *establishment* of liberalism, but its *recovery* and *defense*. Locke was writing in a time when liberalism was a new possibility, and so had the offensive advantage. More importantly, Locke had the benefit of the doubt. Today, where liberalism was established and has since atrophied, we must answer the question: how can we believe again? For Rawls writing in after the disastrous collapse of Weimar Germany, this surely may be what he had in mind. But, even if we admit the fine distinction between being on the offensive and being on the defensive, why would we need to think that Locke's answer is not ours? The presumption in the reasoning I have attributed to Rawls

here is that the *establishment, recovery, and defense* of liberalism are all different questions with different answers. Perhaps to defend liberalism we must recover it, which is to say we must return to its establishment and look again. We must return to Locke's political liberalism that looks most like a *modus vivendi*—a *peace treaty*.

The problem with Rawls' and Manent's views is that both repeat two common tropes about citizenship in liberalism and in democracies, which are directly related to their traditional ontologies. One way to see the status of (or lack thereof) trust in their theories. Trust and self-government are tied together in Locke's theory of what it means to be a citizen (an argument I will elaborate below). By raising the question about trust in their respective political theories, we can see both the ontological assumptions that underpin their work, and the character (liberal or otherwise) of citizenship. In the previous chapter, I highlighted this by focusing on Rawls' lack of substantive trust, who adopts a purely reliance view of trust (where the individual liberal subject is assumed to be like the Cartesian subject, wholly distrusting and doubting); and in Manent's theory, I uncovered a return to basic trust or blind faith in the community—the premodern conception of the citizen as a “political animal” (where does Aristotle talk about trust?).<sup>18</sup> The ideal for liberal democracy, as we have seen in the previous discussion of Locke's ontology, is to produce the space for a type of mature trust that does not itself fall into either an absolutist liberalism or an absolutist illiberalism.

To better understand this, vision of liberal democratic citizenship, let us return to the work of Mouffe, because Mouffe (though a “radical democrat”) shares the same concerns about the alternative visions of citizenship. For Mouffe,

we should not accept a false dichotomy between individual liberty and rights on the one hand and civic activity and political community on the other. Our only choice is *not* one between an aggregate of individuals without common public concern and a pre-modern community organized



around a single substantive idea of the common good. Envisioning the modern democratic political community outside of this dichotomy is the critical challenge. (230-231)

The way to ensure a healthy synthesis between a crude liberalism drawn from a reliance view of trust and an overbearing communitarian view of basic trust is to promote a mature trust, which navigates between these two notions. For Mouffe, this is not necessarily a question of trust (though she would not object to this conceptual scheme), but one of faulty conceptions of citizenship. The naïve liberal view produces only individuals, and so public concern and community are alien to their all-encompassing self-interest. The communitarian view responds by pulling the individual into the community, making the individual a *citizen* and not an individual. The problem is conceptualizing the proper type of citizenship that can incorporate both individualism and a concern for the community that does not entail losing one's individualism. This, I have argued, is to put trust at the center of our politics—it is the best fence against these two deviations.

Mouffe's solution is to first jettison any talk about "certainty," because democracy is only possible in a world of "flux," of the "political"—on the "dissolution of landmarks of certainty" (229). Political certainty is the view of finding "real essences," which Mouffe rejects. Second, then, we must also reject the claim of a community premised on a single vision of the common good (228). Since we have no direct insight into the "true" nature of human happiness, we must give up the hope of achieving a substantive common political good. With no certainty, there can be no legitimate vision that demands unquestioned obedience. So far, Mouffe has outlined a seemingly very liberal synthesis. But, her third step is that we must blunt these liberal concessions. While there is no longer a single pre-modern concern for the common good, there is no singular focus on a liberal "humanity" (227). There, of course, can be more than a minimal obligation to the rest of mankind, but the democratic impulse for a community (even if not directed toward a single political good) cannot be denied. Fourth, we must keep in mind that, since there are no direct

claims to certainty, and therefore flux, whatever political community does arise is not one directed toward any one particular goal but possibly many. What this concern for *a* public good (and not *the* public good) entails is that the individual cannot be simply disconnected from public life—the individual must come to recognize their self-interest (still of fundamental importance) is nevertheless inextricably tied to the community in not merely instrumental ways. Here Mouffe follows the republican tradition, drawn from Machiavelli, that: “To ensure our own liberty and to avoid servitude that would render its exercise impossible, we must cultivate civic virtues and devote ourselves to the common good” (228). We should be clear here, though, that Mouffe does not mean that the public good is simply one, but only that the public is a concern for the individual. For Mouffe, in other words, the liberal concern for liberty cannot be at the expense of a principle of self-government, which makes liberalism much closer to republican and democratic politics than is often understood.

The public good, to be clear, is not a singular thing. Instead, for Mouffe, it is a set of principles—freedom and equality—which constitute our liberal-democratic “grammar.” By multiplying the ends of common political life, Mouffe extends the burden of liberal-democratic citizenship. Not only is liberty now tied to public life, the concern of politics is to reconcile—or attempt to—the dueling principles of liberty and equality. For Mouffe, citizenship is now in line with the vast majority of liberal and democratic doctrines, and has made citizenship “active” and not merely passive or “legal”: “It implies seeing citizenship not as a legal status but as a form of identification, a type of political identity: something to be constructed, not empirically given” (231). One major weakness of naïve liberalism is to envision the individual as enshrined in a stable legal casing that grants and protects the legal status of the individual (as an individual), but in return demands passivity, neutrality, and non-interference. These rest on the largely institutional

or mechanical solutions of experts—particularly lawyers and judges—to navigate the political terrain of liberty and equality. Self-government in this liberalism has been utterly forgotten (or rendered dangerous). To get it back, but without forcing it to be in service of any one vision of the common good, Mouffe here lets the political domain be itself the battleground of interpretations of liberty and equality—that is to say, she largely makes the otherwise suppressed (though still political) agonism between liberty and equality hidden in the courtrooms a matter of public interpretation. This is obviously altering citizenship from a crude individualistic utility calculus to a self-interest properly understood as one concerned with the “ethico-political principles” of one’s public life (233). Mouffe’s vision also entails that liberal democracy cannot strictly be “neutral,” since it must promote some ways of life and exclude others, though this need not eliminate the notion of tolerance—certainly not the kind of tolerance Locke presented above.

Liberal democracy is now grounded in the conflict of interpretations. Politics is now “agonistic”: a battle between powers—social relations and actual ways of life—that are nevertheless drawn together along the principles of liberty and equality.<sup>19</sup> Mouffe’s “radical democratic interpretation” of liberalism will seek to remedy the “relations of domination” always existent in every political society (236). The space for the “radical democratic interpretation” must be made within political or public life. This will further challenge the liberal notion of a lubricated politics of compromise and negotiations of small, largely material interest. The agonistic battle over liberty and equality is still liberal insofar as consent, compromise, civility, and negotiation are the stuff of politics, but this is all done along ethico-political principles and not trade ledgers. Liberalism holds on to an apolitical notion of politics if it cannot recognize the possibility that rights will not gradually be granted (or domination retracted). Therefore, the only avenue available to the apolitical liberal is a democratic revolution that will be seen as a wild disruption of the

current distribution of rights, obligations, and duties. Liberalism cannot forget that, even while “small parties” are often more calm and peaceful, they are nevertheless derived from “great parties” and the passions of “great parties” that underwrite them, even in ordinary political life.<sup>20</sup> In “democratic ages,” we cannot so quickly draw the line between great and small parties, and this is Mouffe’s point: politics is no longer (nor ever really was) the realm for small parties. The great and small parties are themselves in a temporary truce. This does not render the liberal-democratic solution here unstable, since the terms “stability” and “unstable” are comparative terms, and there is no outside that would allow us to compare liberal-democracy to some other liberal-democracy, but only to some form of absolutism, which, as we have seen, is only concerned with stability however gained. The solution to liberal-democracy is to internalize the antagonistic relationships between the parties, recognizing that the peace treaty will only ever be fragile and under constant negotiation.

For many liberals, it would strike one as odd to talk about liberal *partisans*. Liberalism is often understood to be “above” or “beyond” political partisanship. However, as we have seen above, Mouffe’s presentation of a possible way to synthesize liberalism and democracy requires an active liberal citizen that does have something like a liberal partisanship. So, in this section, I want to explore the mechanics of how a liberal partisanship can emerge—what others will call a “People.” In order to do this, I turn to Laclau’s work on “populist reason,” which largely focuses on the emergence of democratic identities and shares Mouffe’s aim to bring liberalism and democracy much closer than is typically understood.

A collective identity can be created even within a largely individualistic liberal populous if we understand that the identity to be created is not simply an aggregation of particular individual interests, but a “chain of equivalence” among individuals. The chain of equivalence is, for the

liberal, ideally that of “the People.” The identity of the people, as Mouffe has already argued, is drawn along the frontier of liberty and equality—the two largely liberal values. At the heart of liberal democracy is the agonistic back-and-forth between two (or more) competing interpretations of liberalism and equality. This “internal agonistic frontier” in the heart of liberal democracy allows—indeed, demands—political identifications. As any particular individual claim of injustice—either an expression of domination of one’s liberty or equality—becomes a more solid and general claim, the more and more it becomes an articulation or interpretation of equality or liberty, which makes it more and more a collective identity as more and more individuals recognize their claim as “equivalent” to the others and the original. Elaborating and expanding the principles of liberty and equality within the liberal framework, renders naturally antagonistic partisans mere adversaries. Understood in this way, the affective and partisan attachments to liberty and equality do not—so long as each principle never wins over the other, but they remain in contest—endanger liberal democracy. In fact, again following a republican line of thought, it is precisely this active contestation within the citizenry that could in fact stabilize the regime, so long as they remain adversaries and not real enemies.<sup>21</sup>

This is not yet the collective identity of “the People,” however, nor should this identity be taken for granted, as it is often forgotten in contemporary liberalism. On the one hand, the stark individualistic tendencies in naïve liberalism make public life seem desolate, and therefore renders politics apolitical: a haggle between two vendors. This is largely due to the recognition that politics and political identities are the site of very dangerous passions, which, in order to avoid such raucous instability, we should try to diminish public life and politics as much as possible. On the other hand, liberalism, if it is honest, often relies on a collective identity—“the People”—to not only provide the original ground of all legitimate (liberal) government, but to possibly be the last

defender of constitutionalism itself. But, if we understand politics as merely a coordinating game of individual interests, we have to admit that a collective identity that can be trusted with the care of liberal constitutionalism itself is impossible to fathom, because it would require both an inflation of the importance of public life (though, of course, not over private life), and it would suggest that affective identification—partisanship—is not beneath liberal rationalism. In other words, liberal constitutionalism does require public concern, it does require “the People,” and therefore it does require a robust (though unique) citizenship with its attendant civic virtues. All of which, we will discuss below.

By bringing liberalism into the realm of the “political,” we see that we not only must have a “liberal partisan,” but it is only by conceptualizing a liberal partisanship at all that we can begin to adequately respond to Schmitt’s challenge to liberalism. Liberal constitutionalism does not rest on a naïve rationalist ontology, but the precise ontology of flux that Schmitt relies upon in his criticism of liberalism. By grounding liberalism in the “political” we must, however, acknowledge the more “democratic”—which is here understood as the home of the us/them, political relationship—elements that underwrite liberal democracy. This is captured in the concept of the liberal partisan, or “the (liberal) People,” which is “politically” constituted as the opposition to political power.<sup>22</sup>

The original antagonism of the us/them relationship is brought into the center of liberal democracy, where on the one hand the political terrain has been altered (but not eradicated), between dueling interpretations of liberalism and equality. Remaining within this liberal “symbolic” space, the natural political antagonisms are softened (but not displaced into economics or religion) to political adversaries. In this way, liberalism has not conceded anything more than it had to, since the things it held that largely opposed democratic politics of this kind were things

that it need not claim. The original antagonism is a liberal compromise between naturally antagonistic parties to play by liberal rules. Here, “the (liberal) People” does not necessarily emerge, but only partisans.

Of course, if we leave it here, one could immediately object to this solution on the grounds that it suggests that these partisan antagonists must really have been quite “reasonable” if they accepted so quickly the liberal relegation of antagonistic politics to adversarial politics. In other words, as has been levelled against Mouffe and Laclau, have we not just assumed the same reasonableness that Rawls assumed in his “original position”?<sup>23</sup> For Mouffe and Laclau, we must understand that the real agonistic relationship is not simply the “small” politics of conflicting interpretations of liberty and equality that must always be active and ongoing. For Mouffe and Laclau, the real solution is to alter the symbolic understanding of liberalism to be itself a political identification: between the people and power, or, as we have seen in Locke’s writings, between the subject and the magistrate. The symbolic space—what Mouffe calls the “regime”—is then both liberal (insofar as it is uniquely concerned with separating the political relationship out of the pre-modern vision of the father-child, and avoids the contemporary liberal absolutist position of master-servant—as outlined in chapter 2), and democratic (insofar as this relationship is precisely a *political* identification of us versus them that can become an existential conflict, to follow Schmitt explicitly). The emergence of “the People” is not only practically important for the safety of the regime (which must fight against any power that seeks to displace the particular symbolic space of political power resting in the subject-magistrate relation), but it is important theoretically or pedagogically for the sake of the citizens to understand themselves as potentially part of “the People.”

If we bring Laclau's treatment of collective or populist identities to the logic of "the People," we have to be clear what the chain of equivalences is that binds the individuals into a "People" and not simply a "demos."<sup>24</sup> Unlike the "demos," which is constituted along the agonistic frontier of dueling interpretations of liberty and equality, "the People" is constituted in the agonistic relationship it has with a power that seeks to disrupt the symbolic space of governed and governor. The "People" is a chain of equivalence along the demand for the symbolic space to be constituted in such a way—for whatever reason.<sup>25</sup> The power that must be resisted (which unites even the "natural" political antagonists—democrats, republicans, and liberals) is that power which seeks to do away with politics itself—to do away with the contestation and flux of political life. Liberal democracy holds open the possibility for an agonistic politics on two levels, incorporating the political ontological critique of Schmitt, rendering it ineffective. Schmitt's critique is important insofar as it shows us what liberalism *cannot* be.

As I have presented it, liberal constitutionalism must not forget the ontological grounds of flux. However, liberalism is often understood as being antithetical to the "political" or to "flux," as Schmitt makes clear in his critique. Liberalism—comprised of a healthy respect for individual rights, the doctrine of separated powers, and the rule of law—is a "public philosophy" that aims toward peace (Kautz 1995). Peace is central because of the natural flux of political life where natural antagonistic partisans—democrats, who argue for equality; republicans, who argue for virtue. Liberalism, then, we can say is not "natural" in this same sense, because it is not grounded in a passionate community—like the democratic egalitarians or the virtuous republicans—but supposedly are the group of individuals who have cool, calm reason and argue for liberty. This message does not win much on such simple rational grounds. Democrats demand equality over liberty, because liberty is seen to be a source of inequality; republicans demand virtue over liberty,



because liberty is seen to be a source of (private) vice. For the liberal, we must reject both democracy and republicanism for their lack of self-restraint and moderation—i.e., for being too passionate and “unreasonable.” To establish peace, on this liberal vision, we must disarm and deflate the passions behind partisanship, thereby rendering the original flux a thing that can be more “reasonable.”

One way to disarm these naturally warring passions would be to exorcise them completely from human nature. By denying them, we can hope to secure a liberal peace because we would understand the human being to be a thing fundamentally devoid of natural passions—which would be like imagining the human being as a thing incapable of envy, and therefore designing an entire political system where envy is not possible for human beings.<sup>26</sup> Political life in this liberal view would be less about passions and partisan identities, and more about questions of administration: since we all are all now assumed to be reasonable, justice is now a logistical question. This is a “naïve rationalist” view of liberalism, and it must be rejected for being apolitical: it abstracts away the natural political passions, not actually engage or remove them, but only makes us blind to the real political differences between people who would not be considered “reasonable.”

The “naïve rationalist” position—one we could apply to Rawls’ liberalism—is the common trope among many detractors of liberalism.<sup>27</sup> Rather than take seriously the political flux naïve rationalist liberals produce instead “ideal” theories about justice and the common good. In other words, this vision of liberalism on the one hand recognizes the pluralism of political life, but then, on the other hand, says that there is nevertheless a rational common ground that unites the whole group around guaranteed principles of demonstrable political justice. But, even if we grant this unlikely abstract common ground, the naïve rationalist cannot call this common ground a “community,” since that would betray the methodological individualism at the core of their vision

of human agency—we are individuals not members of a group. As Kautz says of Rawls’ political liberalism:

Political liberalism is simply the public aspect of every ‘reasonable’ comprehensive doctrine in a well-ordered society; unlike the liberalisms of Kant or Mill, it is not itself a comprehensive doctrine but rather applies the principle of toleration to philosophy itself. There is no liberal *community* but only an ‘overlapping consensus’ among citizens who affirm in common (but for many different reasons) rules of public reason and principles of justice suitable for a democratic society of free and equal persons. (1995, 178)

By holding on to such a strict individualism, the naïve liberal is put into a tight spot: flux is a recognition of pluralism, which now must immediately be reduced to merely ‘reasonable’ pluralism, which is the ‘overlapping consensus,’ that can never be a doctrine of any one individual or group but the spirit of all individually. But this truncation of the political flux in the beginning to ‘reasonable’ is perhaps the most important move, and it is the one that effectively grounds this ideal theory of liberalism but renders it ineffective—who would be convinced by this argument, that is not already counted among the ‘reasonable’?

*Political Liberalism* may describe a theory of justice suitable for ‘reasonable’ persons, who already somehow admit the conditions of ‘fairness’ that is modeled by Rawls’ new and improved original position—even *this* surely presupposes more ‘consensus’ in our liberal community that really exists. But who needs to persuade *these* people to be tolerant and liberal? A truly *political* liberalism must recognize the intractability of certain naturally intolerant partisan opinions, including ‘unreasonable’ and ‘irrational’ opinions, thus the necessity of meeting these threats to civility with good (concrete) reasons that manifestly answer potent natural passions (fear of death, love of liberty, desire for comfortable security and so on through the ‘traditional’ liberal list). (178)

Liberalism cannot be defended on the naïve rationalist grounds as Rawls presents them because it does not even come close to responding to the original and animating premise of liberalism in the first place: the ontology of flux, or the antagonistic nature of political life. What good is liberalism if there is no original antagonism to search for peace? In order to meet the natural antagonism between partisans, which is largely fueled by passions—either for virtue or equality—liberalism must ground itself in the “political,” which is to say in the passions.

Kautz outlines the “traditional” list of passions that classical liberalism relied upon—fear, love, desire. To respond politically, liberalism must make its case on these grounds first, then on the more elevated plane—when it has the attention of the passionate partisans—can cool, calm reason take over as guide. This move is contingent and messy. This small move to ground liberalism in the passions, has radical consequences for our understanding of the nature of liberalism. Liberalism is usually understood to seek peace, which we assume to be stable. But, this new version of liberalism, while still searching for peace, admits that going down to the level of the passions means embracing (not overcoming or ignoring) political flux. But, as Kautz notes, this is not a defect of classical liberalism, but perhaps its redeeming virtue—moderation even in the stability of peace:

Classical liberalism seeks a more modest, yet still reasonable, agreement (a “public philosophy”) to seek peace together so that we will not discover war as we go our separate ways. That is the least that might be expected from reasonable human beings: but it is also, perhaps, the most. (179).

Contrary to the naïve rationalist—who now is naïve precisely because they overvalue the role of reason in political life—the classical liberal understood that liberalism must be “political,” which simultaneously grounds liberalism in the more passionate or partisan realm, but also alters its own self-understanding of the limits of peace: perhaps the only viable peace is one that does not seek a more solid ground than it can reasonably reach for (as Rawls did when he wanted to make political justice a function of certain moral principles). For the classical liberal, we must ultimately even moderate our own expectations of peace. Perhaps the best is a *modus vivendi*, a public philosophy that is more a ceasefire or cautious peace treaty.

This view of liberalism as a “peace treaty” among antagonistic partisans is completely antithetical to Rawls’ “ideal theory,” which we saw above. This *modus vivendi* liberalism of Mouffe and Kautz casts liberalism properly on political grounds, and recognizes that even for the

liberal passion and community are needed in more than simply instrumental ways for self-interested individuals. For Mouffe, who follows generally the republican tradition, liberal democracy requires a “people” as a collective identity that is established by a non-instrumental demand for ethico-political principles of liberty and equality to ground our political life. For Mouffe (and Laclau), as we have seen, liberal democracy in other words requires a more than shallow understanding of citizenship, and, as Kautz makes clear, this entails a non-instrumental set of “liberal virtues” (181): “The question is not whether liberal politics requires virtue or not: it evidently does.” We must be clear on these liberal virtues and the nature of liberal democratic citizenship in order to fully appreciate classical liberalism.

Classical political liberalism is a “peace treaty” among natural antagonists, and in order to properly understand liberalism we cannot lose sight of this ontological fact of political life. Classical liberalism also recognizes the importance of a political community that is capable of engaging the political passions of the antagonistic adversaries—the democrats and republicans. Not only will the community be an affective bond among citizens—unlike the highly abstract “overlapping consensus”—but it will also demand of its members a certain set of virtues. For Kautz, minimally, “virtue, in the liberal view and not only the liberal view, is the disposition or habit of restraining and ordering one’s passions so that they submit to one’s reason...” (182). For Kautz, virtue is a disposition or a habit that can effectively govern the passions, perhaps through the careful examination and education of one’s “conduct” of the “understanding.” The ground of virtue is reason, which sets out to properly sort our passions, and to restrain or moderate our behavior accordingly. Reason must understand its own limits in ordering our passion, though—it cannot eradicate our passions but must always be a vigilant guide—for both the individual and the

community (116). Taming the passions is often done indirectly through “institutions,” and not directly through “education.”

The liberal republican next relies on another triumph of enlightenment rationalism, the ‘new science of politics’—by which, says Publius, ‘the excellencies of republican government may be retained and its imperfections lessened or avoided.’ Among these modern improvements in the science of politics: separation of powers, bicameralism, an independent judiciary, representation, the extended sphere. (116)

There is no doubt that there is an institutionalist or proceduralist element in classical liberalism, even understood as a *modus vivendi*: we agree that these institutions are important for maintaining (and monitoring) the peace, however won. But, the core of the political liberal community is not the virtues of procedural institutions, but the education in virtue understood minimally as that of self-government. The virtue of self-government is the glue that originally bonds the community into a “People,” that *then* comes to recognize institutions as important for maintaining and monitoring the peace treaty.

Self-government was missing in both the “liberalisms” of Rawls and Manent. It is largely missing even in the accounts of classical liberals who focus too much on the institutional aspects of liberal democracy. From what we have seen in Mouffe and Laclau, the institutions and procedures—the “legal”—is often the site of hegemonic power that seeks to exclude the possibility of agonistic politics, understood as the contestation of collective identities—even when the game has been drawn between liberty and equality (Mouffe 2000, 2005, 2013; Laclau 2014). The emphasis on the liberal “community” is not in its *constitutive* rules—the specific procedures of who has what office and how—but on its *constituent* rules—the substantive identity that grounds someone as a member of one’s political community. For Mouffe, Laclau, and Kautz, this suggests that there must be a “social” element at the center of liberal democracy—a liberal “People.” But the need for a “People” is often understood as a procedural or “legal” identity that is shared or

expressed by no individual or group. The “legal” does not constitute “the People,” but the reverse: “the People” constitute the “legal.” However, this conflation of the legal with the people is precisely what many contemporary liberals do when thinking about the nature of liberalism. The “legal” is only a follower of the “social” or “the People,” or the “shared way of life,” the *modus vivendi* of self-government. As Locke says, we first come together as a “People” and *then* determine the constitutive rules of the “legal” procedures and institutions (*Second Treatise* 132, 133 in particular). If one conflates these steps, one necessarily conflates the legal and the social—the institutional and the “behavioral.”

Prioritizing the legal over the social (or conflating them) is to put too much faith in the legal frameworks to mete out justice and to guard the conditions of the peace treaty. The core of liberal community—the virtue of “the People”—is the principle of self-government, not the procedures and institutional doctrines of the separation of powers, or the rule of law. While these are no doubt helpful, they are instrumentally important for helping cue the necessity of “the People,” which I will explore in more detail in the following chapter. The key here is that the central liberal virtue, according to Kautz, is “trust, but verify.”

One must, in the first place, ‘trust, but verify’: that is, one must possess those *virtues*, as well as reasonable opinions, that enable one to be vigilant and effective in the defense of one’s own interests against the possible violators of the so-called peace treaty—here, the ‘social contract.’ One cannot simply rely on liberal institutions to preserve the peace. (1995, 182).

The last line is the most important: institutions are not enough, Yet, they take up a considerable amount of our time. At the center of political liberalism, properly committed to an ontology of flux, is the virtue of vigilance and suspicion, all in the name of “trust.” Moreover, Kautz makes clear that this “trust, but verify” is more needful than institutions, once we must recognize that institutions cannot be relied upon, we have nothing left but our own self-government. Virtue saves liberal democracy. Trust, here, is not to be understood as basic or blind trust, but it is an active,

suspicious trust. It is a trust that recognizes the need for trust and consent, but also sober enough to see that trust is always a tenuous matter. The particular brand of citizenship that liberalism here creates is—as we saw with Mouffe—one drawn on “trust, but verify,” which produces virtues that “are self-regarding as well as social virtues” (184). The problem for Mouffe was how to overcome the false dichotomy of a citizenship that has at its core a blind trust in the community or a radical distrust of all everyone. Here, we have explicitly the formula: trust, but verify. This peculiar, paradoxical type of trust is most needful for a liberal democracy that is properly grounded in an ontology of flux. This of course moderates the presumption that liberalism can ever be more stable than a “peace treaty,” but it does allow for a more robust liberal citizen—a virtuous liberal partisan—to form a “People,” if so needed to enforce the peace treaty.

I concluded the section on Locke’s ontology by quoting a section of the *Essay* where he says that, given our place in a world of flux, we should not quietly or naively seek certainty nor should we radically further alienate ourselves by radically doubting everything. Instead, Locke says that we should set out to “busy” and inform ourselves. We must, as Kautz put it, be vigilant—trust, but verify. Locke’s post-foundational ontology has immediate political consequences: self-government and suspicion.

But, one may wonder where self-government and suspicion are in Locke’s *Second Treatise*. As I mentioned above, the main thrust of that treatise on liberal constitutionalism is, in fact, seemingly the opposite: a politics of *trust*. As I outlined in the previous chapters, and in the last section of part one of this chapter, however, this is not a naïve or basic trust, but one that comes about only after we have recognized the flux of life, and the demand to be responsible and self-governing. But, again, where is this figure in Locke’s *Second Treatise*?

I argue that this figure is the “busie head” (*Second Treatise* 230). Now that we understand that Locke as a post-foundationalist thinker, we should recognize the importance of power, contestation, and consent for both a healthy liberal democracy and a virtuous liberal democratic citizen. I will have much more to say about the precise psychological features of the Lockean liberal subject in the next chapters, but I will focus here on the functional aspects that the “busie head” role suggests in Locke’s liberal constitutionalism. Briefly stated, the busie head is the suspicious guide that is supposed to adequately temper the people’s natural or basic trust in authority, thereby exercising the virtues of self-government and the performative aspect of establishing “the People” through a chain of equivalences. In short, liberal constitutionalism as Locke understands it is not possible without a citizenry of busie heads.

Locke mentions the “busie head” only once (*Second Treatise* 230). This fact alone has probably contributed to the busie head being largely ignored in liberal theory. The busie head, which we should be keen to in light of Locke’s use of the word “busie,” is nevertheless a central figure in Locke’s liberal democracy or constitutionalism. Before continuing, I would like to quote the passage where the “busie head” occurs in the *Second Treatise* in full:

Nor let anyone say, that mischief can arise from hence, as often as it shall please a busy head, or turbulent spirit, to desire the alteration of the government. It is true, such men may stir, whenever they please; but it will be only to their own just ruin and perdition: for till the mischief be grown general, and the ill designs of the rulers become visible, or their attempts sensible to the greater part, the people, who are more disposed to suffer than right themselves by resistance, are not apt to stir. The examples of particular injustice or oppression, of here and there an unfortunate man, moves them not. But if they 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, who is to be blamed for it? Who can help it, if they, who might avoid it, bring themselves into this suspicion? Are the people to be blamed, if they have the sense of rational creatures, and can think of things no otherwise than as they find and feel them? And is it not rather their fault, who put things into such a posture, that they would not have them thought to be as they are? I grant, that the pride, ambition, and turbulency of private men, have sometimes caused great disorders in commonwealths, and factions have been fatal to states and kingdoms. But whether the mischief hath oftener begun in the people’s wantonness, and a desire to cast off the lawful authority of their rulers, or in the rulers insolence,



and endeavors to get and exercise an arbitrary power over their people; whether oppression, or disobedience, gave the first rise to the disorder; I leave it to impartial history to determine. This I am sure, whoever, either ruler or subject, by force goes about to invade the rights of either prince or people, and lays the foundation for overturning the constitution and frame of any just government; is highly guilty of the greatest crime, I think, a man is capable of; being to answer for all those mischiefs of blood, rapine, and desolation, which the breaking to pieces of governments bring on a country. And he who does it, is justly to be esteemed the common enemy and pest of mankind, and is to be treated accordingly. *Second Treatise* 230.

Unlike in the *Essay* where Locke says we should busie ourselves, the first reading of this passage would suggest that the busie head is an almost contemptable figure—a “turbulent spirit,” who will face “just ruin and perdition” for their mischief. Locke does not explicitly say: be a busy head.

Indeed, the general drift of this passage is generally familiar: it is the core of Locke’s doctrine of political resistance. As Locke says in this passage, when injustice has become visible to the people—such that they cannot but otherwise trust what they see and feel—the moral authority of the community to resist the prince can be asserted, and revolt legitimate. Locke’s obviously counting on the general conservative nature of the people “who are more disposed to suffer than right themselves by resistance, [and] are not apt to stir,” so that if such revolution occurs it can only be based upon sufficient “manifest evidence, that designs are carrying on against their liberties,” or that the “particular injustice or oppression, of here and there an unfortunate man” is not a general phenomenon. When this evidence has been presented to the people, when the case has been made that would lead an otherwise trusting people to “strong suspicions of evil intention of their governors,” then Locke says what choice do the people have but to rebel? More importantly, who is to be blamed—Locke asks—for this potential situation? Here, Locke must be said to side with the people against the sovereign, because it is probably truly the case that the sovereign is a tyrant if the otherwise subservient people have united and resisted. Of course, this is an empirical question of historical record if the people really are so conservative, but Locke seems relatively positive that it is the case.

This certainly is the crux of Locke's argument for the legitimate right of resistance. But, I want to quickly point out that there are two familiar processes happening in the background of this passage that should vindicate the busie head: the primacy of suspicion against a basic trust; and the establishment of a chain of equivalences along the lines of resisting arbitrary power and injustice. Both of these are a product of the seemingly dismissed busie heads, and without this work by the busie head, liberal democracy would collapse.

The busie head is a turbulent spirit, and the first to call for the alteration of government. This would make the busie head something akin to an alarmist. Obviously, even Locke admits that this single busie head alarmist will not gain a hearing from the people, and will come to their "just ruin and perdition." But, we should not be so quick to dismiss this alarmism as unreasonable. In fact, Locke points out in this passage that the people *are* so conservative and are *too* trusting. This is similar to the problem in the *Essay*: people too quickly take on the opinions of others, they trust too quickly, and this is dangerous according to Locke. Epistemic self-government demands that we busy ourselves with the information about things that matter, so that we can adequately judge or assent. Without critical examination, our assent is slavish. The chief struggle for Locke was to get people to adequately doubt authorities, but not to go so far into radically alienating ourselves in a thoroughgoing skepticism about all things. For Locke, it is a hard fought battle to create the critical space to even doubt authorities. The busie head, then, as an agent of suspicion, cannot be rejected on those grounds alone. The busie head is also, as the agent of suspicion, presumably not attempting to usurp power himself—Locke gives no indication of this in the passage above—but only seeks to overturn what is considered an unjust government or constitution. Again, there are reasons to reject the busie head which I will discuss in the next section, but providing evidence of an injustice is not one of them. Nor, to be more clear, is the simple act of political suspicion or

doubting authority. The point is that trust is actually dangerous if it remains the kind of basic trust that Locke here ascribes to the mass public, and therefore a suspicious guide is needed to defend liberalism.

While suspicion is obviously important for Locke, and the busie head is certainly an agent of suspicion, we should be clear that Locke does not therefore endorse just any busie head. That would be very imprudent. Instead, Locke suggests something like a formula. If the injustice of any single individual is raised, and if it remains an isolated incident, then it is justly ignored by the mass public. However, if the particular claims are no longer understood to be simply particular claims of “here and there an unfortunate man,” but manifest evidence of the general tendency of things, then the busie heads ought not to be ignored. The demand, then, on the busie head is indeed to busy oneself with gathering evidence of particular injustices that are not themselves mere isolated incidents. What this looks like in particular, we cannot hope to know *a priori*. However, that the busie head is the one who should establish a chain of equivalence between the particular injustices of particular individuals, is very important for a liberal democracy. It is only through this chain of equivalence that brings together the evidence of the particulars and makes it seem like a general phenomenon, and this general set of injustices, Locke says, cannot but persuade the people of the designs and intentions of the governor to be something that ought to be resisted. The busie head, then, is instrumental in constructing a distinctly liberal “People” through establishing a chain of equivalence not on any particular material demand, but on injustice in a more general sense, i.e., due to arbitrary power or tyrannical designs. The particular substance of the injustice is dropped, and the case is made general that the trust has been broken between the government and the governed. The People do not emerge because of some particular, partisan interest but a more general, trans-partisan concern for escaping arbitrary power. The emergence of a liberal “people,”

which we have seen to be so important in a more mature liberalism, is not possible without some figure like the busie head.

When we properly understand Locke's vision of liberalism as being drawn from a post-foundationalist and political ontology, two things become clear. First, the political critique set against contemporary liberalism does not apply to Locke's classical liberalism, because Locke's busie head liberalism is thoroughly political. Second, since Locke's vision of liberalism is grounded in a political ontology, it pushes against much of the tendencies and assumptions of contemporary liberalism. Contemporary liberalism is premised on a faulty ontology, Locke would say, and this makes it apolitical in a decisively inadequate way. In fact, in the critique of contemporary liberalism, Lockean liberalism actually shares significant common ground with supposedly radical democrats—Mouffe and Laclau. In Mouffe's political agonism we can see the importance of establishing an internal political agonistic relationship between political identities drawn to conflicting interpretations of liberty and equality. This is important, too, for classical liberalism if it wants to be serious about its commitment to being (no more than) a peace treaty among naturally warring partisans. Moreover, as we saw with Laclau, the formation of these political identities are important, since the affective party attachments to liberty and equality need to draw a political us/them relationship against each other. The democratic political us/them relationship cannot be exorcized from liberal democracy—and Locke would presumably agree.

Locke would certainly agree when the agonistic or contentious us-them relationship needs to be drawn between “the People” and seemingly arbitrary political power (which we will call the “prerogative”). The affective chain of equivalence is indispensable for Locke when constructing the political identity “the People” from an otherwise trusting and lazy mass public. And it is here that we may show just how deeply committed Mouffe and Laclau's to this type of “liberal” politics:

the symbolic order (what Mouffe calls a regime) in liberalism, according to Locke, is the subject/magistrate relation. This largely symbolic relation must be kept separate from at least two other alternatives—the child/parent and the servant/master relations.

But this is Locke's truly liberal argument: the subject/magistrate must be a particularly political relation that does not fall into either of the two alternatives. Mouffe and Laclau accept precisely this symbolic ordering of the regime when they set out the two principles as liberty and equality, and when Mouffe defends a sense of citizenship that does not look like the radically distrustful and individualistic ego of liberal absolutists like Hobbes and Rawls, nor does she accept the vision of a servile citizen in a premodern society (like that of the basic trust relationship of the child/father, Aristotle, or Manent). She (and Laclau) sides squarely with the liberal symbolic regime as Locke (and other classical liberals) understand it. The truly political liberalism, then, is not simply as Mouffe and Laclau understand it as conflicting public identities with competing claims of equality and liberty (which is implicit in Laclau's basis of populism in a "demand"),<sup>28</sup> but it is in the potential existential struggle between those who hold Locke's view that political power rests in the symbolic relationship between subject/magistrate (one based on consent and trust), against the liberal absolutist and premodern alternatives. On this political ground, Mouffe, Laclau, Kautz, and Locke agree.

## CONCLUSION

In the first part of this chapter, I outlined Locke's ontology. I showed how Locke's ontology is generally a reversal of the foundational ontology that is the aim of Schmitt's critique of liberalism, and still the ground of the most famous contemporary articulation of political liberalism—John Rawls. Locke's ontology is one of "flux." I outlined Locke's empiricism and nominalism, showing that it is precisely because of the ontological flux that the concepts of consent

and trust take on a particularly important meaning in our lives. For Locke, we strive to have the virtues of reflection and examination—of epistemic self-government—but, also, a sober recognition of the limits of our understanding. We ought not trust too quickly, but we should not doubt radically. For Locke, we need to be busy in the examination of the things that matter most to us, and happy in our ignorance of those that we neither care about nor can know completely anyway. Stability and peace can be won, but only on these educated virtues of the liberal public.

In the second part of this chapter, I outlined how the forgoing discussion of political ontology changes the character of liberal democracy to be more “political”: it is affective, about collective identities, and explicitly a contest about power. Drawing from Laclau, we see that the liberal prejudice against affective partisanship must be abandoned. Liberalism is now in need of “the People,” and it is itself in a political relation with the illiberal alternatives. Liberal democracy must incorporate contestation not only within itself—between partisans for liberty and equality, as Mouffe helps us see—but it must be ready to constitute itself as a liberal “People” against other political “hegemonic” articulations (what I have consistently tried to reveal through the ‘trust relationships’ of parent/child and master/servant). In this way, liberalism is completely *political*: it has a community, an us/them potential. The basis of consent and trust are still there, of course, but they are not anchored in demonstrable metaphysical truths but the contingent power relations—liberal democracy must be secured. This seemingly political relationship now at the heart of liberalism, does not alter the insight that it can only emerge as a peace treaty. In light of this, we need an active, vigilant “people”—liberal partisans—that, at times, needs to defend or enforce the treaty. Liberal democracy, then, requires a more robust understanding of the virtues of liberal citizenship, which are often dismissed in contemporary liberal theory. Contemporary liberal theory often emphasizes the institutional aspects of liberal democracy and not the behavioral or virtuous

demands placed on the public. This is to grossly inflate the importance of the letter of the peace treaty at the expense of diminishing the spirit of liberalism. But, the crisis of liberal democracy is precisely the decline in the spirit of liberal democracy. To recover the spirit, we must first push away the confusions, and chief among them has been a faulty traditional or naïve ontological foundationalism.

I concluded by returning to Locke's political thought directly. Grounding such a *political* vision of liberal contestation in Locke's thought may seem to overemphasize the "messy" character at the expense of the calmer institutional mechanics of liberal constitutionalism. I turn briefly to Locke's *Second Treatise* to ground this "post-foundationalist" interpretation of Locke's liberalism. Here, I showed that his post-foundational ontology produces a need for suspicion where a public is too trusting, and therefore is in need of a suspicious guide for the people. The busie head therefore plays a radically important function in liberal democracy: establishing the chain of equivalences among the people. The chain is not simply grounded in any particular material or partisan demand, but in the ethico-political principles of self-government and escaping cruelty.<sup>29</sup> It is this particular fixation on escaping cruelty and arbitrary domination that can unite even adversarial partisans against the usurpation of political power. The busie heads help bring out "the People" in a political relationship against arbitrary and cruel power. This is the ethical spirit of liberal democracy, and it is brought out by the agonistic work of the busie head. Without the busie head, liberal democracy cannot survive.

In the following chapter, I focus on the "constitutional" aspect of contestation, where I set out to defend Locke's notion of the extra-legal character of the prerogative, and the corresponding need to have an extra-legal power ("the People") to resist it. This model, I show, is under a similar *ontological* critique that suggests that the demarcation between the legal and the social is not

tenable. I argue there that this critique of Locke's liberalism is only possible if one is completely blind to both the conceptual or ontological grounds of Locke's liberalism, and the practical importance of the "busie head." Finally, in the last chapter of the dissertation, I outline the particular psychological aspects of liberal political subjectivity—namely, fear, anxiety, and suspicion—all of which are now not accidental or unfortunate byproducts of liberalism, but necessary components.



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<sup>1</sup> This is a particularly “traditional” statement, but it is nevertheless still one central to current literature on the notion of epistemic trust, the nature and philosophy of testimony, and political philosophy broadly understood. For a review of the contemporary work on the relationship between the traditional view of seeking the truth and epistemology, see Zagzebski, Linda T. *Epistemic Authority: A Theory of Trust, Authority, and Autonomy*. Oxford: Oxford University Press, 2012. I will revisit Zagzebski’s work in more detail in the final chapter of this dissertation.

However, it is important here to note that she still finds both the traditional notion of truth as a central feature of epistemology, and, therewith, the work of John Locke as foundational for contemporary epistemology.

<sup>2</sup> In the beginning of the *Essay*, Locke seems to present such a rigid view of “knowledge,” which should be explicitly contrasted with a more deficient “opinion.” I will address this both in this section, where I discuss Locke’s philosophy of language, empiricism, and nominalism, and I will address it later in chapter 5 where I discuss the recent work by Casson (2011).

<sup>3</sup> Although he is a militant anti-foundationalist, Rorty’s work on essentialism and foundationalism in contemporary analytic philosophy is nevertheless important. Therefore, much of the following discussion of foundationalism’s “commonsense” is adapted from Rorty’s discussion of foundationalism in the first part of his *Philosophy and Social Hope*, New York: Penguin Books, 1999.

<sup>4</sup> See Casson’s (2011) discussion of the classical and medieval origins of the distinction between *scientia/opinion*.

<sup>5</sup> Here I depart from both traditional interpreters of Locke’s work, who seem him as following almost slavishly in Descartes’ footsteps (see Ayers, Michael *Locke: Epistemology and Ontology*, New York: Routledge, 1991), and even the anti-essentialists who *also* hold that Locke was an English Cartesian (see Rorty’s essay “The Contingency of Philosophical Problems: Michael Ayers on Locke,” in Rorty, Richard *Truth and Progress: Philosophical Papers Volume 3* Cambridge: Cambridge University Press 1998). The point is that Ayers and Rorty place Locke as a foundationalist or essentialist within the dichotomous space of foundationalist/anti-foundationalist. This dichotomous space has come under attack, as I have briefly shown in the previous chapter. Instead, as I will attempt to argue below, Locke’s “essentialism” is overblown, and this is particularly the case when he moves to discuss his own nominalism, but, of course, for the moderate Locke, this does not mean that he is abandoning essentialism of any kind for anti-essentialism (whatever that could mean), but wants to posit a space between these two positions. The overall argument of this chapter is that, while Locke is successful in finding a space between these two positions, the thrust of his argument is ultimately *not* drawn from metaphysics or ontological deductions, but the sober reflection of the necessities and demands of political life. In other words, contrary to the majority of epistemologists, Locke’s epistemology is inherently politically-motivated, and the adequacy of his theory should be judged according to these explicitly political ends.

<sup>6</sup> I will be referring to Locke’s *Essay Concerning Human Understanding*, which I refer to in-text as simply *Essay* followed by book number, chapter number, and section number. The edition I use, for the sake of clarity of prose is: John Locke, *The Works of John Locke in Nine Volumes*, (London: Rivington, 1824 12th ed.).

6/23/2016 <http://oll.libertyfund.org/titles/1725>, specifically volumes 1 and 2 which contain the unabridged version of the four books of the *Essay*.

<sup>7</sup> Locke says: “I think it is beyond question, that man has a clear idea of his own being; he knows certainly that he exists, and that he is something. He that can doubt, whether he be anything or no, I speak not to; no more than I would argue with pure nothing, or endeavor to convince non-entity, that it were something. If anyone pretends to be so skeptical, as to deny his own existence (for really to doubt of it is manifestly impossible) let him for me enjoy his beloved happiness of being nothing, until hunger, or some other pain, convince him of the contrary. This then, I think, I make take for a truth, which everyone’s certain knowledge assures him of, beyond the liberty of doubting, viz. that he is something that actually exists” (4.10.2). See Essay 4.2 for a discussion about the particular “degrees of knowledge” available to us, which immediately suggests that things are not either known or unknown, but known or unknown relative to some other things known or unknown.

<sup>8</sup> The most famous doctrine of this type of ontology is found in Plato’s “theory of the forms,” which is most clearly presented in the *Republic* 508a-510a. Plato makes clear that the concrete and particular are in no way the things of knowledge or certainty, but only those that are non-material (abstract) and non-particular (universal)—the “form” or “idea” of the thing itself—are the true grounds of knowledge.

<sup>9</sup> Locke explicitly uses the phrase “busie” in a psychological or political context in the following places: *Essay* 1.1.4; 2.1.2; 4.16.4; *Conduct* 13, 45; *First Treatise* 58; *Second Treatise* 230; *Education* 74, 76, 118, 129, 152.

<sup>10</sup> The passage quoted above is a famous representative of Locke’s theory of the mind as a “blank slate,” or as we know it today: *tabula rasa* (*Essay* 2.1.2). This is as famous as it is a controversial doctrine, and I will briefly make clear what Locke is here saying about the nature of the mind. First, we should make clear that Locke is not claiming (at least right now) that human beings as such have no nature—which, we will see in his discussion of abstract

general ideas, would be akin to say that human beings have no definition. This is obviously not Locke's view. Second, if we understand "human nature" to be an abstract general idea, then it must have a definition, but this itself does not guarantee that it passes from the "nominal" to the "real." So, while Locke is not here denying something called human nature, we should be clear on what grounds he does retain such a notion. Third, the main point of this passage refers explicitly to the realm of thought—to our understanding—to our consciousness. Locke here is very much a realist in the following sense: we often behave according to our thoughts, and our thoughts are not static or guaranteed by innate principles, so, then, our minds are both a field with no inscription (a blank slate) and a field that has considerable malleability. Does this mean that human nature as such is malleable? No, again, as we will see, Locke saves the concept of human nature as a certain *notion* (but only by making a hard distinction between the nominal and the real).

<sup>11</sup> To even put it this way—the "production" of knowledge—is to already reveal how (post)modern Locke's ontology and epistemology can be. As I will show in chapter 5, it is precisely this Foucauldian undertone in Locke's writings that Mehta is very much keen on exposing (see Mehta, *Udah The Anxiety of Freedom: Imagination and Individuality in Locke's Political Thought* Ithaca: Cornell University Press, 1992).

<sup>12</sup> A recurring theme throughout the *Essay* and Locke's other writings is privileging the position of the child: the child reveals to us what the understanding looks like before it is tainted and encumbered by our meddling. This is particularly the case when it comes to the abstract general ideas of "spirits," which Locke says are *not* the product of experience or our senses, but that of power: "But even then, and always whilst he is young, be sure to preserve his tender mind from all impression and notion of spirits and goblins, or any fearful apprehensions in the dark. This he will be in danger of from the indiscretion of servants, whose usual method is to awe children, and keep them in subjection, by telling them of raw-head and bloody-bones, and such other names, as carry with them the ideas of something terrible and hurtful, which they have reason to be afraid of, when alone, especially in the dark" (*Some Thoughts on Education*, section 138; cf. section 191). For Locke, it is clear that there is always power in the construction of our understanding, and we should be vigilant that it is not to be further sanctified by the word "innate."

<sup>13</sup> As we shall see when we turn to Locke's nominalism, the concept of *genus* is just a category scheme that we impose on the objects—not something that emerges from "nature" (*Essay* 3.3.10-16).

<sup>14</sup> I have used the word "arbitrary" here, which is itself a failure of speaking. Of course, to a nominalist, the connection between word and object is precisely *not* arbitrary, if by that we mean "meaningless" or even entirely "subjective," which are today often how this word is taken. This would be to contrast arbitrary against the "meaningful" or "objective," which is precisely what is being denied. Instead, let us understand "arbitrary" as the function of *judgment* (where *arbitrary* is derived from *arbiter* or "judgment"). Given the importance that Locke will place on the faculty of judgment, this is a more noble (and faithful) interpretation of the word "arbitrary" as Locke will use it throughout the *Essay*. The specific centrality of judgment will be discussed in Chapter 5.

<sup>15</sup> See Paul Guyer (1994), "Locke's Philosophy of Language," in *The Cambridge Companion to Locke* edited by Vere Chappell. Cambridge: Cambridge University Press, 115-145 for a review of the landmarks in the literature, and for a more systematic interpretation of language within Locke's writings. Guyer makes the case that Locke is perhaps using a threefold distinction—the real constitution, the real essence, and the nominal essence of a thing. This would perhaps make Locke much more radical, since, the point is that even the real essences are fundamentally products of a categorical system that must, by necessity, not be a function of any sense experience. Sense experience, in other words, reveals to us only the totality of a particular object, not, as Locke wants to claim, the primary (real) and secondary qualities, which is a distinction of categorization and not sense experience.

<sup>16</sup> On the centrality of self-government, understood in a radically "existential" sense, see Strauss *Natural Right and History* 3; Zuckert, *Launching Liberalism* chapter 7, particularly 193-197. The all-too familiar equation of freedom as the right to "choose," while a cornerstone of early modern thought (particularly of Milton's *Areopagitica*), was put forward most militantly by Jean-Paul Sartre in his 1945 lecture "Existentialism is a Humanism" (Sartre, *Jean-Paul Existentialism is a Humanism*. New Haven: Yale University Press, 2007), see particularly 22-28 on the first principle of existentialism: subjectivity and choice. For Strauss, the march of modernity (one could say from Milton to Sartre) is the ever-growing demand to escape from "necessity" and live in "freedom," which we must understand as precisely the abandonment of "nature" or constraint of any kind (see Strauss, *Leo Thoughts on Machiavelli* Chicago: University of Chicago Press, 1958, particularly the end of chapter 4). The existentialist theme of freedom of choice was a distinctly *modern* emergence, and, as we saw with Manent, one that has far from gained universal assent. The point here is that, taking self-government seriously entails a proto-existentialist position where choice and the will are central, not because it is a revolt against God, but because it seeks to establish responsibility and care in the world. The modern move to the "self" as a concept of consciousness, only makes sense if consciousness or "selfhood" is something that must be *made* or *chosen*, and not naturally arising. The distinctly modern position is,

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then, to put it sharper: *the only way that the responsible “self” emerges is through choice*. Again, we should not understand this as an attempt to do away with morality, but only an *a priori* morality that—since it is not strictly a choice—does not make room for responsibility, self-government. Locke, in rejecting the doctrine of innate ideas, is a proto-existentialist in this sense.

<sup>17</sup> This is a famous distinction in early Locke scholarship that sought to show that Locke’s liberalism is really an apology for economic and capitalist elites, see: McPherson, C. B. *The Political Theory of Possessive Individualism: From Hobbes to Locke*, Oxford: Oxford University Press, 2011 [1962]. The distinction argues that there is a fundamental difference between human beings, which might suggest a radical break with Locke’s explicit egalitarianism, see: Strauss, Leo *Natural Right and History*, Chicago: University of Chicago Press, 1952. Both of these positions want to make more central a division that, while may exist now, need not exist *essentially*. In other words, Locke is at pains even in these passages to suggest that, first, laziness is a product of environment (working conditions and lack of leisure) and, second, a lack of proper education—that does not do away with laziness but encourages it with the doctrine of innate ideas. To want to make this distinction more than a descriptive statement about the state of the world by making it Locke’s normative judgment about how the world ought to be, is to confuse what Locke is doing here: cataloging the obstacles to exercising our self-mastery of our understanding. There is little reason to think that this is not possible for more than a simple minority or elite section of the adult population.

<sup>18</sup> The most substantive talk about trust in Aristotle’s political thought comes from his *Politics* (Book 5). Here Aristotle is keenly aware that trust is important for conspiracies that aim to topple tyranny. The tyrant, then, should seek to promote fearful distrust among the people to stop conspiracies against his rule. From this, we can understand perhaps a bit better (though without the epistemological frame of Locke’s notion of trust) that trust in politics serves a mobilizing and anti-authoritarian or anti-tyrannical power. Trust is not explicitly the basis of the legitimate regime, for Aristotle, but this is not to say that Aristotle has nothing to say about the political effectiveness for trust in the revolutionary context—a lesson, Locke surely well understood by the time he wrote his *Second Treatise*.

<sup>19</sup> The political values of liberty and equality have a long empirical history, see: Rokeach, Milton *The Nature of Human Values*, New York: Free Press, 1973.

<sup>20</sup> See Tocqueville, Alexis. *Democracy in America* translated with an introduction by Delba Winthrop and Harvey C. Mansfield, Chicago: University of Chicago Press, 2000; cited as Part, Book, Chapter, I.2.2.

<sup>21</sup> For Mouffe, “What liberal democratic politics requires is that the others are not seen as enemies to be destroyed, but as adversaries whose ideas must be fought, even fiercely, but whose right to defend those ideas is not to be questioned. To put it another way, what is important is that conflict does not take the form of ‘antagonism’ (struggle between enemies) but the form of an ‘agonism’ (struggle between adversaries)” (2013, 7).

<sup>22</sup> As we have already seen in the previous chapter, Mouffe and Laclau are particularly clear on this point: the problem is a lack of resistance or counter-hegemonic space allowed within the legalistic or hyper-institutional liberalism of Rawls, for example. For classical liberals like Kautz and Kleinerman, the political space must always be open, too—however that space is drawn (either as a “peace treaty” among republicans and democrats, or between separated constitutional powers). To believe that this contestation is not needed, or, more precisely, that this contestation can be avoided and is unhealthy, is to be lulled into a rather naïve and dangerous slumber.

<sup>23</sup> There many criticisms of Mouffe and Laclau; for a review of this literature, see Wigenbach, Ed *Institutionalizing Agonistic Democracy: Post-Foundationalism and Political Liberalism*, Burlington: Ashgate Publishers 2011; and Norval, Aletta J. *Aversive Democracy: Inheritance and Originality in the Democratic Tradition*, Cambridge: Cambridge University Press 2007. As Wigenbach points out, much of the criticism levelled against Mouffe and Laclau can be sorted into two camps: on the one hand, you have more “mainstream” philosophers and theorists who simply do not understand (nor wish to do so) Mouffe’s and Laclau’s “jargon” of hegemony and populism. Here the criticism is simply one of clarity and the age-old claim that continental thinking is not “rigorous.” I do not have time for this criticism of their work. On the other hand, and far more interesting in my opinion, is the work from the committed intellectual and radical left. Here, to name only a few, are Slavoj Zizek and Judith Butler, who both have sustained criticisms of Laclau (and Mouffe’s) agonistic approach (see the edited work by Butler, Judith, Ernesto Laclau, and Slavoj Zizek *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*, New York: Verso Books, 2000. Here the criticism from Butler is that Laclau’s conception of hegemony sits uncomfortably between universal and particular. Uncomfortable for Butler, because she denies the “universal” any particular expression. And, for Zizek, his criticism is that Laclau’s logic of hegemony and populism has abandoned the universal altogether, since the Zizek holds true to the dogmatic notion of *class* as *the* material ground upon which all particulars form. For Laclau (and Mouffe) these alternatives are to push, however paradoxical it sounds, hegemony (a post-foundational concept) back into the essentialist/anti-essentialist or foundationalist/anti-foundationalist dichotomy.

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<sup>24</sup> This distinction is made in Kautz, Steven J. “On Liberal Constitutionalism,” in *The Supreme Court and the Idea of Constitutionalism* edited by Steven J. Kautz, Arthur Melzer, Jerry Weinberger, and M. Richard Zinman, Philadelphia: University of Pennsylvania Press, 2009, 30-49; and in Kleinerman, Benjamin A. “‘The Court Will Clean this Up’: Executive Power, Constitutional Contestation, and War Powers,” in *The Supreme Court and the Idea of Constitutionalism* edited by Steven J. Kautz, Arthur Melzer, Jerry Weinberger, and M. Richard Zinman, Philadelphia: University of Pennsylvania Press, 2009, 235-254. This distinction will be discussed in much more detail in the next chapter, as I set out to defend the “extra-legal model.”

<sup>25</sup> If we understand the natural political antagonisms as those between liberal (who argue for liberty or freedom), democrats (who argue for equality), and republicans (who argue for virtue), we can see how a chain of equivalence is possible if it is *negatively* defined—if the demand is for the remedy of some injustice, most particularly the demand for non-domination, which is allied to self-government (which we now have wedded to liberalism). This is the way that the symbolic space can be won without claiming that all of the antagonists have suddenly come to see the light of reasonable liberalism. See Kautz, 1995; Mouffe 2005.

<sup>26</sup> Rawls explicitly does this in the original position.

<sup>27</sup> On this in particular, see Tarcov, Nathan. “A ‘Non-Lockean’ Locke and the Character of Liberalism,” in *Liberalism Reconsidered*, edited by Douglas MacLean and Claudia Mills, Totowa, NJ: Rowman and Allenhead 1983.

<sup>28</sup> Laclau’s concept of “demand” was briefly discussed in the previous chapter. The point is simply that, while Laclau seemingly wants to avoid making the individual the basic “unit of analysis” (because this would be to grant a more traditionally liberal ground than he would like to admit), his appeal to demand does not escape this consequence, either. Indeed, it seems as if Laclau *does* rely on some notion of a free-market that will be able to collect and organize the demands, which is to bring in a much more fundamental (neo)liberal ontology than he is willing to admit. For a detailed analysis of this, see: Berlanga, Jose Luis, “The Liberal Roots of Populism: A Critique of Laclau,” *CR: The Centennial Review*, 10:2 Fall 2010, 151-182; and Žižek’s “Lacanian” criticism in his “Class Struggle or Postmodernism? Yes, please!” in Butler, Judith, Ernesto Laclau, and Slavoj Žižek *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*, New York: Verso Books, 2000, 90-135. Laclau’s response can be found in both his essays in the edited volume with Žižek and Butler (2000), and in his most recent work on the rhetorical foundations of society (2014). In this last book, Laclau correctly notes that his concept of “demand” does not simply function like a “market principle,” that distributes and coordinates dissent, but of course constitutes the social or collective identity of those within the “chain of equivalence.” Here, we should note that, while Laclau is certainly wedded to the notion that the demand first arises as a request *within* a given hegemonic space, the demand takes on a more critical and anti-institutional form the more and more a request becomes a claim, and this eventually becomes a demand. For Laclau, there is no reason to make “essential” this process, which is seemingly what is implied in the critiques by Berlanga and Žižek (and Butler). The emergence of a truly revolutionary identity—“the People”—is not a *given* but a product or construction of social agency (2014, 148-151). For my purposes, Laclau’s conception of the demand *does* make him commit to a certain “liberal” notion of the individual—as that which gives and articulates “demands” and for whom the expression of justice must take place within the community and not merely one’s private judgment. This is already to show how close both classical liberalism and Laclau’s supposedly radical democratic perspective are very much in tune with one another. As I have argued above, this is because Laclau *is* within the larger “symbolic” “regime” of liberal democracy, as is Mouffe; a regime that is ordered around protecting and maintaining the political power within the subject/magistrate relation (and not elsewhere).

<sup>29</sup> This particular notion of cruelty at the heart of liberalism will be discussed in significantly more detail in the final chapter.

## CHAPTER 4: DEFENDING THE NORMATIVE EXTRALEGAL MODEL

In the following chapter, I will present a particular theoretical model of the prerogative power in liberalism. In the first section, I will briefly outline the gravity of the prerogative power, and the danger it poses to liberal constitutionalism. In second section, I focus on the extra-legal model, and pay particular attention to it as articulated in Benjamin Kleinerman's work. Kleinerman's work is particularly important because it grounds the model in the philosophy of John Locke. Though it has a largely institutional focus, I recast it to emphasize what I take to be the most important elements of Locke's extra-legal response to the prerogative power: cultivating the right sense of political trust within the people. In the third section, having outlined the extra-legal model, I turn to a recent critique penned by Leonard Feldman. In my view, Feldman is correct in pointing out the shifting grounds of public judgment, so central to the extra-legal model. Feldman makes clear that the extra-legal model must commit to a set of ontological propositions that are not often explicit—and potentially repulsive—to some of the theorists of the extra-legal model. And, on a more practical level, the extra-legal model must fully recognize the near-impossibility of public judgment doing what it is held responsible for in the extra-legal model.

In the fourth section of this chapter, I respond to Feldman's two critiques—the ontological and the practical, as I call them. Put simply, rather than resisting the political ontology of “flux,” which Feldman suggests Lockean politics cannot seemingly accommodate, I find conclusive evidence of such ontology in Locke's *Essay*, which I then argue underwrites precisely the political power so central in the *Second Treatise*. So, insofar as Feldman critiques the Lockean model for not being aware of political flux, I show this critique to be unfounded. Moreover, I argue that Feldman has grossly misunderstood the nature of the prerogative power in Locke, and subsequently the demands of political judgment by the public. Simply put, he gives ontological

priority to the legal context where he should have merely given epistemic authority. In other words, the power of the people to judge (and the ultimate standards by which they do it) are not the legal, though, of course, the legal context is helpful in discerning (and demonstrating) the intentions behind the use of the prerogative power.

As for the practical critique that popular political judgement will not be capable of fulfilling the demands of the extra-legal model, I counter with two arguments. First, if the reliance on public judgment must be rendered impossible because it is not reliable in guaranteeing the “right” thing to do in every particular event, then I argue that Feldman is ascribing a degree of foreclosed certainty that not only runs counter to his own view of a political ontology of flux (a self-contradiction), but also is not representative of the normative extra-legal model. Second, if Feldman’s practical critique is more deflated than that, and merely suggests that public judgment requires a degree of political awareness or knowledge not common among the mass public, then I argue he does not provide for the role of the “busie head,” central to Locke’s liberal constitutionalism (yet missing in Feldman’s own understanding). Since Feldman’s criticism is *not* ontological, it is merely practical and epistemological. However, on the level of epistemology, Locke can rely on the actions of the busie head to both guide public opinion through the many layers of the legal context when judging any particular instance of the prerogative, and promote a level of general agitation or uneasiness that halts the natural complacency of a liberal public. As I argue in the next chapter, the real demand, then, that Locke places on the people is that they be receptive to the claims of the busie head.

In section 5, the conclusion to this chapter, I argue that the problem of political judgment, then, while a perennial problem for is not an insurmountable problem. The real problem facing liberal constitutionalism is that we too often believe that the public is incapable of judgment. By

not believing in the public's ability to judge, or simply fearing the seeming instability of judgment at all, we ultimately reject liberalism constitutionalism consciously or unconsciously.<sup>1</sup> To properly defend liberal constitutionalism, we must turn back to Locke's work, helping us see that "busie head" liberalism, though messy, nevertheless is the only viable model for liberal constitutionalism—the only alternative to liberal absolutism.

In the section below, I follow many contemporary liberal theorists in arguing that the nature of liberal constitutionalism must begin by properly addressing the nature of "prerogative" power. As I will explain below, one of the most important issues facing liberal constitutionalism is the challenge not from illiberal or non-liberal critics, but from liberal absolutism. The argument from liberal absolutism rests on a claim about the political reality of liberalism—a political ontology of flux. From this political fact of flux, liberal absolutists claim that constitutionalism cannot properly emerge.

Liberal constitutionalism seemingly rests on the claim that political power should not be univocal, and that it should be filtered and constrained through the rule of law. The absolutist claims that this image of liberalism is faulty because it effectively denies the politics of pluralism and flux it started from. Liberal constitutionalism is seemingly stuck in a self-contradiction with its own liberal premises. In particular, the claim that political power can wholly be encapsulated within the law and institutions either denies or covers over the real battlefield: the ability for liberal constitutionalism to control or curtail the extra-legal political power that will always be necessary for the survival of the liberal polity in a political world of flux. Therefore, the real problem facing liberal constitutionalism is its inability to come to grips with its own reliance on extra-legal political power. In the following chapter I will attempt to ground liberal constitutionalism on the

ontology of flux, and show how it can successfully resist the liberal absolutist alternative while also resist the slide into illiberal political arguments.

Political liberalism demands a society that is governed by the law—the “rule of law.” Political power is legitimate when it stems from the standing laws, established, hopefully, through proper procedures and aim toward the good of the community and not the good of only a part of society. Regardless of the normative goodness of the laws, liberalism rests on the firm ground that what is a legitimate use of political power must come from a law.

Of course, power legitimated through the law is different than saying political power is bound by the law. Enter the liberal absolutism of Thomas Hobbes. On Hobbes’ view, the proper end of a liberal society is peace, and it is hoped that such a public peace can be guaranteed through the law. The basis of the law’s ability to guarantee this peace, however, is not strictly the law but the extra-legal power that animates the law. In other words, the sovereign power is the basis of the law, since it is the sovereign who decides when the rule of law applies and when it does not. In deciding the exception to the law, real political power emerges: the rule of law is an instrument of sovereign power, not a constraint.

This absolutist argument rests on a certain political ontology—a first order claim about the nature and reality of the political world. The political ontology that liberal absolutism rests on is one of “flux” or “uncertainty.”<sup>2</sup> Flux and uncertainty are facts of the political world because, once one admits that individuals are the center of analysis—that individuals have the “political power” in the “state of nature”—the fact of pluralism makes certain a degree of chaos. For Hobbes and his absolutist followers, the pluralism in the state of nature guarantees the chaos of the state of war: the state of nature is the state of war (cf. *Leviathan*, chapter 13, Schmitt 2007). On the grounds of individualism, pluralism, uncertainty, and flux, society emerges with the singular focus of



guaranteeing public peace and stability (Rawls 2005). It would be too quick to say that chaos is overcome by the stabilizing nature of a shared, known, and standing law. Indeed, for Hobbes, the stabilizing nature of the law is due to the absolute, dare say arbitrary, political power of the Leviathan that floats always behind the rule of law.

Centralized, unhindered, and univocal political power is the true basis of liberal public peace, and it would be a categorical confusion to equate this with the law. The law is a product of the political power, not a container of it. The sovereign exercises its power through the law, which makes the law an instrument that necessarily has no critical edge. Indeed, to demand that the law curtail political power is, from the liberal absolutist position, to destabilize the political community, since it is the sovereign's extra-legal power that guarantees the power of the law in the first place. To negate the importance of the political power—to believe that the law could do what the sovereign can—is to negate the political ontological foundations of liberalism: flux and uncertainty. In other words, in calling for the rule of law to constrain political power, an alternative political ontology is assumed: rather than uncertainty and flux, the political world is wholly-knowable, rational, and certain. On these alternative ontological grounds, then, the law can reign supreme since there is no need for extra-legal action. In effect, this denies the primary importance of individual pluralism, perhaps making this a strictly illiberal political ontology.

At any rate, liberal absolutism begins and ends with a political power that must be univocal in resisting the political reality of uncertainty and flux. Accordingly, it must deny the independent power of the rule of law (since it is a product of sovereign power). The law cannot curtail the sovereign. In light of the tight logic of liberal absolutism, it is seemingly difficult to see how—by starting from Hobbes' liberal individualism—one does not arrive at Hobbes' conclusion that the political power cannot be restrained by anything, and certainly not by the rule of law. Liberal

constitutionalism, however, does claim to meet Hobbes' arguments while sharing the fundamental commitment to political liberalism—specifically here, understood as individualism and pluralism. The chief architect of liberal constitutionalism is John Locke (Kleinerman 2009).

Locke's liberal constitutionalism rests largely on Hobbes' shared political grounds of individual-level focus, and that, given this individualism, that there is legitimate pluralism in ends. Indeed, as I will show below, Locke explicitly anchors his liberal constitutionalism in the political ontology of "flux" or uncertainty (*Second Treatise section* [ST] 157, Nacol 2011). In this way, Locke does not attempt to critique Hobbes on non-liberal grounds—for example, by denying individualism and legitimate pluralism. The problem facing liberal constitutionalism is not its commitment to liberalism, but its commitment to securing liberalism through other means than political absolutism.

The concern facing liberal constitutionalism is not to account for its commitment to liberal individualism (though such criticisms do apply).<sup>3</sup> Instead, the simpler objection—and therefore the more devastating one—is that liberal constitutionalism cannot resist the siren song of liberal absolutism. In other words, if liberal constitutionalism claims to secure liberalism by appealing to institutions, it sorely misses the objection raised by Hobbesian liberal absolutism. Institutions are surely indispensable for practical liberal politics, but they cannot reach out and curtail the potentially necessary extra-legal sovereign political power. The status of "constitutionalism" in "liberal constitutionalism" must be properly qualified.

In Locke's political thinking, liberal constitutionalism must square up against what he calls the "prerogative power." Indeed, one of the primary reasons for the resurgence of Lockean political and legal thinking is precisely that he correctly perceived the centrality of the "prerogative power" in liberal constitutionalism (Fatovic 2004).<sup>4</sup> Put simply, Locke defines the prerogative power as

“the power to act according to discretion, for the publick good, without the prescription of the Law, and sometimes even against it” (ST 160). The prerogative power not only has the ability to go beyond the law, but it necessarily can even go against it, in the name of the public good. In other words, political power exercised in the name of the public good can in fact be legitimate, even when the laws are against the action.

Why? Because, here Locke is a realist about politics: sometimes “a strict and rigid observation of the Laws may do harm; (as not to pull down an innocent Man’s House to stop the Fire, when the next to it is burning)” (ST 159). The laws, simply put, cannot adequately trace the public good. If the laws could simply trace the public good, extra-legal political power would be in fact illegal political power. Instead, as Locke makes clear here, political life cannot escape a certain degree of uncertainty or “flux.” As Locke says, “Things of this World are in so constant a Flux, that nothing remains long in the same State” (ST 156). Here, I argue, Locke’s discussion of the prerogative is based on the frank recognition that when it comes to first principles about the nature of political reality it is ineradicably one of flux. Since we begin and always remain in a world of flux, extra-legal political power (the prerogative) will always be a structural fact of our politics. To deny this, Locke would say, is to deny political reality.

Constitutionalism, however, intimates the priority of the law over choice—or, to use Aristotelian language, the “rule of law” over the “rule of man.”<sup>5</sup> But, if the power of the law is necessarily inadequate, then what is the purpose of the constitution at all? How does it relate to the prerogative power? In the recent literature on the nature of the prerogative power and liberal constitutionalism, there are largely two positions: constitutionalists and extra-constitutionalist.

For some, the prerogative power is not a power that exists outside of the constitutional system—it is not fundamentally an extra-constitutional power (Arato 2006; Feldman 2008;

Scheuerman 2006; Zuckerman 2006).<sup>6</sup> The argument for these constitutionalists runs as follows. Drawing from a longstanding republican tradition, there has been the recognition that in times of emergency the rule of law may need to be suspended. Indeed, classical republicans held a certain type of dualist approach to the rule of law where there were essentially two laws: the rule of law for normal everyday political life, and a law that guided action in the state of exception (Feldman 2008, 550-551). Here, the presumption was that institutional procedures would carefully guide the extra-legal claims of the one law over another, and that the decision making process would be able to adapt the law to a world of flux.

Picking up this institutional perspective are those that hold that, rather than relying on two competing types of law (which is itself prone to destabilizing conflict), the prerogative or extra-constitutional power can be wholly couched within the constitutional system. For these scholars, the role of the independent judiciary should effectively evaluate prerogative claims after the fact (Cole 2003; Kostal 2005).<sup>7</sup> Here, the claim is that, while the prerogative power is necessarily a power that can go against the law in a particular instance, this is extra-legal power is simultaneously granted this power from the constitutional structure, and the consequences of the prerogative can be evaluated under the rubric of the law.

Similar to this last constitutionalist position, there is another way to ground the prerogative within the constitutional structure. The previous perspective put the whole of the prerogative within the constitutional structure, arguing that its origin of power stems from the constitution itself and, therefore, is beholden to the law. However, it could be possible to argue that the prerogative is a constituted power, but it need not be evaluated in within the constitutional structure. In other words, there is a sense that the prerogative power can be understood as a constituted power—something that is afforded its legitimacy from the constitution itself—but the

precise application and potential consequences of the prerogative cannot be retroactively brought under the gaze of the law. As Feldman pointedly remarks, this constitutionalist perspective—“realist extra-legalism”—“seeks constitutional grounding for unlimited executive power” and therefore may “more properly be termed ‘authoritarian’” (2008, 551). This constitutionalist position is almost explicitly a Hobbesian liberal absolutist one, which makes renders it incoherent as a model of liberal constitutionalism.

The last model, and the one I will spend considerable time describing and defending in this chapter, is called the “normative extra-legal” model (Elshtain 2004; Gross 2004; Kleinerman 2009; Tushnet 2005).<sup>8</sup> This is a model explicitly based on the work of Locke’s political thought, and it is, I argue, the only one that can properly meet the ontological criticism from the liberal absolutism camp. Though I will go into considerable detail below, the general argument of this model is as follows. The prerogative power is not properly a constituted power—its basis rests in a pre-political, or simply extra-legal state. In this way, the prerogative, while recognized within the constitutional structure as a real possibility, must resist any attempts to “constitutionalize” or “normalize” the extra-legal character of the prerogative power. The prerogative should always rest outside the constitutional structure, since any attempt to naturalize it would mirror the previous “realist extra-legalism,” or Hobbesian liberal absolutism. Instead, the normative extra-legal model argues that the only way to resist the prerogative power is to counter it with another extra-legal power: the democratic public or the people. Here, when properly understood, liberal constitutionalism is not simply an attempt to foster contestation within a constitutional system (though this is an important instrumental virtue of the liberal polity), but to promote contestation between extra-legal forces: the people and the prerogative. It is only on the ground of the contestation between these extra-legal forces, I argue, that liberal constitutionalism can survive.

The rest of this chapter will outline the extra-constitutional model. In particular, I focus on the public trust component of the model. I then present a criticism of this model, that levels two charges. First, it argues that liberal constitutionalism still fails to live up to the political ontological commitments of liberalism, and therefore runs the risk of falling into incoherence or, worse, liberal absolutism. The second aspect of the criticism is that it demands too much of the democratic people—i.e., it is not even theoretically feasible. In the last section of this chapter, I respond to both charges, and, in so doing, fill in aspects of liberal constitutionalism that have gone either under-theorized or ignored by even its staunchest defenders.

#### NORMATIVE EXTRA-LEGALISM

One of the most prominent articulations of the normative extra-legal model is found in Benjamin Kleinerman's work (2007; 2009). In the following section, I will carefully trace his argument, paying particular attention to the role of political trust and the democratic public. Obviously, where necessary, I bolster Kleinerman's account with others, and the singular focus on just one part of Kleinerman's larger work is solely for my purposes later. Or, stated in another way, through Kleinerman's argument for the normative extra-legal model, I lay the groundwork for my own project of putting ontology, trust, and the busie head at the center of liberal constitutionalism.

For Kleinerman, liberal constitutionalism is "a new type of politics" (2009, 245). By this, Kleinerman means that liberal constitutionalism has its roots in modern philosophy's break with the classical tradition in focusing not on the "good life," but on peace (*ibid.*). Liberal constitutionalism rests on this modern break, one that shifts the question from one about ultimate ends of human life to a much more practical, if lower, technical or "mechanical question" of *how*

to arrive at peace. But, as Kleinerman points out, the modern search for stability and public peace need not be a liberal *constitutionalism* but, indeed, a liberal *absolutism* akin to Hobbes' *Leviathan*.

Once we have abstracted out the question of happiness or properly human ends, we are left with the technical question of how best to secure public peace, and the obvious first answer is through institutional stability, which is precisely what Hobbes offers in his liberal absolutism. "The founder of the modern approach to politics is, instead, an absolutist who insists both that the people have no place nor taste for politics and that the laws are nothing except the sovereign's commands." (ibid.). Hobbesian liberalism puts a primacy on stability, treating all disturbances to the single sovereign authority as a threat to public peace. As Kleinerman eloquently puts it:

The preeminence of peace forecloses the political contestation that would arise if there is anything other than one absolute answer to all political questions. Unitary sovereigns are always right not because they are any more special than anyone else but because they have to be always right, else civil war and anarchy. Hobbes' sovereign absolutism rests on the inexorable logic of a devotion to peace to the exclusion of all other political goods (2009, 245-246).

The distinction Kleinerman is drawing is here one between "police," on the one hand, and "politics" on the other. A regime predicated on "police" is one that aims only at maintaining order, stability, and the hegemonic power relationship imbedded in the sovereign decision. This means that what divides "police" from "politics" is precisely the un-foreclosed nature of the sovereign—of who ultimately decides, a question that Locke is intimately concerned with. If there is a question about who decides, there is a degree of inherent political contestation that chips away at the absolute character—not of the decision *as such*—but of who is the "decider" once and for all. It is Hobbes' fixation on stability and peace that pushes him into the realm of "police," and therefore eliminating "politics," since any contestation over precisely *how* the peace will be maintained—a *political* question.

To establish a true liberal constitutionalism, Hobbesian liberal absolutism must be rejected. Though, of course, it should not be completely rejected. Hobbesian liberal absolutism cannot be rejected on the grounds of its *liberalism*, i.e. its focus on individuals and individual rights, a view of human nature that necessarily avoids discussion of “proper human ends.” The liberal perspective does not foreclose any discussion of “proper human ends,” but just that these are not the animating justification for government. In true liberal fashion, liberalism must still hold that the chief political concern is public peace. In this way, we can understand Locke’s liberal constitutionalism as a response to Hobbes “on the same mechanical ground that Hobbes claims as his own” (2009, 246). Liberalism cannot be jettisoned. Liberal constitutionalism, beginning with Locke, does jettison, though, its fixation on *stability* as only possible through a unitary sovereign. A unitary sovereign, as pictured by Hobbes, is necessarily one that cannot be resisted—since that would be the realm of “politics” and not “police”—and this Locke rejects on (republican) grounds of non-domination.<sup>9</sup> For Kleinerman, “Constitutionalism emerges to give people the freedom from arbitrariness, both at the hands of others *and* at the hands of those who hold political power” (2009, 246). Strictly speaking, constitutionalism is precisely the recognition of the power of law—understood as the power to “bracket and limit what can be claimed as a legitimate exercise of power by the sovereign” (ibid.). Liberal constitutionalism, in other words, “stands as a correction to Hobbes” (2009, 247). Put simply, the liberal constitutional “correction” of Hobbes is that, while it is important to start from liberal grounds of seeking peace, this peace cannot be guaranteed in an absolutist regime like that of the Leviathan. This peace can only be guaranteed by the law, which constrains political power.

For Kleinerman, however, there are two fundamental issues that threaten the liberal constitutional correction of Hobbes’ liberal absolutism: first, that the law must itself allow for a



certain degree of “exception,” and, second, that liberal constitutionalism rests on a precarious notion of trust—one that, paradoxically, can undermine liberal constitutionalism. The first problem that Kleinerman outlines is simply the fact that the contingencies cannot be accounted for in the law, and therefore there must be some admittance of “discretion” to the sovereign even when there is law. In other words, “though arbitrary power cannot be legitimate if it is exercised merely at the sovereign’s whim, this does not preclude its necessity” (2009, 246). Even liberal constitutionalism needs the prerogative exception to the law from time to time. The point is clear: since liberal constitutionalism must admit a potential *need* for discretionary power, this recognition necessarily limits the extent to which one can put one’s trust in the laws and the institutions that are designed to bracket and constrain that discretionary power. Contrary to certain perspectives, institutionalism is not enough, as Kleinerman’s account of Madison’s constitutionalism confirms: “To a considerable degree, Madison’s turning to the people’s sovereignty as the final arbiter of constitutional authority seems, in part, motivated by the realization that the institutional separation of powers Madison envisions in *Federalist* 51 does not work quite as well as he expected” (2009, 134). The point is that the prerogative power cannot be wholly contained even in the most carefully constructed constitutional system, and therefore the people in some form must always be the final arbiter.

Liberal constitutionalism, then, is not about constructing the institutional mechanisms that help eliminate the need for the prerogative or discretionary political power, since it is something that cannot be eliminated. Institutions, then, are important not because they help to truly constrain political power but in that they help guide the judgement of the people. This brings us to the second, and deepest issue with liberal constitutionalism, according to Kleinerman: there is a seeming “inevitable” tendency for the people in a liberal polity to become politically apathetic. We must

remember that the liberal perspective does not eliminate the idea of the “good life” or the “proper end” of the individual only, instead it only demands that these are not to be considering animating reasons for public policy. The end of our liberal government is not to make us happy, but to make us safe and at public peace. This demarcation of the public and the private relegates questions of the good life to private matters, leaving public policy essentially mechanical questions—the logistics of how to secure the public good of peace. For Kleinerman, a successful liberalism itself poses a problem for liberal constitutionalism, insofar as it rests on some more-than-trivial public judgment of the people. According to Kleinerman, a liberal people “would rather pursue their private goods, leaving the mechanical questions of politics to the mechanics in charge” (2009, 246). Liberalism’s distinction between the public and the private, a doctrine designed to avoid the tumultuousness of a politics associated with public declarations and dogmas of the “good life,” paradoxically pushes individuals more and more into the private realm, leaving the public realm less and less political but increasingly unilateral and absolute. Liberal constitutionalism requires the judgement of the people about the public good, something that they are seemingly unable to do.

For my purposes, Kleinerman’s argument points to a dangerous ambiguity at the heart of liberalism: the meaning of political “trust.” Trust is certainly foreign to Kleinerman’s account. For Kleinerman, the problem that Locke realized is that—put baldly—the people trust too easily. Pushing the metaphor of the “mechanic,” Kleinerman paints a very Lockean picture of the problem of apathy in the mass public when it comes to adequately judging and trusting the sovereign:

Very few [people] insist on fixing their own car because they are too proud to let someone else do it for them. They only insist if they do not trust their mechanics. Although Locke cultivates a spirit of distrust in the people, most give up that distrust when they meet a very nice and dependable mechanic. ... Prerogative stands as a constant temptation to the people, who have been made apolitical by the limited ends of modern government. The people would, it seems, prefer to hand over rule to a mechanic they trust than to bother insisting on ruling themselves. This problem is

deeper insofar as the mechanic can effect justice and preserve security in a way that the laws, given the limitations they impose on government for the people's own good, cannot. (2009, 246-247)

For Kleinerman, the real danger facing liberal constitutionalism is that the people do not properly trust the government as they should. Instead, the people are too willing to give up their ability to govern themselves—understood here minimally as the power to judge—and therefore enter into a particularly unreflective or uncritical or simply naïve trust relationship with the government. I have characterized this particular understanding of trust as the *basic trust* relationship I outlined in chapter 1. Put simply, the fear here is that the individual has given up any demand for a reciprocal relationship between subject and magistrate, to borrow Locke's terms. Giving up this reciprocal relationship necessarily implies that there is no concrete, political resistance or checks to the claim of the magistrate to use the prerogative power. This particular regression into this basic trust relationship is not simply a product of individual ignorance, but structural necessity: there is a certain sense in which discretionary power is needed, even in a well laid out constitutionalism. And, perhaps, the “temptation” of the expert mechanic is heightened precisely in that constitutional regime. Here, we arrive at the paradoxical position that it is political trust—the concept so important in distinguishing liberal constitutionalism from liberal absolutism—that is now seen to be dangerous to liberal constitutionalism because it does not actually provide a clear path to distinguish constitutionalism from absolutism. Like liberal constitutionalism, it seems as if liberal absolutism draws its power from a particular kind of trust between subject and magistrate, as well.

Liberal constitutionalism and liberal absolutism could be distinguished from one another insofar as liberal constitutionalism advocated multiple sovereigns or “politics,” in a way that liberal absolutism relied on a unilateral sovereign power whose command foreclosed discussion—i.e., rule by “police.” The difference between politics and police is the ability for there to be another power that can legitimately (i.e. *concretely* and not merely legally) oppose or resist the sovereign

command. As we have seen, Kleinerman is aware that institutional remedies must ultimately fail to constrain the sovereign, if only because the law itself must in a non-trivial sense allow for some discretionary power to fulfill the ends of security and peace where the laws cannot: “Modern constitutionalism stands as a correction to Hobbes, but Hobbes’ insight about the necessity of sovereign action does not disappear” (2009, 247). So, rather than a strict institutional remedy, liberal constitutionalism requires an “extra-constitutional” power to concretely resist the sovereign, and this is “the people.” However, as we also saw, this does not necessarily save liberal constitutionalism, since the people are typically bad judges. In particular, the people are seemingly bad judges as to who we should trust with the political power: even the people’s ability to determine who to trust is all too limited; they trust appearances without bothering to probe enough to discover the reality” (2009, 247). Since the people are too quick to trust, and the prerogative or discretionary power is structurally necessary for a functioning liberal polity, it seems almost inevitable that constitutionalism will collapse into absolutism—politics will be replaced with police.

The only solution seemingly open to liberal constitutionalism is to revisit and clarify the relationship of trust, and to have this understanding of trust at the center of the public’s political psychology. As Kleinerman argues,

The people’s all-too-willing acceptance of prerogative requires a constitutional order that makes it suspect else the constitutional order will be overrun. If the people were less willing to accept the ‘god-like prince,’ the constitutional order would have to worry more about their foreclosing the necessity of prerogative or punishing the exercise of prerogative unjustly. Because they tend to accept it, the constitutional order must create conditions under which they will view it with *suspicion*. In other words, their apolitical tendencies must be corrected by a demand that they become political by participating in *the constitutional politics of judging necessity*. (2009, 247)

First, let us make clear where the defense of liberal constitutionalism must be mounted. Contrary to many contemporary liberals, constitutionalism cannot be defended by elaborating more and

more institutional rules, codes, or regulations of the prerogative power. The discretionary power is a structural necessity of political life, and therefore must be accepted within liberal constitutionalism if it is to have any grounding in political reality. So, turning away from institutionalism, the battlefield of liberal constitutionalism is in establishing the proper sense of trust—i.e., in mass political psychology. How we *think* about politics affects how we behave, what we do in the political world. As has already been made clear, there is a natural tendency within liberalism to *think* that politics ought to be about “expertise,” which invites precisely the apathetic, disengaged—yet seemingly content and comfortable—liberal citizenry dangerous to liberal constitutionalism. The people are supposed to judge, and the major element of that judgment consists in knowing who to judge (and that one is supposed to judge). The people are willing to judge only by “appearances,” which implies a sense of naivety—which, again, is to say that they trust too quickly. Second, since the battlefield is in mass political psychology—counteracting the natural way in which we engage with the (liberal) political world—we must consciously create a culture of “suspicion” that counteracts naïve trust.

Though this is seemingly what Kleinerman is suggesting, I will complete the argument for him: in order to defend liberal constitutionalism, we must have a culture of suspicion, and this suspicion is a *healthy* sign of liberal constitutionalism. In this light, the talk of institutional mechanism and constitutional structure is important but for reasons not typically recognized: they help spread suspicion. In the penultimate paragraph of his book, Kleinerman returns to institutionalism as an important feature of liberal constitutionalism. For Kleinerman, “both the Constitution and the separation of powers it creates aims to solve the Hobbesian problem” (2009, 248). This institutional solution, however, should not be understood as solving the problem *through the law*, since the law cannot properly constrain the extra-legal prerogative power. This is

an institutional solution to the problem of the prerogative only insofar as it attempts to challenge the unilateral claim of political power, thereby introducing contestation among competing “sovereigns,” i.e. instituting “politics” over “police.” As Kleinerman states,

Although political order remains fundamentally committed to the Hobbesian goal of peace, it reintroduces the possibility of real political contestation over the means of achieving peace. Moreover, the separation of powers creates three different branches that represent different aspects of what we mean by peace. (2009, 248)

For Kleinerman, the institutional solution of the separation of powers and a written constitution are important insofar as they “institutionalize” political contestation.

Kleinerman joins ranks with many other recent constitutional thinkers who take political contestation seriously.<sup>10</sup> This defense of liberal constitutionalism and the tripartite constitutional structure, again, does not *solve* the problem of the prerogative, so much as it allows *political space for contestation that can tame the princely prerogative*. Kleinerman’s work is important in pointing out that institutional arrangements like the separation of powers and a written constitution are not sufficient—though necessary—for the survival of liberal constitutionalism. These institutions create a space for real political opposition, though, they do not themselves guarantee real political opposition. The most this institutional perspective can hope for is establishing multiple “sovereigns” that resist any natural tendency within liberalism to collapse into one, unitary absolute sovereign. Each of the three branches ought to aim at a piece of the public political good—something that even liberalism must nevertheless admit exists—which consists of three parts: defense of individual rights, care for public peace, and national self-preservation. These three parts of the liberal public good, being lodged into each of the three branches of government—the judiciary, legislative, and executive, respectively—are to compete over the boundaries of political power, the discretionary prerogative. And, it is precisely this contestation that forms perhaps the most important liberal political good:

There is and must be, of course, contestation over the boundaries of these functions. But this contestation should be, in itself, viewed as a political good rather than as an evil that should be corrected by final pronouncements. The contestation over political authority corrects the Hobbesian tendency in modern liberalism to avoid politics entirely. (2009, 248)

Liberal constitutionalism requires institutionalized political contestation so as to displace the natural tendency of political power to foreclose the political deliberation of the common good, eliminating politics and returning to an unchallengeable, absolute unitary police authority. But, it is important to remember that, even though the institutional doctrines of liberal constitutionalism—particularly the separation of powers and a written constitution—are important for maintaining liberal peace that still holds a place for politics, the real defense of liberal constitutionalism rests not in institutions but in the people’s proper perspective of politics itself. The natural tendency of liberalism that Hobbes counts on is that people tend to give up their power to experts, or that they see political contestation as inherently “evil,” revealing a deep conviction that stability and thereby public peace can only be guaranteed through “final pronouncements” from an unchallenged single authority. The true danger to liberal constitutionalism is a failure of the people (and their intellectual and political representatives) to properly judge their relationship to political power.

#### THE PROBLEM OF JUDGEMENT

As we have seen in Kleinerman’s careful examination of the development of the discretionary power and the numerous attempts by liberal thinkers to “tame” it, the most important defense of liberal constitutionalism cannot rest on a notion of getting the institutional arrangements “right,” since the political power that underwrites the discretionary power of modern executives is not simply *legal* but *extra-legal*. And, following Kleinerman and others, this *extra-legal* model of constraining executive or discretionary power must rest on another *extra-legal* power—the people. This amounts to taking seriously Locke’s repeated refrain in his *Second Treatise* that, first, the people must always be understood as having the power to decide the various aspects of the

“goodness” of any claim to prerogative power, and, second, that the people are often given the benefit of the doubt in their judgments against the sovereign. However, this *extra-legal* model leans, then, ultimately on the power of the people to “judge necessity,” which even Locke admits is difficult if not impossible for them to do reliably. The paradox at the heart of liberal constitutionalism is that it must rely on something that it recognizes it cannot simply rely upon: the people being able to judge correctly the necessity of prerogative power.

The paradox of relying on public judgment that is seemingly necessarily unstable or unreliable has been brought out in recent theoretical work on Locke’s doctrine of the prerogative, exemplified by that of Leonard Feldman’s “Judging Necessity” (2008). In the following section, I will outline his criticism of the *normative extra-legal model*. As my explication above made clear, there is no doubt that political judgment is a central concern for the *normative extra-legal* model. This could entail that liberal constitutionalism is seemingly set up to fail, even on its own terms: liberal self-government is impossible.

The virtue of Feldman’s criticism, however, is not simply in repeating the paradox of liberal self-government (that, if liberalism is successful it makes its people apathetic, rendering it a self-undermining force) but deepening it. For Feldman, the paradox of judgment at the heart of the normative extra-legal model is not merely a practical concern (though, it is obviously that, too), but an *ontological* problem that cannot be so easily dismissed by normative extra-legal theorists. Put simply, the normative extra-legal model relies on casting the public power of political judgment as a *natural* power. If it were simply or ultimately a *natural* power, there would be hope that the people would be able to judge it reasonably well. If it is a natural power, then it is a capacity that exists in the people, and, so, judgment is really a matter of simple guidance and education, not of experiment and invention. However, as Feldman argues, the power of judgment is not simply



natural but also *legal*, and this makes the judgment of the people nearly impossible—since there are too many layers to any particular judgment. Judgment is not something that can be relied upon as an *extra*-legal power, since judgment itself seemingly relies on the *legal* and not the natural, understood here as the *extra*-legal ground upon which the Lockean extra-legal model is built. In the following section, I will spend considerable time outlining both the deeper *ontological* critique (1.2.1.1) and then Feldman’s more deflated practical critique (1.2.1.2). Having made explicit Feldman’s criticisms, in the next section I turn to responding to each.

In a recent article, Leonard Feldman argues that the “normative extra-legal” model is right to consider the people’s power in constraining the prerogative, i.e. that the people are the judge. However, he points out that the *how* the people judge has been “undertheorized.”<sup>11</sup> For Feldman, drawing from the works of Oren Gross, Jean Elshtain and Mark Tushnet, the “normative extra-legal” model argues that the best way “to preserve the rule of law is to embrace the necessity of certain emergency measures while simultaneously denying any legal or constitutional validity” to these measures (2008, 551). The powers of the prerogative are and should remain extra-constitutional, and therefore we should resist codifying the measures of necessity into our Constitution:

Extra-legal powers cannot be effectively controlled by courts *or* by constitutional or statutory provisions that seek to regulate and limit the state of exception. Indeed, judges may do more harm than good—not just accepting the suspension of legality by writing it into law as well. (2008, 552).

For Feldman, without the courts or the legislature to constrain the prerogative there remains only one option: the public. The key is to understand how individuals judge the prerogative, how many steps there are in forming that judgment, and what the obstacles are to rendering the correct judgment.

Rather than the typical two-power view of the relationship between the extra-constitutional prerogative and the extra-constitutional judgment of the people, Feldman posits a three-way interaction: “Locke, I argue, describes a tri-polar world in which law (including a society’s basic law), executive discretion (including prerogative), and popular judgment (including the right to resist tyranny) exist in a permanent constitutive tension with each other” (2008, 553). According to Feldman, we have to understand that the prerogative and the people judge from two moments: the extra-constitutional *and* the constitutional. In other words, this requires that we reinterpret the naturalness of the prerogative power, from a “natural” power to a non-natural or constituted power. As Feldman says, “However, because the people who judge prerogative do not do so in a legal vacuum, I agree with the ‘constitutionalist’ position that Lockean prerogative is not a ‘natural’ power” (2008, 557). However, as Feldman quickly points out “to suggest that prerogative is not a natural power is not to assert that it has a constitutional foundation. Rather, I suggest that Lockean prerogative is best viewed as constituted by its constitutional contestation” (ibid.). What Feldman admits is that his view of the prerogative must entail that it is not a natural power, which would deny that it is something that is prior to the foundation of the constitution. But, as the quotation also says, it is a constituted power that, nevertheless, is not strictly speaking constituted.

For Feldman, there is a third option: “Judging prerogative power is exactly such a politics, one that occurs at a kind of threshold where constitutionality and extra-constitutionality not only ‘blur with each other’ but also collide in a contestatory politics” (2008, 565). This is what he seemingly means by “constitutional contestation.” The space between constitutional and extra-constitutional, or, rather, the claim that there can be simply a strict separation between the two, suggests that political judgment must always have both elements of the natural and the political. This ontological fact of the “blurred lines” between constitutional and extra-constitutional makes

the practical reliance on public judgment that much more difficult: the people, untaught, are woefully incapable of rising to the task of resisting the prerogative. Indeed, the almost cognitive limitations and burdens placed on the public's judgment—mixed with their already affective or natural tendency to uncritically follow the executive—renders liberal constitutionalism, as presented in the normative extra-legal model, a utopian fantasy.

For Feldman, if the prerogative is a natural power, it must have a natural opposing force to constrain it. If, however, it is a constituted power it requires a countervailing constitutional power. Rather than these two clear-cut options, Feldman has suggested that the nature of the prerogative is somehow both natural and constituted. Now, it is clear that for Locke the prerogative is literally a constituted power insofar as the government is itself constituted by the people, and the prerogative rests with (or is entrusted to) the government. Indeed, Locke is even more specific: the executive is given the prerogative power. However, this does not mean that the prerogative power is *itself* a constituted, i.e. non-natural, power. We must understand the government's prerogative as a transformation of some natural prerogative. It is a natural power that is given in trust to the government, which usually falls into the executive's hands. According to Locke, that it falls into the executive's hands is due, in large part, to the natural flux of the world, and the inability for there to be a world that has every contingency legislated beforehand (ST 157). Therefore, we should be skeptical of Feldman's attempt to synthesize the nature of the prerogative power if it entails denying the "natural," or non-constituted fact of the prerogative power.

Turning to Feldman's argument specifically about the nature of judging the prerogative power, he bases much of his analysis on Locke's example of the man who, seeing a burning house, tears down a neighboring one to prevent the fire from spreading—an example in the *Second Treatise*. Locke claims that the individual who tore down the house, while doing something

explicitly illegal, could nevertheless be “pardoned” by the magistrate, since this is an aspect of his prerogative power. I will discuss this example in more detail below, but let us turn to Feldman’s interpretation of this story. For Feldman, there is a misleading “symmetry” between the individual’s extra-legal action and the way that the prerogative is to be judged:

1. Individual’s extra-legal action → Government judgment: maintain law (criminal conviction) or take extra-legal action (pardon).
2. Government’s extra-legal action → Community judgment: maintain law (passivity/obedience) or take extra-legal action (condemnation and revolution). (2008, 561)

For Feldman, the case as presented by Locke would suggest that the same individual-level extra-legal action has similar consequences from the executive, as the executive’s extra-legal action has similar consequence from the judgment of the people. The question is the “common good” and whether it was fulfilled by that extra-legal action or not, and the judgment is squarely on those grounds. However, for Feldman, these two sets of consequences are not equivalent:

while there appears to be equivalence between government extra-legalism and community extra-legalism, notice that the two dyads are not entirely symmetrical: When the government validates extra-legal citizen action it does so by taking action that is itself outside of law. When the citizenry validates extra-legal governmental action it does so by refusing to take any extra-legal action. And, conversely, when the state rejects a private individual’s necessity claim for justified extra-legality and punishes that individual for an illegal action, it acts by enforcing existing law. By contrast, when the community declares the state’s claimed prerogative is illegal and tyranny, it acts extra-legally, through violent resistance (561).

From this asymmetry, Feldman concludes that there is a “presumption of innocence” which only applies to the magistrate and not to the citizen. Feldman draws this from Locke’s explanation in the *Second Treatise* that the people are generally apathetic or welcoming of a king who goes against the laws for the common good (ST 161, 164, 165). Putting Feldman’s point another way, there is an interpretive difference between how the government sees its people and their individual claims to use the “natural” prerogative power and how the community sees how its government uses this “natural” prerogative power. If the individual tears down a burning house, which is

against the law, the act itself is immediately seen to be *illegal* and carries with it a set punishment. The executive has the option to validate or invalidate this particular claim to use the prerogative, and therefore his options are: either to allow, and therefore pardon, the extralegal action, or, to deny, and therefore, punish the extralegal action. If the government allows this action, it appeals to something beyond the law (since tearing down someone's house is illegal). However, if the government invalidates this appeal, then the executive applies the act under the rubric of the law—forgoing any particular use of the prerogative, allowing the act to be judged according to the standing laws.

The way the community judges the extra-legal actions of the government is different. The community can validate or invalidate the government's claim of extra-legal or prerogative power. If the community judges the extra-legal actions of the government valid, then it simply does nothing. However, if the community judges the extra-legal actions of the government to be invalid, then it begins the process of resistance. While the cases of the community and the government may seem symmetrical insofar as the community judges the government, and the government the actions of the individuals within that community, Feldman correctly highlights that this symmetry is quite misleading. The government acts only to excuse or *validate* the actions of individuals, to opt-out of applying the rubric of the law to a particular case, while the people act only to *invalidate* the executive's claim of the prerogative; the government *invalidates* the actions of individuals through inactivity, allowing the law to be applied, and the community is inactive when it *validates* the executive's claim of prerogative. The asymmetrical relation between activity and legality puts the community in a position where there is a "presumption of innocence" with regard to the government (i.e., the inactivity of the people implies validation of the executive's prerogative).

This asymmetrical difference between community and government troubles the all-too-clean division between those who hold that the community can simply judge the governor, and that the natural power of the prerogative is not simply identical between the community and the government. In other words, popular judgment of the prerogative seems to be predicated on more than just the natural or pre-political judgment of whether an action fulfilled the “public good,” but now it must be filtered through the constitutional questions of legality, necessity, and alternatives. The ontological character of the prerogative power has a direct influence on the practical estimation of the simple feasibility of the *normative extra-legal* model, i.e. of (Lockean) liberal constitutionalism.

Another significant contribution of Feldman’s paper is that he stresses the very practical questions that give rise to serious theoretical questions that are at the core of Locke’s liberalism. Feldman’s question, to put it simply, is this: given that the people are the judges, how should they judge? For Feldman, we judge from a social world, a shared horizon that is established by our laws and norms. Therefore, we judge from, at most, an equally natural and non-natural standard (2008, 562-563). Likewise, the prerogative power “is not fully extra-constitutional either; it is imbued with law because it is exercised in anticipation of the judgment of the people who are themselves using in part the categories of public law” (563). For Feldman, this shared horizon, a mixed natural and non-natural standard of judgment, can be found in Locke’s “second stage of the Lockean compact” (563). The first stage is the formation of the community (ST 97). The second stage is “the entrusting of political power to the constituted authorities” (563). Therefore, what some may mean by “natural” is really found in the first stage of the contract, and the second stage of the contract establishes the shared framework that authorizes all government action. Whatever the natural power of the prerogative, the most important aspect of the prerogative is the one that

emerges through the constitutional system—i.e., in relationship with the law. The law is central to political judgement, which makes any judgement about the prerogative multilayered—i.e., both natural and unnatural.

According to Feldman, in order for the people to judge the prerogative they must make a series of other judgments, too. As Feldman states: “The most straightforward issue here is that citizens are now required to judge between legitimate (but extra-legal) prerogative and illegitimate, extra-legal tyranny. In other words, *the mere fact of state action outside of or even contrary to law* is no longer decisive” (566). For Feldman, in order to judge legitimate and illegitimate prerogative requires individuals to be well-versed in the law of the land. However, in trying to move the focus of attention from legitimate/illegitimate he must underemphasize the distinction between prerogative/tyranny, i.e. the distinction that Locke actually discusses. If the distinction between prerogative/tyranny can be made without appeal to the civil laws of the land, then there is no reason to follow Feldman to his conclusion that: “Lockean resistance depends upon a practice of judgment that is legally grounded” (566). It is precisely here that Feldman directly challenges the idea that “natural law” is underwriting the judgment of the people:

Given that *prerogative* power seems to derive from natural law or our natural right to execute the law of nature, why should the preexisting constitutional order be required for judgment? After all, to judge whether or not such prerogative has been rightly exercised means judging whether this natural law has been followed or violated, and this judgment, it could be argued we can make as prepolitical persons, without attention to the particular political context we inhabit, with only a much more general norm of the good of the community (566-567).

Though Feldman clearly presents a theoretical objection (one I will defend later), he dismisses it with a practical objection: the problem of competing interpretations:

However, for the congruence of an exercise of prerogative with the law of nature to be the *only* question raised, two highly implausible conditions have to be met:

1. Rulers would always publicly declare the extra-legal nature of an exercise of prerogative power instead of claiming the legitimacy of positive law.

2. No disagreements would exist in the polity about the meaning and application of positive laws; the only disagreements (say, between a ruler and the people) would concern whether an extra-legal action served the good of the community or a ruler's private interest. (567)

Put simply, while these are clearly two conditions that are seemingly prior to the judgment of the prerogative as prerogative/tyranny, they are in no way objections to the power and basis of the judgment stemming from natural law. Feldman's practical objection is that there are three specific questions that arise if the people are to judge the prerogative. First, "did the executive act outside of/in violation of the law? In other words, did the ruler act *legally* or *illegally*?" (567). Second, "did the ruler act for the good of the community or for the sake of private interests and 'irregular passions'?" (567-568). Third, "was the ruler's judgment correct that extra-legal action was necessary for the good of the community?" (568). These three questions are actually all questions that either happen simultaneously or prior to the judgment of the goodness of the use of prerogative power. Moreover, according to Feldman, "these questions require a knowledge, not only of a specific legal context, but also of the specific practical, empirical context in which power is exercised" (568). In other words, it requires a knowledge that is not natural. For Feldman, the moral of the story is simple: there are a number of problems facing the normative extra-legalist model, because this model seemingly assumes a "consensus" on a series of questions that are unlikely to garner such a consensus (570).

Feldman's critique here amounts to this. Since the government will necessarily withhold explicitly mentioning that they use the prerogative power, a certain type of forensic psychology is needed to even uncover if the prerogative event has even occurred. Simply, we must now have justification for even claiming if the prerogative occurred. Second, even assuming the explicit claim of the prerogative power by the governor, there still would be secondary interpretive questions that need to be answered and justified before the final judgment could be rendered. What



Feldman here is pointing to, though he does not say so explicitly, is the emergence of a constitutional contestation. The ultimate goal of the people is to render informed consent or active judgment as to the goodness or adequacy of the prerogative power. The user of the prerogative power, though, is seemingly trying to cover over the use of the prerogative power altogether (Tarcov 1981; Huntington 1982). Political power will necessarily try to hide, while the people are supposed to try to uncover. The problem, as Feldman is well aware (and so, too, is Locke) is that the people generally are apathetic and operate under a “presumption of innocence” toward the governor. The epistemological issues—how do I know, or am I justified to believe in, x—are too insurmountable for the mass public to follow. Liberal constitutionalism seems unable to defend itself as a viable alternative to liberal absolutism.

#### RESPONSE TO FELDMAN’S TWO CRITICISMS

If the normative extra-legal model is to be defended, it must argue for the naturalness of the prerogative power, and it must also meet the charge of what to do with the legalism that often overlays that natural prerogative power. In the following sections, I will attempt to show that the nature of the prerogative power through a reading of Locke’s *Essay Concerning Human Understanding*. In so doing, I hope to establish that, at least for Locke, the foremost question that is on the minds of the people is the question of prerogative or tyranny (virtuous or viciousness), not legitimate or illegitimate. The former distinction stems from a different standard of judgment than the latter. The latter is from the standard of civil law, the former from the standard of virtue and vice. These standards are not discussed explicitly in the *Second Treatise*, though they are discussed in the *Essay*. In another paper I will meet the practical criticisms.

In order for us to answer the question of how individuals are to judge human actions—the pressing question from our introduction—we must first understand the character and general

outline of Locke's theory of psychology or epistemology. Locke's *Essay* begins with the fundamental thesis that there are no "innate ideas."<sup>12</sup> As Laslett pointed out, this doctrine itself had considerable political consequences since it posits that there are no "natural" ideas, no "universal" truths, only what our socialization and experience have taught us from a very early age. The entire *Essay* is predicated on the position that our ideas are a product of our empirical world around us, and the voluntary associations and combinations of our experiences we make up in our minds. In other words, Locke's *Essay* has a thoroughly political basis. In what follows I will outline briefly Locke's theory of ideas (as relevant to judging human actions), examine the three laws or standards by which we are to judge these actions, and the consequence of this for human sociality or political life. Since Locke's epistemology and political psychology dictate that human beings are simultaneously the innovators of their moral ideas (complex modes), there is a tendency to see them as wholly individualistic. However, Locke makes very clear that this is not the case, and, indeed, that most people, most of the time, are constrained by a certain natural sociality that comes through the use of language—the law of opinion. It is the law of opinion that Locke grounds in our natural self, and makes central to our judgment about politics—when the question arises between the people and their governors.

Since Locke denies innate or natural ideas, the *Essay* must explain how and where our many ideas arise in our minds. Since our focus is on political ideas and notions, we will focus only on these categories of ideas. Our notions of moral and political matters fall under the categories of "complex ideas" and "mixed modes." Since there are no innate ideas, our political and moral ideas are "voluntary combinations" in our minds of more simple ideas, which are themselves derived from sense-experience. A complex idea or mode is made up of a number of simple ideas. Since these complex ideas are voluntarily made, they are quite prone to "confusion" (2.29.7). An idea

can be confused if it is not made up of the right ideas, the right number of ideas, if it is organized incorrectly, and especially if we use the word attached to that idea inconsistently (2.29.7-11). Why is there so much confusion? For Locke, confusion is a real and pervasive problem since complex ideas, strictly speaking, are “Combinations of simple ideas, put together, and united under one general Name,” by the “Liberty” of an individual’s mind:

Secondly, Mixed Modes and Relations, having no other *reality* but what they have in the Minds of Men, there is nothing more requires to those kinds of Ideas, to make them *real*, but that they be so framed, that there be a possibility of existing conformable to them. (2.30.3)

Simple ideas, however, are real and so we have things that exist in physical reality. A stone may have a color, a taste, a texture that—while we may all call it something different—nevertheless carries with it those ideas. In other words, this rock has an “archetype” in nature, which makes that rock natural, real (2.30.1). With complex ideas, though, since they are voluntarily made and joined in our mind, they exist only in our mind and not in nature. Yet, even though they do not exist naturally, i.e. have no archetype in the empirical world, they can still exist in the world, but the archetype—the model—is simply the idea itself.

While our ideas may be voluntarily constituted, they are not simply arbitrary: ideas do have relationships with other ideas. Ideas can have a “natural” connection between one another. By a natural connection, Locke means that, once an idea is constituted in the mind, another necessary idea arises. For example, the idea of a “father” implies that of a “child.” While this is a “natural” connection, it has only the connection that is natural not any specific content. Other ideas have a connection which is “instituted,” one that is voluntarily assigned and separable from the object to which it is assigned. A man who has a son will have attached the idea of a father by “nature,” but a man who is “king,” is only so far a king by convention. Any person, in other words, cannot be the father of a given child, but any person can be “king,” since its content and relationship to other

ideas remains determined by convention. Finally, there is a “moral” relation that our ideas can have with other ideas and the world around us. A moral relation is one that either is in agreement or disagreement with a given standard or rule. For our purposes, it is in this last relation that most of our argument is based.

For politics, there are two important aspects to understanding how ideas are related to one another and to the world around us. First, since there is no strict correspondence between our complex ideas and the empirical world, our ideas have various relationships between each other. The empirical world, in other words, is constantly a work of interpretation and negotiation. But, while ideas are not directly connected to the world, they have a sort of logic in their relationships. For example, there is a necessary difference between the idea of king and the idea of father, a relationship that Locke makes explicit in his *First Treatise* and in the beginning of the *Second Treatise* (ST1). Second, since there is no correspondence between our ideas and the world around us—but only categories of relationships between ideas—Lockean politics becomes the negotiation between what is contained in these ideas and relationships. In other words, not only what ideas are related to what other ideas, but what constituted our complex ideas, i.e. what do we mean by father or king, takes on a clearly political and psychological significance.

For Locke, moral notions share a dual nature. Not only is there the idea of “stealing,” which requires definition, but simply calling a specific action “stealing” does not tell us what the goodness of fit is to a set standard of judgment. How we judge the actions of another or even ourselves not only has to be properly characterized through the criteria of the complex moral idea, but its actual “morality” or goodness or agreement to a rule must be established. The standards of judging, according to Locke, are divine, civil, and opinion. These three standards help individuals

not only define and clarify their moral ideas, but they also help determine the actual morality of the action to which they have denominated a moral word.

The three standards Locke describes are properly speaking three different sets of “laws.” Laws carry with them a consequence, which is either reward or punishment. Divine law carries the punishment of sin, the reward of duty; civil law that of criminal or innocent; the law of opinion, virtue and vice. These rewards and punishments are categories that often carry material consequence—death, money, eternal damnation, etc. However, it is important to remember that a moral idea is not only the actual content of the idea but the relative relationship to a given standard or law.

Returning to our example of “stealing,” Locke makes the following distinction between the content of the moral idea and its actual morality:

Thus the taking from another what is his, without his knowledge or allowance, is properly called Stealing; but that Name, being commonly understood to signify also the moral pravity of the action, and to denote its contriety to the Law, men are apt to condemn, whatever they hear called Stealing, as an ill action, disagreeing with the rule of Right. And yet the private taking away his sword from a Mad man, to prevent his doing Mischief, though it be properly denominated Stealing, as the name of such a Mixed Mode; yet when compared to the Law of God; and considered in its relation to that supreme Rule, it is no sin or Transgression, though the Name Stealing ordinarily carries such an intimation with it. (2.28.16)

While we may have the right idea of what stealing is, i.e. what the “name” denotes, it is still important to take into account the specific instance of that action. For Locke, the most difficult obstacle to overcome when talking about moral ideas is that people often confuse the word and the idea as not being relative to a given rule. In other words, because some action has been called or named “stealing” people usually assume that it is wrong on all standards of judging. However, Locke’s point is that our moral notions are “relative” to a given rule, not absolute.

Moral actions are moral insofar as they fit the complex idea that is denominated by that moral notion, *and* insofar as they are in accordance with a specified rule or standard of right and

wrong, i.e. whether the action is in agreement or disagreement to a specific law. Therefore, correct judgment in moral actions requires a stated and explicit law or standard to establish the rightness or wrongness of an action, as well as whether that action fits the description of a given moral name.

Human actions, when with their various ends, Objects, manners and Circumstances, they are framed into distinct complex Ideas, are, as has been shown, so many mixed modes, a great part whereof have Names annexed to them. But this is not all that concerns our Actions; it is not enough to know what Names belong to such and such combinations of Ideas. We have a farther and greater Concernment, and that is, to know whether such Actions so made up, are morally good, or bad. (2.28.4)

In order to judge accurately, our moral notions must not only be correctly arranged into the right sets of ideas and words, but we must have a well-defined rule to which we can refer the goodness or badness of that action. If we do not have both, we are unable to judge accurately: for, if we are confused in our ideas, we know not what name to apply and what rule to follow; if we do not know the standard, we do not know the morality of the action, however well we may understand the ideas that went into that complex idea.

As we have already stated, the standards by which we judge the goodness or badness are properly called laws. Laws are directed at uncovering and providing guidance to our concepts that we apply to understand human action. Laws not only provide the categories of right and wrong, they also define the complex ideas themselves. Since human beings can voluntarily create their own complex ideas and mixed modes, it is very unlikely that any two individuals have the same complex ideas or mixed modes. Moreover, since we can create our own ideas, we can name these ideas of human behavior as we please. This means that in our communication, when I use certain words to refer to certain actions the audience is usually unable to follow my language. What one would call justice another may call liberality, and what one considers right, another may consider wrong. Since our ideas are ours and ours alone, communication becomes impossible without a supervening factor: laws. Laws capture certain ideas and attach them to names, and punishment

and rewards are thereby established. What laws mean can be changed, since language changes, but they are the bedrock of our moral discourse:

For it is evident that in the beginning of languages and Societies of Men, several of those complex ideas, which were consequent to the Constitution established amongst them, must needs have been in the minds of Men, before they existed anywhere else; and that many names that stood for each complex Ideas were in use, and so those ideas framed, before the combinations they stood for existed. (2.22.2)

The beginning of society is the beginning of language, which happens when individuals come together to establish laws that carry names, punishments and rewards, and the definitions of those ideas that are to be combined into the moral terms. Society arises on the back of its language, since it is language that clarifies the community's moral notions (2.22.4-5).

That society should arise with the invention of language is, for Locke, an aspect of our "social nature." Far from being a proponent of atomized individualism, Locke argues the following:

God having designed Man for a sociable creature, made him not only with an inclination, and a necessity to have fellowship with those of his own kind; but furnished him also with Language, which was to be the Great Instrument and common Tye of Society. (3.1.1)

The beginning of society rests on language, as it is the common tie of society, which brings all individuals together. Individuals, moreover, though individual nevertheless have more than an "inclination" for society, for fellowship with others. Language is the medium of that social inclination. It is through language that individuals express themselves to others, and it is through language that an individual comes to understand the intentions of others. As Locke later writes:

The Comfort and Advantage of Society, not being to be had without Communication of thoughts, it was necessary that man should find out some external sensible signs, whereby those invisible ideas, which his thoughts are made up of, might be made known to others. (3.2.1).

Individuals are drawn to language because they are sociable by nature. They form society to better understand themselves and others through clear communication. Clear communication, especially

of the actions of oneself and others, requires laws, which define through the names of categories of punishment and reward the meanings of moral words, the consequences of human actions.

From the view of the *Essay*, Locke is not a defender of the solely atomistic individualist approach to politics, because he not only posits that human beings are social, but because his whole philosophy of mind and language rests on the fundamental premise that individuals need to express themselves to others, the need to understand the actions of others and how their actions will be interpreted. But, does this mean that there is no individualist streak in Locke's psychology? No. In fact, while the needs that give rise to society and language stem from man's social nature, the individual is still the unit of analysis.<sup>13</sup> There are no innate ideas or universal truths, which means that individuals must construct their moral notions and complex ideas in their own minds. The community may be a teleological construct, but it requires that individuals can somehow bridge their subjective notions of right and wrong to inter-subjective notions. Inter-subjective notions of right and wrong are instituted through laws. However, in the beginning of societies, there were only ideas and not laws, and every individual "had so inviolable a liberty, to make words stand for what ideas he pleases, that no one hath the power to make others have the same ideas in their minds that he has, when they use the same words as he" (3.2.8) Without some kind of consent, it seems that a given word has a specified meaning, and that words is in constant use so as not to cause confusion, there is little hope that individuals will be able to communicate clearly with one another. Without clear communication, without laws, there can be no advantage of society.

The *Essay* paints a parallel image as that found in the opening chapters of Locke's *Second Treatise*. Where individuals are scattered and unable to clearly communicate, where there are no laws and no government. The problem of language is at the core of Locke's doctrine of the state of nature. Since there are no natural moral notions, no natural law, we start off in the state of nature



with only our moral conscience, our own set of complex ideas to guide us. Again, to anticipate the conclusion, the state of nature understood from a psychological perspective does not disappear once society is formed or even when the government is formed. Instead, it sits solidly in the background as a standard by which individuals can judge society and government. The *Essay*, in other words, conclusively states that the prerogative power, which I will now outline as the power of naming, is a natural power. It exists prior to the formation of society, and, strictly speaking, even within society but outside of the civil law.

In the previous section I highlighted Locke's philosophy of language. The section also outlined Locke's thinking about what laws do: laws help determine the goodness and wrongness of human action, as well as define the different complex ideas by giving ideas stable names and definitions. For Locke, man is a social animal that needs society and language. The problem of language is a fundamental problem of society. In the *Essay*, Locke often refers to "the beginning of societies," without detailing what this means for the formation of society and the problem of language and politics. In Locke's *Second Treatise*, however, Locke begins at the beginning with the "state of nature." Ignoring the connection between the *Essay* and the *Second Treatise* obscures the relationship that language has to politics, and, as I will now show, the true nature of the prerogative power.

Much has been written on the relationship between the law of nature and the state of nature in Locke's *Second Treatise*.<sup>14</sup> As is well known, Locke gives each individual in the state of nature the duty and the power to execute the law of nature. Many scholars have attempted to reconcile the seeming contraction between the supposedly universal or innate quality of the law of nature and Locke's whole psychological system, which, as we have seen, is premised on denying this possibility. Others have sought to determine what kind of constraint the law of nature can have in

the state of nature, i.e. what kind of “law” is the law of nature? I will bracket these questions. Instead, I will focus on grounding the prerogative power in the “naming” and “un-naming” aspects of the state of nature, which get carried over into civil society. The individual in the state of nature, following the psychology Locke laid out in the *Essay* suggests that the power to name and un-name is identical to the legislative and executive powers in the state of nature and in civil society. The prerogative power is the power of naming and un-naming in the *particular circumstances* what has been established in *general, by “law.”* This is a considerable power politically since the world, as we shall see, is always in “flux.” The individual in the state of nature has the prerogative power *by necessity*, according to the psychological system Locke has outlined in his *Essay*, and this extends from the state of nature and into civil society.

To begin, Locke presents the origin of society and government as one that stems from a state of nature.<sup>15</sup> In that state of nature, Locke claims every individual has the duty to protect all of mankind and, as a consequence, himself.<sup>16</sup> If individuals put themselves in positions where they are actively harming another, they are no longer a part of the community. What Locke means here is individuals in the state of nature have formed a set of criteria about what it means to partake in the “fellowship” of mankind. Enemies of “mankind” by necessity resemble animals, like tigers and lions, which are threatening and, most importantly non-human (ST 11, 16). A threat requires punishment, which is determined by the individual, and extends only so far as retribution and restraint permit—and these are, of course, determined by that individual.<sup>17</sup>

In the state of nature, then, we not only have the legislative power, the executive power, but most importantly the prerogative power. The legislative power is the power to name a given action that one perceives occurring in the world as a moral action that either requires punishment or reward (ST 151-152). Not only that, but the legislative power also determines the extent of the

punishment or reward. The executive power is the power to literally execute the punishment or reward. In the state of nature,<sup>18</sup> if an individual sees “stealing,” which is something that they have determined as morally wrong, they must also determine its actual morality by referencing some standard. Since there is no civil law in the state of nature, there can only be the divine law or the law of opinion to appeal to.<sup>19</sup> The divine law and the law of opinion converge in the individual’s “conscience,” and it is the conscience which is operant in the state of nature when dealing with punishment and reward (ST 8). The prerogative power, which I have defined as naming in the particular what has already been named in general, does so not on the grounds of civil law, but on the grounds of the individual’s conscience, on their “opinion.” In other words, individuals do not raise the question of legality in the state of nature to judge the actions of others, since there is no civil law, but, instead they measure the actions of others from the standard of their opinion, or conscience, which tells them what actions are virtuous or vicious—understood to be what is good for society or the community, the public good of mankind.

The prerogative power is the political equivalent to the process of naming moral actions, as found in Locke’s *Essay*. The approach I suggest to reading the state of nature is a hermeneutical one: one where individuals are not only capable but must necessarily determine the *meaning* of the actions of others. By hermeneutical, I mean simply to uncover and ascribe meaning to actions. Consider the difference between the state of nature and the state of war. For Locke, “the state of war is a state of enmity and destruction; And therefore declaring by *Word or Action*, not a passionate or hasty, but a *sedate settled Design*, upon another man’s life, puts him into a state of war with him against whom he has *declared such an Intention...*” (ST 16, emphasis added). The state of war is recognizable only if one understands what a sedate and settled design or an intention to do harm *means*. The state of nature and the state of war are separated only by how a given

individual *judges* and *understands* the actions of others. The whole of Locke's social contract is to help reveal the intentions of others through the establishment of a standard to help regulate how individuals interpret the world around them (Casson 2011; Kleinerman 2009; Tarcov 1981). The state of nature and the state of war, in other words, are not *historical* state of mankind but *psychological states of the mind*. Since there are no innate ideas nor does anyone have the power to control what someone thinks, according to Locke, there is, strictly speaking, no "common Superior on Earth, with Authority to judge" except the individual, who either consents or not to be ruled by a given community and its laws—i.e. to adopt their language and categories of thinking, the hermeneutical lens of the standing laws (ST 19, 21).<sup>20</sup> Put simply, all we have is our "conscience" which we use to judge the actions of others, to uncover their intentions, however, in society, this conscience becomes a much more social tie (Casson 2011).

According to Locke, the power to judge by our consciences is given up in some significant way when we form civil society, i.e. when we consent to form a "common Superior on Earth" in the laws of that country (ST 129). The laws will determine what we had only subjectively determined in the state of nature: what actions are moral by delineating what actions will be called legal or illegal, lawful or unlawful. But this is not to suggest that the civil law is the only operant standard for judging moral actions in a constituted society. In fact, Locke explicitly states that the people still judge by their consciences, which forms public opinion in society:

For though men uniting into politick society, have resigned up to the publick the disposing of all their force, so that they cannot employ it against any fellow-citizen, any farther than the law of that country directs: yet they retain still the power of thinking well or ill, approving or disapproving of the actions of those whom they live amongst, and converse with: And by this approbation and dislike they establish amongst themselves, what they call Vertue and Vice. (2.28.10)

Though individuals give up their *force* to the political society—which uses that force to dictate and execute the laws—they do not give up the power to think an action virtuous or vicious. This

may seem like a trivial point, but it is a point that carries considerable political consequence when discussing the nature and limits of the prerogative. By virtue and vice, Locke means an action that garners “Esteem and Reputation that, wherein everyone finds his Advantage; and blame and discountenance the contrary” (2.28.11). Individuals think that actions that are to their advantage and for the advantage of mankind are “virtuous.” These actions are judged well by the people generally. In fact, though they be bad judges in their own cases, they are good judges in the cases of others:

Nay, even those men whose practice was otherwise, failed not to give their Approbation right, few being depraved to that degree, as not to condemn, at least in others, the faults they themselves were guilty of: whereby even in the corruption of manners, the true Boundaries of the Law of Nature, which ought to be the Rule of Vertue and Vice, were pretty well maintained (2.28.11).

The “boundaries of the Law of Nature” are the manners of a given community, which are governed by the opinions of that establish the rule of virtue and vice. The law of nature, which dictates that one act with the advantage of society and oneself as its end is meted out by the law of opinion which determines if the action was virtuous or vicious. The prerogative power, as we shall see below, insofar as it names and un-names, acts in accordance with the standard not of civil law but in light of the law of nature, now understood to be the law of opinion, the standard of virtue and vice.<sup>21</sup>

As we have already stated above with the example of stealing, the action is moral not only insofar as the idea of that action is constituted properly in the mind of the individual, but it must also fit “relative” to a given standard or law. The morality of an action that aims for the advantage of the community is, if legislated by the legislature and revealed by the word of God, in accordance with all three of Locke’s different standards or laws: that action would not only fulfill a duty and avoid sin, it would be lawful and virtuous. However, Locke’s point in the example of stealing (and as we shall see below in the example of the burning house) is that sometimes these three standards

come into conflict with one another: to steal is certainly unlawful, but to steal a sword from a madman intent of causing harm is a virtuous action. The *application* of a standard to a given action is to properly “name” it, i.e. to *apply* a given moral standard to a moral action. Since a moral action is relative to the standard to which it is applied—and since there are multiple standards that one can apply an action—the power to “name” or “un-name” a given action is the power to determine the standard by which to judge the morality of that action. This is the power of the prerogative.

I will now explicitly draw from Locke’s chapter on the prerogative as found in his *Second Treatise*. The prerogative power is a “discretionary” power given to the executive in a constituted government. This power allows the executive to “act according to discretion, for the publick good, without the prescription of the law, and sometimes even against it” (ST 160). That the prerogative goes *against* the standing law, has perplexed many scholars. However, Locke’s arguments for the necessity for such a power are manifold. Since the world is in “flux” (ST 157), and it is therefore “impossible to foresee, and so by laws to provide for, all Accidents and Necessities, that may concern the publick” (ST 160), the prerogative is a necessity for any functioning government. This argument, as it stands, may not be as convincing as Locke hopes it to be—for, is it not possible to legislate the exception, or at least legislate for the exception? This objection misses the larger ontological claim Locke is making. Read it in light of only the *Second Treatise*, it may be possible expect the possibility that one can legislate for the exception. However, in light of the *Essay*, this possibility disappears. Laws themselves are only as helpful to the government insofar as the world remains as it was when the law was established. A law is not only rendered obsolete in light of a crisis, the nature of the times may render the law obsolete, too. If a law has been rendered obsolete by the nature of the times, the prerogative can go against that law in the name of the public good. A law, the standard of civil law, is a general and static definition of the category of lawful and

unlawful actions. As general words with static definitions, when words and peoples change—as Locke says they do (cf. *Essay* 2.22.7; 3.3.19)—so too does society and its needs. The prerogative is a corrective force, when it acts to reflect that change in society (ST 155-158). Put simply, if it is done correctly, the prerogative corrects the laws in application by *not* judging—or un-naming—from the standard of civil law, i.e. by what is lawful or unlawful, but from the deeper standard of virtue and vice, public opinion, the law of nature.

Let us turn to the example at the beginning of the chapter on prerogative. Note the words that Locke uses in this example, and how the quoted text from the *Essay* helps reveal the meaning of this example:

Many things there are, which the Law can by no means provide for, and those must necessarily be left to the discretion of him, that has the Executive Power in the hands, to be ordered by him. As the public good and advantage shall require: nay, 'tis fit that the laws themselves should in some Cases give way to the Executive Power, as rather to this Fundamental Law of Nature and Government, *viz.* That as much as may be, *all* members of society are to be preserved. For since many accidents may happen, wherein a strict and rigid determination of the laws may do harm; (as not to pull down an innocent man's House to stop the fire, when the one next to it is burning) and a man may come sometimes within reach of the Law, which makes no distinction of Persons, by an action, that may deserve reward and pardon; 'tis fit, the Ruler should have a Power, in many cases, to mitigate the severity of the law, and pardon Offenders: For the *end of Government* being the preservation of all, as much as may be, even the guilty are to be spared, where it can prove no prejudice to the innocent. (ST 159)

The prerogative power determines which standard to apply to a given situation or action. A man tearing down a house in an emergency clearly broke the law, and is therefore a criminal who did an unlawful action. But, just as in the case of stealing in the *Essay*, if it was for the right reason—the advantage of all or as many as possible, or done for the right end—it is also a *virtuous* action. Therefore, by appealing to the standard of opinion and the law of nature, the executive can use the prerogative to pardon or “remit” (ST 11) the punishment due to the guilty verdict. The prerogative power, in altering which standard to apply, effectively “names” the action as virtuous, un-naming the individual a criminal. However, it is important to recognize that even the prerogative power

itself must be directed toward some other standard than the legal, which is often made only to the law of opinion, according to Locke. The shared horizon is not strictly that of the legal but, and even more primarily, that of the *virtuous* or public good—the law of opinion.

For Feldman, this story hides an asymmetrical relationship between the people who judge the use of the prerogative power by an executive and the executive who judges individuals who use their own “prerogative,” like the man who pulled down the house. The asymmetry is certainly there, but it is only due to the force the executive has over the individual. The executive has the power and authority of the civil law, whereas the individual does not. However, because Feldman does not trace the prerogative power to be a wholly natural power, which not only stems from the state of nature but continues to operate in civil society through the law of opinion, he believes that the prerogative used by the executive and the prerogative used by the individual differ qualitatively. Instead, they merely differ quantitatively—which is why when enough people “appeal to Heaven” (ST 20, 21), the numbers even out and right reverts back to the people. The law of opinion is the shared horizon of both the people and their governors, and this is natural ground. This certainly does not do away with the more practical objection that Feldman levels—that there are multiple interpretive layers (not merely public good or bust), and competing interpretations—but, these are not questions that forego Locke’s “natural law” theory of constitutionalism. Indeed, Locke’s remedy to the practical problem only serves as a solution *given* the basis of the prerogative as a natural power of naming, something that is shared by all and therefore shares a ground that can constrain the executive’s appeals when the need arises. The practical obstacles are real, but it is simply too much to say this is why Locke cannot rely on the people to be adequate judges *tout court*.



In summary, my argument essentially culminates in the following claim. Feldman is correct to realize that public judgment is paramount to the normative extra-legal model, and that the theoretical aspects of this judgment have been sorely missing. For Feldman, the nature of the prerogative is best seen *through the way the public is meant to judge it*, and the way we are to judge it, Feldman concludes, reveals that it is *both* a constituted power existing in a legal context and that it is a natural power that points beyond the legal context. In short, the ontological fact of the prerogative is that it is *both* natural and conventional.

Therefore, Feldman concludes, the judgment of the people must partake in both a natural sense of political morality and a conventional sense of legality. This dual nature of the prerogative puts too much stress on the people's judgement. However, as I have shown here, Feldman conflates the degree to which the prerogative power *can* and *does* exist within the liminal space between natural and constituted power. By conflating this—or, rather, overstating the case that the prerogative *does* exist in this space—Feldman stacks the deck against popular judgment. As I have shown, the prerogative power is a natural power—specifically, the natural power of naming—and this is carried over and placed within a legal context. However, there are many ways in which Locke understands an act to be “good,” and, more importantly, he privileges not the *legal* but the law of opinion. This suggests that Feldman may be right that the character of the prerogative, when seeing it through the practical lens of popular judgment, looks as if it is both legal and natural, but this is only to further conflate the *ontological* and the *epistemological* aspects of judgment. In other words, Feldman incorrectly given ontological priority to the legal at the expense of the natural. For Locke, the legal is important—the constitutional system is important—but not as a *replacement* or as an equal *alternative* to virtuous action, but as a means through which we can *see* it properly. Discerning when to act is different than determining the origin of political power.

The prerogative power is thoroughly extra-legal, though we must recognize that, in order to properly judge it, we may need to filter the prerogative actions through a legal context. However, this epistemological demand to properly “see” the prerogative ought not confuse us as to the nature and origin of the prerogative power of naming. Instead, it should heighten our awareness that the battle within liberal constitutionalism will always be one between a force that wants to remain hidden and a force that strives to uncover it. This dynamic at the heart of liberal constitutionalism has not been properly theorized, and I remedy this problem in the following chapter on the “busie head.”

## CONCLUSION

It is commonly understood that Locke believes that the people are to judge when there is a conflict between them and the executive’s use of the prerogative (ST 240). This has led some scholars to ask the practical question: “How are the people to judge?” For some, like Feldman, this is a real issue since it seems that, in order to judge properly, they will need substantial legal knowledge to even recognize if the use of prerogative is even illegal and, therefore, in need of judgment. This line of argumentation suffers from the simple fact that it does not consider that Locke had an answer to the question “How are the people to judge?” The answer to this question is outlined in the *Essay* and only hinted at in *Second Treatise*. In turning to the *Essay*, however, it is clear that there are three standards by which individuals can judge the morality of an action. Of these three, Locke only believes one is truly the most effective standard for guiding individual behavior and action: the standard or law of opinion and fashion. This standard legislates what is “virtue” and what is “vice.” This standard, moreover, not only operates in civil society, but it is the closest standard to the law of nature, since Locke defines virtue as that which is most advantageous to all society, and the law of nature dictates the preservation and maintenance of the

public good. The prerogative power is the natural power of naming and unnamng an action, according to these standards, by which Locke means that a given action is only *moral* insofar as it is in agreement with one of these standards of right and wrong. In the *Second Treatise*, Locke seemingly only discusses the standard of civil law, which explains why many commentators misunderstand the nature and function of the prerogative power, when they claim that it is simply the power to go against the law. But, in light of the *Essay*, the prerogative power is constrained by the people because it draws from the standard that properly belongs to the people: the standard of opinion, of virtue and vice in maintaining the public good. Locke's theory of the prerogative requires a very robust conception of the people's relationship to the public good—to trust.<sup>22</sup>

As we have seen, turning to John Locke's political thinking is important because it helps us clarify a sense of liberal trust that can resist the push into a hyper-liberal formalism and pull away toward an illiberal communal *identification*. The purpose of this chapter was twofold. First, I explored the status of *contestation* or *agonistic politics* in Locke's liberalism; second, I explored the *ontological* status of Lockean liberalism. Though it may seem odd to say, but it is precisely the *ontological* status of liberal constitutionalism that necessitates the contestation for liberal constitutionalism. Locke's liberal constitutionalism is then best understood as a "busie head" politics: one that avoids the improper trust relationships seemingly natural to liberalism through cultivating and relying on a contentious "busie head."

Locke relies on the "busie head" to contest the prerogative. The "busie head" is the political analogue of the individual tutor that spread suspicion among the people (Second Treatise section 230). The busie head does the work that many have suggested the public cannot, but there is a sense in which Locke still requires judgment from the people. This judgment has a low threshold, though it is still very important. For Locke, the public should be sufficiently suspicious, and the

busie head is—in the name of nurturing the proper trust relationship—exercising a sort of moderate political rhetoric in perhaps exaggerating the potential fear if the people are too naturally trusting (Kautz 1995). This grounding in suspicion need not be highly intellectual for it to be important for liberalism, as Feldman (2008) suggests, since Locke only requires from the mass public that they be receptive to the claims of the busie head against the claims of the prerogative (Locke 2005, particularly “Letter from a Person of Quality”). If the people, in other words, are capable of expressing a reflective trust relation—and not their naturally unreflective trust—then there is hope that the liberal constitutionalism can rely on the people as judges (Tarcov 1981). The public must, however, undergo an education in fear akin to that between the tutor and the pupil in the Education.

This chapter concludes by arguing that, while it may seem like unstable ground, the extraconstitutional model is the accurate description of Lockean liberal politics. This does not mean, however, that liberal politics is always revolutionary, i.e. that it is wholly unstable. But my reading suggests that “normal” politics is a routinely anticipatory politics, premised on guiding popular suspicion, and therefore more conflictual and dynamic than liberalism is often understood to be (Tarcov 1981). The centerpiece of Lockean liberal constitutionalism is the political conflict between the busie head (on behalf of his suspicious liberal community) and their government. By bringing the contest and conflict into the fold of constitutionalism, Locke avoids the need for constant revolution without abandoning the continuous possibility of a civil war. This is strictly speaking the precise political relationship that radical democrats deny liberalism can maintain. I show that, not only can this potentially existential political struggle between two groups (the people and the Prince) be compatible with liberal constitutionalism, Locke’s liberal constitutionalism relies on this political contest. In order for it to be truly political, of course, it must be potentially existentially violent, but this does not mean that it inevitably will be. He is,

indeed, “institutionalizing” the revolutionary, democratic or simply political spirit (Kleinerman 2007, 2009; Mansfield 1989, 1991; Strauss 1958).

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<sup>1</sup> As I show in the other chapters of my dissertation, many supposedly liberal theorists, fearing the instability of judgment, flee into the workshop of institution building—hoping that the right arrangement will eliminate the need for popular judgment. Others, realizing that liberalism demands popular judgment, leave liberalism altogether, signing up for less and less liberal democratic politics. If even the most educated and seemingly sympathetic liberals no longer believe in the people to self-govern, why should it be surprising that the people will no longer see themselves as being able to self-govern?

<sup>2</sup> See Hobbes' famous chapter 13 in his *Leviathan* as the prime example of the dangerousness of individualism and pluralism. Of course, as I argue throughout this chapter, liberal constitutionalism also rests on an ontology of "flux," which I draw out in detail below.

<sup>3</sup> In response to John Rawls' particular articulation of the individual in his famous *A Theory of Justice*, many commentators have focused on the relatively shallow and abstract characterization of this individualistic psychology. The battle became more pronounced in the early 1990s, where the camps formed into two semi-coherent factions: the libertarians and the communitarians. For a review of this literature see (Mulhall and Swift 1992). My argument here is not with the particular notion of the content of this individual psychology (that they are squarely a-social creatures or utility/value maximizers), but only in the broadest sense that liberalism must squarely defend the *individual* who carries rights *as an individual*. The source and content of these rights, however, I am not here willing to determine and it in no way hinders my argument in doing so.

<sup>4</sup> Clement Fatovic, "Constitutionalism and Presidential Prerogative: Jeffersonian and Hamiltonian Perspectives," *AJPS* 48 no 3 2004.

<sup>5</sup> A famous distinction that Aristotle draws between the rule of law and the rule of sovereign power in Book 3 of his *Politics*.

<sup>6</sup> Andrew Arato, "Their Creative Thinking and Ours: Ackerman's *Emergency Constitution* after Hamdan," *Constellations* 13 no 4 2006, 546-572; Oren Gross, "Chaos and Rules: Should Responses to Violent Crises Always be Constitutional?" *Yale Law Review* 112 2003, 1011-1134; Ian Zuckerman, "One Law for Peace and War? Judicial Review and Emergency Powers between the Norm and the Exception" *Constellations* 13 no 4 2006, 522-545. William Scheuerman, "Survey Article: Emergency Powers and the Rule of Law after 9/11" *Journal of Political Philosophy* 14 no 1 2006, 61-84;

<sup>7</sup> David Cole, "Judging the Next Emergency" *Michigan Law Review* 101 2003, 2565-2595; R W Kostal, *A Jurisprudence of Power: Victorian Empire and the Rule of Law*, Oxford UP 2005.

<sup>8</sup> Jean Bethke Elshtain, "Reflections on the Problem of 'Dirty Hands'," in *Torture: A Collection*, ed. Sanford Levinson, Oxford UP 2004; Oren Gross, "Prohibition on Torture" in *Torture: A Collection*, ed. Sanford Levinson, Oxford UP 2004; Mark Tushnet, "Emergencies and the Idea of Constitutionalism," in *The Constitution in Wartime*, ed. Mark Tushnet Duke UP 2005.

<sup>9</sup> I am very sympathetic to the view of Locke as an early "liberal-republican." For an elaboration of this view of Locke in more detail see: Thomas L. Pangle, *The Spirit of Modern Republicanism*, Chicago UP 1990; Paul A. Rahe, *Machiavelli's Liberal Republican Legacy*, Cambridge UP 2006.

<sup>10</sup> For a review of this exciting, expanding literature on liberal contestation see: Ed Wigenbach, *Institutionalizing Agonistic Democracy*, New York: Routledge 2011.

<sup>11</sup> Leonard C. Feldman, 2008. "Judging Necessity: Democracy and Extra-Legalism." *Political Theory*, 550-577.

<sup>12</sup> Immediately, it should strike the reader as absolutely contradictory that there are no innate ideas yet a natural law that is to guide our political judgments. This is a tension that has been adequately discussed, though it has not been wholly resolved (cf. Laslett's introduction). For my purposes, I will suspend in this section any discussion of the inherent contradiction.

<sup>13</sup> This does not necessarily demand a wholesale methodological individualism, which I will have discussed in the previous chapters on the politics of trust.

<sup>14</sup> There have been various waves of scholarship on this topic, all with their own sets of questions. On the one hand, there are scholars who want to understand the teaching of Locke's politics in light of his rationalist thought experiment. This gives rise to scholars who critique the content of the state of nature, of Locke's deductions and inferences drawn when forming the social contract and powers of government (cf. Strauss 1956 *Natural Right and History*, C.B. MacPherson 1962, *The Political Theory of Possessive Individualism*, A. J. Simmons 1989, "John Locke's State of Nature"). On the other hand, scholars have debated the literal-ness of Locke's state of nature: is it a thought experiment or is it historically true? For these scholars, who include those that have uncovered the "political anthropology" sections of the *Second Treatise*, the interesting aspect of the state of nature is not its analytical

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qualities—i.e. what Locke actually wants to *say* about politics—so much as what how he argues for what he wants to say. In other words, while the first set of scholars have attempted to be must more analytical about Locke's state of nature, the latter set of scholars have attempted to analyze the literary character of the *Second Treatise*, hoping to move past the seemingly sterile state of nature doctrine. My interpretation of the state of nature will depart from each of these approaches, but nevertheless synthesize them to some extent. Understood psychologically, the state of nature is not merely a thought experiment, but the way in which we as individuals do think about politics. Therefore, it *does* exist, though not in some ancient past at the founding of society, but in Locke's contemporary time and in our own. This does not mean that mankind literally came together to form societies via a social contract, but leaves open the possibility that the true origin story is found in Locke's political anthropology. Therefore, it is both a thought experiment and reality, it is not historical but always contemporary. Needless to say, considerable more needs to be written.

<sup>15</sup> In the *Second Treatise*, Locke presents *two* origin stories for political society. The first is the state of nature, the second is what has been called his "political anthropology." (cf. Ruth Grant 1988, "Locke's Political Anthropology and Lockean Individualism"). While I will not deal in this paper with the political anthropology section of Locke's *Second Treatise*, I will note that no considerable work has been done that ties the political anthropology to the *Essay*. This is unfortunate since it may well be that there is a whole second teaching in the *Essay* that parallels the political teaching of the anthropology section.

<sup>16</sup> The fundamental law of nature is always about the community above the individual in the *Second Treatise*. In the *First Treatise*, there is evidence that the individual comes first (FT 57-59), but not in the *Second Treatise*. Instead, the *Second Treatise* presents purely *political* thinking which is directed toward the "other." Insofar as you must protect the species, you can protect yourself but no farther than is necessary (ST 120-123), is the general orientation of the argument of the *Second Treatise*. Not taking seriously the other-directedness of the *Second Treatise* leads many scholars to present Locke as a thoroughly individualistic thinker (see endnote 1 above). In a trivial sense, Locke is merely saying that an individuals as individual objects cannot be denied. However, as an individual, his sense of self arises out of language, out of a social need to express oneself to and understand another. The foregoing comments suggest that we take much more seriously Locke's claim to follow Hooker (ST 3-10).

<sup>17</sup> There has been considerable work on Locke's theory of punishment, cf. Alex Tuckness 2010, "Retribution and Restitution in Locke's Theory of Punishment"

<sup>18</sup> As Locke says later in the *Second Treatise*, the inability to mete out punishment is a considerable obstacle in the state of nature. In fact, the state of nature is radically unstable, as Locke notes (ST 13). There is considerable "confusion" and "disorder." This has led many commentators to argue that Locke's state of nature immediately devolves into the state of war, and is therefore little different from Hobbes' conception (cf. Leo Strauss 1956, *Natural Right and History*). However, viewed in light of the *Essay*, while there may indeed be radical instability in the state of nature, the danger stems from a problem that has a rational solution: confusion caused by our subjective use of words and meanings. In fact, the difference between Locke and Hobbes could simply be stated as this: the thing that drives humans to violence in the state of nature is a misunderstanding due to language. The whole problem of politics is language. Liberal politics is the first to incorporate this insight by making it the bedrock of its conception of legitimate authority: authority that has to explain itself is a liberal authority, not simply because it demands accountability, but because it puts force into words which have a meaning only in the community, in the public good.

<sup>19</sup> The relationship between the divine law and the law of opinion has not been adequately explored by the literature. There is a passage in the *Essay* where Locke explicitly links the law of opinion to the divine law. Read as a believer, Locke is arguing that true opinion is always divine. Read as an empiricist, Locke is arguing that all things that are virtuous are for the advantage of society, and these things are usually ascribed to God, since they are advantageous to mankind. This problem between the divine law and the law of opinion points to the larger problem of Locke's own belief, which is not easy to remedy. In the body of the paper, I will not attempt an answer to this problem, though I believe reading Locke's take on divine law from the point of view of an empiricist or anthropologist is more convincing than reading him as a believer.

<sup>20</sup> This reinterpretation of Locke's social contract has the following evidence for it. Locke makes a significant appeal to the fact that different languages have different ways of thinking, which stem from their words. A country's laws are only as comprehensible as that country's language (*Essay* 3.5.8). Since individuals cannot control what people think (but only what they outwardly express), there is no authority that can control one's mind. However, this suggests that there are considerable implications for socialization processes in a community through education and the family. These processes become highly political since they establish ideas in the minds of children, and they dictate the language in which that child will come to think. It is not so much the ideas themselves but the way in

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which they are expressed, the words and the associations that are attached to them that take on considerable political consequence. See *Essay* 1.3.20-25.

<sup>21</sup> Though many of us may be skeptical of the claim that opinion may have such a constraining effect on the executive's use of the prerogative, that skepticism is not unwarranted. However, it needs to be made clear that Locke does not share in this skepticism about the power of opinion (*Essay* 2.28.12). In fact, according to Locke, the most effective social force is not God and the divine law nor is it the magistrate and the civil code, but the power of opinion and virtue and vice. This last power is pervasive and constrains all human actions—even an executive's use of the prerogative, because a king is no different than a common man (ST 6-8).

<sup>22</sup> There are a number of implications that come from this interpretation of the prerogative power. The first is that there is no "presumption of innocence" of the executive. While Locke's politics is based on *trust* it is nevertheless a trust that is itself based on suspicion. Indeed, the political problem of language is that one must adequately judge the actions of another. This critical orientation toward the other is the character of Locke's liberal politics. Put simply, trust is earned. One could characterize the general suspicion that Locke wants to spread throughout the liberal society as one that is oriented toward uncovering the intentions of the executive: finding the Leviathan in everyday politics. Or, simply, "trust, but verify."



## CHAPTER 5: LOCKE'S LIBERAL POLITICS OF FEAR

Let us return to the criticism of ideal theory liberalism, especially those criticisms levelled against John Rawls' *Political Liberalism* by more "realist" classical and radical liberals alike. The general thrust of the criticisms amounted to this: Rawls essentially stacks the deck in favor of his version of liberalism by assuming what he had set out to prove—that his principles of justice and general vision of liberalism was "reasonable." His argument is essentially a tautology: reasonable people believe reasonable things, and the principles of justice and other doctrines as laid out in *Political Liberalism* and *A Theory of Justice* are reasonable, therefore reasonable people are reasonable in demanding his version of reasonable liberalism. The problem has never been to persuade liberal people to remain liberals. The problem is: how to deal with the "unreasonable" people that have now been shuffled to the dissenting masses who would disagree with his principles of justice (among other things)? On what grounds can liberals, democrats, and republicans all seemingly come to an understanding—how can we translate antagonism into agonism, existential enmity into beneficial rivalry?

This is a particularly important set of questions, because it seems more and more every day that the translation process has failed us. Part of the problem, it is assumed, is the loss of a demonstrable golden line that can clearly demarcate what is and what is not "reasonable," and this will gain universal consent because it is ultimately grounded on something infallible (like "nature" or "God," etc.). If we eliminate the foundationalism that underwrites our line between reasonable and unreasonable, then what do we have left but flux, contestation, and uncertainty? Is there no other alternative for our public philosophy than an infallible bottom that can guarantee we are always in the right? Where is liberal peace and stability in a world where we have blurred the lines between reasonable and unreasonable?

For Locke, as I will show below, we should be wary of any attempt to secure stability on presumed grounds of infallibility—secured through truths divine, natural, or otherwise. We must always remain in possession of ourselves, as Locke would say, and this self-government is intimately tied up not with intellectual deductions of metaphysical substances, but judgments stemming from observation, experience, history, and the occasional good (ancient) book. We often assume that, in order to secure liberal peace, we must forfeit our private judgments altogether, but this would be too far a concession, as I have argued for Locke. To forfeit our judgments, our self-government, is but to fall into a master/slave relationship, which Locke just does not fathom as possible. Nor, too, does Locke imagine that we would be willing to surrender ourselves as fully determined beings, incapable of self-government, placed within an unalterable web of relations, mirroring the biological fact that one is never free from being a part of a family (however we may wish otherwise). Locke denies this relation, too. Political power certainly *can* rest in these other relations, but Locke claims they *should not*, and this is due to his opinion that liberty requires self-government, however messy. We give up our private judgments not wholly, but only so much as we need to get along.

The line between reasonable and unreasonable, then, is the final and perhaps deepest level of contestation within Lockean liberalism. As we have seen throughout this dissertation, contestation and paradox run through almost every aspect of Lockean liberalism. On the most theoretical level, the tension is between three competing conceptions of the proper relationship of “political power.” Two historical and sociological relations are rejected by Locke as being insufficient: first, the natural or familial notion of political power as that which mirrors the parent/child relationship, and second, the relationship between master/servant, which happens through force. Instead, Locke argued for a separate relationship between subject/magistrate, which

entails something like a mean between these two alternatives. In chapter 3 I showed how contemporary visions of liberalism and its alternatives largely mirror these more fundamental symbolic relationships of trust—Rawls’ contemporary ideal theory liberalism falls into a master/slave relation; Manent’s liberalism repeats the illiberal parent/child relationship. In chapter 4 I showed that Locke’s notion of political trust—the proper subject/magistrate relation—only obtains in a liberal democracy which is fundamentally at odds with itself: the logic of liberalism on the one hand pitted against the logic of democracy on the other. Here, the work of classical liberals meets contemporary radical (democratic) critiques of liberalism to show that contestation must be admitted because liberal democracy is at best a *modus vivendi* among liberals, democrats, and republicans. The point, however, is not to foreclose the area of contestation (as Rawls had done), but, following Locke’s lead, to encourage and nurture dissent.

In chapter 5 I showed how this tension goes further into the political life of everyday liberal democracy, by providing yet another level of contestation between “the People” and the prince’s use of the prerogative power. By making this tension between the prerogative and the people central to his constitutionalism, Locke indicates that contestation is the mark of a healthy liberal democratic polity. The supposedly radical enmity between the warring alternatives can, when liberal constitutionalism is at its most basic level the articulation of a “people” against absolute, arbitrary power, be translated into a unified community of a “People,” and not merely a *demos*. This also reveals how important the figure of the “busie head” is in Locke’s account, since it is the “busie head” that effectively constitutes the otherwise apathetic and slumbering “people” into a meaningful countervailing force.

In this chapter, I extend the level of contestation further into Locke’s notion of individual psychology, where the tension is now between what is and what is not “reasonable.” Specifically,

the question is what it is or is not reasonable to be *afraid* of. The answer Locke generally answers as the greatest evil, which is arbitrary power. However, Locke leaves the precise character of this evil one of judgment, which cannot—properly speaking—be a claim to certainty, but only probable knowledge. At the bottom of Locke’s liberalism, then, is the tension between conflicting notions of what is or what is not “reasonable,” and the tension and discussion is always meant to remain open.

I ground this interpretation of Lockean liberalism by tracing Locke’s notion of the “art of governing men in society,” which implies both flux and the need for judgment. Judgment and the “ethics of belief” that govern what is or is not a good reason for one’s beliefs will be discussed, showing how Locke’s epistemology and ontology discussed in the previous chapters support the following interpretation. In particular, my argument in this chapter is that Locke is consciously creating a liberal subjectivity that avoids the claims of certainty—one does not “dwell” in the sciences or arts that pretend to more knowledge than is available to us. We must remember that Locke takes his bearings of knowledge by assessing what it is important for us to know *given our concerns*. The most important aspect of judgment, then, is establishing that which we are most concerned about. For Locke, though he certainly is committed formally to the view that that which concerns us is the greatest evil, he is quick to admit that any particular expression of this concern is a matter of private judgment. For Locke, though, this private judgment, if it is to gain public support, must remain within the realm of the *probable*.

Locke is committed to forcing us to fixate on that which makes us *afraid*. Why? The center of this chapter is on Locke’s notion of fear. For Locke, fear is a certain type of *uneasiness*, and it is perhaps the most impressive uneasiness since it lays claim to a particularly important aspect of our lives: our ability to self-govern. Our actions are governed by our will, which is directed toward

happiness, and this is achieved through alleviating certain pressing uneasinesses. Since we are driven toward acting by uneasiness, coupled with a natural drive toward happiness, we can say that, for Locke, we are driven *negatively*: by the avoidance of the worst evils that press upon our awareness. Governing men in society, then, is chiefly concerned with guiding and navigating their fears.

I argue that Locke does not feel fear is necessarily detrimental to our reason—our ability to be “rational creatures”—if we understand the nature of fear, and are properly prepared for it. I turn briefly to discuss the teaching of Aristotle’s second book of the *Rhetoric*, which Locke says is the key text for understanding human nature—an important knowledge for grasping the “art of governing.” In this book of the *Rhetoric*, Aristotle is chiefly concerned with establishing the proper relationship between the speaker and the audience, which entails both that the speaker be of the right kind and the audience be in the right mood to properly listen to the speaker. The core of the teaching, I argue, is twofold. First, fear is not antithetical to reason, as the phenomenology of fear brings forth the rational or deliberative faculty. Reason reveals itself in fear. Second, since the proper trust relationship is predicated on reason, then it is predicated, too, on a rational fear. These two points Locke explicitly relies upon in his own political teaching on the importance of judgment and the busie head.

The final sections of this chapter argues that we should *not* separate the liberalism of rights from the liberalism of fear. The liberalism of rights (the familiar set of constitutional doctrines like the separation of powers, civil liberties, etc.) must not wholly foreclose the discussion once and for all of what, specifically, we are to *fear* and how *reasonable* that fear is for *us*. To make this point, I return to briefly discuss Locke’s *A Letter from a Person of Quality*, where I argue that he is most like a “busie head.” Fear gives rise to reason and deliberation about what we can *do*. This

reflective agency is grounded on our right to *alter* the government, by normal means and by revolutionary resistance. The awareness of this right to alteration is constantly covered over by power, which naturally tends toward eliminating precisely this *political* act of alteration. What we need to always recognize is the *potential* of an evil befalling us. However, this brings us to the tension about the status of possible fears brings us full circle with chapter 2: the first-person versus the third-person perspective about what is *possible*. The contestation between these two perspectives is perhaps *the* most important dimension of Locke's liberalism, and it is fitting that he should therefore leave it unresolved—something we would do well to remember today. Fear gives rise to deliberation about what possible evils can befall us, to reason about our agency, and these ultimately lead to the liberalism of rights.

#### POLITICAL JUDGMENT AND THE “ART OF GOVERNING”

The following section will outline how Locke's discussion of “reasonableness” will be grounded in the emergence of “judgment” as the most important aspect of our political thinking. Judgment is ultimately tied to what Locke will call his “art of governing men in society,” which is the second (and perhaps more important) part of his division of politics. Judgment is at the center of the art of governing because these are intimately concerned with the ontology of *flux* or uncertainty. In the following section I will outline some recent developments in the study of judgment and liberal subjectivity, noting that Locke purposefully leaves unresolved what is or is not reasonable, but gives us the dictate that we should try to deliberate about them in a particular way—i.e., probabilistically. To govern people in society, then, we must always remain within the realm of “opinion,” which has its own set of rules or “ethics of belief.” The next section will focus on governing men in society through the *passion* of fear.

The fact that liberal constitutionalism is not “natural,” but the product of historical reflection, and the intervention on naturally warring parties by instituting a *modus vivendi* peace treaty, means simply that liberal self-government is not inevitable. Today, liberal constitutionalism is taken for granted. The highly contingent but tenuous achievement of liberal constitutionalism or self-government is often taken as “natural.”<sup>1</sup> Today, while we debate about rights and duties we tend to do so on grounds taken for granted: abstract natural rights. This is typically called the “liberalism of rights.” This phrase was made famous by Judith Shklar, who articulated a “liberalism of fear” as an alternative to the “liberalism of rights” (whose thought I discuss in the conclusion of this chapter).<sup>2</sup> There is no need to deny the existence of these natural rights, but only that the driving force—the ethico-moral principles of liberalism—are not some simple rational deduction from a faculty of the mind.<sup>3</sup> Instead, as we have seen with Locke, liberalism properly understood comes from reflection of the precise contingency or flux that is denied by those who baldly assert that liberal constitutionalism is a natural regime founded on abstract principles of some kind—of nature, human or otherwise.

Again, to be clear: natural rights are not themselves dangerous to liberal self-government. However, I want to focus on the point that the danger to liberal constitutionalism as self-government is not natural rights but the claim that these are the inevitable principles or rights for human beings. This Locke denies. Human beings are not innately guided toward any one particular end—and the end of peace is at best, while nice, but one end available, and seemingly the most passion-less alternative to the more engaging democratic or republican alternatives. This point of the non-teleological character of human beings can be expressed as the core of Locke’s political teaching against innate ideas. Without innate ideas, then, human beings have a “busie mind,”

which Locke spends considerable time excavating. In the following chapter, I will outline some particularly important feature of Locke's notion of the "busy head" or the liberal "subjectivity."

Given Locke's empiricism and nominalism, he cannot but conclude that individuals are radically free and equal in the almost trivial sense of being the legislator and executive of their own minds. Locke is both an epistemic egoist and egalitarian: individuals are autonomous as they are equal in their autonomy. From here, Locke lets us see that, given there are no innate ideas to guide our individualism and egalitarianism, we inevitably fall into some sort of conflict of flux.<sup>4</sup> The flux in our minds translates to the flux in our relations with others. The institution of a community provides some sort of certainty in an otherwise uncertain world, but only on the level of norms—what Locke will call the "law of opinion."<sup>5</sup> This, though, is not a problem-free remedy. On the one hand, it leaves open the natural skepticism that always must be admitted from Locke's epistemic individualism, and, on the other hand, the institution of a communal standard creates another layer of potential conflict: fanaticism or traditionalism.<sup>6</sup> When we move to the communal, we shift from strict epistemological individualism to a potentially overwhelming epistemic egalitarianism—between the "first-person" and the "third-person" perspectives, which I outlined in chapter 2. The remedy for Locke is not to take on a dogmatic character—either in the form of radical distrust and skepticism stemming from our natural skepticism; nor should we be content with a radical faith or "enthusiasm" characteristic of partisans of community and certainty (*Essay* 4.19). For Locke, then, the only way out—to the extent that there is a way—is the balance and tenuous *modus vivendi* between basic trust and radical skeptical distrust, which is to say the realm of "judgment," the faculty that navigates between this rock and that hard place. Let us turn, then, to Locke's account of "judgment."



The central role of judgment in Locke's liberalism has only recently been examined by Locke scholars.<sup>7</sup> The problem facing liberal constitutionalism can be further brought into focus, now: not only is liberalism often taken for granted when it should not be, the core of liberalism—judgment—is often denied by predominant theories of liberalism, which argue for institutional arrangements precisely to nullify and displace the contingency of judgment.<sup>8</sup> The liberal constitutional doctrines—like the separation of powers, the rule of law, etc.—are taken to be the best defense against illiberal tendencies, both at home and abroad. If the institutions can just be more and more refined, our liberties and our peace can be more and more secured. The security, it is assumed, is in a stability that avoids contingency and flux, contestation and dissent, and in particular the realm of *judgment*. If we leave things to judgment, it seems, we leave them to flux, uncertainty, and instability. As I have argued, the ontology of flux is *not* an argument against liberal constitutionalism and judgment, but an argument *for* it.

Locke's elevation of judgment is also a diminishing of the constitutive importance of institutions and institutional principles. Instead, these institutions become important in *guiding* judgment not in *replacing* judgment. The vigilance of the people must always be encouraged, and with it the ultimate concession that “the people” are the final arbiter of justice. But, the suspicious and contingent judgment of “the people” must always be directed toward the trust, consent, and even the constitutional arrangements—a “self-imposed self-restraint”—and it is this paradox and unresolved tension, best encapsulated as the judgment between simple trust and radical suspicion that underwrites liberal constitutionalism. Given the centrality of judgment, then, we must never forget the need for guidance and education, which steer this popular expression of the people. We should not forget that it is “the People”—moderate or otherwise—which hold ultimate political judgment and legitimacy, according to Locke.<sup>9</sup> Indeed, the desire for it to be otherwise—for the

people to not be the final arbiter of political power—is the most dangerous opinion in fashion today: grounding liberalism in a “certainty” established by institutions which deny and displace the flux of judgment, supposedly grounded on natural, abstract and perhaps demonstrable moral truths.

The “busie mind,” which Locke holds to be the defining character of the human being, as we often understand that phrase, is denied by contemporary liberalism.<sup>10</sup> By denying the “busie head” character of the human being, Locke suggests that the only way available to contemporary liberalism is to assert some set of innate ideas or principles of justice. The principles, having been uncovered, then become the center of our institutionalism that has only as its goal the maintenance of these principles. Since this is not the proper function of institutions, and this failure to properly recognize the proper end of institutions is due to a lack of education as to the true foundation of liberal constitutionalism, there is a necessary emptiness to contemporary liberalism. The problem today, then, is our failure to properly understand liberal constitutionalism precisely because we deny flux and the need for judgment.

We can see our problem today as an undue emphasis on one of two aspects of liberalism, which Locke outlined in a small writing about the importance of reading for our education. Locke explicitly marks out two aspects of politics: “Politics contains two parts very different the one from the other, the one containing the original of societies and the rise and extent of political power, the other, the art of governing men in society” (1997, 351). Locke’s distinction is important for understanding liberalism. Political liberalism has a more formal and abstract aspect—that of “the rise and extent of political power”—which Locke points to his own *Second Treatise* as an example for study. This book opens with the famous state of nature doctrine, and the abstract law of nature that is the law of reason that guides human beings toward a happy consensual politics. Of course,

this is an exaggeration of the true layers in the teaching of the *Second Treatise*, but this exaggeration has an important pedagogical function: there is a certain edifice of certainty to Locke's political teaching. Liberalism can have a certain foundation in reason, seemingly innate in human beings.<sup>11</sup>

Put simply, this teaching—which I will refer to as the “liberalism of rights”—cannot be the *whole* of liberal politics. Instead, Locke makes clear that there is another aspect: the art of governing men in society. From this simple dichotomy, we ought to be aware that perhaps the flux that existed in the state of nature and was overcome by us moving into civil society is not so simply eliminated by the emergence of institutional constraints—known and standing laws, impartial judges, etc.—but that it still remains. The unrepressed flux at the center of Locke's liberal constitutionalism, as presented in his *Second Treatise*, is Locke's wrestling with the “prerogative” power, as was discussed in the previous chapter. Locke says the “art of governing” is best revealed by experience, history, and observation—those parts of our mind most closely aligned with Locke's commitments to knowledge and epistemology as found in the *Essay* and the *Conduct* (and the *Education*)—and this alone suggests a sense of priority within the liberal teaching. We should spend our time trying to figure out the art of governing men in society, which we largely do not do since we focus too much about the larger theoretical or abstract questions of the “extent of political power.” Indeed, if we assume that the first aspect of politics is the more metaphysical or theoretical of the two, then we should take Locke's advice and not “dwell” there, and certainly not at the expense of the more pressing concerns—like governing men in society.

Further, while the typical abstract doctrines associated with the *Second Treatise* are presented with a certainty and finality, we can assume two things: first, that this is a rhetorical or pedagogical move by Locke; and, more importantly, second, that the art of government is

predicated on dealing with *flux*. Indeed, the “art of governing” is perhaps a reference to “judgment,” which we have outlined above as that fundamental attempt to guide the skeptics to a common authority, and to guide the fanatics away from imposing their private judgments as public doctrines.

Both the skeptic and the fanatic, as we have seen, Locke diagnoses as the characteristic responses of fleeing from the realm of flux and uncertainty (and therefore trust and reason) and into the realm of presumed certainty. The skeptic’s radical doubt being a form of political quietism that nevertheless still upholds the claim that politics ought to be grounded on certain doctrines (though the skeptic does not have such certainty yet). This is a generally cowardly or timid position. On the other side, we have the fanatic, who is more than confident in their own opinion about what ought to be done, and their ambition knows no bound. The specific problem for Locke’s own liberalism is that the quietude of skepticism has rendered politics a space where the zealous and certain fanatics to seize control. Skepticism indeed legitimizes ambitious and radically enthusiastic politics. The realm of uncertainty or flux—the natural opponent of the ambitious—is the realm of judgment, and this is denied by both natural partisans of certainty. The art of governing men, then, is intimately tied to establishing judgment, if only because men in society are often those who repeat the all-too-familiar claim that politics should be a realm of certain knowledge.

The central role of judgment in Locke’s liberal constitutionalism is obscured by contemporary perspectives that focus only on the more formal aspects of liberal constitutionalism. As I have argued, however, by taking notice of the importance of the “busie head” even in the *Second Treatise*, we can uncover precisely where even the formalism of Locke’s liberal constitutionalism gives way to concept of “the People,” and therewith relies on judgment and a certain set of civic virtues among the citizens. I have suggested that the core of the liberal civic

virtues is best summed up as “trust, but verify.”<sup>12</sup> The liberal subject is, then, one capable of trust—and indeed directed toward a particular sociality—but sufficiently capable of individual self-government, i.e. capable of “verification.” We ought to trust, but “with good reasons.” The realm of certainty is displaced in this phrase—“trust, but verify”—and replaced with the realm of the uncertain, or as Locke concludes his *Essay*, the realm of the “probable.”<sup>13</sup> The liberal subject is not simply directed toward trust, but the trust is a suspicious or “distrustful” trust, which is to say that proper liberal trust is a function of *probable judgment*. If we are in a world of probable judgment, then we are in a traditionally “uncertain” or of “flux.” The danger, then, is to abandon the ground of the probable and the role of judgment, in hopes of something “more” certain. The distinctly liberal virtues, as we have seen, arise not from certain knowledge, but from our “mutual ignorance” and the duty to respect and tolerate each other in this realm of uncertainty, and to “busy” ourselves in uncovering the things most useful for our most pressing concerns in this world. The truth, moreover, is not *a priori* or deductive, but inferred from “evidence”—which is to say that trust must be based on “good reason”—and our evidence should proportionately ground the strength and importance of our judgments.<sup>14</sup> To deny flux, judgment, evidence, and probability is to deny the only framework available for Locke’s conception of the “busie mind,” and therefore to deny the political necessity of the “busie head” in self-government. Put simply, the true ground of our freedom and equality is that we must govern ourselves by our judgment, and that we are all thrown into the world of the probable, not the world of certainties.

Let us restart this discussion of Locke’s liberal “busie head.” If we take the perspective of the formalistic or overly-legalistic *Second Treatise* we will take for granted things that Locke himself did not, and therefore perhaps miss the true ground of Lockean liberalism by focusing too exclusively on what is taken to be the most familiar and most essential liberal constitutional

doctrines: institutional arrangements of power or ambition that counteract power and ambition. From this “naturalistic perspective,” the goal of liberal constitutionalism seems generally straightforward: individuals have interests, and these interests often conflict, so let us set out to construct a field of public space where the conflict between individuals will be nullified, and peace and stability will prevail. Put simply, individuals are free and equal, and this freedom and equality often leads to individuals following competing and mutually exclusive things, “invading each other’s turf,” and liberalism is to find the right equilibrium, acceptable to all parties. Liberal government, then, is meant to be “limited”: protection of our “natural rights” of freedom and equality, and curtail and punish the otherwise aggressive and harmful and abusive expressions of these rights—maintain in civil law and government institutions what the “law of nature” dictates but cannot guarantee. If only one could figure out the proper variables in the equations, the governmental institutions we could have our individual conflicts perfectly calibrated and peace and security is won by the “new political science” of a mechanical equilibrium. Or, so one had hoped.

The familiar “naturalistic perspective” is premised on the view of individuality as a thing driven by interest, free, equal, and rational. But, it is precisely this notion of the liberal individual that Locke strove to create, and struggled to articulate, not take for granted. The achievement of liberal constitutionalism is not to be found in the institutional equilibrium where interest counteracts interest, but in the construction of the individual as the thing for which it has a recognizable interest. Liberal subjectivity is constructed through a much more involved process of education and guidance, and therefore cannot be so quickly assumed, and much less practically relied upon in the production of a stable politics. The first and perhaps most important teaching of Locke’s liberal politics is that the individual be understood as a “busy mind,” which makes clear

the necessity for politically engaged “busie heads.” These are the aspects of liberalism that require the most attention, and those that in fact ground the whole of Locke’s politics. We must first truly understand what the “busie mind” is, and understand ourselves *as* the “busie mind,” before we can truly adopt the doctrines of liberal constitutionalism.

This point is forcefully made by Mehta. For Mehta, Locke’s decision to focus on the mind is not an accidental one, but the most important feature of Locke’s political vision. The “busie mind” is Locke’s formulation of the human mind, one governed not by any innate constraints but only guided by sense experience and language. This is the centerpiece of Locke’s liberalism—not the typical institutionalism associated with liberal constitutionalism:

If the problem to which Locke is responding is not solely nor even primarily one in which individuals manifest a tendency to invade each other’s turf and to be partial to themselves in the pursuit of their own interests, but rather one in which individuals display a lack of self-control and constancy, and as a result an episodic but nevertheless hazardous absence of moderation, then it is unlikely we can find these concerns addressed by focusing simply on Locke’s political and institutional proposals (Mehta 1992, 123).

The pressing concern for Locke is the constitution of a stable, moderate subject with some self-control. Part of this requires translating their otherwise unruly passions and imagination into meaningful expressions of interest. Only then does the institutionalism become important, but not a moment earlier because the individual (as an individual with meaningful interests) has not been established. Put another way, there is an uneasy and fragile connection between an individual “busie mind” and respect for the institutions and the rule of law, which can only be reinforced the more the “busie mind” is bottomed on interest. The connection cannot be taken for granted, but must be the work of considerable education and guidance, which is to say of considerable “construction.”<sup>15</sup> For Mehta, this need for “constructing” a liberal “subjectivity” reveals the degree to which the state of nature—where individuals understand themselves as individuals, free, equal,

and rational—is the outcome of a rather involved process: liberal individuality is “a processes of coming-to-be” (1992, 127).

More radically than suggested earlier, Lockean liberalism is very much a product of education, an artificial intervention on the seemingly “natural.” Education is now radically at the center of liberal constitutionalism. This education cannot remain neutral toward any particular end of human life, since it must wrestle out a particular normative conception of the human being as free, equal, and rational. The stability of liberal democracy rests on its ability to win this battle, to “construct” individuals who see themselves as individuals in the state of nature. This is Mehta’s point:

To summarize, my central claim is that for Locke the coherence and stability of his liberalism depend on its capacity to foster successfully a particular self-understanding in which individuals come to view themselves as individuals, and that such a self-understanding is heavily contingent on embedding individuals within liberal institutions, including, most centrally, liberal education. (Mehta 1992, 6).

Let us be clear: “institutions” like the constitutional and educational doctrines play an important role not in establishing the proper equilibrium of justice, but in so producing the interests and individuals themselves that need the counterbalancing mechanisms. Most important is education. This education is, then, not of any *techne* or expertise, but in the constitution of liberal subjectivity itself. How we ought to *think* about ourselves and the world around us becomes the animating question that Locke must set out to answer.

This is fundamentally a question about the “ethics of belief,” a specific inquiry as to what should guide our beliefs—what the *norm* of judgment ought to be.<sup>16</sup> The historical origin of this branch of philosophy and psychology stems from Locke’s last two books of the *Essay* and especially his *Conduct*. For Locke, while it certainly will be important to establish the content of one’s beliefs, Locke nevertheless recognizes the absolute importance and power of constraining



those beliefs through raising the questions of *how* one is to think about things, and *how* one is to ground one's judgment. This is a clear consequence of Locke's empiricism and, perhaps most importantly, of his medical background.<sup>17</sup> As a good *iatrochemist*, Locke recognized early in his studies that the only solid ground for our judgments and beliefs is observation—the surface of things, or “the things themselves.”<sup>18</sup> From here, we come to recognize that the best we can do is gather evidence and impose categories to help us better understand a given phenomenon, never piercing into the “nature” or “natural essence” but only through our own classificatory systems. Then, we mark out and trace the effects for a given remedy, and note the results. The important thing is that Locke never attempts to overstep the clear boundary between our imposed classifications and the “real world” (Mehta 1992, 95-97). Locke, true to his larger philosophical commitments to empiricism and nominalism, cannot claim to form clear and distinct ideas about the natural essences of things, just like as a doctor he was not capable of knowing the precise cause of any disease. Instead, the knowledge he can have is of inference and probable causes. The point is not that Locke denies any actual first or natural cause—why would he?—but to refocus our attention to the level of appearances and the realm of the probable.

This refocusing has a normative thrust: the radical skeptic and the zealous partisan are denied their claims of certainty.<sup>19</sup> Once we are in the realm of probability, our individual judgment is no longer concerned with demonstrable proofs of natural kinds or first causes, but what we have “good reason” to believe, given our evidence and our self-imposed categories. Obviously, Locke does not remain simply at the very sparse point that we should just rest on “probable” and not “certain” knowledge, since he is further committed to the view that human beings ought to be understood as individuals, free, equal, and rational. But, Locke's point is now not that human beings are *naturally* free, equal, and rational (a claim he must admit his ignorance as to its ultimate

truth), but the practical postulate or the nominal definition of the individual he will rely upon in constructing his liberal politics. Lockean liberal individuality is a “process” and not something so quickly assumed to be “true” (Casson 2011; Mehta 1992; Wolterstorff 1996).

To say that Locke’s liberalism is predicated on uneasiness, fear, and anxiety is not wholly new.<sup>20</sup> However, the general understanding of anxiety and its relationship to liberalism is almost *ad hominem*, especially when it comes to discussing Locke’s liberalism. For example, many have spent considerable time showing how Locke’s concept of uneasiness applies more generally to his political liberalism, and that the point of political life is to separate the public from the private, saving public life from private intrusion (Terchek 1997, Wolin 2006).<sup>21</sup> For Terchek (2007), *Locke’s* anxiety molds his view of the nature of government—*he* is afraid of others intruding on the rights of the innocent. This, then, Terchek argues, is carried over into contemporary discussions of liberalism since liberals who pick up Locke’s (or J. S. Mill’s or Adam Smith’s) problematic repeat their initial anxiety themselves. This view of the liberal problem, of course, while importantly attached to “uneasiness,” nevertheless plays off of the “naturalist perspective” that Mehta suggested is *not* the true plane of uneasiness and anxiety in Locke’s liberalism (Mehta 1992). In Mehta’s view, Locke’s problem is the imagination, and the anxiety is almost exclusively *Locke’s* anxiety about the malleability of the busy mind. The problem is not that individuals have interests and that they potentially might invade one another, abusing their freedoms, but that they might not even come to recognize themselves as liberal subjects with interests and natural freedoms. Liberalism is tied to anxiety because its founders were anxious people, for whatever reason. Wolin (2006), also suggests that the problem is the malleability of the human mind, which is why political “society” is so much more important for Locke than even governmental form—which I will turn to in a later section of this chapter.

While both of these views of Locke's anxious liberalism are helpful in showing how important psychology is to Locke's greater liberal project, I differ from them on the importance of anxiety *for* the liberal subject. Terchek and Mehta both ultimately argue that anxiety is a thing to be overcome—eradicating. For Terchek, once we have diagnosed the paranoia floating behind liberalism, we should be better able to move past it; for Mehta, the anxiety that Locke feels when uncovering the nature of the “busie mind” is all aimed at establishing the precise tools and mechanisms for solidifying and making stable the flux inherent in our psychologies. My point, however, has been the opposite: reveal the extent to which Locke sets out to *make* us more anxious, and to leave unresolved the tensions and paradoxes of the busie mind. To strive for a final solution to our natural uneasiness is to mischaracterize the liberal project altogether, to miss the extent to which Locke believes our individualism is predicated on uneasiness and its ability to present to us a world of possibility and agency through reflection and deliberation *about* the most pressing uneasinesses, i.e., our fears of evil. There is a certain sense that anxiety is not merely a description of what it means to be a human being, but a fundamentally normative assertion: this is what it *should* mean to be a person in this world.

Holding out the unresolvable anxiety and uncertainty of human life is on the face of it not a comfortable one, if we understand comfort to be some form of stability and inactivity. For Locke, this is not what human beings are *meant* to be—inactive. Human beings are (and should be) “busy” and “inquisitive.” Children, Locke points out repeatedly in his *Education* are naturally curious, and are only *made* stale, “dull” and “useless” by individuals who have failed to properly guide these children toward the proper concerns of life: self-government (*Education* 118). This does not mean that the child or the adult individual should never be at rest, but that, for Locke, the nature of the human being is to be busy and ought to be so. If we return to the sentiment of trust that arises

out of our mutual ignorance of “real substances,” discussed in the previous chapter, Locke commands us not to fall into an apathetic despair but to “busy” ourselves with that which truly concerns us: our life in this world. Life in this world is naturally one of flux, uneasiness, and fear. To demand a space where one can “dwell” that avoids these conditions of the world is to make your concern otherworldly, and this is not where we should be concerned (*Education* 94).

So, where should we “dwell”? In this world, and we should be concerned with this world. This is a world of potential fear, and so we should be concerned with that which is most fearful. In the second chapter, I discussed the notion of what is “reasonable,” and placed that unresolved question at the center of the debate about political trust. Briefly to repeat the thrust of that discussion, one view of trust takes the “third-person” view of possibility, and this renders all things a matter of some degree of “probable.” It is then reasonable to always understand that betrayal is a possibility for *everyone*, and hence for *me* now when I trust someone with something. Trust happens within the realm of possible betrayal—it is *reasonable* to always have some suspicion. The second perspective of trust denies precisely this mix of the possibility of betrayal and trust: it is *not possible* for me to be betrayed when I trust, here and now.

This is most explicitly brought out in the all-too-familiar conversation about what it is reasonable to fear. In the second chapter, I illustrated this by the story of two dinner guests, one who was an editor for an opposition newspaper in an autocratic regime, and another guest who was his friend who suggested the food may be poisoned by the chef (who is related to the autocratic ruler). The question I posed in that chapter was, who is right: the friend who has a list of seemingly good reasons to believe the food may be poisoned, or the editor who denies the possibility of being poisoned? To the modern (liberal) reader, this is perhaps too easy an example for us: intuitively, we believe the friend to have *sufficient* evidence to claim good reason for being anxious for his

friend. The friend's reasons, of course, stem from an observer's standpoint—from knowledge of *other cases*, historical or otherwise—about the nature of autocratic regimes, their penchant for cruelty toward opposition, and so forth. History and observation naturally lead us to side with the friend over and against the editor. The editor, we can further assume, would have a ready response to his friend's long list of evidence: "that won't happen to *me* though." To which we would have to admit as *possible*, though increasingly unlikely. And, let us say that the food arrives and it is not poisoned. Would we then say that the friend was *paranoid* or *mad*, and that we should abandon the supposed "good evidence" of observation and history? Or, should we think that the editor, though right, is nevertheless *foolhardy* or *reckless*? But, again, would not the editor respond that the friend is a *coward*? How should we go about resolving this dinner dispute?

Obviously, the solution presented above was that we should just eat it and see what happens. This is not the most prudent way to proceed, though it is perhaps the most decisive: either you are or are not poisoned. The point, however, is this: certain knowledge for us in our daily lives is never so attainable, and whatever is generally available to us only happens largely after the fact—after we have decided to act. So, what is to be done? For Locke, the solution is to establish parameters of reasoning, or what has been called "the ethics of belief." For Locke, while it is obviously important *what* you believe, it is also equally important *how* you come to believe it. As Wolderstorff says,

At the very heart of Locke's model of the responsible believer was a preachment, an exhortation: We ought so to discipline ourselves that for those propositions of sufficient concernment to us, we take Reason as our guide. ... Locke's philosophy was, by inner intent, a *public* philosophy. His proposal was a proposal for the reform of the doxastic practices of all of us (1996, 148-149).

It should not strike us as accidental that the *Conduct of the Understanding* is the natural conclusion to his *Essay*: the point was no longer to understand ourselves as beings within a world of certainty, but to understand ourselves in a new world of probability and flux. Flux, probability, and

uncertainty coupled with uneasiness all make it so our beliefs and actions require due and thorough examination. Here we must recognize that we must be busy gathering evidence, deliberating, and informing ourselves not necessarily about the “truth,” but what is of most concern for us. The truth of the matter is usually always outside our reach, and so we have only what is probable, our judgment, and therewith only that which is “reasonable.”

Appealing to a privileged epistemological position—be it through divine revelation or innate wisdom or intellectual apperception—must be dismissed not because they are *false* but because they do not fit within our doxastic practices as individuals in communities. “Locke was no more concerned than the ancient skeptics to arise above *doxa*. *Doxa* is satisfactory for our life in the world; it is our God-given lot. But we must *regulate doxa*” (1996, 225). The regulation of *doxa*<sup>22</sup>—opinion—happens by establishing institutions that sculpt a precise epistemological character. The precise line between truth and falsity, however, cannot be attained—all we have is our *judgment* and the evidence. The regulation of *doxa* happens within the community, which is why Locke has a distinct realm of law associated with what I have called the “social,” the “law of opinion.”<sup>23</sup> The law of opinion or *doxa* is, according to Locke, the wellspring of the community, and it dispenses with praise and blame, which are to accompany virtuous and vicious actions. For Locke, this “law” is not a law in the *legal* sense, but it nevertheless has a *more important* role in guiding and constraining human behavior than even civil or divine law. This is largely due to the fact that people are more *uneasy* about the judgments of their peers, about praise and blame, being called virtuous or vicious, than following the dictates of civil or divine law. Human beings are not driven by the positive good, however great. People would rather be held in esteem according to the law of opinion. Locke, then, can stay in the realm of “mere” *doxa* because that is where all of the social and political power properly is, anyway!

The problem of the malleability of the “busie mind” is not alleviated, but perhaps exacerbated by Locke’s move away from certainty. The realm of the probable is fundamentally a realm of uncertainty. For Locke, the consequence is obvious: human beings are now placed into a very “uneasy” situation, where their concern must be to “busy” themselves in living as well as can be here on earth. Locke’s move away from certainty, as I have noted before, is perhaps best understood as a *political* consideration, more so than a strictly epistemological or metaphysical demonstration: Locke wants to bring individuals back down to earth, to recognize their responsibility for their beliefs, and ultimately to focus on their interests and concerns in this world.<sup>24</sup> The move from certainty to uncertainty, then, perhaps strikes us as odd: how can Locke hope to achieve these ends by making people more “uneasy” or anxious? Why exacerbate the uneasiness and fear of our human condition? To what end can uneasiness and fear lead us? For these answers we must turn to an underappreciated aspect of Locke’s political psychology: the *rationality* of fear.

#### UNEASINESS AND THE RATIONALITY OF FEAR

Let us return to Locke’s claim that politics is comprised of two aspects: the metaphysical nature, origin, and extent of government, and the practical “art of governing.” The “art of governing,” Locke tells us, is generally gained through experience and observation, and reading history is therefore important insofar as it reveals the experiences and observations of previous generations, particularly those histories of one’s own country. This more practical knowledge should accompany the theoretical aspect of government. Locke makes clear that his *Second Treatise* should be treated as presenting the more theoretical aspect of government, and not necessarily the “art of governing.” To see the “art of governing” in Locke, some have argued that it is not in the *Second Treatise* but in his *Education* (Tarcov 1999).<sup>25</sup> While this certainly is true,

and I will explore a part of the *Education* below, I want to take a more (in)direct route: through Aristotle's *Rhetoric* and its relationship to Locke's psychology of fear and rational examination. This section shows how, following Aristotle, Locke sees the importance of fear in providing the spark of reason, and, so, Locke must set out to give fear a central place in his politics—not to make people scared and thereby escape their freedom, but to make them rational. We must learn how to be afraid.

At the end of Locke's small essay on reading where he has divided politics into two aspects, Locke returns to the question of where one can read about the "art of governing." He originally said that this art is only gained through observation and experience and reading histories filled with reliable observers. But, at the end of the essay, Locke says that the key text for understanding human nature and the art of governing is Aristotle's second book of the *Rhetoric*:

To fit gentlemen for the conduct of himself whether as a private man, or as interested in the government of his country, nothing can be more necessary, than the knowledge of men; which though it be to be had chiefly from experience, and next to that, from a judicious reading of history, yet there are books which of purpose treat of human nature, which help give an insight into it. Such are those which treat the passions and how they are moved, whereof Aristotle in his second book of *Rhetoric* has admirably treated, and that in a little impass. (Locke 1997, 354).<sup>26</sup>

For Locke, the second book of Aristotle's *Rhetoric* is of particular importance for understanding the art of governing. The art of governing is properly the "knowledge of men," where we must understand them to be largely moved by "passions," and therefore knowing how to move the passions is to know how to move or "fit the conduct" or govern individuals.

Before turning to Aristotle's second book of the *Rhetoric*, we should be clear that Locke himself did not merely leave the art of governing up to Aristotle or the historians, but wrote a considerable amount about the "conduct of the understanding," the passions, and what moves them. Indeed, the question of what moves or animates an individual's will is of primary importance to Locke, and is central to his *Essay*. In fact, what animates the will is an aspect of Locke's thought



that changed drastically throughout his lifetime, and mapping this shift is important for understanding Locke's later political writings—specifically, for understanding the art of governing in liberal society. I will turn to Locke's *Essay* first and then to Aristotle's *Rhetoric*, where it should be clear that Locke is largely following Aristotle's view of human motivation. The upshot of this investigation is to show how Locke's liberalism is properly grounded on fear and anxiety.

Locke completed the first draft of his *Essay* in 1671, but he continued editing it and substantially revising it for nearly 18 years until it was finally published in 1689/1690. He released five more edited editions until his death in 1706, which indicates a continuing fascination with the nature of the “busie mind” throughout his mature life, which we must assume extended and saturated his other ideas about education, politics, and theology. The *Essay* had a monumental impact on the general trajectory of philosophy at home and abroad. In England, it set the tone for English empiricism and idealism by greatly influencing the work of David Hume and George Berkeley and Reid. Abroad, the book was translated in French by Pierre Coste,<sup>27</sup> and became a cornerstone of continental enlightenment thought, influencing most major philosophers from Leibniz to Kant. The influence of the *Essay*, which at least explicitly is about the power of the individual to mold and direct one's thoughts and reason, could be said to have far exceeded that of Locke's own *Second Treatise*, published anonymously around the same time as the *Essay* (Laslett 1988, 84).<sup>28</sup> In other words, it is the epistemological and psychological doctrine of “tabula rasa” and the destruction of innate ideas that had greater sway over the minds of the Enlightenment than his doctrines of natural rights and the state of nature. Of course, this point is often contested in Locke scholarship, including the view that the psychological doctrines of “tabula rasa” and the destruction of innate ideas in the *Essay* ought to be differentiated from those political doctrines in the *Second Treatise*.<sup>29</sup> Though I will not recount the various waves of the debate about the

relationship between the *Essay* and the *Two Treatises*, I will argue here that Locke's *Essay* is the ground for his political teaching in the *Second Treatise*. In particular, I will argue that Locke's notion of "uneasiness" is central to Locke's epistemology in the *Essay* and it is the proper ground of Locke's politics, when uneasiness is translated into a certain anxiety or salutary fear, as we have seen Locke rely upon in his *Second Treatise*: the busie mind becomes the busie head. It is only from uneasiness understood properly as more than mere desire and as anxiety or fear that Locke's liberal constitutionalism begins to take root. Continuing what I argued in the second chapter, the doctrines of the *Essay* reveal the extent to which Locke's liberalism of rights, often understood as a politics of trust, is really a liberalism of fear, understood as one grounded on the politics of suspicion.<sup>30</sup>

The relationship between liberal constitutionalism and uneasiness or anxiety is not wholly a new insight. Pierre Coste translated Locke's English word "uneasiness" into French as "inquietude," which was in use by many French intellectuals—particularly Pascal and Montaigne—and it had largely a theological tone that referred to our restlessness due to our "fall" from grace, i.e. from our original sin.<sup>31</sup> The notion of inquietude was picked up by Montesquieu in his *Spirit of the Laws*, where he placed it at the heart of the British political character. Though inquietude, Montesquieu argues, is perhaps not enough to secure political liberty, it is the ground upon which constitutionalism must nevertheless be built (Rahe 2009, 46-47). For example, the central constitutional doctrine of separated powers is justified only on the grounds that it gives the suspicious and otherwise formless "uneasiness" shape:

In practice, then, it must be the separation of powers itself, the foundational law of the English Constitution, that translates the characteristic uneasiness of the English into a passion capable of setting their politic in motion. (Rahe 2009, 47)

The principle of uneasiness can be directed—and indeed must be guided—by individuals and institutions. Institutions like the separation of powers give form to uneasiness. The justification of the core of British constitutionalism is that people are uneasy. Liberal constitutionalism, then, presupposes that the people are already in a state of uneasiness—that inquietude is a fact of our own self-understanding.<sup>32</sup> For Locke, the concept of uneasiness is not—as it will be for later liberals—something to be eradicated, as if the only way to be free is to be free from all fear. Instead, as we shall see below, Locke’s position is that freedom and rationality are won *within* fear. While Locke does think that uneasiness is central to the human condition, he recognizes that this insight is often denied or does not properly obtain in the minds of many people.

Over the various drafts of Locke’s *Essay*, perhaps the most striking revision is Locke’s recognition that individuals are not driven to act in accordance with the greatest good, but by the greatest “uneasiness” to avoid pain or misery. To the modern ear, this is almost a truism: the bitter overpowers the sweet. But, we must mark this shift in Locke’s thought as an important one. The motivation of actions is not, as some would say, toward some great, positive notion of the good or of happiness, but to avoid the negative: pain and misery. Or, put perhaps more bluntly, we are not directed toward the good life so much as we are repulsed by the vilest evils. This distinction will prove to be decisive for Lockean liberalism.

Locke discusses the concept of “uneasiness” most thoroughly in the second book of the *Essay*, and in particular in a chapter devoted to “power.” For Locke, power consists in two modes, when it comes to our understanding. First, power is particularly understood as an *active* faculty of the mind to sort, categorize, and order our ideas as they come to us from our passive sense-experience. As I mentioned in the chapter 3, Locke’s empiricism and nominalism make the mind properly the source of most of our knowledge because it is the active agent that adds, subtracts,

and perceives the relations between ideas. Locke calls this active power the “prerogative of the understanding” (*Essay* 2.11.5, 7; 2.13.3; 2.7.3). The second mode is that power is also the ability of the mind to control our actions and command our assent: we can suspend our judgment. This is properly called the faculty of the “will” (*Essay* 2.21.29). The power to direct our actions, to exercise our will, is properly speaking our natural “liberty” which exists where one can will or not some action (*Essay* 2.21.21-29). The power to actively guide one’s understanding through adding, subtracting, etc. the ideas in one’s mind is “prerogative” of the understanding; and the power to actively guide our will is the prerogative of our freedom or liberty, properly understood.

For Locke, the question is, then: what motivates our beliefs and our behaviors? The will and the understanding. So, then, what ultimately determines the will and our understanding?

To return to our Enquiry, *what is it that determines the will in regard to our actions?* And that upon second thoughts I can apt to imagine not, as is generally supposed, the greater good in view: but some (and for the most part the most pressing) *uneasiness* man is at present under. (*Essay* 2.21.31)

That which moves our will and our understanding is “uneasiness” (*Essay* 2.21.29). Uneasiness is closely related with “desire,” but the desire here cannot be understood as some positive good simply, but of a relational “good”—the absence of “pain” (*Essay* 2.21.42). “Happiness” is properly understood as always contaminated or related to the absence of something, misery or pain. Insofar as we are driven toward the alleviation of pain, we are aimed at fulfilling the absence of a good, which is to say that we are always *uneasy*.

The consequence of this is that human beings are driven by the *negative* and not the *positive*: we seek to avoid. The significance of this difference was one that Locke overlooked:

It seems so established and settled a maxim by the general consent of all mankind, that Good, the greater good, determines the will, that I do not at all wonder, that when I first published my thoughts on this subject, I took it for granted. But yet upon a stricter inquiry, I am forced to conclude, that *good*, the *greater good*, though apprehended and acknowledged to be so, does not

determine the *will*, until our desire, raised proportionately to it, makes us uneasy in the want of it. (*Essay* 2.21.35)

Human beings are not moved by a clear vision of the greater good. The greater good does not itself guarantee or move one's will. The will, instead, is only pushed by our *uneasiness*, which means that, if one wants for us to do good—to follow the path of the recognized greater good—one must be made “uneasy in the want of it.” The path to the good is paved by the use of uneasiness to make one feel so pressured that one's will cannot but do otherwise than move along the path it recognizes as the greater good.

How does one influence the will? Uneasiness. The passions associated with uneasiness are then those that most pressure us into action. For Locke, these passions are “aversion, fear, anger, envy, and shame” (*Essay* 2.21.39). These obviously are not the only passions, but Locke is careful to note (true to the aim of the art of governing) those passions which move human beings, i.e. determine their will. These are the passions that “usually in discourse and contemplation” that “operates the strongest and appear most in the present state of mind” (*Essay* 2.21.39). These passions are those that most guide our actions in both speech and deed, in both our private contemplations and in our public deliberations with others. Here we see that Locke is not merely discussing, then, what is true for us and only us, but what is true for the individual and for the community of individuals. Put simply, Locke is referring to both psychology and rhetoric here—that which guides others in speech. The basis of our innate drive toward happiness is to squarely guide our own uneasiness toward that greater good, which is to say to make this uneasiness the most felt. This must be true, too, for guiding others as well through the use of speech. The power of judiciously using the power of certain passions to amplify and direct our uneasiness, is properly the art of governing both ourselves individually (in making our conduct fit with our own private lives) and governing ourselves in society.

According to Locke, we are the beings most moved by uneasiness, and not by the recognition of some positive good. Should we assume, then, that Locke is going to then say that we are unable to control our passions? Absolutely not. As we will see, Locke says that *fear* ought not to be taken as completely antithetical to reason; and, in fact, reason emerges out of fear.

This is the insight I believe Locke takes from Aristotle's second book of the *Rhetoric*.<sup>33</sup> The "art of governing men in society" is governing one's passions, understanding how they are moved. These two themes are explicitly those of Aristotle's second book of the *Rhetoric*. In this book, Aristotle is concerned with establishing the proper relationship between the speaker and the audience, which is to say *political speech* (1377b21-25). Political speech is often understood to be the art of persuasion, which is "an offshoot of the dialectical and also of ethical studies," and the latter of which is often understood to be properly "political" or "political science" (1356a25-30). However, it is in the second book that Aristotle makes clear that most people are not swayed by syllogisms, or are only rarely moved by them. The true ground of deliberation must first begin on the ground of the passions, and Aristotle says that this requires that the speaker both understand what is required of him and what he should know about his audience—particularly their "mood" or "state of mind" (1356a1-6). If one is capable of embodying the characteristics needed to properly understand and speak to the people, what has been established is "trust," which is so important for a healthy democracy (1378a14-15). When Locke references Aristotle's second book of the *Rhetoric*, we should take it as his indication that governing men in society is ultimately about knowing the passions and what moves them, and, most importantly, about establishing trust between the speaker and the audience. Since I have already indicated that fear plays an amazingly important role in Locke's thought, we should not be surprised to find it front and center in Aristotle's second book of the *Rhetoric*. This then entails that, to properly establish trust between

the speaker or guide and the audience or the people, the speaker should be more than prepared to engage with fear.

In the following section, I will outline the general aspects of Aristotle's second book of the *Rhetoric*, focusing on the virtues of the speaker, Aristotle's account of fear, and lastly Aristotle's account of the "ages" of life. The point is to show the incredible overlap between Aristotle's account and Locke's, and this not only confirms what I have said above (and will say below) about the "rationality of fear," but also to suggest further the role of judgment and a speaker for Locke's liberal politics of trust, which, when properly understood, will be more than capable of engaging in speech that emphasizes the passion of fear.

Aristotle begins the second book of the *Rhetoric* by discussing the need for the speaker to establish "trust" between himself and the audience. Aristotle says that trust is obtained when two conditions are met: first, that the speaker presents himself as trustworthy, and second, that the speaker and the audience are in tune with one another. For Aristotle, the speaker's trustworthiness is established when he can demonstrate or can properly claim to have the following three characteristics: good sense, excellence, and good will toward the audience (1378a7-14). "Good sense" or *phronesis* (judgment) is a particularly important term in the Aristotelian lexicon, and here we must simply note that it references the ability to properly "see" the matter at hand, to "think" and be of the right mind or have careful and measured perceptions of the world. "Excellence" or *arête* is the sum total of the moral virtues, and this is demanded of the speaker because it is important to not only have proper judgment about the things of the world, but to speak it—which takes especially courage or fortitude. To not speak the truth, yet to be capable of properly seeing (or indeed possessing the proper judgment) is a moral failing for Aristotle. Finally, "good will" or *eunoia* is the clear recognition of what is of utmost concern for the good of the audience.

Aristotle says that the failure of good will is to finally give in to some other good than what is truly best for the audience—specifically to flatter instead of guide or lead the audience. When the three are together in the same speaker, the emergence of trust between the audience and the speaker is possible. This trust is not simply affectual, though it does promote a certain closeness or friendship of good will, but it is primarily a trust that is ethical (*ethos*) and reasonable (*logos*).

These three characteristics are clearly present in Locke's discussion of the "tutor" in his *Education*. The moral excellence of the tutor is a precondition for effective teaching, since the pupil will immediately follow his example in both speech and deed, so a slip in deed will quickly undo the virtues established only in speech (*Education* 89). So, then, we should expect that the tutor to have the very same excellences that will hopefully be given to the pupil through instruction.

Or can it be expected that he should be better bred, better skilled in the world, better principled in the grounds and foundations of true virtue and generosity, than his young *tutor* is? To form a young gentleman as he should be, 'tis fit his *governor* should himself be well-bred, understand the ways of carriage and measures of civility in all the variety of person, times, and places, and keep his pupil as much as his age requires, constantly to the observation of them. (*Education* 93)

The moral excellence of the tutor is required if the guide is to be believed and to be effective. Second, we should also expect that the tutor to have a general concernment for the care of the child. For Locke, this is to say that the tutor ought to set out to care for the child as an individual, as an individual who will be capable of self-government.

The great work of a *governor* is to fashion the carriage and form the mind, to settle in his pupil good habits and principles of virtue and wisdom, to give him by little and little a view of mankind, and work him into a love and imitation of what is excellent and praiseworthy, and in the prosecution of it to give him vigor, activity, and industry. (*Education* 94)

The true end of the speaker's or the guide's teaching is to promote the true end of the audience. Here the true end of the audience, the pupil, is to be capable of self-government.

Finally, we should note that Locke spends a considerable amount of time talking about the particular prudence or judgment that is required by the tutor—the tutor's "good sense," or



phronesis. I have already mentioned this section of the *Education* in previous chapters, but I return to it here with a new appreciation for Locke's own emphasis on judgment. Locke says that, aside from the tutor having the moral virtues—"being well-bred"—he should have considerable practical wisdom, which is to say "good sense" about the nature of the world, and about human beings. The tutor should have good judgment and should be capable of imparting this good judgment to the pupil. The character of Locke's good judgment is to know both when to trust and what to fear—to properly discern appearance and reality, which is the traditional definition of Aristotle's view of *phronesis* or judgment.

Besides being well-bred, the *tutor* should know the world well: the ways, the humors, the follies, the cheats, the faults of the age he has fallen into and particularly of the country he lives in. These he should be able to show to his pupil as he finds him capable, teach him skill in men and their manners, pull off the mask which their several callings and pretenses cover them with, and make his pupil discern what lies at the bottom under such appearances that he may not, as inexperienced young men are apt to do if they are unwarned, take one thing for another, judge by the outside, and give himself up to show and the insinuation of a fair carriage or an obliging application; a governor should teach his scholar to guess at and beware of the designs of men he has to do with neither too much suspicion nor too much confidence, but as the young man is by nature most inclined to either side rectify him and bend him the other way. (*Education* 94)

The most important part of the education is to instill proper judgment, and this means mixing suspicion and confidence as needed to correct his pupil's natural tendencies. In familiar Aristotelian fashion, we must bend the student toward the other excess, hoping to land in the virtuous mean. Proper judgment is not only knowing the world that we have "fallen" into, but also to properly recognize the dangers that are always potentially upon us: that we are too quickly "thrown" into the world without proper education, and that others will "dissemble" their true aims by flattery or claims to certain truths that are not properly our "dwelling" or our concern (*Education* 94). Because it is central for both the tutor and the pupil's education, "knowledge of the world" or proper judgment is the center of Locke's liberal politics. The three characteristics of Aristotle's

speaker are repeated by Locke in his discussion of the pupil in his *Education*. In particular, however, Locke emphasizes the character of judgment or *phronesis*.

The second part of Aristotle's teaching in the second book of the *Rhetoric* is to emphasize the particular moods or states of mind within the audience (1378a21-24). For Aristotle, trust obtains when the speaker has the three characteristics—good sense or judgment, moral seriousness, and good will—and when the audience and the speaker are in tune with one another. The bridge between the speaker and the audience happens through the passions, and it is here that deliberation first emerges. The goal of the speaker is to get the people to be in the right state of mind, to establish the right pathos for the ethos and logos to take root. The passions, then, are the base of the ethical and the rational, and so we must turn to the passions and, in particular, the most important passion: fear (1382a21-1383b111).

Aristotle says that fear is the anticipation of some evil that is directed toward me, that is a concern for me at present (1382a22-29). And, since evil is to be avoided, fear is quickly the most powerful passion because it is intimately concerned with my concern and my end. I strive to avoid something that may befall me, and I am immediately drawn into the *anticipation* of this evil. Fear is not simply an unreflective response—it has a much deeper philosophical aspect: it reveals that I am a thing for which I am concerned for myself, and the concern is to avoid an evil, and I am sitting in anticipation of that evil (1383a4-12). My concernment, as Locke would call it, is revealed to me immediately in fear, and so, too, are a series of other insights: my agency and my individuality. It is *me* that is afraid, and it is *me* for which the evil is impending, and it is *me* for which this is a concern. The world, understood as the things for which I care, emerges in fear. For this reason, as we saw above, Locke is ready to say that fear can make us aware—attentive, vigilant, and cautious.

For Aristotle, the feeling of “fear” is itself a contingent thing: some people deny fear as a possibility for *them* (1382b28-1383a6). To cover over or to deny fear not only limits one’s awareness, but it limits our reason. If reason and ethics—logos and ethos—emerge only out of pathos, and the most important pathos is fear, we must be wary of the foolhardy for they foreclose the fertile ground of ethos and pathos. Foolhardiness is mutually exclusive from the reasonable. This is because Aristotle recognizes that fear reveals to us “what can be done” to resist the impending evil (1383a7-8). It is only when we deny that evil its possibility or when we deny that possible evil its status as evil, that we fail to be aware of fear and we thereby lose our reason. Fear is related to the possible and thereby the “uncertainty,” and it is here—and only here—that the question of escape through deliberation reveals itself. Our reason is ultimately tied to maintaining our interest, our concernment. Confidence, properly won, is that recognition of the fearfulness of the properly fearful thing, not expanded or amplified by the cowardly imagination, or diminished or eradicated by the foolhardy and reckless. The proper recognition of that-which-is-fearful is the beginning of measured, moderate deliberation.<sup>34</sup>

Let us turn back to Locke. What is the most powerful passion that can be used in the governing of ourselves and others? For Locke, the passion is *fear*. For Locke, fear is “an uneasiness of mind, upon the thought of future evil likely to befall us” (*Essay* 2.20.10). Or, again, Locke as Locke says in his *Education*: “A dislike of evil is so natural to mankind that nobody, I think, can be without fear of it; fear being nothing but an uneasiness under the apprehension of that coming upon us which we dislike” (*Education* 115). Fear is natural, since we have the natural desire to avoid any evil that will likely befall us. Fear is intimately tied with judging the most important aspect of our lives: resisting and avoiding fear. This makes fear the most fundamental and most important uneasiness, and therefore a powerful tool for government: “Fear is a passion that, if

rightly governed, has its use” (*Education* 115). The virtues associated with fear are courage and fortitude, which are “the guard and support of the other virtues” (*Education* 115, 86). Fear is natural, and it is the passion associated with the virtues that guard and support the other virtues. Fear is the center of liberal virtue. Fortitude is properly the “possession of a man’s self,” and, so, we must say that fear does not necessarily *cause* one to “lose” oneself, but, actually, the precondition for the emergence of self-ownership, or self-government. Fortitude and courage are the first and most important virtues that protect the other virtues, and this is done by properly engaging with and not fleeing from fear.

To be clear, Locke is aware that fear is often understood to be one of the main obstacles to our lives—it can quickly raise our uneasiness of some other thing than the “greater good,” so that we willingly deviate from what we know or what we hold to be the good. But, this does not mean that we ought to be in a world simply without fear. Instead, Locke makes clear that we ought to guide our understanding to better engage with fear, rather than spending our time trying to eradicate it or wish it away. Fear properly understood is the recognition of an impending danger that does *not* interfere with our “reason”:

Fear was given us as a monitor to quicken our industry and keep us upon our guard against the approaches of evil; and therefore to have no apprehension of mischief at hand, not to make a just estimation of the danger, but heedlessly to run into it, be the hazard what it will, without considering of what use or consequence it may be, is not the resolution of a rational creature but brutish fury. (*Education* 115, 85)

The important distinction Locke places between rational creatures and brutes is the use of “Reason,” which is our only “star and compass” (*First Treatise* 58). The difference between rational creatures and brutes is, then, the just estimation of what we ought to fear. Just as reason is a monitor to our trust, fear is a monitor to our lives. To deny fear is not the mark of rational creature,

but of a brute. Fear is important because it demands reflection—careful examination, not simple denial or brash overcoming.

Aristotle turns from examining the passions individually to examining the passions individually to examining them together in what we could call the “character” profiles of the young, elderly, and those in their “prime” (1388b32-1390b10). At the center of these different characters is the various differences between trust and fear among the young, old, and middle-aged. Aristotle says of the young that “they look at the good side rather than the bad, not having yet witnessed many instances of wickedness. They trust others too readily, because they have not yet been often cheated” (1389a16-19). Aristotle continues that the youth are too quick because they have unearned confidence—they do not properly fear, and their frustrations with others come across as anger which blinds them, making them more confident. The elderly individuals have the opposite problem: “their experience makes them distrustful, and therefore suspicious of evil. ... They are cowardly, and are always anticipating danger; unlike that of the young, who are warm-blooded, their temperament is chilly” (1389b27-31). The young are foolhardy, since they do not properly fear and trust too quickly, while the elderly are cowards, since they do not properly fear what ought to be feared and they do not trust at all. As is so often the case for Aristotle, the proper relation is the mean between these two extremes, which Aristotle calls here the character of those in their “prime.” These individuals “neither have the excess of confidence which amounts to rashness, nor too much timidity, but the right amount of each. They neither trust everybody nor distrust everybody, but judge people correctly” (1389b28-34). The mean between trust and distrust like fear and confidence, are not dichotomies but a spectrum marked by two deviant and excessive ends. The aim is proper judgment of what is and what is not to be feared, the proper judgment of who to trust and distrust. This is properly the field of *phronesis*, practical wisdom. To simply

believe that trust and distrust, fear and confidence, are the only options available to us is to eliminate the plane of deliberation—to raise the question of reflection: do I have good reason to trust or distrust, to be afraid or confident? This is the realm of reason, and it emerges properly from the passion of fear.

Locke outlines two approaches to fear, both of which he thinks are inappropriate: foolhardiness and cowardice (*Education* 115). The foolhardy assume wrongly that to be afraid is to be irrational—since there is nothing to fear, one is simply “paranoid” or mad. This denies the possibility of engaging with fear, and therewith of the emergence of the deliberative faculty. The coward sees fear everywhere, and cannot properly judge what should command our attention and what should not. Unlike the foolhardy, who denies fear altogether, the coward amplifies it, though too much as to cover over any actual deliberation. For Locke, reason begins by carefully engaging what is and what is not to be feared:

Where danger is, a sense of danger so much fear as should keep or awake and excite our attention, industry, and vigor but not disturb the calm use of our reason nor hinder the execution of what it dictates. (*Education* 115)

Reason is not antithetical to all types of fear, and is indeed predicated on a certain type of measured fear.

Reason operates in due proportion with that with which we should be truly afraid. As we said above, foolhardiness goes too far in assuming that any recognition of danger or fear is to deny rationality—which amounts to the claim that where fear is reason cannot be. Locke outlined the opposite problem in cowardice. Here fear is admitted, but deliberation over what is to be feared does not emerge—which amounts to the claim that reason can only be possible where fear is not. The foolhardy mirrors the zealous enthusiast, who believes doubts and fears are a sign of weakness not reason; the coward mirrors the radical skeptic, who believes that reason is so swallowed up by

all the potential fears and doubts, that it may not even be possible. Like in the case with knowledge, so too with fear and reason Locke argues that both predominant positions play off of each other, oscillating between deviant extremes, never capable of understanding the middle road. Foolhardiness and cowardice are two deviant extreme responses to fear, and they come from a failure to properly understand the mutually constituting relationship between fear and reason. Fear, if properly governed, can bring us to focus, make us awake and industrious to the things that matter for us—our interests and concerns—and it can further provide us with the space upon which we can deliberate about what we ought to do. Rational fear puts us in a position where we can properly govern ourselves and others.

Let us return to Locke's concept of uneasiness more generally now. For Locke, freedom is the ability to choose—to will or not—and this is determined by the greatest uneasiness present upon us.<sup>35</sup> In particular, fear is the uneasiness that brings to light an impending evil, and so it can quickly amplify the uneasiness we feel, making it more and more the center of our attention. The more afraid, the more it presses upon us, the more we feel a sense of dread or anxiety, and the more and more we bring ourselves to reflect upon possibilities. With fear comes the possibility of reflection, direction, and deliberation. If we are not careful, of course, fear may well swallow up our whole being—we believe ourselves to be precisely the thing that has no other options, no ability to do otherwise, no ability to act thoughtlessly to flee fear in any way possible. Fear, then, also can cover over our reflection—make us more *determined* than recognizably free. The key for Locke and Aristotle is not, then, to eliminate fear itself from our minds and our lives. On the one hand, neither Locke nor Aristotle simply believe that fear can be eliminated *precisely because it is always a possibility of our existence with others*: we can always be made fearful or afraid of another person. Since human beings are things that live together, and others can be the source of

fear, our being in this world is always potentially liable to fall into a state of fear. On the other hand, we should not strive to eliminate fear because it is the basis of our reason, it puts us in a state of reflection and deliberation—precisely with others, in escaping fear. Uneasiness, especially that stemming from fear, can bring us to a level of reflection that simply is not possible otherwise. Fear and uneasiness put us in a position of reflection and examination:

There being in us a great many uneasinesses, always soliciting and ready to determine the will, it is natural, as I have said, that the greatest and most pressing should determine the *will* to the next action; and so it does for the most part, but not always. For the mind having in most cases, as is evidence in Experience, a power to *suspend* the execution and satisfaction of any of its desires, and so all, one after the another, is at liberty to consider the objects of them; examine them on all sides, and weigh them with others (*Essay* 2.21.47).

For Locke, the mind has the ability to suspend execution, to begin thoughtful examination and deliberate about good reasons for action. It is precisely uneasiness that gives rise to the need for our rational faculty of examination. The rational faculty can sort through considerations of action enough to find a measured response, to deliberate about what one ought to do. This is not to say that reason has properly eliminated uneasiness, or overcome uneasiness. Instead, we should be clear that reason emerges in the engagement with uneasiness in a certain way: courageously and with fortitude.

The “rational creature” acts with reason by being properly disposed to fear, so as not to overwhelm the mind, rendering our faculty of judgment ineffective. Fear—the amplification of uneasiness—ought to be set to good use insofar as it can “keep us awake and excite our attention, industry, and vigor but not disturb the calm use of our reason nor hinder our execution of what that dictates” (*Education* 115). Contrary to our expectations, the education toward rational examination—of becoming a “rational creature”—requires uneasiness. Locke makes clear that this may require a particular curriculum where we “by gentle degrees” become accustomed to fear and uneasiness. The point is to live *within* fear and uneasiness, not escape it.



Locke's fixation on uneasiness and fear as those primary features of our political psychology was not lost on Montesquieu. As Rahe notes, the "inquietude" that underwrites Locke's modern republicanism "can do little more than keep a polity on edge" (2009, 46). There may be a certain truth to this view that perhaps more is needed than simply to keep a people "on edge," but we should not ignore that this must be the first step to our political freedom—inquietude. The problem is apathy, and with apathy there is a failure to properly understand what should be feared, a deeper intellectual and moral failing. We do not know how to properly fear. If we assume that Locke held a similar view of political liberty as Montesquieu put it in his *Spirit of the Laws*, this has serious consequences for our liberal politics. For Montesquieu,

The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite that government be so constituted as one man need not be afraid of another (Book 9, chapter 6).

From Locke's perspective, this cannot amount to the eradication of fear simply, though it might be read that way. In other words, the tranquility of mind cannot be a passive, sedate, or empty of fear or uneasiness. If this were the meaning, the mind as Montesquieu here describes it would be the antithesis of the busy mind, so precious to Locke's project. Further, for Locke and Aristotle, the potential of fear is always present where another is around. So, if "tranquility" is to be understood as a full negation of fear simply, we would have to say that Montesquieu has rendered the individual wholly individual—without any sense of being with others. This Locke and Aristotle (and even Montesquieu) would deny as possible. Instead, we should recognize that the fear that Montesquieu is referring to in this famous passage is that fear that overrides reason, not all fear itself. There has to be a reasonable fear, which is to be distinguished from that fear that causes animosity or enmity between individuals. Reasonable fear can be directed or translated into something else than simply fear. It is this more reasonable fear that, while still a mark of uneasiness

or inquietude, “translates” this potential busy character of the mind into a political principle of vigilance, once it is filtered through a properly “constituted” government, particularly a constitution of separated powers. The liberal population may be “on edge” but this uneasiness is the first (and perhaps most important) step to having “political liberty.”

## THE RIGHT TO ALTERATION

The general argument of this chapter has been that Locke has sought to change the way we think about ourselves as individuals. As we have seen, the general drift has been to exacerbate *fear* and uneasiness in our lives. This means that, going back to our brief discussion of the seemingly unresolvable tension between two competing claims of “reasonableness,” that Locke is squarely advocating something like a “paranoid style.”<sup>36</sup> The point of paranoia—or, what Locke will accurately call “madness” throughout his work—is not to make us cowardly, isolated, and timid, but to correct our natural ungrounded confidence. We must bend ourselves back the other way, from naïve or basic trust to a much more rational or suspicious trust, and that happens only through being more “paranoid.”

It is often said that it is strange to see the extent to which Locke notes that the people are too trusting of authority. This point is made continuously throughout Locke’s political writings. But, when it comes to both the *Essay* and his *Second Treatise*, we can see that Locke means that the people trust *incorrectly* and are too trusting in a certain *naïve* way—they are “young,” too “confident” or simply “foolhardy.” The solution, and this point I have emphasized, is that Locke requires that there be a proper guide to overcorrect the people’s natural basic trust. Just like it is in Locke’s *Education* where a tutor sets out to make his pupil aware of the world—to instill a suspiciousness in the child’s judgment about the intentions of others—so, too, in Locke’s *Second Treatise* and in his politics more generally does he rely on a guide—what I have called the “busie

head.” The point is not to make people simply afraid, but, Locke argues, in their fear they will come to see what is of most concern for them. The thing most concerning is self-preservation, and in particular, self-government, which, Locke will say is the ultimate right to *alter* our circumstances when needed.

This last point is made in *A Letter from a Person of Quality*, which Locke wrote with the Earl of Shaftesbury. The purpose of this section is twofold: first, I want to show briefly the direct relationship between the metaphors and imagery of the *Letter* and Locke’s later *Second Treatise*, cementing that these two works should be read largely together. Indeed, I argue that Locke makes clear in the *Letter* what he only vaguely references in the *Second Treatise*: the *Letter* is as an example of the work a “busie head” must be allowed to do in a proper liberal constitutionalism. The second part of this section is to focus our attention on the singular great principle that Locke places at the heart of liberal constitutionalism—the right to *alter* the government. This is the final aspect of liberal constitutionalism that must adapt to the ontology of flux: the government itself is stable and just *insofar as it remains forever open to alteration*. For Locke, as I show briefly below, the unifying spirit of liberal constitutionalism is that all individuals of all natural parties—democrat and republican—will come to be so afraid of potential tyranny, that they band together in the name of the right to *alter* the government, and the right to a competition to make the case to do so when needed.

The “paranoid style” of Locke’s politics becomes clear in his *Letter from a Person of Quality*. In response to a proposal to institute an oath of allegiance to the Crown that denied the right “at any time endeavor any alteration of government either in church or state,” Locke and Shaftesbury wrote a pamphlet that revealed the innerworkings and intentions of the Crown and those in Parliament influenced by the Church and the King. The hope, Locke thought, was that by

bringing this to the public's attention, there would be awareness of the long train of abuses that went into this particular event, which looked so unremarkable. Locke in his *Letter* is directly appealing to the public. The general intention behind the *Letter*, then, is that of a "turbulent spirit" or a "busie head," which he refers to in the *Second Treatise*. Locke is a busie head. The end of the busie head is to constitute a people and to raise their awareness and knowledge of political life. Locke does this through the "language of conspiracy" and suspicion and fear.<sup>37</sup> The point of such fear and suspicion is, then, not *below* the dignity of liberal democratic statesmen, but perhaps its most important ally and ground of the whole liberal constitutional project. Locke presents us not only with the theory of government that relies on the "busie head" in his *Second Treatise*, but, he provides us with numerous writings that explain how the busie head should go about securing liberalism.

The *Letter* is a clearly rhetorical document. Locke begins with a reference to a plot set in motion by the Church to demand an oath of allegiance. The imagery of this section of the *Letter* is nearly identical to a famous passage of the *Second Treatise* that I referenced in the previous chapter: the image of a passenger on a ship. I will quote both texts below.

It was first hatched (as almost all the mischiefs of the world had hitherto been) amongst the great churchmen, and is a project several years standing, but found no ministers bold enough to go through with it, until these new ones, who, wanting a better bottom to support them, betook themselves wholly to this, which is no small undertaking, if you consider it in its whole extent. (1997, 361).

The point here is that the conspiracy against the people, stemming from a religious sect that is trying to usurp power, looks as if it might not exist, since it first may appear as different disjointed parts and false starts. For Locke, the point is to see that the events are all connected, and that the only reason that the plot had not further developed was due to a lack of resolve in the conspirators. This is recounted in the *Second Treatise*:

But if all the world shall observe Pretences of one kind, and Actions of another; Arts used to elude the Law, and the Trust of Prerogative (which is an Arbitrary Power in some things left in the Prince's hand to do good, not harm the People) employed contrary to the end, for which it was given: if the People shall find the Ministers, and subordinate Magistrates chosen suitable to such ends, and favored, or laid by proportionably, as they promote or oppose them: If they see several Experiments made of Arbitrary Power, and that Religion underhand favored (though publicly proclaimed against) which is readiest to introduce it, and the Operators in it supported, as much as may be; and when that cannot be done, yet approved still, and liked the better: if a *long Train of Actings shew the Councils* all tending that way, how can a Man any more hinder himself from being persuaded about how to save himself, than he could from believing the Captain of the Ship he was in, was carrying him, and the rest of the company to *Algiers*, when he found him always steering that Course, though cross Winds, Leaks in his Ship, and want of Men and Provisions did often force him to turn his Course another way for some time, which he steadily returned to again, as soon as the Wind, Weather, and other Circumstances would let him? (*Second Treatise* 210)

The *Letter* opens up by pointing out that the conspiracy by the churchmen and the Crown had only been at bay as long as it needed to steer clear of the “cross winds” of circumstance, and find “men and provisions” or “subordinate Magistrates” or “Operators” capable of following through with the conspiracy. The imagery between the *Letter* and that of the *Second Treatise* fit together nicely. In the *Letter*, then, we should say that Locke is revealing the tyrannical designs afoot. In the *Second Treatise*, he defends the idea of the “busie head” as someone who would justly demand the alteration of the government if the case was predicated on “manifest evidence” (*Second Treatise* 230). In this section of the *Second Treatise*, Locke is defending the right of the busie head by making the point that, if it is predicated on such manifest evidence, then it is the People's duty to be aware of their obligation to resist tyranny. The People, in other words, should always be vigilant or aware of the possibility of tyranny, even if it is not there. The *Letter* and the *Second Treatise* make clear that, not only should we be vigilant, but that we might also need to recognize that disparate events may in fact be connected—the *long train of actings* need not be a fully linear development.

Locke is justified in writing his *Letter* if the busie head is not, in fact, dangerous to the health of a liberal democracy. Locke shows us, then, in both speech and deed that busie head

contestation is not detrimental to liberal democracy, but in fact predicated on it. The *Letter* in “unmasking,” as Locke’s tutor does for his pupil, the hidden ill-intentions of power, reveals the extent to which contestation and alteration are important for Locke’s liberal constitutionalism. For Locke, the point of the *Letter* is that political power will always gravitate toward absolutism, and, therefore, a resisting force will always be needed to constrain this power. The “bottom,” as Locke calls it, of the *Letter* is that political power will always lean toward absolutism because it will always want to cover its authority in doctrines like innate ideas or de jure divino (1997, 265). The true danger to liberal constitutionalism is that power which will claim to be unobjectionable. The attempt by the Crown to demand an oath of allegiance predicated on the inability to alter the government is the clearest sign of absolutism and tyranny, for Locke. It is the clearest example because its “design” is only to eliminate self-government, and rational examination. Examination is important in the *Letter* because it establishes the intention behind actions, particularly those that seem remotely connected. That the end of this particular proposal was just an oath does not deter it from having drastic consequences or any real significance, and so Locke’s main goal in the *Letter* is to establish the proper extent of *fear* we should have toward these actions by the churchmen and the Crown. Locke’s argument is stark: there is a specter haunting the commonwealth of England, and it is the influence of the Crown in Parliament, and this is the silent march of tyranny and arbitrary power, that remains largely hidden from the People. The *Letter* is properly the work of a “turbulent spirit,” because, as Locke makes clear in writing the *Letter*, the “busie head” is always needed because power always tries to hide.

The *Letter* shows us that the concern that should bottom our liberalism is properly that of self-preservation understood as the principle of non-domination, of resisting and avoiding arbitrary power. The goal of liberalism is self-government. That this entails that the government ought to

be held as a thing forever alterable, Locke makes clear in the *Letter*: the oath to outlaw alteration “stick at the very root of government; it being necessary to all government to have freedom of votes and debates in those who have power to alter and make laws” (Malcolm 2011, 73).<sup>38</sup> Moreover, Locke makes the point that, strictly speaking, oaths are a very unreliable basis of power, and so, for the Crown to demand an oath it must be significantly more than what it seemed. For Locke, the consequence was more symbolic—a claim about the nature of the relationship between the governor and the governed (which I referred to in the second chapter): there ought not to be a reciprocal relation between the monarch and the people. For Locke, if a monarch has but only the fear of God to worry about, then it is properly an “absolute” power, since “bounded” monarchy is where the king fears both God and the people (ibid., 76).<sup>39</sup> The true “design” of the oath was, finally, revealed: “Here the mask was plainly plucked off, and arbitrary government appeared bare-faced...” (ibid., 78). The Crown’s oath, however seemingly simple, was an assertion of arbitrary and absolute government. The oath, in denying the ability to alter the government, denied the right to resist—the right to self-defense. In the letter, the right to self-defense, alteration, or resistance, are all tied to a single, epistemological point about the existence of “infallibility” (ibid., 80). Infallibility, Locke has already argued, cannot be admitted both in his epistemological doctrine and in his doxastic practices. It would be to place the legitimacy of rule on something other than the community of individuals, in something other than consent—either nature or, more likely, power. This would be to fundamentally alter the self-understanding of governor and governed as necessarily equal partners, as properly constituted as subject/magistrate, replacing it with either the parent/child or master/servant relation.

The ultimate defense of alteration is to see it as fundamentally the *legislative* function of society—the deliberative body. As Locke makes clear here,

For what is the business of parliaments, but the alteration, either by adding, or taking away, some part of the government, either in church or state? And every new act of parliament is an alteration, and what kind of government in church or state must that be, which I must swear upon no alteration of time, emergency of affairs, nor variation of human things, never to endeavor to alter? (ibid., 83)

As I have repeated argued, here Locke's point is not only that self-government is intimately tied to the legislative body of the government, and that the People must have properly the right to alter the laws. But, that denying the possibility of alteration is nothing more than a claim to power, absolute and arbitrary, because the ontological nature of the world—of flux—makes alteration *necessary*. Locke's *Letter* here helps us see the extent to which the seemingly revolutionary character of the busie head is actually present in the everyday business of the legislative, since the right of resistance and the right of alteration are not distinguishable for Locke, the one belonging to the revolutionary busie head, the other to the legislator.

Finally, as Locke says in the *Letter*, the oath served a further rhetorical purpose of no small consequence: that all dissent and alteration became the work of “conspirators.” As Locke says, “the lord treasurer, told the committee in plain terms; that they intended, and designed to prevent caballing and conspiracies against the government...” (ibid., 84). The end of the oath is essentially to render all potential alteration the work of “caballers and conspiracies,” i.e., illegitimate. The power of “names” comes to the foreground. When dissent becomes identical with conspiracy and caballing, then it is seemingly the work of usurpers and not legitimate. This takes considerable influence and power away from the elite, or those in Parliament: “And it must be a great mistake in counsels, or worse, that there should be so much pains taken by the court to debase and bring low the house of peers, if a military government be not intended by some.” (ibid., 87). The point is that, when dissent is pathologized or delegitimized, it serves only to empower those who seek absolute and arbitrary power. The small oath, by the end of the *Letter* is made into the following interpretation of the actions of the Crown:



I shall conclude with what, upon the whole matter, is most worthy your consideration, that the design is ‘to declare us first into another government more absolute and arbitrary than the oath of allegiance, or old law, knew;’ and then ‘make us swear unto it,’ as it is so established. (ibid., 88)

The embers of fear become even more explicit in the concluding lines, where Locke makes clear that what we are being told to give up is our ability to self-govern, to interpret and signify our own interest, and to be denied the ability to preserve ourselves.

Nay, what is worse, they [the clergy] have trucked away the rights and liberties of the people, in this and all other countries, wherever they have had opportunity; that they might be owned by the prince to be ‘jure divino,’ maintained in that pretension by that absolute power and force they have contributed so much to put into his hands; and that priest and prince may, like Castor and Pollux, be worshipped together as divine, in the same temple, by us poor lay-subjects; and that sense and reason, law, properties, rights, and liberties, shall be understood, as the oracles of those deities shall interpret, or give signification to them; and never be made use of in the world to oppose the absolute and free will of either of them. (ibid.)

The closing lines of Locke’s *Letter* show just how dangerous even the smallest act by the government may be to us. The point is not to make us afraid and thoughtlessly revolt, nor to make us so defeated that we should just sign an oath of allegiance, but that we should “busy” ourselves in the things most concerning to us: our lives, liberties, and property. The vigilance required, however, requires commitment—resolve, fortitude, and courage. Our fear and uneasiness should direct us toward the reasonable position that, aside from our differences, we are all here and must always hold out that the government over us must remain *alterable*.

In 1690, Locke wrote a paper to his friend Edward Clarke, trying to give a rhetorical defense of the newly established King William III’s regime. Echoing the *Letter* 15 years later, Locke says that unity can be won without foundational agreement on principles, if people are just brought to a momentary recognition of “mutual charity,” since it can never be expected that universal consent will obtain. Instead, Locke says that “what everyone must confess [as] absolutely necessary to the very being and subsistence of our government” is that the monarchy cannot be held *de divino* or *de facto* (which, for Locke are the same) but only by *de jure* or by right (1997,

307-311). For Locke, any commonwealth can survive more tumultuous political debates, as long as they do *not* fall strike at this root: that the government must always remain *alterable*: “Divisions in opinions on smaller matters amongst those who hold the fundamentals shake not the frame” (1997, 312). In a political society that has seemingly forgotten its core commitment to rule by *right* and not by force or nature, where politics is grounded properly in a trust relationship that always has a reciprocal nature between governed and governor, partisan divisions will not dissolve society. However, in a society where doubts emerge as to the true ground of our politics, then Locke says:

We have a war upon our hands of no small weight. We have a potent and vigilant enemy at our doors, who has emissaries and zealous partisans enough to blow up any doubts and distrusts among us into disorder and confusion (1997, 312).

The reference here to “disorder and confusion” is literally the phrase that he used in his *Second Treatise* when discussing the state of nature (13). The problem of the state of nature is not *simply* that there is a plurality of opinions, which necessarily happen when everyone is a judge in their own cases, but when the doubts, fears, and anxieties become *intentionally* exacerbated by those who would want to wield absolute and arbitrary power. For Locke, this is *not* simply a statement about the general nature of mankind, like it is for Hobbes, but a consequence of an education that has not properly understood that we cannot have certain knowledge, which is the only way that one can ultimately establish rule *de divino*, and we ought not to accept the rule *de facto*, but only by right—which is tied to consent, agency, and judgment. People may be bad judges in their own cases for two reasons: *error* or *domination*. For Locke, we can live in a world with the former, but not the latter. Judgment, then, and the right to alter one’s condition, cannot be denied. And, these two doctrines push for only a politics of consent or right, against a politics of the “infallible.”<sup>40</sup>

## LIBERALISM OF RIGHTS AND THE LIBERALISM OF FEAR

Liberalism is a “political doctrine” that has “only one overriding aim: to secure the political conditions that are necessary for the exercise of personal freedom” (1989, 21). Liberalism “does not have any particular positive doctrines about how people are to conduct their lives” (ibid.). For Shklar, liberalism is wholly negative—i.e. directed toward alleviating or avoiding uneasiness than it is a doctrine directed toward some good end. In this sense, liberalism does not “offer a *summum bonum* [‘highest good’] toward which all political agents should strive, but it certainly does begin with a *summum malum* [‘worst evil’], which all of us know and would avoid if we could. That evil is cruelty and the fear it inspires, and the very fear of fear itself” (29). For Shklar, the very familiar liberal political doctrines of toleration, constitutionalism, and the rule of law are grounded in the centrality of fear—specifically in the fear of cruelty, which she defines as “the deliberate infliction of physical, and secondarily emotional, pain upon a weaker person or group by stronger ones in order to achieve some end, tangible or intangible, of the latter” (1989, 29). The aim of liberalism is not to eliminate fear, but cruelty and the fear it causes: “The fear it [liberalism] does want to prevent is that which is created by arbitrary, unexpected, unnecessary, and unlicensed acts of force by habitual and pervasive acts of cruelty and torture performed by military, paramilitary, and police agents in any regime” (ibid.). It is important that liberal politics avoids cruelty (and the fear it causes) while not eliminating a certain kind of fear-of-cruelty that animates the whole enterprise.

For Shklar, it would not be an understatement to say that fear is a central and unavoidable aspect of our psychology. Indeed, she says that to “be alive is to be afraid, and much to our advantage in many cases, since alarm often preserves us from danger” (1989, 29). There is a sense in which fear is healthy—a reasonable person is capable of being afraid. There is a sense, of course, in which fearing too much or too little is unreasonable, though fearing is not *unnatural*. The point

here, as Shklar suggests, is that liberalism is properly a politics that must first recognize the centrality and importance of fear for human beings, and, second, that it is therefore more important to direct the fear than it is to eradicate it wholly. As Shklar says, “the fear we fear is of pain inflicted by others to kill and maim us, not the natural and healthy fear that merely warns us of avoidable pain” (ibid.). There is a *healthy fear*, and this type of fear is crucial for liberalism on Shklar’s rendering. We care about ourselves and others, we treat each other as things that we ought not be cruel toward, and therefore we invest in toleration and public constraint as necessarily political doctrines to curb cruelty—absolute and arbitrary power. For Shklar, fear extends beyond merely our self, but to a concern for others as well: “And, when we think politically, we are afraid not only for ourselves but for our fellow citizens as well” (ibid.).

From the perspective of Shklar’s liberalism of fear, the real danger to a liberal society is where cruelty has become an “expectation” or “institutionalized” (1989, 29). This, Shklar calls “systematic fear,” and it is very much the logic she sees underwriting Hobbes’ liberal absolutism, powerfully presented in his *Leviathan*. Cruelty, to sum up Shklar’s point, is that of absolute, arbitrary (public) power. Because Shklar puts fear of unconstrained public authority at the heart of liberalism, she rejects the notion that Hobbes is the “father of liberalism”: “No theory that gives public authorities the unconditional right to impose beliefs and even a vocabulary as they may see fit upon the citizenry can be described as even remotely liberal” (1989, 24). The type of politics she sees in Hobbes’ *Leviathan* certainly begins from the premise of natural individual rights, and this set of propositions alone is often equated with a certain “social contract” tradition, often held to be a mark of liberalism (ibid.). Here, though, this political system leads to the “bizarre” conclusion that properly constituted liberals are “indifferent, if not openly hostile, to personal freedom” and self-government (ibid.). The charge here is that liberalism is inescapably tied to

absolutism (cf. Strauss and MacPherson) (ibid.). Liberalism, if not properly grounded, seemingly has a natural tendency toward absolutism, Shklar concludes.

As we have seen, the liberalism of fear is a liberalism that simultaneously aims at removing a certain kind of fear—fear that stems from cruelty—but is nevertheless grounded on the *fact* of fear—that one *should* be afraid of cruelty. As Shklar notes: “Anyone who thinks that fascism in one guise or another is dead and gone ought to think again” (1989, 22). The liberalism of fear begins with a sober view that cruelty is not something that can be easily (or perhaps wholly) eradicated. The real basis of liberalism is in the resistance of cruelty, a psychological alarmism—a healthy fear. However, it would be too simplistic to suggest that liberalism is only concerned with avoiding explicit tyranny or absolutism. “For this liberalism [of fear] the basic units of political life are not discursive and reflecting persons, nor friends and enemies, nor patriotic soldier-citizens, nor energetic litigants, but the weak and the powerful” (1989, 27). The liberalism of fear is ultimately concerned with power, and specifically asymmetrical power relations between the governed and the governor. For Shklar, rather than a perspective that is informed by a philosophical system—as natural rights theorists often engage in—she subscribes to a thoroughly historical account—a “strongly developed historical memory” (ibid.). “The assumption, amply justified by every page of political history, is that some agents of government will behave lawlessly and brutally in small or big ways most of the time unless they are prevented from doing so” (1989, 28). At the core of Shklar’s liberalism of fear is the recognition of the potentiality of cruelty, which is furnished by an avid reading of history.

For Shklar, historical reflection is the “faculty of the human mind that the liberalism of fear draws most heavily.” (1989, 27). This is because history is *concrete*, and therefore the “liberalism of fear is a response to these undeniable actualities” of injustice in everyday life. The core of the

liberalism of fear is precisely that it seeks a certain kind of liberty or freedom: “freedom from the abuse of power and intimidation of the defenseless” that exists always and forever in this world. Our supposed moral pluralism can be checked, not by the liberalism of rights and its deductions about the abstract and infallible cosmos, but by the simple phenomenological fact that fear is universally felt and avoided by all things, human and animal alike (1989, 29).

Shklar says that Locke is a “spokesman” for the liberalism of rights, and not the liberalism of fear. Locke, she says, did not have precisely this “strongly developed historical memory,” which precludes him from being able to adequately appreciate the role of *fear* in our political lives. As Benhabib says, Shklar ultimately rejects Lockean liberalism precisely because she sees it as a “foundationalist” metaphysical politics, premised on a thick concept of “Nature” (1994, 478).<sup>41</sup> She does not see that Locke is very much in line with her “distinctive anti-foundationalism,” as Benhabib calls it (ibid.).<sup>42</sup> This view of Locke, however, Shklar cannot reliably maintain: Locke is a problem for Shklar because he is seemingly *both* a theorist of the liberalism of rights and the liberalism of fear. For example, consider what was just said above about the centrality of asymmetrical power in the liberalism of fear with what Shklar says about Locke:

What the liberalism of fear owes to Locke is also obvious: that the governments of this world with their overwhelming power to kill, maim, indoctrinate, and make war are not to be trusted unconditionally (‘lions’), and that any confidence that we might develop in their agents must rest firmly on deep suspicion. Locke was not, and neither should his heirs be, in favor of weak governments that cannot frame or carry out public policies and decisions made in conformity to requirements of publicity, deliberation, and fair procedures. What is to be feared is every extralegal, secret, and unauthorized act by public agents and their deputies. And to prevent such conduct requires a constant division and subdivision of political power. The importance of voluntary associations from this perspective is not the satisfaction that their members may derive from joining in cooperative endeavors, but their ability to become significant units of social power and influence that can check, or at least alter, the assertions of other organized agents, both voluntary and governmental (1989, 30).

How is it that Locke *cannot* be counted as one of the founding members of the liberalism of fear, even on Shklar’s *own* understanding? Locke’s keen insight as to the asymmetrical relationship

between the people and power, the demand to trust but be suspicious, and the non-utilitarian justification of liberal constitutional doctrines and civil associations, all point to the conflation of the liberalism of fear with the liberalism of rights. This whole chapter can be said to be both the proof text for Shklar's own presentation of Locke here, and, more importantly, a rebuttal of Shklar's assertion that Locke ought to be held as one of the spokesmen for the liberalism of rights as opposed to the liberalism of fear. Instead, I have argued, that precisely in Locke's thought we can see where the liberalism of fear and the liberalism of rights *necessarily* converge.

## CONCLUSION

So, where does this leave us? It leaves us with a sense of Lockean liberalism as necessarily one that still retains its commitments to the liberalism of rights, though on much more solid and perhaps reasonable ground of fear. We can say that, Locke's liberalism is "a liberalism with a tragic sense" (Allen 2001, 360).<sup>43</sup> Since we cannot wish ourselves to dwell above the death and destruction that we know is always around us, we need to be clear-eyed in understanding the true ground of our liberalism, the ground that will be the most persuasive to even that unreasonable lot of democrats and republicans. Locke, insofar as he is not *simply* a liberalism of rights philosopher, but a liberalism of rights philosopher with his tragic, historical sense, cannot (and will not) attempt to legislate metaphysical principles as the *only* or even most *effective* means of governing men in society, contrary to the initial impressions of his *Second Treatise*. Instead, we should understand Locke as mounting a liberal politics of judgment—and this matches with even the most contemporary "realist" critiques of ideal theory liberalism today.<sup>44</sup>

So, what, then, can we say Locke demands of a liberal democratic people? What does he want us to "know"?<sup>45</sup> I have made the argument in this chapter that Locke wants us to be properly afraid. Often we assume that Locke wants us to "know" something, to have a certain kind of

“reason” or to properly divine the will of God, or what have you. I have argued that Locke does not want us to “know” anything in the sense of something that is *certain* or foundational. Instead, Locke wants to persuade us through a direct appeal to the emotion of fear—to the sense, the sights and feelings, of being afraid. In this he follows Aristotle, who correctly understood that not only is a logical demonstration practically ineffective, but that reason and deliberation *emerge* out of being afraid. In this way, Locke can ground his liberalism in the passion of fear: we come to our properly see our concerns of self-government in the moment of fear.

So, what should we say that Locke wants us to know? Simply put, Locke wants us to know that things are not always what they seem, that suspiciousness is not antithetical to trust, and incidents seemingly far and remote, small and inconsequential may not be far or remote, small or inconsequential. The people ought to be predisposed to believe the busie head, to see the necessity of a guide that unmask and makes clear what is otherwise hidden. The ghost of tyranny, then, will always be a necessary device to stoke the fears of a too-trusting people.

Locke can be sure that a healthy liberal democracy can thrive if it is placed in the most concrete and effective passion, widely shared by all human beings: fear. As Locke says in his *Letter*: “fear did what reason could not do” (Malcolm 2011, 82).<sup>46</sup> The point is not to suggest that Locke is the first to recognize that the mass public can respond to fear.<sup>47</sup> Instead, the novelty is that liberalism rests properly and only on the passion of fear. This is to say, that, borrowing Shklar’s terminology, that Locke’s “liberalism of rights” is properly a “liberalism of fear,” or, perhaps more directly: the liberalism of rights *is* the liberalism of fear. The liberalism of rights is the teaching that most comes to the surface of the *Second Treatise*, and it is the more formalistic and legalistic doctrine; but, the liberalism of fear emerges when one follows Locke’s suggestion that politics is also about the “art of governing” the opinions and passions and what moves them.



In other words, it is a mistake to say that Locke's politics is a liberalism of rights as opposed to a liberalism of fear, not because Locke denies the liberalism of rights, but that Locke shows us that there can be no liberalism of rights without the first liberalism of fear.

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<sup>1</sup> Here I follow much of the recent “political epistemological,” to invent a clumsy phrase, studies that has recently emerged on Locke’s thought. In particular, I follow the work of Casson, Mehta, and Wolterstorff which will form the backbone of much of my discussion of the role of “judgment” in Locke’s politics. Casson, Douglas John *Liberating Judgment: Fanatics, Skeptics, and John Locke’s Politics of Probability* Princeton: Princeton University Press, 2011; Mehta, Uday Singh *The Anxiety of Freedom: Imagination and Individuality in Locke’s Political Thought*, Ithaca: Cornell University Press, 1992; Wolterstorff, Nicholas *John Locke and the Ethics of Belief*, Cambridge: Cambridge University Press 1996.

<sup>2</sup> Shklar, Judith “The Liberalism of Fear” in *Liberalism and the Moral Life* edited by Nancy L. Rosenblum, Cambridge: Harvard University Press 1989, 21-39.

<sup>3</sup> As I have tried to indicate throughout the whole of this dissertation project, the abstract principles of natural right are not denied as an impossible proposition for “post-foundationalism,” which I have tried to show that Locke should be counted among that group. The tension that I fear I have not been explicit about trying to avoid is this: the existence of natural rights is often taken as the *foundation* for our moral and political lives, and, consequentially, the basis for our legitimate government (if we are so lucky). Locke *certainly* has a doctrine of natural rights, and this doctrine is often discussed as if it were the true basis of his liberalism. In other words, Locke presents the story almost matter-of-factly in the beginning of the *Second Treatise*: we have natural rights, we are free and equal, and so forth. However, considerable tensions exist within Locke’s own presentation of this natural rights liberalism, from two sides: first, the Law of Nature must function like an innate idea in the state of nature, if it is to have the *original* power he assumes it to have, and innate ideas like these are roundly denied by Locke’s own epistemology; second, as Dunn has made clear, Locke’s doctrine of natural rights explicitly stems from our subject position as a “creature” of God, and this makes liberalism shackled to a certain stripe of Protestantism. In denying natural rights as the most important aspect of Locke’s teaching, I am not denying their ontological or metaphysical “truth,” but only that *they cannot operate reliably in political life*. Locke is a “post-foundationalist” because he was writing in a time where the foundations were *literally falling down around him*, as Casson and Wolterstorff make clear in their work on the importance of judgment in Locke’s politics, which I discuss in detail below under the heading “ethics of belief.” We should *not* take my thesis to be that Locke does not believe in natural rights, but, instead, I am arguing that the core of his liberalism is not (for reasons I outline in this chapter and generally in this dissertation) abstract foundationalism, but the phenomenology of everyday life, particularly fear.

<sup>4</sup> For a discussion of epistemological individualism and egalitarianism in Locke and analytic philosophy more generally, see Zagzebski, Linda *Epistemic Authority: A Theory of Trust, Authority, and Autonomy in Belief* Oxford: Oxford University Press, 2012.

<sup>5</sup> This term is taken from Locke’s *Essay* 2.28.7, and I have discussed this in the previous chapters of the dissertation. I will briefly outline the importance of this distinction for Locke again. Since we now understand that the core of legitimate government rests in the proper *understanding* of trust, we then must reevaluate the component ideas of both trust and legitimacy. In this latter notion is the idea of a “law,” which Locke divides into three types: divine, civil, and that of opinion. Properly speaking “morally good and evil then, is only the conformity or disagreement of our voluntary actions to some law, whereby good or evil is drawn on us, from the will and power of the law maker; which good and evil, pleasure or pain, attending to our observance or breach of the law, by the decree of the lawmaker, is that we call reward or punishment” (2.28.5). The goodness or badness of an action is composed of both the will animating the act, and that the act be in accordance (or breach) of a law. At the heart of our lives, then, is the fundamental interpretation of our actions in accordance with some law—divine, civil, or that of opinion or the “social law.” For Locke, the most impressive law is *not* the divine law or even the civil law, since he is very aware that these are often animated by a larger yet remote positive good (salvation or safety), which is quickly covered over by the uneasinesses of everyday life. Therefore, recognizing the effective or practical power of the law of opinion, Locke need not—since he is intimately concerned with the practical and effective conditions of our lives—go beyond “opinion” or “doxa.” For Locke, “no man escapes the punishment of their censure and dislike, who offends the fashion and opinion of the company he keeps, and would recommend himself to” (2.28.12). A helpful point on this can be found in Hans-Georg Gadamer’s “Aristotle’s Doxographical Approach,” in his *The Beginning of Philosophy* translated by Rod Coltman, New York: Continuum Press, 2001 71-82. For Gadamer, we should be careful in distinguishing between different senses of “*techne*” or “creation” as the opposite of “*physis*” or “nature,” since for Aristotle, *techne* is properly that which makes nature orderly, or molds the flux of social or political life to mirror the natural order of the cosmos (73-74). The point, then, is that discovery and invention or construction need not be diametrically opposed to one another: Locke is molding what was always already there, but gains its legitimacy in the act of molding not in the passive discovery.

<sup>6</sup> See Casson 2011 on this point.

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<sup>7</sup> See Casson 2011; Bourke, Richard and Raymond Guess (eds.), *Political Judgement: Essays for John Dunn*, Cambridge: Cambridge University Press, 2009.

<sup>8</sup> For example, the sections of Rawls' influential *A Theory of Justice* are telling: Theory, Institutions, Ends.

<sup>9</sup> However much we might wish the people to be more "moderate," we cannot deny that when it comes to the deciding the case between the people and the government, we ought to side with the people, see *Second Treatise* 240.

<sup>10</sup> Here I recognize the extent to which Locke's theory of the "busie mind" walks almost into a statement of the nature of human beings *as a natural kind* (Kautz 1995). For Locke, we need to be careful in this ascription—since, we cannot claim this insight as a natural discovery. Instead, Locke shows us that what he reveals as the busie head is compiled through numerous examinations of individuals, and that this is the inference drawn from his experience and observation. This, then, allows him to (perhaps uncomfortably) place a seemingly natural claim about the nature of human beings as an inferential claim from observation (and therefore, a truth guaranteed by the nominal essence). In this way, we can then perhaps see that, by defending and insisting on the "busie mind" character of the human being, Locke's epistemology is distinctly normative and political: he is *naming* and giving meaning to the "person" as a distinct *thing*, understandable through the words and propositions applied to it (and thereby "discovered" by Locke's empiricism). To say that the individual is the busie mind, as Locke does, is to give meaning not to the natural world but to our understanding of it, and therefore Locke does not (however it may look) ever make a claim about the natural kind but only the nominal essence. Consider, for example, Locke's doctrine of "personal identity" (*Essay* 2.27.9-26) where the "name" "person" is to be distinguished from any "natural substance," and identified thorough consciousness: "This may show us wherein personal identity consists; not in the identity of substance, but, as I have said, in the identity of consciousness," where there is a clear distinction between "man" and "person" or "self." Locke is concerned with the more nominal or dynamic concept of "self" or "person" than he is with the brutish, physiological facts of "man." Our moral concern rests with "persons," and then the questions arise, more true to our political lives: what *is* consciousness, and who "counts" as a "person"? The emergence of the "person" is the emergence of an "identity," i.e. it is a construction, not simply a discovery.

<sup>11</sup> This has led many Locke scholars down the path of trying to understand the many paradoxes and contradictions that arise both within the *Second Treatise* and the *Second Treatise* in relation to his *Essay* and other writings. I referenced these debates above in footnote 3, but for a review of this literature see: Aarsleff, Hans "The State of Nature and the Nature of Man in Locke," in *John Locke: Problems and Perspectives*, edited by John W. Yolton, Cambridge: Cambridge University Press, 1969 99-136; Ashcraft, Richard "Faith and Knowledge in Locke's Philosophy," in *John Locke: Problems and Perspectives*, edited by John W. Yolton, Cambridge: Cambridge University Press, 1969 194-223; Coby, Patrick "The Law of Nature in Locke's *Second Treatise*: Is Locke a Hobbesian?" *Review of Politics* 49:1, 3-28; Dunn, John *Locke* Oxford: Oxford University Press, 1984; Forde, Steven "Natural Law, Theology, and Morality in Locke," *American Journal of Political Science* 45:2, 396-409; Forde, Steven "What Does Locke Expect Us to Know?" *Review of Politics* 68 2006, 232-258; Forde, Steven *Locke, Science and Politics*: Cambridge: Cambridge University Press, 2014; Grant, Ruth *John Locke's Liberalism* Chicago: University of Chicago Press, 1987; Meyers, Peter C. *Our Only Star and Compass: Locke and the Struggle for Political Rationality*, New York: Rowman & Littlefield 1998; Schouls, Peter *Reasoned Freedom: John Locke and the Enlightenment* Ithaca: Cornell University Press, 1992; Strauss, Leo *Natural Right and History* Chicago: University of Chicago Press, 1953; Tarcov, Nathan "'A Non-Lockean Locke' and the Character of Liberalism" in *Liberalism Reconsidered* edited by Douglas MacLean and Claudia Mills, Totowa, New Jersey: Rowman & Allanheld 130-140; Waldron, Jeremy *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* Cambridge: Cambridge University Press, 2002; Yolton, John W. *Locke and the Compass of the Human Understanding: A Selective Commentary on the 'Essay'* Cambridge: Cambridge University Press, 1970; Zuckert, Michael *Natural Rights and the New Republicanism* Princeton: Princeton University Press, 1994; Zuckert, Michael *Launching Liberalism: On Lockean Political Philosophy* Lawrence, Kansas: University of Kansas Press, 2002.

<sup>12</sup> See chapter 4 above.

<sup>13</sup> We should be clear about what we mean when we say "probable." For some, it is unclear that Locke even truly understood the notion of "probability," see Hacking, Ian *The Emergence of Probability: A Philosophical Study of Early Ideas about Probability, Induction, and Statistical Inference* Cambridge: Cambridge University Press 2006, and his *Taming of Chance*, Cambridge: Cambridge University Press, 1990. For Hacking, Locke does not understand probabilities as markers of *statistical* or *frequency*. We should note that probability *was* indeed emerging well *before* the late 17<sup>th</sup> century, as Hacking argues (see Daston, Lorraine, "Probability and Evidence" in *The Cambridge History of Seventeenth-Century Philosophy* edited by Daniel Garber and Michael Ayers in 2 volumes, Cambridge: Cambridge University Press 1998; and her *Classical Probability and the Enlightenment* Princeton: Princeton University Press, 1988). Following Daston's lead, Casson (2011) argues that Locke's notion of "probability" is fully

robust if we understand probability to be a function of *judgment* which is an achievement wrestled out of scholastic ways of thinking that denied probable or plausible judgment. I would hasten to add that, strictly, then, probable judgment as *statistical* or *frequentist* marks of an event occurring is a more narrow operationalization of “probable judgment,” taken up much later by 20<sup>th</sup> century analytic philosophers, most notably Richtenbach, Hans “The Logical Foundations of the Concept of Probability,” in *Readings in Philosophical Analysis* edited by Herbert Feigl and Wilfrid Sellars, New York: Appleton-Century-Crofts Publishing 1949, 305-323; and Carnap, Rudolf “The Two Concepts of Probability,” *Philosophy and Phenomenological Research* 5:4 1945, 513-532. Here, the concept of probability takes on its more empirical or frequentist tone: measuring and cataloguing the appearance or disappearance of a given event. This is a narrowing of the sense of probability insofar as it obscures the extent to which it ultimately relies on inference and, therewith, the space between certain *scientia* and almost meaningless *opinio*, as Casson (2011) argues Locke was the first to truly make clear.

<sup>14</sup> Locke’s fourth book of the *Essay* is particularly concerned with cultivating the right opinion in light of proportionate evidence (*Essay* 4.2; 4.3; 4.11.8-10; 4.14). Since there are few things that attain the level of certainty of “intuitive” or “demonstrable” proofs, then we must be conscious about *how* we go about giving our “assent” to our beliefs. This is properly the work of “judgment,” which is the faculty that supplies the “want of clear and certain knowledge, in cases where that cannot be had” (4.14.3). Judgment is likewise concerned with the truth or falsity of things, though it does not attain to the level of “certainty” that supposed “knowledge” does. Instead, judgment must “presume” the connection between our ideas that are not clear and distinct. Since we must “presume” a connection or relation of some sort between any ideas, we are necessarily in the realm of the “probable” (4.15). Probability, insofar as it is tied to judgment, is also to “supply the defect of our knowledge, and to guide us where that fails” (4.15.4). The origins of our probable judgments—or, rather, the proofs or evidence for these probable judgments—come from two sources: ourselves in our own “observation” or “experiences,” or by “the testimony of others, vouching their observation and experience” (*ibid.*). The whole of Locke’s epistemology, then, is not in the establishment of demonstrable truths, but in the conduct and guidance of our judgments, in light of the evidence and testimony of others.

<sup>15</sup> The view that things need to be “constructed” is certainly fashionable today (see Hacking, Ian *The Social Construction of What?* Cambridge: Harvard University Press 1999), and I have suggested throughout this dissertation that Locke is deeply concerned with *constructing* a liberal subjectivity to go along with his constructed liberal democracy. Let me follow the simple sense of “social construction,” which is incidentally closer to Locke’s own meaning: that things *could be otherwise* and therefore require an *action of the will* to bring them about. In other words, that things are not inevitable.

<sup>16</sup> See footnote 14 above.

<sup>17</sup> We should never forget that Locke was trained in (and practiced heavily) medicine at Oxford, and it was through that training that he became involved with both the Royal Society and Shaftesbury. It would be irresponsible to deny Locke’s own training and numerous insights from his preferred vocation when discussing other seemingly unrelated matters like epistemology and politics—though, of course, we should not be shocked to learn that much of his work in the *Education* is drawn from his insights as a doctor, touring France in exile, where he had his infamous *Second Treatise* sent under the cover of a medical notebook on “the French disease,” and where he came to realize that madness was not simply a *physiological* phenomenon. For a review of this literature on Locke’s medical background and medicine’s influence on his thought, see: Dewhurst, Kenneth *John Locke (1632-1704), Physician and Philosopher: A Medical Biography*, Wellcome Historical Library 1963; Romanell, Patrick *John Locke and Medicine* Prometheus Books, 1984; Sanchez-Gonzalez Miguel A. “Medicine in John Locke’s Philosophy,” *The Journal of Medicine and Philosophy* 15 1990, 675-695.

<sup>18</sup> Here we can see the difference between the more contemplative Cartesian “Therapy of Doubt,” and Locke’s own preventative approach, as Wolterstorff (1994) makes clear: “The contrast with Descartes and Locke could not be sharper. What most impressed Descartes and Locke about the opinions of their fellow human beings was not that those of the wise contain a great deal of truth, but that, in general, they are riddled with error, with the consequence that our being reared in such a ‘climate of opinion’ plants in us all sorts of harmful *praejudicia* [or *doxa*]. To practice *scientia* successfully, Descartes insisted, we must free ourselves from these *praejudicia*; we do so not by working through our intellectual inheritance in a dialectical fashion but only by submitting the whole of it to the Therapy of Doubt. To the things themselves, said Locke! The full originality of Locke’s vision can now be spied. In Locke there is almost no echo of the long contemplative tradition. True knowledge, and hence true *scientia*, comes to very little. And in any case, what is known is not some realm of higher reality. It is simply the mind and its modifications” (1994, 224-225). As Wolterstorff concludes, “There is nothing in Locke like Descartes’ Therapy of Doubt. But now at last it becomes clear we were looking in the wrong place. We were expecting Locke to urge on us some therapeutic regimen. There is, indeed, a bit of that. Bit mainly the counterpart in Locke to Descartes’ Therapy

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of Doubt is not a similar regimen for curing the mind's wounds, but an educational program inculcating the habits required for rightly conducting the understanding. Locke's *Some Thoughts on Education* should be seen as the counterpart to those passages in Descartes where Descartes outlines, recommends, and practices his Therapy of Doubt. Descartes proposed therapeutic medicine, Locke, preventative" (1994, 153-154).

<sup>19</sup> Casson 2011.

<sup>20</sup> The concept of anxiety plays a particularly important role in Sheldon Wolin's presentation of classical liberalism and John Locke's thought, cf. Wolin, Sheldon *Politics and Vision: Continuity and Innovation in Western Political Thought*, Princeton: Princeton University Press, 2006. See especially, chapter 9. See also, Tarcov, Nathan "Locke's *Second Treatise* and 'The Best Fence Against Rebellion,'" *The Review of Politics* 43:2 1981 198-217. In particular, Tarcov concludes his essay by saying that: "Distrust, fear of the worst, and anticipation are not merely psychological characteristics of Lockean rebels but principles built into the theoretical structure of the state of nature and the state of war, of which the crucial practical instance is the right of resistance" (217). I completely agree with Tarcov's conclusion, but we should be careful to note that simple distrust or fear of the worst does not lead to the right to revolution or the assertion of self-government, though, like Tarcov says, it is seemingly a theoretical precondition for these to emerge.

<sup>21</sup> Terchek, Ronald J. *Republican Paradoxes and Liberal Anxieties: Retrieving Neglected Fragments of Political Theory*, New York: Rowman & Littlefield Publishers, 1997.

<sup>22</sup> The Greek word *Doxa* is often understood to be "opinion," but it more closely is simply the phenomenon of seeing that-which-appears. In other words, it is wholly in the realm of appearances, but also intimately concerned with our immediate concerns.

<sup>23</sup> See footnote 5 above.

<sup>24</sup> The opening of the *Second Treatise* takes for granted that individuals of whatever partisanship will come to recognize the truth of what Locke will expound because he posits them to be fundamentally interested parties. This can only happen if Locke is ready to "construct" a new "ideology" that radically reorders already existing conditions. I have argued that such an "ideology" is achieved by arguing that only a certain relationship between individuals properly houses the "political power": the magistrate/subject relationship. If we accept this decoupling of political power from nature or force, we are prepared to accept Locke's liberal rhetoric. Of course, this is only the *logos* of Locke's political rhetoric, not strictly the whole of his political teaching.

<sup>25</sup> Tarcov, Nathan *Locke's Education for Liberty* New York: Lexington Books, 1999.

<sup>26</sup> Locke, John *Political Essays* edited by Mark Goldie, Cambridge: Cambridge University Press, 1997.

<sup>27</sup> Ashcraft, Richard *Revolutionary Politics and Locke's Two Treatises of Government* Princeton: Princeton University Press, 1986, 372-373. Ashcraft makes a point that Coste was no mere translator of Locke's *Essay* into French, but was his close confidant, and someone for whom the political intrigues that Locke inevitably found himself was not lost on Coste. I should take the time here, too, to make the following point about *A Letter from a Person of Quality*, which strictly of unknown origin (Ashcraft 1986, 120-123). Locke clearly knew of the letter, and so the question is simply the extent to which his hand wrote the words. I have tried to show that, strictly speaking, the precise degree of authorship is not all that important, if we know that both Shaftesbury and Locke were writing this as an expression of long talks about the various controversies detailed in the letter, as they were inevitably unfolding in front of them. We know this to be the case. In short, I set out as partial proof *ad oculus* that Locke's authorship at least floated behind the *Letter*. However, the real controversy attached to the *Letter* is really Locke's truly "radical" commitments to Shaftesbury's "Rye House Plot," wherein a set of parliamentarians set out to literally kill the king (Ashcraft 129-chapter 4). For Ashcraft, Locke is *much* closer to the "radical" republicans or "levelers" than many others have wanted to speculate (Ashcraft 1986, 165). For a more recent denial of Locke's involvement in the Rye House Plot, see Milton, Philip "Locke and the Rye House Plot," *The Historical Journal* 43:3 2000, 647-668. Though I certainly am sympathetic to Milton's overall reexamination of the historical record, which comprises pieced together notes of Locke's own self-reported everyday happenings, the ambiguity of his involvement is far from resolved. Indeed, the radicalness of Locke's politics—which I have certainly tried to demonstrate throughout this chapter and more generally in this dissertation—does not rest *squarely* on the idea Locke was historically involved in a conspiracy, but, rather, that he is certainly *philosophically* open to such a possibility. Here, at least, we must depart from historical record, and analyze his thoughts and speeches, not necessarily his deeds.

<sup>28</sup> Laslett, Peter "Introduction," in *Locke: Two Treatises of Government* edited by Peter Laslett, Cambridge: Cambridge University Press, 1988.

<sup>29</sup> As with the larger discussion of the foundational character of Locke's thought, the doctrine of "tabula rasa" is equally controversial. I refer here especially to Laslett's (1988) "Introduction," where this is generally the drift of his take on Locke's priorities: "Some such construction as this might be made by a modern scholar attempting to create a theory of politics out of Locke's *Essay*, if, as so nearly happened, it had never become certainly known that

the *Two Treatises* was also Locke's. Such an exercise might have illuminating results, though it cannot be our subject here, for the implications of Locke's theory of knowledge for politics and political thinking were very considerable and acted quite independently of the influence of the *Two Treatises*. The famous doctrine of the *tabula rasa*, for example, the blank sheet of the mind on which experience and experience alone can write, made men begin to feel that the whole world is new for everyone and we are all absolutely free of what has gone before" (84). For Laslett, and basically only Laslett, the *Essay* and the *Second Treatise* should be read independently, even though obviously the teachings within the *Essay* have clear political importance. And, more importantly, the seeming epistemological doctrine of the "law of nature" animating the whole of Locke's *Second Treatise*, is completely antithetical to the epistemology he spent so much time crafting in the *Essay*. We then have two choices: either to reevaluate the relationship between the *Essay* and the *Second Treatise*, or, conclude as Laslett does, that "Locke is, perhaps, the least consistent of all the great philosophers, and pointing out the contradictions either within any of his works or between them is no difficult task" (82). I have, I believe rightly, decided to opt for the former course, rather than the latter.

<sup>30</sup> If you will pardon my etymological digression. Suspect or suspicion derives from the Latin *sub* (under) and *specio* (to see, observe). Suspect is then here to put something under observation. Specio is derived from the Greek word σκέπτομαι, or *skeptomai*, which is to think, to see, and forms the center of the familiar phrase "skepticism" or "skeptic," which is the philosophical doctrine that one ought to examine, look, or consider. Suspicion is then a derived term from Latin and Greek. But, the full Greek origin of the Latin suspicion is the following phrase, only seldom used, ὑποσκέπτεσθαι or *hyposkeptomai*, a combination of *hypo* (under) and *skeptomai* (to think, see, consider). This clumsy phrase is used importantly in Hippocrates' medical writings where he describes it as the proper way for a doctor to approach disease or maladies. Here the phrase is used as "to examine" and a more vigilant "be on the lookout," which is the virtue I am suggesting Locke is instilling in his liberal subjectivity: a vigilance, a "trust, but verify" mentality. Which, we can now properly call *suspicious* and understand the difference between *suspicion* or *hyposkeptomai* and mere distrust. Hippocrates was well represented in Locke's education at Oxford and later life (see: Woolhouse, Roger *Locke: A Biography* Cambridge: Cambridge University Press 2007; Romanell *Locke and Medicine*; and Laslett, Peter and John R. Harrison, *The Library of John Locke* Oxford: Clarendon Press 1971).

<sup>31</sup> Rahe, Paul *Soft Despotism, Democracy's Drift: Montesquieu, Rousseau, and Tocqueville on the Modern Prospect* New Haven: Yale University Press, 2009, 40-4; see also: Holmes, Stephen *Benjamin Constant and the making of modern liberalism*. New Haven: Yale University Press, 1984.

<sup>32</sup> Uneasiness can be taken as a given of our self-understanding if we believe in original sin, for example. This would make Locke's whole project thoroughly theological, and predicated on the existence of God and perhaps even committed to one of the Protestant variants of Christianity. Though Locke's particular blend of Christianity has been a constant focus of many Locke scholars (cf. Dunn, *Locke*), we should not be so quick to place the doctrine of uneasiness on such a narrow bottom as divine revelation as understood through a particular brand of 17<sup>th</sup> century Protestantism. Indeed, I will go on to argue that Locke's approach is properly understood to be a *phenomenological* approach, which is to say that uneasiness is the inevitable outcome of our sober reflection on the human condition, whatever its origin—through the "fall" or what have you. There is no reason to think that Locke would have to accept a particularly Protestant notion of uneasiness, since he would have to reject the claims of certainty and redemption if these doctrine (which they inevitably must) cover over our uneasiness, fear, and vulnerability. For help understanding this perspective (which is itself not wholly outside of Christianity, though not explicitly based on it), see Heidegger, Martin *Basic Concepts of Aristotelian Philosophy* translated by Robert D. Metcalf and Mark B. Tanzer, Bloomington, Indiana: Indiana University Press 2009, particularly section 21; and his *Being and Time* translated by Joan Stambaugh, Albany, New York: State University of New York Press, 1996.

<sup>33</sup> When referring to Aristotle's *Rhetoric*, I will use in text parenthetical citations that refer to their Bekker numbers. Unless otherwise noted, references to Aristotle will come from the *Rhetoric*, and the edition is from: Barnes, Jonathan (editor) *The Complete Works of Aristotle* in two volumes, Princeton: Princeton University Press, 1984. The *Rhetoric* is found in volume two.

<sup>34</sup> On this point, see particularly Garver, Eugene *Aristotle's Rhetoric: An Art of Character*, Chicago: University of Chicago Press, 1994, 130.

<sup>35</sup> The articulation of freedom and determinism is purposefully vague in this sentence. Locke, I believe, oscillates between hard free will libertarianism and a soft determinism, which is to say that he is probably a "compatibilist." Compatibilism is the view that we are some parts determined and in some parts free to choose. However, while it is probably generally true that Locke is a compatibilist, my argument here is that, by taking the reins of that which makes us afraid, i.e. controlling our fears, we can move more and more out of the realm of necessity (determinism) and into the realm of freedom (free will). This may be another way in which Locke is directly following Aristotle

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(Everson, Stephen "Aristotle's Compatibilism in the *Nichomachean Ethics*," *Ancient Philosophy* 10:1, 81-103). On the philosophical doctrine of compatibilism and various responses to it see: Ayer, A.J., *Philosophical Essays*, London: MacMillan, 1963; Dennett, Daniel "I Could Not Have Done Otherwise—So What?" *The Journal of Philosophy*, 81:10, 553-567; Bratman, Michael *Structures of Agency* Oxford: Oxford University Press, 2007; MacIntyre, Alisdair, "Determinism," *Mind* 66, 28-41; Pettit, Philip *A Theory of Freedom: From the Psychology to the Politics of Agency*, Oxford: Oxford University Press, 2001.

<sup>36</sup> The phrase "paranoid style" was coined by Richard Hofstadter in his *The Paranoid Style in American Politics and Other Essays*, Cambridge: Harvard University Press 1964. Richard Hofstadter coined the phrase "paranoid style" to refer to a "style of mind" that "evokes qualities of heated exaggeration, suspiciousness, and conspiratorial fantasy" (Hofstadter 1964, 3). Though Hofstadter originally coined the phrase to explain the particular behaviors and beliefs of the "right-wing" Goldwater movement, he is careful to not pathologize the "paranoid style" as that of "profoundly disturbed minds" (ibid., 4). Instead, the "paranoid style" is "above all, a way of seeing the world and expressing oneself," a "feeling of persecution" that "is indeed systematized in grandiose theories of conspiracy" (ibid., 4). To study the paranoid style, Hofstadter warns, is to study "the way in which ideas are believed and advocated rather than with the truth or falsity of their content" (ibid., 5). The point is not to examine individuals' beliefs, but to understand their reasoning processes—their "style" of thinking—as this style fundamentally underwrites (and indeed, organizes) the whole of their political belief systems. The paranoid style is, to arrive at Hofstadter's most provocative claim, not merely an accident of American political life, but a recurring and seemingly inextinguishable facet of liberal democracy. In fact, Hofstadter reasons, it is precisely the commonness of the "paranoid style" among "more or less normal people that makes the phenomenon significant" (ibid., 4). In other words, if the paranoid style was only for those on the fringe of society, it would not be worth exploring. Indeed, as Hofstadter concludes, "[the] recurrence of the paranoid style over a long span of time and in different places suggests that a mentality disposed to see the world in the paranoid's way may always be present in some considerable minority of the population" (ibid., 39). Numerous papers and books have been written discussing Hofstadter's notion of the "paranoid style" (see for example Fenster, Mark *Conspiracy Theories: Secrecy and Power in American Culture*, Minneapolis, Minnesota: University of Minnesota Press, 2008). My point here is to suggest that Locke's anxious liberalism both *relies upon* and (therefore) *helps cultivate* a version of the "paranoid style." Empirical research on this point would be needed to determine how far the "paranoid style" extends into the American mass public, but that is far beyond the scope of this chapter.

<sup>37</sup> Ashcraft 1986, chapter 8.

<sup>38</sup> Joyce Lee Malcom, *The Struggle for Sovereignty: Seventeenth-Century English Political Tracts*, 2 vols, ed. Joyce Lee Malcolm (Indianapolis: Liberty Fund, 1999). Vol. 2. 6/28/2016. <<http://oll.libertyfund.org/titles/1824>>

<sup>39</sup> Here I should note that Locke is again referencing the three "powers" that correspond with the three laws in the *Essay*: God and His divine law, the Monarch and the civil law, and the People and the law of opinion. The point, as I have made throughout this dissertation, is that the contestation between the civil law (the legal) and the law of opinion (the social) is a needed one to maintain peace. However, as Locke says in the *Second Treatise*, and is defending here in the *Letter* as the "right to alteration," we must always side with the People over the legal or the monarch.

<sup>40</sup> Here I share Wolin's "radical democratic" perspective on Locke's theory of revolution (Wolin, Sheldon "What Revolutionary Action Means Today," in *Dimensions of Radical Democracy* edited by Chantal Mouffe New York: Verso Books, 1992 240-253). Wolin says, "Democrats need a new concept of revolution. Its text should be John Locke not Karl Marx, because the problem is not to show that a social class should seize power—no special class in an advanced society can pretend to the universality of right which Marx presupposed in the works of his day—but to reinvent the forms and practices that will express a democratic conception of collective life" (249). The point is not to buy into the teleological narrative of a universal class ascending the throne, struggling against the forces of History. This revolution is too *much*. Instead, Wolin says, we need to recognize the "right to revolution is not solely a right to overturn and destroy institutions but to fashion new ones because those who rule have perverted the old ones. The right to revolution is the right to create new forms" (ibid.). This is what I mean when Locke here "institutionalizes" the radical or revolutionary right of resistance into normal everyday politics: the right to *alter*. This makes, as I have said before, Locke thoroughly a radical "democrat," if we understand that term to be related to the notion that the "people" have substantial power, even in (and precisely in) government: "This last point is crucial, for if the right to revolt is about devising new institutions, citizenship is more than a matter of being able to claim rights. It is about a capacity to generate power, for that is the only way that things get established in the world. And it is about a capacity to share in power, to cooperate in it, for that is how institutions and practices are sustained" (250). The point is, as I have stressed, that flux, uncertainty, and the need for judgment does not produce *apathy* but properly constituted civic engagement. My concept of suspicion or "trust, but verify" matches nicely

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with Wolin's phrase: "hopeful signs of discontent" (252). Liberalism is in trouble today because we do not recognize "discontent" *as* "hopeful," because we do not recognize that "trust" will *always* entail verification on our part. That our stability is guaranteed through our mutual recognition that things could in fact be otherwise, that the right to alter cannot be denied.

<sup>41</sup> Benhabib, Sheyla "Judith Shklar's Dystopic Liberalism," *Social Research* 61:2 1994, 477-488.

<sup>42</sup> Benhabib says the following in summing up Shklar's liberalism of fear: "This vision of an activist and redistributionist government, the call for a citizenship of vigilance, and the insistence upon the moral integrity of public officialdom go far beyond the dystopic liberalism of fear in terms of which Judith Shklar at times characterized her own project. Her vision of liberalism is one of active politics, public rectitude, and social compassion. In this respect, Judith Shklar's thought reminds me of a political thinker from another tradition, Antonio Gramsci, who wrote of 'pessimism of the intellect, and optimism of the will'" (1994, 486). We should do well to follow Benhabib's suggestion that underwriting Shklar's liberalism of fear is a much more radical vision of politics that follows the work of Gramsci. We should also remember that the innovative synthesis between liberalism and democracy set out by Chantal Mouffe and Ernesto Laclau, which I coopted in chapter 4 for the proper defense of "the People" against a hegemonic power, is *directly* related to the work of Gramsci. In this way, we come full circle to seeing the true radicalness of Locke's liberalism, understood as *both* the liberal democratic liberalism of rights and the more radical liberalism of fear.

<sup>43</sup> Allen, Jonathan "The Place of Negative Morality in Political Theory," *Political Theory* 29:3, 2001: 337-363. The conservative charge against Shklar's liberalism of fear was levelled by Kekes, Johnathan "Cruelty and Liberalism," *Ethics* 106:4 1996, 834-844. Shklar (and Locke) are certainly "conservative" insofar as that merely means "non-neutral." Of course, as I have tried to show, especially for Locke, that, while it certainly is the case that fear is perhaps universally felt, the emergence of the distinctly *liberal* subjectivity is not an inevitable process. More to the point, the line between reasonable and unreasonable will *always* be a matter of judgment (and therewith, of potential oppression). But this means merely that the liberalism of fear for both Shklar and Locke will gladly give up the principle of neutrality and the principle of non-interference for a more solidly gained principle of toleration and the principle of self-government or non-domination (Lovett, Frank "The Republican Critique of Liberalism" in *The Cambridge Companion to Liberalism* edited by Steven Wall, Cambridge: Cambridge University Press, 2014 381-400). In other words, Kekes demands that "liberal" mean something that it need not, and, so, no wonder that he finds the liberalism of fear something more "conservative," when it may entail doing away with neutrality and non-interference.

<sup>44</sup> For a recent review of the literature on "realist" critiques of Rawls's ideal theory liberalism, see: Gledhill, James "Rawls and Realism," *Social Theory and Practice* 38:1 2012, 55-82.

<sup>45</sup> See footnote 5 above. Locke does not want us to "know" anything.

<sup>46</sup> This is perhaps the clearest example of Locke's "liberal republicanism," drawn from Machiavelli's analysis that people do well under necessity than freedom (cf. Strauss, Leo *Thoughts on Machiavelli* Chicago: University of Chicago Press, 1958; Tarcov, Nathan "Belief and Opinion in Machiavelli's *Prince*," *The Review of Politics* 75 2013, 573-586).

<sup>47</sup> See, for example, Kapust, Daniel "On the Ancient Uses of Political Fear and Its Modern Implications," *Journal of the History of Ideas*, 69:3 2008, 353-373. Kapust makes clear that the ancients (as opposed to the moderns) held the view that fear can be particularly energizing. In this chapter, I have made clear that, by following Aristotle, Locke is one modern keenly aware of the importance of fear as a spur for industry and awareness.



## CONCLUSION

The liberal statesman and the liberal theorist must therefore, it seems to me, always seek to cultivate a certain prudent insecurity among liberal citizens, a reasonable understanding of the many (hidden) threats to our way of life and the various liberal virtues necessary to preserve it: sober fear makes men reasonably virtuous. This is a task for partisans of liberalism, even, and especially, in the most secure times. And this is a liberal paradox: liberal statesmen must often seem to be crying wolf, so to speak, since the preservation of our humane way of life depends on our regarding it as always vulnerable, because of certain facts about human nature, even when it seems to be most secure (Kautz 1995, 190).<sup>1</sup>

I sought to defend the following argument: liberal constitutionalism rests on a particular “suspicious” trust between the governed and the governing; this suspicious trust emerges from the recognition of a potential or actual, hidden or explicit betrayal; and so liberal constitutionalism emerges and rests on the recognition of betrayal, a certain paranoia, anxiety, or fear. For Locke, a major problem facing liberal constitutionalism is that suspicious trust rests tenuously between two “natural” trust-relationships antithetical to liberalism: the parent-child relationship of basic trust, and the master-slave relationship of mere reliance and stability. Unlike Hobbes, who thought the people were too distrustful, Locke see the exact opposite problem: the people are too trusting, and their trust tends naturally in an illiberal direction.<sup>2</sup> For Locke, these two positions stem from a quest for certainty, for avoiding and overcoming the flux we experience in our everyday lives. A major problem facing liberal constitutionalism today is the desire to escape from flux, contingency, and vulnerability. If liberal constitutionalism does rest on a sober recognition of flux and fear, our contemporary denial of these facts does not bode well for our liberalism.

I have argued that Locke’s politics of trust is not so much about establishing trust as it is in correcting basic, natural trust by making it more reflective, mature. I claimed that the principle way that Locke accomplishes this task is through two joint arguments. First, if our natural tendency to trust stems from our view that certainty or “ontological foundationalism” is necessary for our

political lives, then Locke wants to displace certainty and ontological foundationalism, thereby making us unwilling to rely on an unreflective natural trust. The connection between trusting unreflectively and striving for certainty is that if one believes in a world where such certainty is possible, then believing the trust is not a function of the will or judgment, absolving us of responsibility and the need for sober reflection about what we believe and the grounds for those beliefs. For Locke, in order to be responsible, we must believe we are in a world where innate or inevitable ideas do not obtain, where certainty about our political and ethical lives is not possible. Indeed, it is only in a world of flux or uncertainty where trust is the thing most needful. But this trust is not faith, but reasonable and reflective or responsible trust.

Second, I argued, Locke sets out to create a more reflective or responsible trust by empowering the figure of the “busie head.” The busie head is the dissenting voice, the “turbulent spirit,” who always seeks to alter the government, uncover injustice, and speculate about the designs and intentions of the government. Locke not only empowers this individual insofar as the call for alteration and dissent is encouraged in a world of flux, but the busie head is also entrusted with two constitutional duties. First, the busie head is entrusted with the duty of critically examining and publicly questioning the influence of the prerogative power. The liberal constitutional system, as Locke envisions it, has at its center the potential climactic conflict between the “people” and the prerogative power (usually wielded by the executive). Here, the busie head plays an important role in revealing the invisible influence of the prerogative power, anticipating its evolution into tyranny. The people, being too trusting, are cannot be counted on in doing this investigative work. Instead, Locke insists that the busie head must be the constant gadfly that hopefully uncovers the ill-designs of the governing before it is too late.

Besides the duty to uncover potential, hidden plots, serving a distinctly epistemic function, Locke gives the busie head another duty. Given the natural tendency of the people, Locke also envisions that the busie head is important in constituting the people as a collective identity, as a political agent. The busie head constitutes the people through establishing a chain of equivalences or a long train of injustices that tie individual and seemingly remote cases into a much larger story that potentially reveals the ill-intention of the governor. The people emerge as a collective identity through the particular abuses becoming general so much so that Locke says they cannot but feel and see them. The investigative work of the busie head becomes the backbone for the political identity of the people. The people is a body established against an unjust power, and therefore is a distinctly democratic expression and a uniquely constitutional expression of popular power. The democratic and suspicious element of society must be guided by the busie head, not only epistemologically but politically as well.

I have argued that this fixation on fear and uneasiness in Lockean liberalism is “healthy,” yet it seems all too apparent that fear is a very dangerous emotion. Perhaps so dangerous that, if it cannot be approached with severe caution, it might be better off being eradicated altogether. In no way have I suggested that unbridled fear is not dangerous. Instead, what I am arguing is that the dangerousness of fear is not enough to discount its political efficacy, especially for liberal politics. Instead, what I am arguing is that fear is not necessarily antithetical to a reflective, rational, and sober trust. Indeed, fear is constitutive of this reasonable and reflective trust. Locke makes a distinction between two aspects of politics: the cool, rational deductive doctrines (the “liberalism of rights,” as it is often called); and the “art of governing men in society.” This second part of politics, I argue, is an education in rhetoric and especially the power of establishing a reasonable trust upon the emotion of fear. I make this argument in chapter 5, by tracing Locke’s

recommendation that, in order to better understand the “art of governing,” we must turn to Aristotle’s Second Book of the *Rhetoric*. I show the parallels between Locke’s own *Education* and what Aristotle says in the *Rhetoric*. At the center, I find that Locke believes (like Aristotle) that fear can make us reasonably virtuous. On this low but solid ground of reasonable fear, Locke sets out to build his liberal politics of trust. Insofar as the busie head is the agent of paranoia or fear, liberal constitutionalism rests on the work of the busie head.

Today, however, we believe fear is bad and is dangerous to our liberal way of life. Where Locke recognized and took seriously the reasonableness of fear, we today set out to construct our liberal politics on the opposite premise: the politics of fear is mutually exclusive with our liberalism. I have detailed the work of John Rawls to establish this point, and to show that his liberalism is really a liberal absolutism and not a liberal constitutionalism. His absolutism emerges at the moment where he decides to find some other, transcendental ground for politics instead of remaining in the world of flux, vulnerability, and fear. For Locke, we dwell in the latter and ought to avoid the former. Instead of an absolutist reduction to establish certainty and eradicate fear, Locke sees liberalism as a prudential judgment, a *modus vivendi*. This is not usually how we understand ourselves as liberals, however, and this is a problem today that Locke uniquely can help us remedy.

My argument is that we need to tell a different story about what it means to be a liberal and what the basis of our liberalism really is. We are not a more evolved species of human, with genetically modified superior moral faculties. Nor does our liberalism rest so closely with our economic prosperity or our technological advancements, since the roots of liberalism extend back to a much poorer 17<sup>th</sup> century. We also should not consider ourselves to have transcended the common everyday struggles for survival, living in a utopia free from fear, conflict, and scarcity,

as many ideal theory liberals do implicitly and explicitly in their theorizing. We are liberals because we have reflected on our historical experiences, because we want to live in a world where we want to hold ourselves and others responsible, and because we value self-government. The trust of liberalism is not in looking past or abstracting away our lived experiences like in Rawls' presentation, but in engaging with them—in our experiences and observations. The attempt to separate our *logos*, our “reason” from our *ethos* or “character” serves only to confuse us and to weaken our commitments to liberal democracy. It confuses us because we do not know that our liberalism rests on an *ethos* as much as it does our *logos*. Part of reinvigorating liberal democracy, then, is to tell a different story about what it means to be a liberal, to talk about our *ethos*.

I do not separate the “liberalism of rights” from the “liberalism of fear.” Following Locke’s “developmental story” of a suspicious trust revealed in the potential for betrayal, I claim that the ground of our liberalism of rights *is* the sober recognition of fear. Our reason emerges in deliberating about what is fearful and what we ought to do about it. To sever fear from our lives not only makes it difficult for us to dwell in this world of flux, but further alienates us from our own original liberal spirit. Fear and flux are essential elements to our lives, and they ought to be central to our political thinking.

If we understand fear, flux, and conflict as central facts of political life, we can see how contemporary ideal theory liberalism is left wanting. It denies fear and the power of emotions; it denies the ontological fact of flux, insisting on ontological certainty; and, it denies conflict, by making our public lives free of collective identities. Ideal theory liberalism leaves us dazed because it presents a world that does not even attempt to map on to the most basic facts of our empirical political reality. When we think about liberalism, and we try to sculpt a liberal polity through institutional mechanisms, we cannot help but feel alienated. I believe this particular feeling of

alienation, wholly new in contemporary times, is a powerful causal element in the rise of global authoritarianism and right-wing populism today. By making political life seem as if it is a well-oiled machine run by expert mechanics, we present to ourselves and others the image of liberal political life completely devoid of character and meaning. The affective us/them distinction central to collective identities, the emotional aspect of politics, are all left out of our story of a healthy liberalism: liberals, we say, are not emotional or prone to collective identities, which is a fancy phrase for mob rule. This, I have tried to show, is an unfortunate misstep on our part: liberals *are* emotional and we *do* rely on at least one affective, collective identity—the people. This misstep in our theorizing turns into a monumental political disaster in practice. Since we fail to recognize the proper place for emotion and collective identity in our own liberalism, we leave that space cleared for others to take from us. Because we do not recognize emotion and collective identity as important elements of our liberal constitutionalism, we abdicate this important dimension of public life to those illiberals who are ready and willing to seize the opportunity. The apolitical story of liberalism that we tell ourselves has cleared fertile ground for authoritarianism today.

As I said in the introduction, in turning back to Locke I originally sought out to critique and correct his vision of liberalism, assuming like I did that the theoretical misstep was Locke's own separation of the liberalism of rights from the liberalism of fear. However, this is obviously not what I found. There is no separation between the liberalism of rights and the liberalism of fear in Locke, but actually the interweaving of the two. The hero of Locke's liberal constitutionalism—the model of liberal democratic statesmanship, I would say—is not the individual in an abstract state of nature, but the turbulent spirit, the dissenter, the busie head. By taking this marginal figure, who at first sight is seemingly dangerous, and making him central to Locke's liberalism, I have shown how fear and reason are not exclusive on Locke's account. This is the remedy we need

today. Locke's liberalism rests on a suspicious trust, which is a corrective for our natural tendency to trust uncritically. The way to correct this natural tendency is through fear, uneasiness, and anxiety, which, while dangerous in the extreme, makes us industrious, aware, deliberate, and responsible. Liberals today would do well to recognize that our liberalism is not other-worldly, but derived from our engagement with our empirical world. Lockean liberalism needs the busie head because this is the figure that cultivates and guides our fears, suspicions, and uneasinesses toward a recognizable liberal end. The defense of liberal democracy, then, rests on recognizing that fear and flux are the conditions of our liberal reason, and that we need to think of ourselves and be ready to act like busie heads.

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<sup>1</sup> Kautz, Steven J. *Liberalism and Community* Ithaca: Cornell University Press, 1995.

<sup>2</sup> On the one hand, people may be too busy to question or critically examine authority, taking trust to be more like a faith in the governor to care for the commonwealth. This is basic trust. On the other hand, Locke also recognizes that people who do set out to examine their beliefs and question authority may become confused or intentionally misled by others who seek to only dominate rather than educate toward self-government. In particular, Locke says that we quickly stumble in our investigations because we seek something that we cannot have: certain knowledge of the world. This makes even the inquisitive particularly prone to trusting too quickly, taking knowledge to be an apology for authority, an excuse to become enthusiastic in one's beliefs. People tend to trust too quickly for two different reasons: first, they believe they (or those they trust) have the truth; or, conversely, they are so cynical and disheartened by the pluralism of opinions about the truth that they become distrustful of each other that this cynical skepticism leads to a quietism, where the best authority is the established and stable authority. For more on this, see chapter 5 above.



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