

LOCKE'S POLITICAL METAPHYSICS

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Abstract

Locke's achievements in political theory have traditionally been viewed in isolation from his metaphysical and epistemological accomplishments. Consequently, many deformations of Locke's view of the former and the latter have manifested; principal among these is the notion of an atheist and materialist Locke. The goal of the proceeding study is to show how in what I've termed, Locke's "political metaphysics" we see the emergence of a politics that is a consequence of his metaphysical commitments to human beings as free persons. That freedom is understood by Locke, not merely positively, in what one does, or can be seen by others as being free to do, but negatively, as possibilities, beliefs or attitudes withheld. This is to say that, for Locke, human beings must be understood not merely by what is scrutable in the material or natural properties, but in their capacity to withhold their thoughts, desires, potential from the world. As the consequence of this withholding, an attitude of political toleration is necessitated by the nature of human beings as free persons as one can never be sure their assessments of another in their natural ostensible state reflects the totality of who they are. Moreover, because human beings can make and value things abstracted from the natural world, one is unable to absolutely value the work of human beings based on entirely on the assessments of another. Thus, Locke ingeniously deploys a skepticism and particularist metaphysics that resists the attempts to put people into groups and to impose normative categories on those groups which has been the source of so much political violence. Rather than seek, what Greg Forster once attributed to Locke as "*moral consensus*" Locke shows how the inscrutable nature of the human mind resists such consensus and demands that all government defer to the free person.

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Introduction

John Locke was not an atheist, not even a hidden one. That seems a fairly banal statement, but it goes against over a century of Locke scholarship that wants to recover a secular Locke so as to make him more amenable to an increasingly secular readership. Once you dispense with the secular Locke certain debates concerning his political philosophy dissolve, yet a whole host of new and interesting questions emerge; like what is the nature of human right, the state, the person and how our political arrangements might be organized. Part of the drive to secularize Locke is the association of the idea of Tolerance and secularism, in France it is now simply reflexive to couple toleration with laïcité.

Another major contributor to a secularized Locke is the suggestion that a Lockean political philosophy heavily deferential to Christian theology becomes irrelevant in a secular age. This suggestion was promulgated originally by John Dunn and later supported through suggestion by Alasdair MacIntyre and was further reinforced in Jeremy Waldron's subsequent assertion that Locke is irretrievably Christian. This suggests that Locke's political philosophy is only of parochial importance. It becomes incumbent, therefore, on anyone seeking to recover Lockean political philosophy to attempt a kind of de-Christianization of Locke in order to make it relevant. Much of John Rawls' political philosophy is an attempt at purging any theological or other comprehensive metaphysical commitments to the end of designing a purely formalist liberalism concerned with institutions rather than philosophies. Along with Rawls and his followers, another large school of political philosophy in North America, the

followers of Leo Strauss, tended to agree with their founders assessment that Locke's theological commitments were surface, and that Locke's political philosophy is thoroughly Hobbesian where the principle concern of an individual is their own self preservation.

What's so astonishing about these accounts is how they beg all the important questions about Locke's theological and metaphysical commitments, generally agreeing to a secular Locke, and then proceed to excommunicate each other on political grounds that have little to do with Locke. Mostly, I suspect, the secular Locke is due to a whiggish historiography that sees the products of the enlightenment as emerging in opposition to religious beliefs. This false intellectual cliché has, unfortunately, continued to inform much reading into enlightenment figures.

The advent of the twenty-first century saw the publication of Jeremy Waldron's *God, Locke and Equality*, an attempt to recover and understand the theological underpinning of Locke's commitment to the notion of equality, as Waldron summarizes the point: "...it is impossible to arrive at, articulate or defend a deep and robust conception of basic human equality without some sort of transcendent premise."¹ Dunn characterized Waldron's work as "transgressive" and indeed it transgressed many of the theretofore dogmatically held ideas about how one might read Locke. Generally, this study commiserates with Waldron's assertion about a transcendent premise, but argues that Waldron's premise isn't nearly "transcendent" enough and falls into the same trap as those Waldron

1 Waldron, *God, Locke, and Equality*, 240.

putatively wants to separate himself from, that is, those for whom Locke's political philosophy defers to an extensional or empirical test for right-worthiness. In contrast, I want to argue Locke begins with the "transcendent premise" of the free rights-bearing person and merely describes the moral and political implication of this view. Locke's political philosophy, I want to show, is best understood as a descriptive political metaphysics. What might be taken as prescriptive statements about tolerance, equality, and freedom I want to argue are in fact descriptions of the implications of holding a commitment to the existence of that peculiar thing called a "person" which is the "*transcendent premise*" Waldron describes in Locke's political philosophy.

Persons are what Locke called "forensick" entities because they are the locus of moral responsibility. As such, they are assumed free, sentient and consequently, inscrutable by others. In very much the same way Locke argues we cannot understand things in-themselves, he wants to argue that mental states cannot be inferred through public actions. Praise and blameworthiness must reside in the intent of the free individual and final judgment of intent can only be measured by the final judge, God. Because of this freedom and the privacy of that mental state, it is incumbent on a state to refrain from passing judgment or legislating against acts which do not appear to agree with another's idea of virtue or piety. Locke is skeptical about the very idea that you can know the mind of another.

Locke's skepticism does two important things; first, as Waldron argues, it provides an absolute basis for equality despite the obvious natural differences among people. Second

it ought to immunize him from critiques of elitism concerning any philosophy that valorizes reason given the differences in the rational powers amongst individuals. I say “ought” because sadly, this latter criticism, became influential for very similar reasons as the secular Locke became a feature of the scholarship, it agreed with an influential and then-ascendant Marxian critique of liberalism. The criticism itself as we’ll see is baseless, but the impact has been to influence heavily the presuppositions of would-be defenders of Locke towards a view of his moral and political philosophy as concerned with a demonstration of virtue either through some capacity or some concrete action. What I want to show, instead, is that for Locke, the capacity to be moral is a function of the kind of things that we are rather than what we do or can do. This ontological ground obviates the need to defend Locke against charges of elitism, and, as we’ll see, unites his epistemological and metaphysical views concerning a metaphysically rigid personal identity with a republican political philosophy that resists attempts to legislate moral practice and remains skeptical about government’s capacity to discern virtue for observable behaviour.

Locke’s political philosophy is best understood as a consequence of an understanding of human beings as persons and a description of the consequences of holding such a view. Very little of Locke is normative, and his moral philosophy is silent concerning specific practices leading to virtue, instead, he shows that the kind of things that we are, free, responsible agents or “persons” that persist through time, necessitate a kind of government that limits its encroachment into the precondition for us making those free choices.

Relatedly, I want to explore how personal identity and freedom both anticipate and respond to objections to Locke's idea of state, and most crucially his notion of tacit consent. The latter, I argue, is the foundation of a "negative" metaphysics of freedom that shows that what states, like all artifacts of human understanding anticipate, is a free person, standing in the background valuing and choosing the proper course, moderated by a conscience which is nothing less than the internalized voice of God. This is not to doom Locke to a parochial, idiosyncratically Christian political metaphysics as Dunn and others have argued, but an attempt to ground our political morality in a transcendent rather than naturalistic understanding of the person.

I. Locke on the Kind of Things We Are

Politics as a means of governing human affairs is shaped largely by what you believe you're governing. Superficially it seems, politics involves the management of needs of a society that is, as a whole, like a body whose parts require tending. If you think that there are no individuals, or at least, that individuals are merely a microcosm of the larger (and more important) state, then anything that may compromise the stability of that picture is something to be discouraged or eliminated. The same is true if what you take human beings to be, in Lockean terms, that collection of secondary properties that point to their primary properties. If all you're dealing with is all that can be perceived, and that perception is laid bare without need for interpretation or introspection, then political matters are merely a kind of hedonic calculus, a distribution according to need, as the

Marxian dictum so perfectly summed it up: "*from each according to his ability, to each according to his needs.*"² That materialist picture, however, presupposes assumptions about what we know and how we know it. Our perceptions are not pure or infallible, they are limited, and shaped by forces that do not necessarily reconcile our needs with our actions. Complicating this further, our needs are often not merely material needs but psychological ones, and at times these psychological needs or urges are fulfilled at the expense of what is perceived to be beneficial to the person. Psychological urges inspire acts which are ambitious, irrational, and often imperil not only individuals but entire states.

Is this to say that such forces ought to be quashed for the sake of the state? This is the question that John Locke wrestles with in various ways throughout his life. Living just after a period of mass violence and death throughout Europe in the 15th and 16th centuries, as Locke did, meant that anyone writing political philosophy in its wake had to reckon with one such powerful force, that of religion. Religions can serve either to undermine state power or reinforce it where a "state religion" is enforced. The genius of Locke, as we'll explore, was to harness a feature of transcendent religion to tame more primal urges for domination and recognition which inspire violence.

Since at least the *Crito*, philosophers have tried to understand the obligations to preserve the state in cases where its edicts run up against the private conscience of an individual. The difference, however, is that whereas Socrates resigns himself to his fate and stays in

2 Rawls, *Lectures on the History of Political Philosophy*, 370.

Athens, the protagonist in our story finds himself in Amsterdam, writing and publishing at a furious pace formulating, what I will argue, is the foundation for a "*heathen politics*"³ that at once demarcates the merely indifferent matters of society from the divine duties of salvation and conscience.

Because human beings' perceptions are imperfect, yet aspire to an ultimate happiness and perfection, a political order must accommodate the unflinching drives of personal conviction though those convictions may be errant, while at once ensuring civil order is not imperiled. Locke does this by ingeniously employing a feature of transcendent religion, the idea of "divine properties" of things which are incommensurate with "indifferent" properties of things we ordinarily view. This is a feature unique to transcendent religions which are an innovation unavailable to the ancient Greeks for example. Greek political philosophy is replete with admonitions about loyalty to the state and cosmic order it participates in.

Unlike poor Socrates, Locke survives. Locke, unlike Socrates, can flee his persecution and maintain his moral conviction because he does not conflate his moral duty to God with his duty to the state. Locke could never: "*Be persuaded by us who have brought you up*" as Socrates was.⁴ Locke would never resign himself to: "*Let it be then, Crito, and let us act in this way, since this is the way the god is leading us.*"⁵ This isn't a

3 Locke, *Political Essays*, 1997, 236.

4 In the *First Treatise* Locke explicitly addresses this idea that the efforts of parents somehow oblige of indenture or oblige their children: "*And indeed those who desire and design children, are but the occasions of their being, and, when they design and wish to beget them, do little more towards their making than Deucalion and his wife in the fable did towards the making of mankind, by throwing pebbles over their heads.*" (FT. VI.54)

5 Plato, Cooper, and Hutchinson, *Plato Complete Works*, 46–48.

function of any form of moral cowardice on Locke's part, but a recognition that divine matter would never put political obligations on him and any "god" that made such bizarrely petty and totally intelligible partisan political demands upon Locke is perhaps not a "god" worth worshipping.⁶⁷

The two ought obligations, civil and divine, ought on Locke's account, never conflict because they address two different kinds of happiness. The former of this world, the latter of the next. Nevertheless, this second aspect is absolutely necessary for understanding a feature of the human being, his freedom. In exploring the origins of human freedom Locke exposes a bad Greek metaphysics underlying the political philosophy of his predecessors (Hobbes and Filmer) which sees human political matters as contiguous with divine matters. The latter is completely obvious to a Greek polis whose gods are merely "bigger better" human beings, or anthropomorphisations of nature. The god of Christians, Muslims and Jews creates the light by dint of his will, Helios needs a driven chariot.

The peculiarity, the super-naturalness and transcendence of God means that he is unencumbered by constraints that would bother mortal beings, and, as an analogue, the political affairs of mortal beings needn't concern a transcendent God. In the context of

6 Henceforth (FT=First Treatise, ST=Second Treatise, E= Essay Concerning Human Understanding)

7 Locke makes a similar argument against Malebranche who argues human knowledge is an intelligible aspect of God's being. Locke goes on to argue that were aspects of God's being so easily intelligible he would be unworthy of worship: "*I easier content myself with my ignorance which roundly thinks thus: God is a simple being, omniscient, that knows all things possible; and omnipotent, that can do or make all things possible. But how he knows, or how he makes, I do not conscience his ways of knowing as well as his ways of creating, are to me incomprehensible; and if they were not so, I should not think him to be a God, or to be a perfecter in knowledge than I am.*" (Works of John Locke 255)

Christianity which Locke operates, the demands of salvation need never interfere with human affairs. For Locke, it isn't a matter of choosing between life and liberty in matters of state, but that the life-preserving functions of state ought never agitate such crises of conscience in the first place. To this end Locke's *Letter Concerning Toleration* is the cornerstone for his political philosophy not because it demarcates Church from state, that idea predates Toleration, but because it uses the idea of transcendence as a means of resolving the Socratic dilemma of civic and sacred duties. It does this by understanding the conscientious self or person which imbues sacred properties to common objects through worship practices, a self which requires a politics that doesn't reduce it to its *prima facie* "common properties."

The first thing this separation between "heathen politics"⁸ and heavenly psychology does is resolve a central problem that grounds the theretofore dominant political philosopher, Thomas Hobbes. Hobbes, not merely a philosopher but an astute observer of political psychology, observed that the human need for recognition combined with ambition drives individuals and groups to dominate others in the hope to make the other's estimation of them commensurate with their own, which is to say, superior. For Hobbes, wars arise due to a dissonance between self-appraisal and the appraisal of others. Perceived harsh judgment by others and the desire to reconcile the regard of others with one's self regard leads to war: *For every man looketh that his companion should value him at the same rate he sets upon himself, and, upon all signs of contempt or undervaluing, naturally endeavours as far as he dares (which amongst them that have no common power to keep*

8 Locke, *Political Essays*, 1997, 236.

them in quiet, is far enough to make them destroy each other) to extort a greater value from his contemners by damage, and from others by the example.” (Hobbes, Leviathan XIII) This impetus for war, Hobbes reckoned, could be resolved in the institution of an absolute sovereign who could enforce the peace and so overpower warring parties that neither would *dare* take up arms against the other in deference to the sovereign. Hobbes located his solution to the problem in the individual’s appraisal of the likelihood that they will be triumphant against a potential victim, he will attack “*as far as he dares.*” Thus the solution is to make the odds of a bellicose individual triumphing against the sovereign so unlikely that he would dare not incite conflict.

This solution to the problem is, as Locke saw, incredibly fraught as one would need to institute tyrannical state to create disincentives in the form of overwhelming odds against potential aggressors. The reasoning, as Locke exposed, is flawed because it hinges on two impossible ideals, first, it assumes the victor can ever be certain they’ve completely dominated the “heart” or conscience of another, and second, it predicates self-esteem and identity on social “indifferent” concerns, compromising the freedom of the individual. In Hobbes’ world, a probabilistic calculus of risk acceptance combined with a calculus of needs would be sufficient to a stable state. Neither of these, unfortunately for Hobbes, is possible. Individuals on the verge of aggression rarely act in deference to the likelihood of a desired result. This is especially true where the desired result is a change in the “thoughts” of another as in religious conviction as one could never be sure they have coerced the other nor that what they have achieved by a probabilistic reasoning is in fact the case.

Because peering into the hearts of other men presupposes the same divine clairvoyance presumed by Hobbes' political psychology, Locke can also reject the larger hubris in assuming one can organize individuals into a political vision that properly countenances their personal drives and cries of conscience. For Hobbes the drive is suppressed by the reasoned fear of an overpowering sovereign.

Locke tackles Hobbes' dilemma in a different way, rather than redressing the probabilistic assessments of success by potential belligerents, Locke recognizes that the satisfaction condition for success in a war of ideas, especially those of religious conviction, can only ever be self-satisfied. We don't have a vision of reality, political or otherwise *sub specie aeternitatis*, so Locke looks for the political condition under which an individual becomes satisfied with their self-assessments in such a way as to not be threatened by the perceived ill-appraisal of others. This self-recognition is moved from the realm of the "merely indifferent" common properties to sacred properties which are self-observed. This, however, requires individuals to be capable of regarding themselves in a way completely incommensurate or unrecognizable to the society, perhaps only a small group or community, a Church, or perhaps only to ones' self.

This resolved the psychological burden that gives rise to Hobbes' state of nature. When we look at the potentially harsh appraisal of others towards us, they are usually based on something external, our appearances, our personality, our national or ethnic background. Our appraisal of ourselves ought to countenance, on Locke's account, something

altogether different; our personhood. A “person” is what Locke calls a “forensick” term. It refers to our capacity to make choices and be held accountable for them in a moral and legal sense. The properties of persons are not the properties of our animal natures, just as we don’t hold dogs accountable for their misdeeds though we do admonish the owners. How do we account for such peculiar “forensick” properties? As Locke demonstrates, it is no more peculiar than the common worship practices of a Christian church where foodstuffs and other ordinary things take on special significance: *“The sprinkling of water and the use of bread and wine are both in their own nature and in the ordinary occasions of life altogether indifferent. Will any man, therefore, say that these things could have been introduced into religion and made a part of divine worship if not by divine institution?”* Objects of nature are *“altogether indifferent”* in their natural function but take on special significance from their “divine worship” practice. And, of course, those who participate in worship are doing nothing less than seeking salvation, seeking to fulfill the condition under which they might be judged before God, namely freedom.

The primary concern of the church is salvation, and salvation is merely the description of a conscientious relationship an individual has with their actions, and ultimately, themselves. The means by which the church promotes salvation, and consequently freedom, is through the instantiation of properties through divine worship which endow objects with properties that can only be beheld through acts of faith which are self-beheld beliefs. Because these properties are not a matter of public assent or agreement as they are not perceivable by others, or “common” they are not dependent on the appraisal of

others. Like conscience, acts or worship are judged by a standard that is not necessarily intelligible publicly.

We can now understand how the church promotes “freedom” through the instantiation of privately beheld divine properties of “indifferent” things, but what of “equality”?

Equality for Locke, contrary to its *prima facie* incompatibility, falls out of his understanding of freedom. To understand how, and incidentally, why the contemporary dilemma between freedom and equality exists, it’s important to understand how Locke distinguishes “equality” from “indifference.” Locke, in comparing a dog and goat explains that both are equidistant from God, and the only thing that could make one the object of worship from another is not a natural property but a divine directive: “*What difference is there between a dog and a goat, in respect of the divine nature, equally and infinitely distant from all affinity with matter, unless it be that God required the use of one in His worship and not of the other?*” Both are equally distant from God, but he is not indifferent to which will be required for a worship practice. Mischievously, Locke extends his metaphor to the political realm in *Toleration* to say: “*Princes, indeed, are born superior unto other men in power, but in nature equal.*” When Locke says they are “equal” here, he does not mean to say that their equidistance from God makes them equal, which would put dogs and goats on the same level as princes and men, but that their likeness to God evinces their equality. That is, their “*divine nature*” as both being persons to be judged before God makes them equal though their power is unequal.

Salvation figures large in Locke's account of freedom and equality because it presents a "forensick" scene, a scene where agency and moral responsibility must be determined, where Locke can explore most fully his concept of person. It's through salvation and establishing culpability, that the importance of self-determination outside of social and political interests becomes important if, as we are inclined to do, we believe individuals can be identified and held accountable for their actions. Locke argues that salvation presupposes freedom through the conscientious beholding of the conditions for success from the perspective of final judgment by God. This idea helps us understand how one can simultaneously be free as a person, yet equal to other persons. An individual determines the conditions under which they are satisfied in their beliefs and do not seek the approval or assent of others as that has no bearing on the fulfillment of the judgment condition. How could it? Those who do not share a common faith cannot recognize a shared divine property as Catholics see the "body of Christ" in the unleavened bread of the Eucharist. Their capacity to witness divine occurrence outside of public consent provides evidence of their capacity to take responsibility of their actions outside public scrutiny.

This private relation of an individual with themselves qua person is how Locke responds to Hobbes' astute observation, that we are never aggrieved about inequalities until they are perceived as such: "*For there is not ordinarily a greater sign of the equal distribution of anything than that every man is contented with his share.*" (Hobbes, Leviathan XIII) For Locke the contentment of the individual is not a "*sign*" of the "*equal distribution*" but "*equal distribution*" is nothing other than the *contentment* with one's share. Citing

“the judicious Hooker” Locke cites approvingly Hooker’s contention that: *“The like natural inducement hath brought men to know that it is no less their duty to love others than themselves, for seeing those things which are equal, must needs all have one measure; if I cannot but wish to receive good, even as much at every man’s hands, as any man can wish unto his own soul...”* (FT, II.5) This is more than simply a restatement of the golden rule, it is an attempt to understand equality as resting in what one is content to accept *“unto his own soul”* as equal rather than some external measure. Contentment as self-satisfaction based, not on an attempt to reconcile self-appraisal and the appraisal of others, but on whether the demands of salvation, or personal freedom have been satisfied through the understanding of a human being as a person, a *forensick* thing, which is a property conferred through divine institution rather than nature in the “indifferent” sense.

The state where an individual is equal to others, because free, is what Locke refers to as “toleration.” Toleration is the understanding that individual selves can hold tenets of faith as private beliefs apart from natural properties as evinced by church worship practices. Since the demands of salvation require freedom for judgment, the church provides the means by which an individual can understand themselves as something other than natural determination, as a being whose properties exceed their natural disposition, simply because they have a desire does not necessitate satiating it. The church, through the instillation of worship practice reinforces this separation yet it is coexistence of divine equality in the face of natural difference and “indifference”. This is why Locke refers to toleration as the *“chief characteristic mark of the true Church.”* The church, through its

demonstration of worship practices, takes indifferent objects and imbues them with divine properties privately beheld as faith convictions.

One might object that religious and class persecution has been practiced historically because it works. Indeed, Jeremy Waldron, before a kind of theistic conversion about Locke, once similarly asked why someone can't simply oppress and persecute as a means of enacting religious conversion. The process appears effective, but therein lies the problem, it only appears effective. A Magistrate or prince could never be certain they've coerced the sincere belief or private conscience of the individual. Locke's attack on Hobbes' probabilistic reasoning of potential belligerents has enormous significance not only to political philosophy but also to epistemology generally because it appears to show Locke anticipating and responding to a certain skeptical challenge in a way that a secularized Locke would be defenseless against. In the *Essay Concerning Human Understanding*, David Hume, an intellectual heir of Locke, asked: "*Shou'd it be said, that tho' in an opposition of chances 'tis impossible to determine with certainty, on which side the event will fall, yet we can pronounce with certainty, that 'tis more likely and probable, 'twill be on that side where there is a superior number of chances, than where there is an inferior: Shou'd this be said, I wou'd ask, what is here meant by likelihood and probability?*"⁹ The preponderance of evidence, according to Hume, will always fall to one side of a decision, so one ought use probability rather than conviction as a guide to discern causation. Similarly, one can never be sure they've coerced sincere private beliefs just as one cannot change divine natural properties presupposed in personhood

9 Hume, *Treatise*, 87.

(i.e. freedom, equality). What can one change? One can change indifferent natural properties, and in such matters it is perfectly reasonable to follow the direction of the prince or magistrate, but divine properties presupposed by judgement and salvation are not:

But let us grant that it is probable the way to eternal life may be better known by a prince than by his subjects, or at least that in this incertitude of things the safest and most commodious way for private persons is to follow his dictates. You will say: "What then?" If he should bid you follow merchandise for your livelihood, would you decline that course for fear it should not succeed? I answer: I would turn merchant upon the prince's command, because, in case I should have ill-success in trade, he is abundantly able to make up my loss some other way. If it be true, as he pretends, that he desires I should thrive and grow rich, he can set me up again when unsuccessful voyages have broken me. But this is not the case in the things that regard the life to come; if there I take a wrong course, if in that respect I am once undone, it is not in the magistrate's power to repair my loss, to ease my suffering, nor to restore me in any measure, much less entirely, to a good estate. What security can be given for the Kingdom of Heaven?

Since we can change natural properties, but not divine natural properties, we cannot use probability as a basis for determining matters of salvation as they are not something it is within a prince's or magistrate's power to correct, what is most likely to win a prince's favour or create riches is not necessarily the course to salvation. A transgressed divine directive cannot be repaired, it is the foundation upon which a selection of choices, all equally valid, because "indifferent," must be based, even if others approve of one's choice or one gains the prince's favour, there is no way to reconcile one's conscience to the transgression. Most importantly, what determines whether or not I should revolt against a prince or magistrate that has become tyrannical or made demands that I surrender my freedom is not a probabilistic calculation of my likelihood to succeed a la Hobbes, but an "*appeal to heaven.*" To put into a more intelligible and slightly more contemporary context, imagine an individual living in the Khmer Rouge's Cambodia or North Korea and they oppose their political regime. A good Hobbesean, or, for that matter a good Humean would say "What's more likely, that your cry of conscience will succeed or that you will be crushed by the state? Better to satisfy the demands of public order or moral duty of those who raised you (à la Socrates in the *Crito*). Hume perhaps by way of Hobbes wants to say "What's more likely, that you have encountered some feature of yourself that distinguishes you from the social order, or that you're simply deluding yourself." Locke is answering the far more important question, "What if you or your group is right and everyone else is wrong?" Locke wants to avoid the zealotry and anti-social fanaticism that might follow from the latter assertion while finding a political order and personal metaphysics that facilitates and anticipates a free responsible person. Locke does this in various ways, ways that unite his work in *Toleration* with his extended

critique of Filmer and Hobbes idea of sovereignty in the *Two Treatises*. This accommodation between the personal and political is argued for in three broad ways:

- 1) Church worship practices and human beings as *workmen* which transcend nature.
- 2) The idea of an “appeal to heaven” where no “common” judge exists (i.e. a judge who can, based on divine rather than common properties as evidenced can weigh and come to the proper conclusion).
- 3) Identity and personhood as metaphysically rigid and sine qua non to achieving sufficiency in one’s knowledge claims.

The practices of a Church in the context of a transcendent religion like Christianity, I’ll show, unites *Toleration* and the *First Treatise* by demonstrating the human capacity to transcend nature. The second concept, following from the first is the idea that personal identity is not reducible to a set of primary and secondary properties or what philosophers of language might call “definite descriptions.” Instead, as Locke shows, “person” is a forensic term that grounds culpability and agency in a transcendent identity which is independent of “*indifferent common properties*.” Those indifferent properties, as Locke shows are nothing less than the stuff of nature and natural properties, consequently, nature cannot be the ground of a moral philosophy that aspires to determine good and evil since: “*things are said to be indifferent in respect of moral good and evil, so that all things which are morally neither good nor evil are called indifferent.*”¹⁰

II: Locke's Church and "Properties" Private and Divine

William James once mused that Greeks had little joy or religious comfort compared to a confessing Christian, Muslim or Buddhist because the latter's transcendent religion which extol virtues of restraint rather than indulgence of earthly pleasure, the latter often confused for a measure of happiness:

The early Greeks are continually held up to us in literary works as models of the healthy-minded joyousness which the religion of nature may engender. There was indeed much joyousness among the Greeks—Homer's flow of enthusiasm for most things that the sun shines upon is steady. But even in Homer the reflective passages are cheerless, and the moment the Greeks grew systematically pensive and thought of ultimates, they became unmitigated pessimists. The jealousy of the gods, the nemesis that follows too much happiness, the all-encompassing death, fate's dark opacity, the ultimate and unintelligible cruelty, were the fixed background of their imagination. The beautiful joyousness of their polytheism is only a poetic modern fiction. They knew no joys comparable in quality of preciousness to those which we shall ere long see that Brahmans, Buddhists,

*Christians, Mohammedans, twice-born people whose religion is non-naturalistic, get from their several creeds of mysticism and renunciation.*¹¹

Locke expressed a similar sentiment deprecating the polytheistic religions intimating the same thing as James concerning the latter's lack of the transcendent:

*Whatsoever Plato and the soberest philosophers thought of the Nature and Being of the One God, they were fain in their outward Professions and Worship, to go with the Herd and keep to the Religion established by Law...He was every where near them; yet they were but like People groping and feeling for the something in the dark, and did not see him with a full and clear Day-light; But thought the Godhead like to Gold and Silver, and Stone, graven by Art and Man's Device.*¹²

Transcendent religions benefit from their transcendence, their reference to something *more* than nature. For the Greeks, the idea that individuals are mere organs in a larger cosmic order makes sense because everything is continuous from the state which is ultimately nature. This is easily reasoned out when you abstract your politics from

¹¹ James, *Varieties of Religious Experience*, 80.

¹² *The Works of John Locke ... The Fifth Edition. To Which Is Now First Added, the Life of the Author; and a Collection of Several of His Pieces Published by Mr. Desmaizeaux, Etc.*, 85.

perceived analogies, superior physical attributes, or priority, warrant superior political status. Filmer's entire political philosophy is predicated on such an analogy; the king is like a divine father. This line of analogical reasoning would have been quite familiar to a fifth or sixth-century Athenian. The tyrant Peisistratos is purported to have ridden into Athens with a tall and beautiful woman he claimed was Athena. Because the concept of a god was not a transcendent concept but continuous with a worldly understanding of something bigger, better, stronger as understood by their perceptions, the Athenians accepted Peisistratos' political claim. Compare this Greek idea to Locke's description of bread and water in Christian worship practices in *Toleration*:

*The sprinkling of Water, and the use of Bread and Wine, are both in their own nature, and in the ordinary occasions of Life, altogether indifferent. Will any Man therefore say that there things could have been introduced in Religion, and made a part of Divine Worship, if not by Divine Institution? If any Human Authority of Civil Power could have done this; why might it not also injoyn the eating of Fish, and drinking of Ale, in the Holy Blood of Beasts in Churches, and Expiations by Water or fire, and abundance more of this kind?*¹³

What Locke is implying here, is that God, being so indifferent about the “indifferent property” and the value derived from them that he chose to humble the objects of worship practice. Unlike in the realm of the “indifferent” the goal is not to impress or dominate, but merely to obey a divine directive which shows no deference to earthly power or what our senses might tell us is better. For a 5th century Greek there is no difference between natural excellence and moral excellence, indeed for Aristotle to pursue the former is to achieve the latter; a “good person”, like a “good chair” are evaluated in terms of meeting some “natural end”. The transcendent move Locke appropriates resolves the political problems of esteem and recognition which become *casus belli* for Hobbes’ warlike state of nature. Locke, by turning an individual’s self-estimation and moral worth in on itself with deference only to the final judgment of God (salvation), obviates the need for domination of the esteem of others. The exact means by which Locke separates the “*indifferent*” from the divine is the subject of his famous letter on “toleration.” While the letter “concerns” toleration of religious difference, this is a mere consequence of his larger political metaphysics that separates the divine from the merely indifferent.

The mere call for toleration is not unique to Locke and if this were the sole subject in the book it would have been a long-forgotten tract. Rather, what is notable about *Toleration* is how Locke demarcates the divine from the merely “*indifferent things*”¹⁴ and how an individual can, above the worldly authority of the Magistrate, act in deference to his own salvation despite a probabilistic reasoning to the contrary. Instead of an individual as a microcosm of the state, the latter possessing divine sanction, Locke understands the

14 Locke, *Political Essays*, 1997, 10.

divine as resting with the individual and the profane with the state, he defines his “*heathen politics*” distinct from the divine obligation of salvation of the person. The free person is the condition under which transcendent or divine properties are both apprehended and imbued, but also the condition under which one can gain certainty about the final veracity about their reason and perceptions. Any threat to this condition becomes, for Locke, a justification for revolt. This aspect of Toleration, the irreducibility of divine orders to public or princely approbation, resonates in the fifth chapter of the *Second Treatise* where property is understood as a “mixing” of personal labour with nature. That labour as an artifact of private efforts cannot be fully countenanced by the state, a potential conqueror or the world generally, think of a favorite possession whose value exceeds others estimation. Rather, the self and its valuations can only be understood by itself as judged before God: “*What I have said about the mutual toleration of private persons differing from one another in religion, I understand also of particular churches, which stand in the same relation to each other as private persons among themselves...*” This statement is entirely intelligible in terms of Locke’s larger political project in the *Treatises*, especially concerning private property as a function of a value an individual places upon a thing. This latter bit about “*private persons amongst themselves*” restates Locke’s larger project through *Toleration* and the *Treatises* to reject the Hobbesian approach while understanding the self as something that imparts to itself its divine properties which cannot be understood by the wider public within the state.

Locke’s rejoinder to Hume’s probabilistic assertion in the *Enquiry* is simple, while probability is generally a sound principle of reason; what happens in the unlikely event

that society is wrong and you are right? Or, when *Toleration* finds Locke siding with salvation over the comforts of probability and the prince in cases where the condition under which one can impart to things properties which transcend their nature is under threat, that is, freedom. While *Toleration* frames the problem, the *Second Treatise* answers it by examining the conditions under which “*no common judge on earth*” can be found vis-a-vis probability and princely proclamation. This interpretation of the relationship goes against a sharp demarcation between articles of faith and matters of knowledge to suggest that for Locke: “*Probability defers to faith, but knowledge emphatically does not.*” (Ward, 223) Ward describes reason’s “*regulatory role in faith*” but the regulation also takes place in the other direction. A “*reasonable*” moral determination predicated on probability is to conform with social norms and political imperatives of the powerful in virtually all cases. Where the state under which individuals can participate in their God-given and God-like capacities to transcend nature are infringed by a ruler, individuals have a moral responsibility to challenge the state despite their probability of success.

In *Toleration*, Locke argues for the irrationality of persecution, but how is that possible if the persecution has, as Jeremy Waldron once argued, a great probability of succeeding? Rationality is tied to its efficacy, and the inefficacy of persecution is tied to the transcendence of personality or identity. For the same reason Hobbes’ sovereign accommodation fails, so too does religious persecution. You can’t look into the hearts of men to determine if they sincerely believe an enforced state religion; you can’t see their capacity to countenance the possibility that the enforced state religion is false because

you can't countenance what's not there, that is, the condition of their freedom. Jean-Paul Sartre nicely adumbrates this slightly complicated point: "*It is not because I am free that my act is not subject to the determination of motives; on the contrary, the structure of motives as ineffective is the condition of my freedom.*"¹⁵ That is to say, the reason we can inquire into the motives or sincerity of a professed conviction is tacitly a conceit of the possibility of an individual believing or being motivated by something else which is not manifest physically, but still beheld intentionally. As Locke puts it in the Essay: "*For, it being unavoidable that the action depending on his will should exist or not exist, and its existence or not existence following perfectly the determination and preference of his will, he cannot avoid willing the existence or non-existence of that action; it is absolutely necessary that he will the one or the other.*" (Essay, XXI.23) Locke describes this as state where: "*man can be free and bound at once*" a progenitor to Sartre's: "*man is condemned to be free.*" Forced religious conversion through persecution, then, could never be complete. If the persecution was not out to change the conscience but merely the external manifestation of the individual, persecution could never work since it always presupposes the possibility of believing otherwise.

This responds to the most cynical and unkind critic who might join Waldron to suggest:

practice may stand in some sort of generative and supportive relation to belief – that it too may be part of the apparatus which surrounds, nurtures, and sustains the sort of intellectual conviction of which true religion, in Locke's

15 Sartre, *Essays In Existentialism*, 127.

*opinion is composed. So here we have another point of leverage for the theocrat. A law requiring attendance at Matins every morning may, despite its inefficacy in the immediate coercion of believe, nevertheless may be the best and most rational indirect way of avoiding a decline in genuine religious faith.*¹⁶

Locke rescues himself from Waldron's attack in the *Second Treatise*, understanding, unlike many of his critics transfixed by a pervasive materialism, that the target of religious persecution and political power, like the target of the seizure of property is not merely the seizure of stuff, but the seizure of the beholder's attitude or belief that makes the stuff desirable or valuable. That attitude or belief is the basis upon which our labours transform mere "nature" into property, the thing that makes it valuable:

"Nay, if we will rightly estimate things as they come to our use, and cast up the several expenses about them—what in them is purely owing to Nature and what to labour—we shall find that in most of them ninety-nine hundredths are wholly to be put on the account of labour." (ST, V.40)

Property doesn't just consist of stuff in the world but, by virtue of it including our intentions and attitudes includes that most important bit of property, ourselves. Our self-ownership too is "*ninety-nine hundredths*" due to our transformation of ourselves through our labours:

16 Mendus, *Justifying Toleration*, 83.

“Though the earth and all inferior creatures be common to all men, yet every man has a “property” in his own “person.” This nobody has any right to but himself. The “labour” of his body and the “work” of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property”. (ST, V.27)

Of course, there is quite a bit of unhappiness in the Locke scholarship that Waldron participates in with Locke’s “*mixing*” metaphor here, and his concept of private property generally. Waldron goes so far as to suspect that the insistence on the role of workmanship or labour mixing for “property right” is merely a tacit attack at the rights of North American first nations to hold rights by virtue of occupancy.¹⁷ As colourful and clever as some of the putative refutations of Locke’s concept of property as mixing are, a favorite being Nozick’s mixing a can of tomato soup into the ocean and claiming it as one’s own; the attacks turn out to be baseless.¹⁸ The unhappiness with the “mixing” metaphor as well as Waldron’s Lockean conspiracy against occupancy, turn out to be an artifact of reading the *Second Treatise* without deference to *Toleration* and the *First Treatise*. Besides lacking explicit textual support for the impetus behind the metaphor in chapter five of *Second Treatise*, detractors fail to appreciate why you might, as a liberal, be against mere occupancy as a ground for right. Simple existence cannot be the basis of property, for the same reason you can’t just persecute an individual into coerced religious conversion; it undermines the freedom to acquire property by making all property merely

¹⁷ Waldron is generally unsympathetic to the idea that Locke’s idea of private property and personhood somehow deprecates or dispossesses first nations populations Waldron, *God, Locke, and Equality*, 170. For a more critical appraisal, see Barbara Arneil, *John Locke and America*.

¹⁸ Nozick, *Anarchy, State, and Utopia*, 174-175.

the coincidence of another's being in a place with sufficient force to hold that place. Thus we have an establishing of a kind of divine right inheritance vindicating Louis IV's terse summary of the situation where property is identical to mere force and being, "*L'etat c'est moi.*" One might object that Locke defends property inheritance; but as David Gauthier points out, he only defends the right to determine the "conditions of inheritance"¹⁹ and the right of the conquered not to be disinherited by virtue of a superior force through conquest, once again validating that one cannot use "*common properties*" qua measures of power to determine personal and natural right.

If what determines who owns property is merely the strength of the strongest party, the only true "owner" of any given bit of property is a Hobbesian sovereign. But because the deprivation of the right of the individual to imbue or mix with nature their own free capacities to see something beyond its mere cash value is forbidden by Locke, that obliges the recognition of another party, neighbour or Magistrate. Pace Nozick, while no one has added tomato soup to the seas and claimed them their own, there is no shortage of powerful men in history who have added ships to the sea and claimed the same. The latter, of course, isn't property in the Lockean sense, but of course, neither is Nozick's example. Property for Locke isn't just the force of the greater power to possess; that's made explicit in the prohibition of conquerors seizing property of the vanquished's family. Rather property is a manifestation of an individual to abstract from nature, just as they are abstracted from nature as a person by God, and impart to things a character that makes them "property."

19 Gauthier, "The Role of Inheritance in Locke's Political Theory," 38.

Property of course, unlike personhood can't just, as with soteriological concerns, involve just a relationship of the individual with themselves, it requires recognition by others. That's a tricky thing; if, as Locke suggests, soteriological concerns which loom large over a person's life cannot be determined by others, how is it we can truly come to know another individual, and recognize their property and person? The answer Locke comes to, of course, is *we can't*. We can't peer into the hearts of men to determine the soteriological duties, divine imbuements, or personal identity, all we can do is, to the limits of our reason, base our actions on best evidence to bring the greatest material happiness through government. This is not to say that Locke is, *pace* many of his interpreters, a hedonist, but that the source of morality qua conscience isn't accessible to political or "indifferent" intervention like the base happinesses are. Indeed, confusing one's moral worth with the material world is in the personal, as with the political, objectionable to Locke speaking ill of times: "*When the temporal authority came to be mixed with ecclesiastical jurisdiction, and force was made use of, contrary to the nature of the thing...*"²⁰ The reason one ought not confuse the temporal with the ecclesiastical or the divine with the common is that one becomes enslaved to the estimations of another: "*for a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases.*" Because compacts and consent presuppose freedom, the preceding is not a normative but a descriptive statement. When one attempts to make of one's self an indifferent thing, and evaluate one's self solely on

20 Locke, *Political Essays*, 1997, 373.

the estimation of others, one becomes subject to their power. Of course, despite best efforts, when there is a dissonance between our self-conception and the community's conception of us, or at least our perception of that conception, we find ourselves under great deal of duress.

Because religious convictions that divine aspect of ourself is central to our transcendent identity as a morally responsible and free agent or person before God, we become immensely aggrieved by religious slights yet *"be indulgent to such iniquities and immoralities as are unbecoming the name of a Christian."*²¹ Moreover, where we are evaluated by others as being outside the graces of God, or, the idea that others don't have the same impression of me that I have of myself, we can, lacking sufficient faith, become distraught. We can of course be, to use Harry Frankfurt's clever phrase, wanton, in flaunting our iniquity. A philanderer, for instance, has nothing to fear from rumors about their immorality, because it merely reinforces a conception both that the community has, and more importantly, that they have of themselves. By compromising the freedom to worship, as Locke argues, we undermine not merely an individual's conception of themselves before God, but the very means vis-a-vis transcendent abstraction to understand themselves qua themselves rather than as a mere social function.

21 Locke, *The Second Treatise of Government ; And, A Letter Concerning Toleration*, 117.

III. Identity, Infidelity and Locke's "Abuse of Words"

Speaking of infidelity, I want to explore the topic a bit because I think it illuminates an enormous amount of what I think of as Locke's "*political metaphysics*", that is, the way he understands the complex relationship between a transcendent personal identity and political order. The former can only be defined outside the political, defined in the negative, something which cannot be reduced to mere necessity, but instead the ground of freedom. Identity is the condition under which the justness and rationality of a political order is evaluated. How does one know when the Prince or Magistrate has infringed upon the "reasonable" limits on their freedom of conscience? As it happens, the limits of toleration, like the limits to the acquisition of property rest on a transcendent personality manifest as conscience. We'll explore this issue a bit more later when we look at the so-called Lockean limit on property to the point there "*was still enough, and as good left; and more than the yet unprovided could use.*" (ST, V. 33)

Understanding toleration in terms of personal identity was attempted by a contemporary of Locke, Pierre Bayle. Bayle took the *Affaire Martin Guerre*, a story of mistaken identity, infidelity and law, and used it to argue for freedom of religious conscience. Martin Guerre had left his village only to return to find he had been replaced by an impostor. Several questions arose, not the least of which was whether Martin Guerre's wife had committed adultery with the impostor. Bayle's assessment was that the wife is vindicated by the fact that she had no reason to reject the impostor. Bayle reasons that though individuals act in a way contradicted by facts, the important matter is whether, in

their conscience, they are acting earnestly.²² Bayle went on to reason that because we could never be sure of the wife's conscience, we must be tolerant concerning her internal state. The earnestness of her internal state is something, to use Locke's wonderful phrase "*no judge on earth*" is in a position to evaluate. Locke discusses a similar "forensick" scenario where a judge, determining culpability of a drunk person unable to recall or consent to their actions. Unfortunately, the judge in such cases, according to Locke, must err on the side of reason and evidence and find the man guilty. That said, an individual has recourse in their own conscience which is, in Locke, cashed out in the Christian "Day of Judgment." You may be persecuted for something that you (the person) did not do, but God, and you, can peer into your heart to determine the truth:

Why else is he punished for the fact he commits when drunk, though he be never afterwards conscious of it? Just as much the same person, as a man that walks, and does other things in his sleep, is the same person, and is answerable for any mischief he shall do in it.

Human laws punish both, with a justice suitable to their way of knowledge: because in these cases they cannot distinguish certainly what is real, and what counterfeit: and so the ignorance in drunkenness of sleep is not admitted as a plea. For though punishment be annexed to personality, and

²² "I make my supposition that a wife who sees in a man the airs, size, traits and voice of her husband, without reason to doubt that this is not her husband, presenting himself as his soul, acting in the manner of a married man; I say that this woman would be not only excusable to comport herself in such a manner, but also, would be behave totally inexcusably to behave otherwise." Bayle, *Ceuvres diverses de Pierre Bayle*, 224. translated by the author.

*personality to consciousness, and the drunkard perhaps be not conscious of what he did; yet human judicatures justly punish him; because the fact is proved against him, but want of consciousness cannot be proved for him. But in the Great Day, wherein the secrets of all hearts shall be laid open, it may be reasonable to think, no one shall be made to answer for what he knows nothing of; but shall receive his doom, his conscience accusing or excusing him.*²³

A judge, like a magistrate, cannot and indeed should not, attempt to peer into the hearts of men. Just as Martin Guerre's wife must be assumed to be innocent due to the evidence of the deceit being shared among the village, so the drunkard is condemned. This leads us to some very interesting ideas that potentially resolve some major ongoing debates in Locke scholarship concerning the limits of property and moral philosophy; specifically, the all-important debate between Natural Law and Natural Right (i.e. the limits of property-acquisition versus the rights of the person to acquire it).

A proper understanding of a transcendent personal identity grounded on an individual's relationship before God qua conscience eliminates the debate by showing that conscience at once puts a limit to property where property is understood as the "workmanship" of an individual acting in deference to their salvation which never requires more "stuff" than is required for their bare survival. Injustice occurs when an individual conflates their

23 Strawson, *Locke on Personal Identity*, 216.

identity with riches. To illustrate the point, Locke too invokes a politically charged example of a prince and a cobbler exchanging consciousness.

If the soul of a prince, carrying with it the consciousness of the prince's past life, were to enter and inform the body of a cobbler who has been deserted by his own soul, everyone sees that he would be the same person as the prince, accountable only for the prince's actions; but who would say it was the same man? The body contributes to making the man, and in this case I should think everyone would let the body settle the 'same man' question, not dissuaded from this by the soul, with all its princely thoughts. To everyone but himself he would be the same cobbler, the same man. I know that in common parlance 'same person' and 'same man' stand for the same thing; and of course everyone will always be free to speak as he pleases, giving words what meanings he thinks fit, and changing them as often as he likes. Still, when we want to explore what makes the same spirit, man, or person, we must fix the ideas of spirit, man, or person in our minds; and when we have become clear about what we mean by them, we shan't find it hard to settle, for each of them, when it is 'the same' and when not. (E II.27)

A person is not identical to physical properties or occurrences that attend their person. This seems like a pretty banal statement about transcendent personality, but remember that it's a radical departure from centuries of political philosophy that identify persons with their role in the state and a tacit assault on inequality through the intimation that the prince is no natural superior to the cobbler. While Locke was safe in Amsterdam, Richard Rumbold, a man co-implicated with Locke in an attempt to assassinate the king, is reputed to have uttered a similar sentiment:

“This is a deluded generation, veiled in ignorance, that though popery and slavery be riding in upon them, do not perceive it; though I am sure that there was no man born marked by God above another; for none comes into this world with a saddle on his back, neither any bootied and spurred to ride him...”

Unlike things in the world, you are not the same as your “primary and secondary properties” to use the Lockean language. That is to say simply that the way people come to know *you* in their “*common*” experience, through physical properties, is not the essence of who *you* are. An explicit and neglected example by Locke is found in a letter to Stillingfleet where Locke replies to the insistence that properties are part of a thing:

These Qualities indeed may exist in them [Peter and James], which your Lordship calls Properties; but they are not properties in either of them, but are Properties of that specific abstract Nature, which Peter and James, for their suppos'd conformity to it are rank'd under. For example,

*Rationality, as much a Property are it is of a Man, is no Property of Peter. He was rational a good part of his Life, could write and read, and and was a sharp Fellow at a Bargain; but about Thirty,, a knock for alter'd him, that for these twenty Years past he has been able to do none of these things: there is to this day not so much appearance of Reason in him, as in his Horse or Monkey, and yet he is Peter still.*²⁴

Notice the deprecation of rationality yet the persistence of identity. The tendency to reduce individuals to their primary and secondary properties is the product of a kind of “*abuse of words*” that Locke describes as mistaking an individual’s essence for its component properties. Locke wants to argue that one can’t claim to know a thing simply by describing its properties, rather those properties are the ways by which we come to know that thing.

As J.L. Mackie observed²⁵, Locke anticipates a theory of proper names put forward by Saul Kripke.²⁶ Kripke believed in names as “rigid designators” in contrast to descriptivist accounts of naming which were predominant since the time of Mill. Descriptivists hold that a name is merely an abbreviation for a collection of definite descriptions or

24 *The Works of John Locke ... The Fifth Edition. To Which Is Now First Added, the Life of the Author; and a Collection of Several of His Pieces Published by Mr. Desmaizeaux, Etc.*, 545.

25 Mackie, “Locke’s Anticipation Of Kripke.”

26 This is by no-means an uncontroversial reading, Michael Ayers calls it “*myth-making*”(see Ayers, “Locke Versus Aristotle on Natural Kinds,” 248.)

properties, so when I say “Aristotle” all I’m really providing is an abbreviation of descriptions like: “The author of the *Nichomachean Ethics*, an Athenian, a pupil of Plato”. In contrast, Kripke, and I would argue Locke, believe there is a set of names which are “*rigid designators*” that is, they designate an individual across time and contingency such that I can imagine “Justin Trudeau” not referring to “Prime Minister of Canada” but there is no case where “Justin Trudeau” is not “Justin Trudeau. Locke suggests something similar pointing out: “*Whereas any one who observes their different qualities, can hardly doubt, that many of the individuals, called by the same name, are, in their internal constitution, as different one from another as several of those which are ranked under different specifick names.*”

To undermine the descriptivist account, Kripke puts forward an interesting thought experiment which harkens back to Locke’s case of the drunkard:

Suppose that Godel was not in fact the author of this theorem (the incompleteness of arithmetic). A man named ‘Schmidt’ whose body was found in Vienna under mysterious circumstances many years ago, actually did the work in question. His friend Godel somehow got hold of the manuscript and it was thereafter attributed to Godel. On the view in question, then, when our ordinary man uses the name ‘Godel’, he really means to refer to Schmidt, because

*Schmidt is the unique person satisfying the description, 'the man who discovered the incompleteness of arithmetic.'*²⁷

Much like Locke's drunkard, Kripke would concede there would be no external reasons for believing the drunkard's innocence, or that the author of the theorem was Schmidt, but one would still want to associate some kind of continuity of identity. Kripke concludes that this points to the status of names as metaphysically "*rigid designators*." For Locke too, identity and right function are "rigid designators" tying culpability (the "*forensick*" person) across differences of "common" primary and secondary properties. This is important not just for the earthly legal proceedings, but final judgment.

What does any of this have to do with Locke's political philosophy? Quite a lot. First, Locke discusses naming as an activity left to the "*workmanship of the understanding*."²⁸ As Locke explains in the *Essay*, man is the one that demarcates class and species. This expresses both, that our classifications of things like species is a function of our understanding and those properties we deem shared say nothing of the essence of the thing, but similarly concede our own essence eludes our understanding. We impart to things the unification of identity we find in ourselves. This notion of "*workmanship*" is found also in the *First Treatise* where it causes a great deal of mischief in the scholarship

27 Kripke, *Naming and Necessity*, 84.

28 "I would not here be thought to forget, much less to deny, that Nature, in the production of things, makes several of them alike: there is nothing more obvious, especially in the race of animals, and all things propagated by seed. But yet I think we may say, the sorting of them under names is the workmanship of the understanding, taking occasion, from the similitude it observes amongst them, to make abstract general ideas, and set them up in the mind, with names annexed to them, as patterns or forms, (for, in that sense, the word form has a very proper signification,) to which as particular things existing are found to agree, so they come to be of that species, have that denomination, or are put into that classis." (E III.13)

for those who wish to understand the limits of the personal right to acquire property. This mischief is the product of some confusion about the extent of one's right to property, including property over one's own body. Locke resolves the issue clearly: *"for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by His order and about His business; they are His property, whose workmanship they are made to last during His, not one another's pleasure."* (TT, II.6) We are only answerable to God on this account and not *"another's pleasure."* Does this, therefore, justify rapacious acquisition of property in God's or my name? That's the concern that animates the debate between the communitarian versus liberal understanding of the limitations Locke seems to impose on the acquisition of property from the "Natural Law", what Nozick calls the *"Lockean proviso."* Locke limits the acquisition of property to the extent to which the lives of other human beings are imperiled:

"It will, perhaps, be objected to this, that if gathering the acorns or other fruits of the earth, etc., makes a right to them, then any one may engross as much as he will. To which I answer, Not so. The same law of Nature that does by this means give us property, does also bound that property too. "God has given us all things richly." Is the voice of reason confirmed by inspiration? But how far has He given it us—"to enjoy"? As much as any one can make use of to

any advantage of life before it spoils, so much he may by his labour fix a property in.” (ST, IV. 30)

After taking a look at “where” those limits to the right to property lie, you start to see that both sides of the debate suffer from an uncritical secularization of Locke and a reduction of the “divine” aspect of the workmanship function to a mere “*power of abstraction*” as Waldron calls it. The debate is largely an artifact of failing to countenance a transcendent internalized “*voice of reason confirmed by inspiration*” (T2, V.27) which is nothing less than our conscience and provides a limit on our acts in deference to final judgment before God which is internalized as conscience.

The trouble with this interpretation is it seems a bit too Hobbesian in its approach to religion and becomes “*fear of power invisible, feigned by the mind, or imagined from tales publically allowed...*,”²⁹ and the basic impetus for civil society becomes little more than fear of a more dreadful state of nature. The fear, however, is not the prospect of “*power invisible*” or being punished, but the prospect of losing freedom, *i.e.* reduced to an animal or slave in a state of nature where one becomes no longer free to choose their actions.

Relatedly, John Dunn is interesting here when exploring whether suicide is morally permissible when captured and enslaved:

29 Ward, *John Locke and Modern Life*, 75.

*“Because it was logically impossible for slavery to be a consensual condition, the slave was no longer fully human acts; rather they were bestial...jurally his life is already forfeit and he has no rights whatsoever in its disposal. He has no right to do one thing rather than another, no right at all.”*³⁰

Dunn’s description of the slave’s predicament is not complete, the slave has not entirely been reduced to a “bestial” state, he still retains the right *“in his power, by resisting the will of his master, to draw on himself the death he desire.”* Even in the most justified circumstances, the slaveholder too, would still be constrained: *“And thus in the State of Nature, one Man comes by a Power over another; but yet no Absolute or Arbitrary Power, to use a Criminal when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own Will, but only to retribute to him, so far as calm reason and conscience dictates..”* (Second Treatise, II.4) Further, Locke makes explicit when one has not acted to deserve their slavery, the further choice, which is more like a command, does exist, to revolt:

And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to heaven, whenever they judge the cause of sufficient moment. And therefore, though the people cannot be judge, so as to have, by the constitution of that society, any superior power, to determine and give effective sentence in the case; yet they have, by a law antecedent and

30 Dunn, *The Political Thought of John Locke*, 108–9.

paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth, viz. to judge, whether they have just cause to make their appeal to heaven. And this judgment they cannot part with, it being out of a man's power so to submit himself to another, as to give him a liberty to destroy him; God and nature never allowing a man so to abandon himself, as to neglect his own preservation: and since he cannot take away his own life, neither can he give another power to take it. (Second Treatise, XIV.168)

From this famous passage, it's pretty clear that for Locke, consistent with his account of identity, there are no conditions under which we lose our right which is freedom; a freedom which is identical to our person that even in slavery persists. Such right is, to use Kripke's term, metaphysically rigid. To wit, Dunn contradicts himself in the same paragraph by suggesting of the slave that "*their captor can always terminate the state of war by making a compact with them.*"³¹ But how can one make a compact, implying consent by both parties, when the slave lacks the freedom to do this? The slave remains, in Dunn's account, "*bestial*" and has forfeit his rights. Just as Sartre explained to us earlier, the very possibility of doing otherwise, or not doing something always

presupposes our freedom, a point, as it happens, Locke made centuries earlier in the *Essay*.

The slave who kills himself is not acting under compulsion, because as “*workman*” or “*person*” with certain powers he always has a choice. Moreover, a slave may, under the guidance of his conscience, choose to revolt; to “*appeal to heaven*.” However, the slave could never forfeit their *right* to make a choice: “*And this judgment they cannot part with, it being out of a man's power so to submit himself to another, as to give him a liberty to destroy him.*” The most important word in what I want to now show is the most important sentence in this most important passage is the term “*they*.” An individual can never dispossess themselves of ownership over themselves, and by extension, ownership by God. Attempts to do so are fraught and, as Locke shows, the loss of countenancing or appealing to God as a transcendent soul of personal identity means that one becomes incapable of exercising any right. *Pace* Ward, what I want to show in this next section, is that identity is not a “*replacement for the traditional, and in Locke's view, highly suspect, metaphysical account of soul.*”³² Rather, identity is an attempt to understand the soul in a way that allows us to “confirm” our “*voice of reason*” with “*inspiration*” of conscience anticipating subsequent skeptical attacks on reason and knowledge launched by Hume and others.

IV. Infidelity, Suicide and the Politics of Freedom

32 Ward, *John Locke and Modern Life*, 216.

To explain this rather complicated relationship between “*inspiration*” and the “*voice of reason*,” and how Locke rescues himself from skepticism I want to return to that wealth of philosophical insight, marital infidelity. I want to begin by asking the following question, *who murdered Anna Karenina*? Of course one can answer the question simply, no one “murdered” Anna Karenina; she committed suicide. Curiously, however, Tolstoy describes the first consummation of Anna’s affair with Vronsky as akin to a murder:

And he felt what a murderer must feel when he looks at the body he has deprived of life. This body deprived of life was their love, the first period of their love. There was something horrible and loathsome in his recollections of what had been paid for with this terrible price of shame. Shame at her spiritual nakedness weighed on her and communicated itself to him[...] ‘Everything is finished,’ she said. ‘I have nothing but you. Remember that.’ ‘How can I not remember what is my very life? For one minute of this happiness...’³³

There is a fascinating and illustrative contrast here between Anna Karenina and the wife of Martin Guerre. What Anna Karenina has done is removed herself both from public approbation, but more importantly, from the grace of God. She attempts to manipulate

the latter, imposing an identity predicated solely on the judgments of others which doesn't go well:

She had gathered her last forces in order to maintain the role she had taken upon herself. And in this role of ostensible calm she succeeded fully. People who did not know her and her circle, and who had not heard all the expressions of commiseration, indignation and astonishment from women that she should allow herself to appear in society and appear so conspicuously.³⁴

Anna Karenina has attempted to reconstitute her identity through the approbation of others, and her new relationship with Vronsky, she has, to hearken back to Locke, gone to war with her society, but is deprived of a heavenly appeal. Why does that matter? Because without a conscience and identity grounded in divine rather than common or public approval, one cannot be certain that their judgments are not errant and that one is not merely a slave.

In the case of Anna Karenina, she is driven mad by the prospect that Vronsky's family may have promised him to another woman. She has nothing to ground certainty of her lover's fidelity. That fidelity would have been vouchsafed by the "*divine institution*" of marriage that she has deprived herself of. Now her suspicions guide a plausible reasoning unaided by faith and God: there is nothing that keeps a potential lover whose

34 Ibid., 547.

had an affair with a married woman from doing it again to the same party, the latter having no respect for the limits imposed by the divine institution. Anna Karenina is driven mad by these doubts and kills herself having now apparently twice sinned, first against her husband, and in her suicide, as Locke might say, against God. But did Anna Karenina sin by killing herself? Everyone generally accepts the Lockean prohibition against suicide and it's always been reasoned as being against the precept that we are the workmanship of God and God holds exclusive right to take our lives. Is this, however, true? What I propose to show is that Locke's putative prohibition on suicide is in reality a description of its impossibility.

That's a seemingly strange thing to suggest; after all, how can something seemingly so commonplace as suicide be impossible? The puzzlement has to do with our contemporary materialism which fails to countenance Locke's peculiar account of soul, or, if you like, identity. At first blush, Locke seems contradictory in his simultaneous rejection of suicide yet acceptance of the conditions under which a slave might commit suicide, Michael Zuckert summarizes the point perfectly:

One may licitly destroy the object of this right, one's own life. Yet Locke insists we cannot surrender to another our right to life. This paradox may be readily resolved by distinguishing the right itself and the object of the right. We

*may alienate (or destroy) the object of an inalienable right,
but not the right itself.*³⁵

One of Zuckert's most important insights in *Natural Rights and the New Republicanism*, albeit tacit and incomplete is how the sanction on suicide discloses a lot about the nature of "inalienable right". The nature of the inalienability of right is revealed by examining the ways in which one can dispose of a body, including their own; separating the right as a free act and suicide as an act on a mere body. As we'll see, however, Zuckert doesn't fully resolve the "paradox" because he fails to acknowledge the locus of this "*right itself*" in the transcendent freedom of a personal identity/immortal soul. Rather, Zuckert still wants to cast suicide as a choice that can be exercised as a fulfillment of a "right" over one's possession which is one's self hearkening back to the *Second Treatise* where: "*Though the earth and all inferior creatures be common to all men, yet every man has a "property" in his own "person." This nobody has any right to but himself.*" (ST, V. 26) This, however, fails to fully appreciate what Locke is intimating about the power to demarcate property as something a person "*removes from Nature*"; the ability for that person to transcend nature. As Locke continues in the same passage: "*Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property.*" (ST, V. 26) Much is made of the "*mixing*" but what is often missed is the "*removal*" from "*Nature.*"

35 Zuckert, *Natural Rights and the New Republicanism*, 245.

The faculty which enables the very idea of property, that is, the capacity to abstract from nature and imbue divine or unnatural properties, is found in the person, which is the source of right. The failure to countenance a person as being rather than possessing an “*immortal soul*” or “*transcendent identity*” which “owns” their body, means that Zuckert’s account of Locke’s justification of suicide, like Dunn’s misses what I earlier called the “impossibility of suicide” where suicide is the killing of the person. Rather the person survives to final judgement, though the body dies.

The paradox of how someone owned by God to “*dispose with as he pleases*” is entitled to take their own life is properly answered by Locke’s peculiar understanding of identity. The strange, though most-consistently Lockean account, is that you can kill your body while preserving your identity or soul. This is explained most clearly by Locke’s account of resurrection where a soul can transmigrate to a different body: “*And thus we may be able, without any difficulty, to conceive the same person at the resurrection, though in a body not exactly in make or parts the same which he had here, the same consciousness going along with the soul that inhabits it.*” (*Essay, XXVII.15*) The immortality of the soul or, the transcendence of identity if you like, means that there are cases where you may not inhabit a given body or be the possessor of a given set of properties, but there is no case where you are not you.

You cannot discharge your responsibility for committing an act simply by dispossessing yourself of your body any more than a murderer can absolve himself of responsibility by dispossessing himself of the weapon he used: “*In this personal identity, is founded all the*

right and justice of reward and punishment...” (Essay, XXVII.18) This might strike the contemporary ear as strange, but again, that's only because we often hold a materialistic and deterministic picture of the universe without critically reflecting on its absurdities or challenges. The identification of agency to decide to kill with indifferent common properties of a weapon (extending the weapon to include the body) in this “*forensick*” example of murder would be quite problematic if a murderer were to say they didn't do it, it was their body. Dispensing of a weapon like throwing away a pistol, is not different than killing one's self in an attempt at absolution, “*you*” are still responsible. Again, Zuckert's insight into the distinction between right and object of right is correct. It's true that the right is inalienable though its object is not, but I want to take it further to say the inalienability of it is due to the nature of the rights-bearer, the transcendent personal identity which is not identical with common properties which are all alienable.

You don't have an “inalienable right” to be a baker, for example, because baking and its products are alienable, it's contingent on the labour of others, or the availability of ingredients in an indifferent, contingent world, and those contingencies change. You can, however, say that you are free to bake as a function of what you are as a person. On the contrary, if a government or a magistrate were to say you are a baker and impose this role and identity upon you, you then must decide whether your right has been infringed upon by conflating your free personal identity with an indifferent common property or social function. Scholars for generations have sought to cash out “inalienability” through Natural Law. In Locke we find an ingeniously different and modern way to understand it; descriptively, in terms of a transcendent personal identity, asserting the existence of

this new kind of thing, a person, where certain phenomena or moral quandaries are resolved through a description of what countenancing that person implies instead of what one ought to do or be.

IV. Toleration, Tacit Consent and State Borders

This new picture of Locke's descriptive rather than normative account of freedom and identity allows us to put to rest another major debate in the scholarship concerning the possibility of tacit consent. Tacit consent, is the idea that by living in a state, and availing yourself of its security conveniences, you consent to enter a compact wherein you agree to obey the laws of the state and the duties or obligations that entails.³⁶ The trouble with such a doctrine is that it seems to assume consent based on factors an individual cannot control like the place of their birth, their language, or their customs. If consent presupposes the freedom of choice, it seems that choice has been denied, as Hume famously rebuts Locke:

Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given his tacit consent to his authority, and promised him obedience; it may be answered, that such an implied consent

³⁶ "And to this I say that every man that hath any possession, or enjoyment, of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as anyone under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and, in effect, it reaches as far as the very being of anyone within the territories of that government." *Second Treatise, VIII.119*

can only have a place, where a man imagines that the matter depends on his choice. But where he thinks (as all mankind do who are born under established government) that by his birth he owes allegiance to a certain prince or certain form of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims. Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives, from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master, though he was carried on board while asleep, and must leap into the ocean, and perish the moment he leaves her.³⁷

This criticism seems pretty devastating, Hume goes on to argue if one is committed to consent as a rational act of choice, the exemplar of this phenomenon is surely: *“when a foreigner settles in any country, and is beforehand acquainted with the prince, and government, and laws, to which he must submit.”*³⁸ Surely if anything can be called “consent” it cannot be “tacit” or imposed prior to rational choice. The trouble with Hume’s objection is twofold. First, he conflates through his analogy of the ship

37 Rosen, Wolff, and McKinnon, *Political Thought*, 67.
38 Ibid.

passenger and the “hard” natural boundary of the sea with the soft intentional or institutional boundary of the state. Second, he forgets his own skepticism in simply assuming that a state boundary is something defined purely in the affirmative and not in the possibility of being outside the state.

To understand this latter flaw a bit better, it would be helpful to see how Locke might reconcile the free person with the obligations implied in tacit consent. Consider the following question: Imagine you are out for a picnic in a remote area along the 49th parallel in western North America; how do you know when you’re in Canada and not in the United States? Certainly there are not borders or lines drawn to indicate whether you’ve traversed into a different sovereign nation. If being in a state is a bit like being a passenger on a ship as Hume would suggest, then what in nature tells you you’re in Canada? The answer, of course, is nothing; nature is, as Locke would put it, “*indifferent.*” Through another “*workmanship of the understanding*” an individual or group is able to put together several divergent properties and call it a “state.”

Because the act of procuring property presupposes free personhood, possession of the former does not warrant control over the latter: “*how will the possession even of the whole Earth, give any one Sovereign arbitrary authority over the Persons of Men?*” (FT, I. 41) Notice here how Locke distinguishes what the unjust “*authority*” is over; the “*Persons*” of men. Every state must presuppose a capacity to leave it, otherwise a state is a tyranny, which deprives the choice of being “outside the state” and which identifies the state as necessary to the person, which is false. This conflation of a free person with

indifferent nature brings the conscientious free person into the state of nature, of viewing the arbitrariness of the state which he then treats accordingly: *“one may destroy a man who makes war upon him, or has discovered an enmity to his being, for the same reason that he may kill a wolf or a lion; because such men are not under the ties of the common law of reason, have no other rule, but that of force and violence, and so may be treated as beasts of prey, those dangerous and noxious creatures, that will be sure to destroy him whenever he falls into their power.”* (ST, III.16)

This is to say, that one may treat as an indifferent object or creature of nature a *“wolf or a lion”* anyone who makes war upon an individual. As Richard Ashcraft points out, Locke here is explicitly using scriptural justification and allusion directly to tyrants as natural enemies.³⁹ Thus, when one is outside the bounds of reason within the state, one is justified in war, Locke is explicitly referring to a loss of “consent” and an infringement *“against the right of my freedom.”*:

And hence it is, that he who attempts to get another man into his absolute power, does thereby put himself into a state of war with him; it being to be understood as a declaration of a design upon his life: for I have reason to conclude, that he who would get me into his power without my consent, would use me as he pleased when he had got me there, and destroy

39 See Ashcraft’s *Revolutionary Politics and Locke’s Two Treatises of Government*, 401. Citing the Shaftesbury papers: *“Such are not kings but tyrants, called wolves and lions in the Scripture, that deserve to be destroyed from the face of the earth, as being destroyers of mankind.”*

me too when he had a fancy to it; for no body can desire to have me in his absolute power, unless it be to compel me by force to that which is against the right of my freedom, i.e. make me a slave. (ST, III.17)

For Locke, to be controlled by a person completely, to have no recourse to dissent or difference is to be enslaved and warrants a right to war. In any state, no one can have “absolute power” over me because I must always have the right to differ in freedom. When such a right is infringed, I can go back to a “state of nature” recognizing the indifference of the state and its power over me, including its territorial boundary, and declare war on it. The prospect of leaving the state and dissenting from the state to the extent that reason allows (i.e. not imperil the lives of others), must always be present and tested, otherwise, how do I know if I am, in fact, free? Locke explains this plainly in the Essay: “*wherever any performance or forbearance are not equally in a Man’s power; where-ever doing or not doing, will not equally follow upon the preference of his mind directing it, there he is not Free. (Essay, XXI.8).*” This is probably the reason many philosophers, with Hume, have difficulty reconciling Locke’s theory of tacit consent with the idea of state borders, they fail to countenance the idea that borders are also defined in the negative as “not” being somewhere else. To explain this a bit more clearly, consider how Thucydides explains the foundation of Athens:

It was the quality of the earth which led to an imbalance of power and the resulting internal quarrels which destroyed communities, as well as the greater risk of aggression from outsiders. Certainly the thin soil of Attica kept it largely

*free of such internal strife so the original population remained. And here is substantial proof of my argument that migration prevented comparable development elsewhere: the most powerful of those forced out the rest of Greece by war or civil strife resorted to Athens as a stable society.*⁴⁰

This isn't a grand tale of what government provides; this is certainly no Peisistratus riding in with the goddess Athena or any providence of the gods bestowing land upon a people. Thucydides is saying, Athens flourished because it was on almost barren land no one else bothered to invade. The boundary of the state is not only the welfare it provides or its benefits, but the notion that it is not another state. The state is a freedom from threats outside the state, a negative definition. That is to say, you can never assert that staying in the state isn't a choice, because part of what defines it is the possibility of being outside it. Again, Hume, and those in agreement with his critique, erroneously take Locke to be making a normative statement about contractual obligation, rather than a description of the political metaphysics of a state as the act of free persons. Even understanding the state in a thoroughly Hobbesian manner as *modus vivendi* requires understanding the possibility, natural or intentional, as not being in another state or outside the state.

All this to say the following: if you haven't consented to living in a state, how do you know when you've left it? If being in a political state is a necessary condition rather than a volitional act, there is never a time when we are not in that political state and the

40 Thucydides, *The Peloponnesian War*, 4.

“obedience” that obliges. That is the state of “*absolute power*” that Locke warns against. Without a possibility of exit, we are not in a proper rational state, but a tyranny. Locke’s description of war as an infringement of the “*right of my freedom*” only makes sense when viewed with deference to his understanding of absolute freedom and toleration and the prospect of being “outside” the state physically and intentionally or mentally, after all, it isn’t when our intentions and the commands of the state align that the status of our freedom and the state’s toleration is measured, but when there is a dissonance, we’ll explore this point a bit further when we look at some objections to Locke and the nature of freedom. For now, suffice it to say we don’t need a tolerant state if our “hearts” or “soul” were aligned to the state, but then, there is a question of whether we are free, or like beasts, merely an extension of our environment. For Locke, as for Hobbes, the times outside of the political state are described as, “the state of nature” where, in lieu of a “*common judge on earth*” since, after all, nature is indifferent, we “*appeal to heaven*” to establish a new order and return to that original state wherein the state itself and its boundaries imposed upon an indifferent nature were established.

Unlike Hobbes, however, Locke is not seeking to resolve the conflict, but rather sublimate it into a form where individuals can survive in maintaining a war not to dominate others, but to transcend or at least recognize our capacity to transcend the current state of affairs to a future state that is not the case which is nothing less than the exercise of our freedom. There’s a prejudice in a lot of political philosophy that the goal is peace, rather, for Locke, the goal is changing the location of the war. Rather than a war of survival one has the exercise of moving from a current state, to “not-state” a

negative understanding that understands the war as an internalized exercise of freedom through the attainment of goals to the end of personal salvation rather than political power.

Zuckert comes closest here to understanding Locke's move from domination of others to domination of self, but places too high a value on the role of survival in Locke, influenced no doubt by Strauss' insistence on a Hobbesian Locke. What Locke wants to do is make the situation not about survival, but freedom, and freedom is the capacity to countenance and conquer current conditions to future conditions that are not-yet-the-case. Hobbes wants to keep the peace for the sake of survival, Locke wants to re-conceptualize the war so that mere survival isn't the issue, but the battle between current and future states and the inability to know what some future state desired by another, which is, by definition, not the case, cannot be known in a language that can only truly communicate what is the case.

Zuckert, like others I suspect, is probably led astray by one of the most famous readers of Locke, James Madison, who in *Federalist* 10, explains that faction is a consequence and is sustained by liberty in the same way that fire is sustained by air.⁴¹ Madison's comparison is clearly pejorative, and were he able, it seems, he'd want to avoid "faction." Locke, on the other hand, isn't averse to faction, indeed the *Second Treatise* is in large part a guidebook on how one comports one's self in times of revolutionary "faction." Madison is completely right that liberty sustains faction, and that one will always have

41 Hamilton, Madison, and Jay, *The Federalist Papers*, 42.

the latter by virtue of the former, but, what Locke shows is the inverse is also true; that liberty or freedom requires faction. That is, freedom is nothing less than the conflict between what is the case and what is not, the difference between being in the state and outside the state. As we'll explore, freedom is largely understood as faction and for Locke, his republican leanings with characteristically mixed constitutions attempt to institutionalize the factional nature of freedom while never forcing citizens of the republic to choose between state and life.

V. Rescuing Locke from his Rescuers: Negative Freedom and Why Locke is not an Elitist

The negative definition of state and freedom is crucial to understanding not just Locke's response to Hume's objections to tacit consent, but to the charge that Locke is, in fact, an elitist. What I want to show in this next section is how Locke's negative understanding of the state is derived from a metaphysics of freedom that understands the individual's freedom as residing not in any action, circumstance or substance, but in the capacity to do or not do otherwise, that is, in the capacity to transcend any current state towards some future state and tests limits so as to vouchsafe ones' freedom. Locke demarcates between mere will and freedom; understanding that the latter can only apply to agents:

Powers, belonging to agents. It is plain then that the will is nothing but one power or ability, and freedom another power or ability so that, to ask, whether the will has freedom, is to ask whether one power has another power,

*one ability another ability; a question at first sight too
grossly absurd to make a dispute, or need an answer. For,
who is it that sees not that powers belong only to agents,
and are attributes only of substances, and not of powers
themselves? (E. XXI.16)*

We can't predicate a morality presupposing a responsibility on any substances and, I think by extension particular actions since actions are not valued independent of the intent or motivation of the actor or the state they find themselves in. Whether or not the person is or comes to prefer their action, it tells you nothing whatever about the morality of the act. Locke powerfully illustrates this point with his example of the "paralytic" (E. II, XXI.10) where he invites the reader to imagine they are unconsciously carried into a room where they find a paralytic who, upon waking, they engage in pleasant conversation. Now what you don't know, is you are locked in the room. Now it may be that you enjoy the conversation thoroughly, and an outside observer is tempted to say you are being kind. But, because you did not arrive by choice, nor have the ability to leave, one is unable to make any kinds of moral judgment about you. Locke here distinguishes between "volition" and "liberty" the latter having only coincidental relation to the former. Psychologists studying phenomena of happiness often make this observation, that happiness can be enhanced by restricted freedom.⁴² This, however, doesn't tell you anything about what you should prefer, nor provide a guide to moral choice. The

⁴² See especially Daniel Gilbert, *Stumbling on Happiness* (New York: Vintage Books), 2007. This distinction between freedom and happiness, the former being central to Lockean moral claims, the latter being an artifact of volition further discredits any suggestion that Locke's moral philosophy might be hedonic.

restriction of freedom might compel a virtuous act, but it does nothing to improve the moral personality in the long term. It isn't that some acts are preferable to others, it's that the compulsion of the act by another does nothing to improve the internal motivations of another. Moreover, imagine someone standing outside the room, aware of your imprisonment, but unaware of the conversation taking place, their view of the situation is of a scene of suffering because they lack the insight, just as a Magistrate lacks the insight, to divine morality from specific situations or particular acts. Consequently some very influential rescues of Locke from of the charge of elitism are invalid, because morality is not tied to happiness or any emotion derived by simply observing or countenancing some act you perceive as virtuous. Locke doesn't endorse any qualities or substances over others upon which that elitism could be based due to his skepticism about the ability to divine moral intent or purity of heart from prima facie virtuous acts.

I want to start by looking at a couple of these rescues and show how they begin with presuppositions about Locke's commitment to moral demonstration and acts that ultimately leave him vulnerable to his Marxian critics. There are three serious criticisms of Locke in this respect, and I want to spend this next section showing how the relationship between Locke's politics and metaphysics responds to the following objections:

- 1) C.B. McPherson's idea that Locke has a differential rationality privileging one class, relegating another to superstition and blind obedience.
- 2) Marx's assertion that "political economists" of which Locke is an exemplar, confuse use value and exchange value or property

3) Derek Parfit's suggestion that you can alleviate a lot of moral and political problems by dissolving the notion of personal identity.

To begin with the first objection: is Locke an elitist? This question has a couple of dimensions, the first is socioeconomic; is what he demands or suggests about the moral person something accessible only to a select few? Then there's the problem of exclusion generally, does Locke place conditions on personhood, conditions which compel certain beliefs or values to be held (i.e. can you be a moral person without believing in X or being capable of Y?). Quite a few scholars have attempted to argue for the former or the latter, most notably, C.B. MacPherson and Jeremy Waldron. It would be quite impossible for Locke to believe either because it would violate not only his principle of toleration, but would commit him to an Aristotelian metaphysics and natural law framework he explicitly rejects in the *Essay*. How could Locke predicate morality on any given set of actions if those actions could not lead to the truth of their intentional motives? But more fundamentally, if freedom is a property of agents not substances, how could one demarcate some moral acts above others? Toleration is not some moral imperative, it's the product of the inscrutability of the mind of a free person whose properties and actions cannot be used as a guide to intentional virtue. If being a moral person were contingent on having a mind state derived from some ritual or practice, it would still be beyond the grasp of other individuals to validate the isomorphism between thought and deed. In deference to the role of the state in *Toleration*, it would be well beyond the Magistrate's right to persecute it.

And yet, scholars insist on trying to rescue Locke from: *“the occupational hazard of philosophers, which is to infer – quite fallaciously- from the assumption that their own work is worth doing, that the qualities they use in doing it should be rated high in the pantheon of civic and political virtue.”* (Waldron, 92) Waldron, unfortunately, falls victim to the same occupational hazard of those other philosophers by arguing: *“a being with the power of abstraction can recognize that it has an obligation to act in accordance with God’s purposes, and when it sees the same power of abstraction manifested by others, it can recognize that they too have been sent into the world about God’s business, and so they must be respected-equally with oneself- as beings commissioned by the purposes of God. This is a natural law argument.”* (Waldron, 95) Indeed, it is a natural law argument, and none the better for it. How can one “recognize” that another has been “sent into the world about God’s business”? Indeed, isn’t such an act of “recognition” by others precisely what Locke warns against in *Toleration*? By my lights, Waldron’s account suffers from two pretty serious flaws:

- 1) It’s vulnerable, as is any count that grounds Locke’s concept of equality on a capacity, to a criticism that individuals vary in the ability to execute on this capacity, whether abstraction or reason more generally.
- 2) The power of abstraction is particularly problematic in terms of a place to find equality because its fruits, that is, a mode, is decidedly not inclusive and applicable to all, for instance, the abstraction or mode of “beauty” presupposes exclusion of things “not beautiful.” So can Waldron say the grounds of equality for Locke is that very thing that makes things appear unequal or “different” in the world?

I would say, therefore, while abstraction is a capacity of a person, the latter is a substance which is ontologically prior and independent of any subjective assessments of degree of evaluation by others, and so a better candidate for the grounds of universal equality.

Perhaps the most controversial thing I want to argue for is that Locke is not a natural law philosopher in the Aristotelian mold. In fact, I think Locke makes very little use of “*nature*” in the moral realm besides as a means of demarcating “*indifferent*” things from the divine orders of revelation. Waldron goes on here to argue that Locke has rescued equality by making the “*democratic intellect*” the purview of everyone, but this certainly can’t be the purview of everyone since it presupposes its opposite, those who have not “*been sent into the world about God’s business.*” (Waldron, 95). The very possibility of not performing an action not aligned with “God’s business” is the ground of freedom Locke outlines which can’t, then also be the ground of “equality”.

Locke’s theory of freedom is heavily dependent on what Jonathan Bennett calls Locke’s “*uneasiness theory of action*”⁴³ and how they work in the broader framework of his political philosophy. I want to spend some time looking at how Locke’s theory of freedom brings to light a profound rebuttal of the elitism charge and invalidates too, the alternative suggestion made famous by Derek Parfit, that a lot of moral and political philosophy might be resolved by simply abolishing the very idea of a contiguous personal identity through time and merely treat our future persons as close or far from us in time as others are to us in space; to broaden our person or self-understanding to at once

43 Chappell, *The Cambridge Companion to Locke*, 1994, 94.

embrace that it is itself and someone else. Before exploring Parfit's point, let's look at Locke's "*uneasiness theory of action.*"

Freedom is the capacity to see one's self in some future state which is not present, as Bennett summarizes Locke's uneasiness theory:

*"when I act I am trying to bring about some state of affairs S, and my trying to do that is unintelligible unless I am dissatisfied with my present non-S condition. My awareness that the nonobtaining of S is unsatisfactory to me is my uneasiness – it's my sense of something wrong – and my action is an attempt to cure it by making S obtain."*⁴⁴

This incredibly influential account of freedom also allows us to once again anticipate his refutation of Hume's attack on tacit consent. We would be unable to comprehend a state, and similarly our person if we were unable to conceive of ourselves as not-being ourselves. Our person stands behind all of our free choices and informs and makes meaningful our choices. That robust or metaphysically rigid self or person that stands behind our reality has been understood differently by Locke scholars, but all of them, in principle, agree on its presence in Locke's account of freedom.⁴⁵ Ward, for example, characterizes Locke's notion of freedom as a "suspension" theory. Ward, following Zuckert, wants to suggest that Locke is taking the Hobbesian understanding of domination and turning it inwards toward a self-restraint and self-control: "*that places importance on subjective judgment and uncertain probability rather than ascribing wide*

44 Chappell, *The Cambridge Companion to Locke*, 1994, 94–95.

45 Derek Parfit actually believes these "non-selves" that we countenance in future plans are quite literally future persons, but the error there, as we'll see is that it identifies the self with the situations, social background and circumstances that surround it. This view is untenable.

range for deductive certainty.”⁴⁶ He later makes a suggestion that we are here trying to outline that “*Personal identity and self-consciousness are a potentially promising epistemological foundation for Locke’s theory of human freedom,*”⁴⁷ which I completely agree with. Yet Ward is daunted by the insistence on a moral demonstration that “*could involve judgment based on empirical evidence.*”⁴⁸ Ward’s preoccupation with some kind of “*empirical*” ground for judgment and identity is understandable, and it derives its origins from the same “*empirical*” place that critics of Locke want to accuse him of elitism. Based on the understanding that any capacity, action or property always presupposes its opposite, not doing it, or lacking the capacity will necessarily exclude some group or class of persons. It fails to countenance this oppositional or *negative* understanding anticipates a free individual or person; a workman who “counts” or “values” things⁴⁹ and locating morality in the agent rather than the act, Locke remains vulnerable to his Marxian critics. By conceding to Locke’s critics on the existence of some act or capacity that demarcates the moral from the immoral, would-be defenders merely give ground for the critique. What they confuse is that the moral evaluation of some present choice presupposes its absence, not-acting on it, which defines the moral state of a being as free, rather than mere description of any particular choice or set of choices. Looking at any moral choice involves looking at the preconditions for making the choice rather than the choice itself, this is a distinction Locke understood; “*...a privative cause in nature may occasion a positive idea.*” (E, VIII.4)

46 Ward, *John Locke and Modern Life*, 44.

47 *Ibid.*, 57.

48 *Ibid.*

49 As Ward quite rightly suspects: “*personal identity is the basis for reconstructing a new taxonomy of the human to replace the problematic account of species*” (Ward, 57) or as Eldon Soifer succinctly makes the point, it’s why you don’t care if your cat sees you naked.

Thus any attempt at demonstrating the lowliness of the threshold for moral demonstration is to fall for a trap Locke would have easily maneuvered out of. Locke is arguing for a transcendent, metaphysically rigid person and identity whose moral status is predicated on acting freely in accordance with divine directive as only she can understand it. It isn't any given act, capacity or its absence that is the ground of morality, but the capacity to countenance the choice between some current state and its negation to some future state.

Most famous of the Marxian critics, C.B. Macpherson argued that for Locke there is “*a class differential in rationality in the state of nature.*”⁵⁰ Waldron, unfortunately, creates his own version of “*differential rationality*” by constructing a “*range concept*” where: “*the threshold of equality [is based] around very ordinary capacities...*”⁵¹ Despite Waldron's intent, one would be at a loss to find a capacity so “*ordinary*” that it precludes the ability to exclude those who lack that “*capacity.*” For Locke, however, equality is not a capacity claim, but a description based on an ontological claim, that all men are “*persons*”. Personhood is the locus of agency and freedom, and as the condition of moral responsibility, because agents rather than substances have free will. Waldron, however, wants to lower the threshold to achieve moral action so as to make Locke immune to Marxian attack. As I've mentioned, Waldron's rescue, and others like it, merely reinforce the presuppositions upon which the Marxian critique is based.

50 Macpherson, *The Political Theory of Possessive Individualism*, 238.

51 Waldron, *God, Locke, and Equality*, 104.

Macpherson's critique is of a piece with the broader Marxian criticism of liberalism in the *Critique of the Gotha Program* that charges "political economists" with confusing "use" value with "exchange value."⁵² Locke argues that we must, at minimum, provide for the sustenance of life which immediately gives hope to many defenders of a welfare state. There has, famously been a communitarian and libertarian debate of this influential passage in the fifth chapter of the *Second Treatise*. However, argues the more radically Marxian skeptic, the inequalities seen in politics are a product of what is done with surplus production, that is, what is done with the excesses beyond after we have exhausted resources afforded to mere "use." What Marx's account fails to adequately countenance, of course, is that the exchange value of a good is largely a function of the very subjective evaluation that values, that is, it presupposes a valuer who understands the value of something beyond its mere natural capacity to sustain a human being biologically (i.e. a person). Since the state, however, is in no position to divine the value of a thing as understood by persons whose valuation of the same object might vary wildly (as in the case of species demarcation for a "natural kind"), it must remain silent concerning "surplus" or anything, beyond nature, that is the domain of the divine. Any attempt by a Magistrate to determine this valuation is to infringe upon personal freedom instinct in the very act of valuation.⁵³

Derek Parfit attempts another avenue of attack on Locke, vis-a-vis questioning the possibility of personal identity itself. In a widely-read and influential article entitled

52 Cohen, *Self-Ownership, Freedom, and Equality*

53 This, of course, harkens back to Locke's attack on natural kinds, and also the more general critique of an attempt to predict the evaluative judgements of another based on what one perceives (i.e. "surplus" to you might be me simply enjoying the fruits of my labour, with the understanding of natural law constraints.)

“Personal Identity,” Parfit tried a different approach undermining Lockean liberalism. Through the dissolution of a contiguous personal identity through time, certain vices would lose their hold over us. For example, if I saw a person in an impoverished nation as close to me in distance as a future self is to time, I would, perhaps, be less compelled to hoard my wealth or resources:

Suppose that a man does not care what happens to him in, say, the more distant future. To such a man, the principle of self-interest can only be propped up by an appeal to the principle of impartiality. We must say, “Even if you don’t care, you ought to take what happens to you then equally into account,” but for this, as a special claim, there seem to me no good arguments. It can only be supported as part of the general claim, “you ought to take what happens to every into account.”⁵⁴

In such a scheme, your present self becomes the ground for your current self. Recall, however, in Locke’s “uneasiness” account of action as elaborated by Bennett, there is a question of motivation to act and, more seriously, the capacity to act freely. If you are yourself and everything not-yourself subsumed or leveled into some kind of universal indifference, or to use Parfit’s more benign sounding phrase “impartiality” you lack the very ground to make any moral preference whatever. By resolving the conflict between a

present self and future self, between myself and others in the way Parfit proposes, would be to end personal freedom altogether. Madison's analogy is correct, that liberty and faction are as air is to fire, but it is a reciprocal relationship where the conflict between one's current and future state is what grounds our freedom. Moreover, our "future self" is not to be, in a Lockean framework, understood as some set of circumstances or situation, but the identity that is continuous in some way from the present state since qualities vary, but identity and personal consciousness do not. Merleau-Ponty rather poetically makes the Lockean point: "*my first perception inaugurated an insatiable being who appropriates everything that it can encounter, to whom nothing can be purely and simply given because it inherited the world.*"⁵⁵

I've lumped Parfit together with McPherson, and demarcated both as Marxian critiques, they're both of a piece since they both attempt to understand the end state of politics in a broadly Marxian or even Hegelian framework where individuals are subsumed under interests that concern some larger body-politic and a dissolved or deprecated sense of self. These efforts are merely a retrieval of the very old Greek metaphysics which grounded its theology on natural analogy and sees persons as continuous with a larger indifferent nature.⁵⁶

For Locke, the capacity to demarcate things, to distinguish and value things beyond their indifferent nature is essential to the capacity to make moral judgments. In contrast to

55 Merleau-Ponty, *Phenomenology of Perception*, 374.

56 One need only look at the very language Marx invokes of "species-being". For Locke, species is something demarcated from the "being" of a person, a workman who is the one who names and values nature. For Marx, there is a denouncement of transcendent religion and ideology which is nothing less than a corruption of "nature."

many, not merely Marxists, but also Aristotelians, there is in Locke, no specific virtue or nature towards which moral actions are specifically directed. As Locke reminds us in his attack against the notion of natural kinds, the idea of species presupposes that one can understand a thing through the common properties it exhibits, but since this judgment of qualities varies among individuals, there cannot be a single determination of natural kind, and consequently natural end, since those kinds are disclosed differently to different individuals:

Since the composition of those complex ideas are, in several men, very different: and therefore that these boundaries of species are as men, and not as Nature, makes them, if at least there are in nature any such prefixed bounds. It is true that many particular substances are so made by Nature, that they have agreement and likeness one with another, and so afford a foundation of being ranked into sorts. But the sorting of things by us, or the making of determinate species, being in order to naming and comprehending them under general terms, I cannot see how it can be properly said, that Nature sets the boundaries of the species of things: or, if it be so, our boundaries of species are not exactly conformable to those in nature. For we, having need of general names for present use, stay not for a perfect discovery of all those qualities which would best show us their most material differences and agreements; but we

ourselves divide them, by certain obvious appearances, into species, that we may the easier under general names communicate our thoughts about them. (Essay, III, VI. 30)

This is why would-be rescuers go astray in attempting to locate the lowliness of some assumed threshold for moral action, individuals are not moral because of what they do, or appear to be doing, but because of what they are. Respecting that thing in its freedom is how political and moral virtue is best exercised since we cannot divine the intentions of an individual from apparent qualities or actions. This critique also applies to the efforts of Greg Forster to locate in Locke some kind of “*moral consensus*”⁵⁷ upon which Locke’s liberalism is alleged to be based. The problem with consensus is the problem with moral demonstration, you can’t locate it in anything outside yourself because once you do, you create a preference for actions which dissolve the grounds of the natural equality Locke is arguing for. Knowledge of such moral consensus not only couldn’t be ascertained for the same reason natural kinds can’t be discerned, but if it could, it would raise altogether the need for any divine directive as Locke outlines in his critique of Malebranche.

The only way one can “test” their freedom, is the ability to act on or withhold action from some kind of compelled directive. This is the ground of personal freedom and its distinct from the political which merely deals in providing the bare necessities so as to not compel actions under threat of withholding those necessities. Phillip Pettit uses a

57 Forster, *John Locke’s Politics of Moral Consensus*, 11.

wonderful thought experiment to illustrate this point derived from Henrik Ibsen's play, *The Doll's House*.⁵⁸ Imagine, two scenarios, in both you are a wife of a husband who exerts power over you. In the first scenario, a husband restricts your freedom overtly, limiting your mobility and interfering with your acts. In this case, clearly you are not free and have cause to rebel. But imagine the more difficult case, as in the protagonist of *The Doll's House*, a husband who dotes over his wife, who indulges nearly her every whim and never "interferes" with her, but, whose wrath, should she in some way transgress him would be terrible. Which scenario is worse? Arguably neither is free, but the peril to one's soul is greater in the second case, as it's difficult to perceive an oppression where one is not in some way, encountering something outside the limits of one's comfort, where, to use Lockean language, one does not have to "tolerate" some other state or person that is not one's own. That is, one is free not because one can do the opposite or simply countenance the opposite of what one is doing, but one can refuse to continue to do what they have been doing, to define a course consistent with some non-state. One must, as with Athens, be defined as much by what one is not as by what one is. You need to constantly test your liberties, and need the conflict in order to vouchsafe your moral status as a free agent. To invoke Madison's analogy again, you need the fire of faction, to provide evidence of the air of freedom. Locke's liberal project depends, therefore, not so much on a reconciliation or "moral consensus" as Forster would have it, but a maintenance of a faction that does not imperil life.

58 Pettit, *Just Freedom*, XIV.

VI. Against Conversion through Compulsion: Morals, Maths, and “*Appeals to Heaven*”

Walk through any city long enough and one is sure to encounter him; everyone knows him, the gentleman with the sign generously filled with biblical passages and ominous warnings about salvation and the end of days. For convenience, let’s call him “Sam” to proxy for our sign-holding friends and street preachers everywhere. While Sam’s concerns are generally dismissed as insane, scholars are great deal more measured when discussing or commenting on the soteriological concerns of a John Locke, but why? Surely both Locke and our friend with the sign appreciate the value of a good “*appeal to heaven.*” In fact, how do we know we are not imperiling our soul with our actions? Can we rely on others to warn us? In *Toleration*, Locke is plain: “*no man can so far abandon the care of his own salvation as blindly to leave to the choice of any other, whether prince or subject, to prescribe to him what faith or worship he shall embrace. For no man can, if he would, conform his faith to the dictates of another. All the life and power of true religion consist in the inward and full persuasion of the mind; and faith is not faith without believing.*” Yet in some cases concerns for salvation are taken seriously and others not. There is the assumption that a street preacher’s faith, is in some important sense, not guided by reason, but how is this so? I suspect, with Locke, that a large part of it is the proselytization of faith that is found unconvincing. Faith is often taken as something one is born into and made evident. Without some form of grounded certainty, how does one know their faith is any more valid than anyone else’s? As Locke puts it: “*For if the light, which everyone thinks he has in his mind, which in this case is nothing*

but the strength of his own persuasion, be an evidence that it is from God, contrary opinions have the same title to be inspirations...” (*Essay*, XII.11). The notion that one can “convert” ought to be based not on the persuasiveness of the arguer, but, according to Locke, the truth of the revealed doctrine: “*Light, true light, in the mind is, or can be nothing else but the evidence of the truth of the proposition; and if it be not a self-evident proposition, all the light it has, or can have, is from the clearness and validity of those proofs upon which it is received. To talk of any other light in the understanding, is to put ourselves in the dark, or in the power of the Prince of Darkness, and by our own consent to give ourselves up to delusion to believe a lie.*” The goal is not to convert another, but to maintain conviction in the face of difference where that difference evinces personal freedom and moral responsibility.

This touches on an important section of the *Essay* and potential objection to what I’ve written, Locke’s admonition against the “enthusiasm” of faith over the demonstrations of reason. One must take care, however, not to misunderstand “demonstrations” by reading the *Essay* in a manner that ignores the way demonstrations of mathematics vary from empirical demonstrations. For Locke, moral demonstration, like mathematical demonstration is something which is true by virtue of its terms. Recall what was said about Locke’s notion of personal identity; personal identity is “rigid,” a person is still a person responsible before God despite their station in life or their particular properties. One can imagine a world where Justin Trudeau is not prime minister of Canada, but no case where Justin Trudeau is not Justin Trudeau. Similarly, the propositions of mathematics are true having a similar rigidity, $2+2=4$ whether we are discussing 2 apples,

2 automobiles, or whether there are no objects to proxy for numbers, they are true by virtue of the terms. For Locke, the propositions of morality have the same character as the propositions of mathematics, but of course they would. If principles of morality dictate the responsible action of a person who is in their freedom and responsibility, a personal identity, a forensic entity undetermined by the contingent or “indifferent” circumstances in which they find themselves, then those actions they take too must be guided by principles which are not a matter for persuasion by prince, magistrate or the commons, but self-evident to the individual, freely contemplating their truth.

A lot of the connection I’ve made between *Toleration* and the *Two Treatises* hinges on that all-important phrase, “*appeal to heaven*” and assumes it is more than simply an expression of exasperation. The appeal to heaven is an expression which at once recognizes the individual standing before God (conscience) who cannot be assuaged by the promises of earthly or princely reward and on the other, the recognition that one’s next act will probably not be met with state or community sanction. A famous modern example of the “*appeal to heaven*” occurs at the end of Albert Camus’ novel *The Stranger*, in it, the protagonist, Mersault being condemned to death expresses a feeling of relief and resignation . In this famous scene, Camus uses some remarkably Lockean language in describing a world that is “*indifferent to me.*”⁵⁹ This relief comes after a couple of revelations. The first is that expectations or standards of the community do not matter. Earlier in the work, Mersault chastises his mother who, late in life, had taken a lover. This was, of course, not “natural,” but he realizes: “*Mother must have felt like*

59 Camus, *L’Etranger*: “...un monde qui maintenant m’était à jamais indifférent.”

someone on the brink of freedom, ready to start life all over again. No one, no one in the world had any right to weep for her. And I, too, felt ready to start life all over again.” He then makes his final “appeal to heaven” recognizes the indifference of worldly expectations from the vantage point of his own freedom:

It was as if that great rush of anger had washed me clean, emptied me of hope, and, gazing up at the dark sky spangled with its signs and stars, for the first time, the first, I laid my heart open to the benign indifference of the universe. To feel it so like myself, indeed, so brotherly, made me realize that I'd been happy, and that I was happy still. For all to be accomplished, for men to feel less lonely, all that remained to hope was that on the day of my execution there should be a huge crowd of spectators and that they should greet me with howls of execration.

The “world” is indifferent to the judgments of the community, and that community imposes constraints of what constitutes an orderly way of living. Where Camus wishes to express disdain for the judgments of his community and all normative claims, Locke is more restrained and cognizant of the transcendent concept of identity, the metaphysical machinery afforded by transcendent religion, that makes such an “*appeal to heaven*” possible. The world is indifferent, and persons are free, but they are still bound by the

dictates of conscience which is nothing less than the voice of God internalized in the mind.

The other point of commonality between Camus and Locke is the violent circumstance under which the recourse to an “appeal to heaven” is found. In Camus’ *Stranger*, Mersault’s act of murder forces him to confront through violent means the limits of his freedom and his ultimate indifference to the judgment of others. Locke’s *First Treatise* is equally suffused with violent analogy, specifically, the appeal to heaven being compared constantly to the Biblical story of Jephthah in chapter 11 of the Book of Judges.

Jephthah’s sacrifice of his daughter to God to deliver the Israelites from the Ammonites, sees the exercise of freedom as deprecating or altogether dismissing the value of life or posterity in deference to divine directive. In contrast to the story of the binding of Isaac, the story of Jephthah provides a stark contrast and disrupts expectations that sacrifice to God would always be met with divine rescue. In fulfilling a covenant with God by simultaneously killing and not killing a sacrificial object, the Lockean point about inability to gauge piety through moral demonstration is shown clearly. Also, the choice faced by Jephthah and Isaac is put into stark relief, both are free to choose their acts, and the outcome is not guaranteed, but both appeal to the directives they’ve received from God. The result is different even though the act is the same, yet both fulfill a duty owed to God which, if an observer were to assess, would not be able to discern the difference. The expectation of consistency between demonstrated acts and divine rewards is clearly broken. Both presuppose the agony of choice in the face of what is expected and

acceptable. There is no mould under which one is relieved of the burden to follow divine directive, indeed, such a presupposition of a mould or demonstration or action invoke a kind of rationalism Locke rejects. We cannot understand God's plan, all we have is our agency from which to choose our actions.

VII. Negative Political Metaphysics and the Moral of Locke's Political Story

I began by suggesting that your political theory depends largely on the kind of thing you think you're governing. We saw amongst the earliest political philosophy a view of human beings as simply part of a larger natural or cosmic order. What Locke presents, in contrast, is a break from understanding human beings strictly by their "indifferent" natural properties, and relegating the political to merely attending to the bare necessities of life. Higher concerns of the person are left to an individualistic metaphysics that sees human beings as the workmanship of a creator which they resemble in their own workmanship capacities.

A lot of the confusion around Locke's moral and political positions was found to be in taking descriptive statements to be normative ones. Locke is not so much arguing for the freedom of the person, but merely describing the metaphysical and theological situation we find ourselves in and what that situation calls for politically. Accordingly, Locke's political metaphysics of the person calls for government whose concerns are limited to facilitating bare survival. Tolerance is, again, not a normative creed, but a political accommodation necessitated by the soteriological concerns of Christians and those who

believe they must freely appear before the court of their creator both on the day of Judgment, and every day through pangs of conscience. These individuals appear with their “*hearts laid open,*” whereas “*no judge on earth*” can make absolute determinations of motive, they are, both in their own heart and before God, always accountable, and aware of their freedom.

Persons are forbidden from surrendering that freedom and can escape it neither through slavery nor suicide; identity is rigid, independent of primary and secondary properties manifest as class or wealth. The prince and the cobbler both appear before the court of conscience and the court of final judgment. Perhaps the only normative claim in Locke’s entire moral and political philosophy is found here, the notion that we ought not conflate the divine and the indifferent, and that the implication of predicating one’s self-esteem or worth on the estimation of others is simultaneously to surrender one’s freedom by enslaving one’s self to the estimation of others, and to become belligerent in the interest of controlling that esteem in the “*hearts of men.*” This latter drive, Locke reckons with Hobbes, is the origin of war.

The moral of Locke’s political tale seems to be that if you identify yourself with something based on communal recognition, you enslave yourself to the estimation of others. If one has an entire state where the sole concern is public censure or approval, one has a tyranny. Like Socrates in the *Crito*, if you care about how other nations or your own society will view you, you condemn yourself. If your understanding of what you’re governing is a mere material object or animals reducible to satisfaction, satisfaction of value is exhausted in the satisfaction of bestial necessity. That dependence upon you as

the state actor obliges the other to obey you in much the same way that a parent operating off of a false sense of paternalism obliges the child to obey. This is the picture Locke breaks by exploring and postulating the primacy and coequal ontological status of the “person” with the “human being.” In understanding human beings as persons, government is obliged to restrict itself rather than encroach upon matters of value. The trouble lies in understanding individuals as positive properties, rather than the locus of an individual that anticipates and acts on beliefs, thoughts and values that are not-the-case. This negative aspect of Locke’s political metaphysics has analogous implications for state, which is understood as much by what it doesn’t govern or what isn’t the state as what it is. In fact, the very notion of a free state, as we saw in the case of tacit consent, presupposes not-being in the state, as Locke would put it, the capacity to not be in the state, at every point there is a freedom presupposed.

What are the implications for emphasis on the negative aspects of state and its Lockean origin in the free person in the broader conversation of political philosophy? Well, first, it conclusively dissolves the Rawlsian idea that you can have a tolerant liberal state without recognizing some “*comprehensive doctrine*” about the nature of freedom and personhood. Rawls attempted to take Locke’s empty personhood and suggest a kind of formalism that eschews what he called “comprehensive doctrines.” One can certainly look after the basic needs of the society, but that call for humility, tolerance, for political ignorance presupposes an understanding of individuals as free beings, of things that define their world independent of the external material necessities. The second implication is that it shows how you can leave all of the premises of libertarianism intact

and still come to an entirely different conclusion about the state. Individuals are free persons, and as such, manifest artifacts of their freedom as workmen who can imbue properties and things that are not materially in the world. These workmen demarcate not just species, but states, property, rights and all those artifacts of human understanding not intelligible solely in terms of materialistic or positive accounts.

In Locke's view, the role of state is neither simply a facilitator for the necessities of bare existence; nor the violent imposition upon the freedom of the individual as the libertarians or Hobbesians might suggest. Like all artifacts of human understanding, a state is to be understood not merely by what it is, as a facilitator of necessity, but also by what it is not, that is, what is outside the state, the person. Persons are the precondition of the state, otherwise, the state becomes contiguous and inseparable from the individuals in it, removing all notions of freedom and agency, and evincing a kind of metaphysics and "absolute power" Locke explicitly rejects. A state is to be understood as much by what it is not as by what it is. A state is understood by the hopes, beliefs, aspirations and ideas of those who found and inhabit it, things that are "not-the-case". This negative understanding allows us to avoid the perilous excesses of positive, reductive or materialistic understandings that do such harm to human freedom, which is the possibility to do otherwise.

Political philosophers and theorists are late to recognize the importance of "*nothingness*" or Locke's equal emphasis place on "*our being able to act or not to act*" (*Essay*, XXI.27)

congruent with his “*uneasiness theory of action*”⁶⁰ which allows us to understand human beings as the kind of thing that is not merely a recipient of social and political realities, but creators or “workmen” of them. Political theorists, daunted by the dominance of a naive materialism that dominated political philosophy through the twentieth century often fail to fully countenance the realities of human experience evinced by this “negative” aspect of freedom and its political implications.

Philosophers, psychologists and neuroscientists have run up against the “hard problem” of intentional first-person consciousness which is heavily guided by what is “not-the-case” which looms so large in political philosophy. What does the latter have to do with the former? If you’re a political theorist, trying to understand something as complex as the state, it serves to reason that you probably, even if not explicit, have some thoughts about what human beings are like. If you believe that human being is essentially a kind of determined machine or a function of a larger social organism, and you see the state as coextensive with that, you might come up with something like a Hegelian understanding of the state where individuals are merely a microcosm of a larger abstracted state spirit. If you believe your compatriots “*sprung forth from the earth*” as the myth of the founding of Thebes suggests, you might believe that they are unable to leave the state. A human being shouldn’t leave their home for the same reason a fish shouldn’t leave its pond. These kinds of arguments through analogy form the basis of a kind of bad political metaphysics wrought by a materialistic understanding of the state. John Locke attempted

60 Chappell, *The Cambridge Companion to Locke*, 92.

to break free from such an understanding by defending the notion of a person with right, which is identical to their freedom.

Through the twentieth century, philosophers believed that human thought accorded to external realities through direct reference, so thought and world were a reflection of one another, influenced by the same materialism that led Locke scholars so astray. Later, in the ordinary language school we see a modification to a functional understanding where what I think is entirely exhausted in what I do. The trouble with these views is that human beings have the capacity to do other than what their inclinations or motivations predispose them to, as Locke makes the distinction, I may have the will or inclination, but its exercise does not evince my freedom unless I have the capacity to withhold acting upon it. We have rich mental lexicons of counterfactual hopes, aspirations, fears and beliefs that, though not “real” in the material sense shape and direct who we are. As Roderick Chisholm explains, to say that someone has an intentional attitude towards something, like a belief, isn’t to commit someone to the existence of a thing, simply that an individual is shaped or directed in deference to that belief that “doesn’t exist.” Chisholm uses the example of “*John fears a ghost.*” Such a belief does not commit John to the existence of ghosts, merely that that “fear” assists in understanding John. Similarly in the mythical story of the founding of Thebes that “*Athena founded Thebes*” does not commit one to the existence of “*Athena*” but does help us understand what Marc Bloch once called the “*mentalité*” of the state. A state, like a person, is not defined, as Locke showed, merely by what one is, but by what one is not, that group of intentional beliefs, commitments, and goals that at once understand the political state as an artifact of the

workmanship of human belief, yet defined entirely negatively as everything a free being created in God's image needn't preoccupy their thoughts with (i.e. their bestial necessities). A state observant of toleration anticipates this free being and is at once sustained by it; that even though one can be motivated by material gain or survival, one shouldn't be coerced by threat of its deprivation. The Lockean state is thus understood as much by what its borders do not demarcate or limit (freedom) as what they do; just as Thucydides once understood Athens not in terms of what it is, but by what it is not.

VIII. Conclusion

Once we begin by accepting what Waldron has called Locke's "transcendent premise" which I locate in the idea of a transcendent person, the problems of prima facie inconsistent accounts of the use of species in the *Treatises* and the *Essay*, the "strangeness" of Locke's "very strange doctrine" wherein human beings can execute the "law of nature" in a state of nature, and the shared use of evocative words and relations like "common" and "person" across *Toleration*, the *Essay* and the *Treatises* are no longer puzzling.

No more must we be vexed by how one limits one's right to property, or how we might understand Locke's moral philosophy. It is plain that, through the exercise of freedom, which is negatively understood as the curtailment of one's will towards some state that is not-the-case, we understand that morality cannot be coerced by the state, but enforced through conscience and ultimately God.

We must, given the evidence, accept Locke's commitment to the existence of a person, a conscientious agent whose capacity to transcend nature and exercise their restrictive freedom on themselves and the world to make difference in an "indifferent" nature, and the incommensurability of a person's external properties or actions to their intentional states. Toleration and the limited state are not positive virtues to be extolled or proselytized. They are the result of rational inference, or, as Locke might have it: "*capable of demonstration as well as mathematics*" (E. XII.8) of first principles concerning the person and their relation to God and conscience. If you cannot see into the "hearts of men" and their relation to God, you are obliged to adopt toleration and limit the encroachment on a person's exercise of divine prerogative manifest through the "*workmanship of the understanding*" or "*abstraction*" (e.g. the creation of property). Locke is in his *Two Treatises of Government* merely describing the moral and political implications of his metaphysical and theological commitments in the *Essay Concerning Human Understanding* and the *Letter Concerning Toleration*. Locke's politics, therefore, is inseparable from his metaphysical and theological commitments, and vice versa.

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