

Locke's Liberal Theory of Public Reason

Gerald Gaus

I LOCKEAN RIGHTS AND DISAGREEMENT

It would seem that of all the classical social contract theories — Hobbes', Locke's, Rousseau's and Kant's — Locke's has least to do with the idea that social and political life requires constructing a sphere of public reason, and so to some extent, setting aside one's private judgment. Indeed, many read Locke as inclining toward a sort of anarchism, in which each is guided exclusively by her own judgment, rather than in the direction of creating a public sphere defined by common reasoning. This interpretation appears, at least at first inspection, well grounded in familiar passages.¹ All individuals, says Locke, "are naturally in ... a state of perfect freedom to order their actions and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature; without asking leave, or depending upon the will of any other man" (ST: §4).² This is also a condition of "equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection" (ST: §4). However, Locke's state of nature, while one of natural freedom, is not one of "licence" in which one can do whatever one wishes. "The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions" (ST: §6). In addition to each possessing natural rights, each has the right to enforce the law of nature: "that all men may be restrained from invading others rights, and from doing hurt to one another, and the law of nature be observed, which willeth the peace and preservation of all mankind, the execution of

the law of nature is, in that state, put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation" (ST: §7).

The question for interpreters of Locke is how conflictual such a condition is. Because the state of nature is a condition of perfect equality in which no one has superior authority to determine the dictates of natural law and decide on appropriate enforcement, each has an equal right to do so. But each being a judge in his own case — having the right to interpret and enforce the law of nature — leads to great "inconveniencies": "self love will make men partial to themselves and their friends; and on the other side, that ill-nature, passion, and revenge will carry them too far in punishing others; and hence nothing but confusion and disorder will follow" (ST: §13). Locke, though not all his contemporary followers, grants that "civil government is the proper remedy for the inconveniencies of the state of nature" (ST: §13): government employs political power, "making laws with penalties of death, and consequently all less penalties for the regulating and preserving of property, and of employing the force of the community, in the execution of such laws" (ST: §3). However, "Every man being, as has been showed, [is] naturally free, and nothing being able to put him into subjection to any earthly power, but only his own consent" (ST: §119). Thus only if individuals actually consent to form a political society and institute a government are they bound to obey political authority.

What we might call the "anarchist strain" among Lockean interpreters stresses either (i) that these inconveniencies could be handled within the state of nature or, (ii) even if a central state organization is required to facilitate coordination, it is not really essential that people consent to obey it. The first option examines various ways that organizations, such as private enterprise enforcement and adjudication firms, could arise within the state of nature to solve the problems of disagreement. The second strain argues that, while legitimate governments could arise, widespread consent to obey is neither to be expected, nor is it very important. Because, this

interpretation runs, most people have not, in fact, consented to government, most are not bound to obey; most continue to have their full rights to interpret and enforce the law of nature as their own judgment dictates.⁴ Their original jurisdictional rights are retained. This does not mean that they will disobey the law. Given all the relevant moral considerations, this type of Lockean anarchist may well decide that it is best to do as the current civil government directs (say, because these common directions allow individuals to coordinate their activity). The critical point is that our Lockean anarchist does not perform an act simply because the law says she must — because she is obligated to obey. She decides on the right thing to do, taking account of the fact that there is a legal directive, which many will follow, and this may produce moral benefits. The definitive feature of this type of Lockean anarchism is that the individual retains her *full right of private judgment* even if there is a state that gives legal directives. She may do as others do and obey, but only if her own judgment instructs her to.

II THE INCONVENIENCE OF RETAINING PRIVATE JUDGMENT

Lockean anarchists typically see their proposals as friendly amendments to Locke, perhaps noting that he was rather too quick to jump to government as a solution to the “inconveniencies” of the state of nature, though his basic moral outlook remains pretty much intact.⁵ For them, it is the theory of rights that is the core of Locke’s theory, not his analysis of the inevitable disputes that arise from differing private judgment: the important thing is to act on your rights, and do what you think is demanded by morality. So long as people are rational, and see important benefits in cooperation, they should be able to both act morally and cooperate with each other. I believe that the problem of conflicting private judgment about morality is much more severe than anarchistically-inclined Lockean believe. Only a more radical solution — one that creates an umpire or judge that gives an authoritative public judgment, can solve Locke’s problem.

That problem is (1) “Man being born ... with a title to perfect freedom, and uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man ... hath by nature a power, not only to preserve his property, that is, his life, liberty, and estate, against the injuries and attempts of other men; *but to judge of and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it*” (ST: §87, emphasis added). (2) But we judge differently. Thus not only are we led into conflict about whether or not punishment is appropriate, but we have conflicting judgments about what our rights are. It is important that our concern is not simply about coordination on what Locke calls “indifferent” matters (FLT: 30). I might disagree with you about which side of the road we should drive on, but we both can clearly see that we need to coordinate, and so I will be ready to do what most others do, rather than insist on what I think is best. The law certainly can serve as a simple coordination device here: the state announces through a law that “Drivers shall drive on the right side of the road” and even if I much prefer the left side, I will go along. This is simply a matter of interests. In matters of justice or natural rights one’s moral sentiments are evoked; a good education, Locke stressed, teaches a person to detest the vice of injustice as an ingrained habit (TCE: 101). So, once a person has formed a judgment of justice, compromising with views she considers unjust is apt to be difficult and unstable. Judgments of justice involve moral emotions and ingrained habits.

The Lockean anarchist would have us think that she can secure coordination benefits despite this. Thus, as she would have it, our Lockean anarchist could see that if some law, which she thinks violates natural rights (but not in too grievous a way), is critical in helping to coordinate effectively with others, she may rationally act on it. While maintaining her judgment that the law is unjust, she could still see the coordination benefits of identifying the contours of our rights and stopping cycles of punishment and counter-punishment; thus she may do as the law directs

even though, in her view, these are not the just boundaries of rights. But once we have taken seriously that one believes that the other is acting *unjustly* (not just counter to my interests), and so it is apt to invoke one's "detestation of this shameful vice" (TCE: 102), this looks less likely. Given the importance of acting as one judges morality requires, we might expect anarchistic Lockians, who also recognize the importance of coordinating on what morality requires, to have the following ordering of outcomes: 1st — we coordinate on what I think is just; 2nd — I act alone on what I think is just; 3rd — we coordinate on what you think is just; 4th — I act on what you think is just while you act on what I think is just (not a very attractive option!). This is the ordering of people who care most about acting as morality requires and detest the vice of injustice, but also value coordination. As Figure 1 shows, if rational, such people will fail to coordinate.

		Betty	
		<i>A</i>	<i>B</i>
Alf	<i>A</i>	1 st 3 rd	2 nd 2 nd
	<i>B</i>	4 th 4 th	3 rd 1 st

Figure 1: Where Commitment to Morality Prevents Coordination

In this game the sole equilibrium is that Alf acts on his view (*A*), and Betty acts on her view (*B*), of justice. At either of the coordination solutions (when both play *A* or both play *B*), one of the parties would do better by changing her move, and acting on her favored interpretation of natural law. Thus they have no real interest in coordinating, even though they see considerable value in coordinating. As Locke says, in this case "confusion and disorder will follow" (ST: §13) — a case in which each is devoted to her private judgment about morality. In order to coordinate at least one of the parties must prefer coordination with the other to acting alone as she

thinks is right: doing what the other believes to be right for the sake of coordination. Such an agent places great value on coordination, and less value on doing what her private judgment deems the right thing. It is hard to believe that people devoted to natural rights would have such valuing.

III EXCLUDING PRIVATE JUDGMENT IN FAVOR OF PUBLIC JUDGMENT

I am not, of course, maintaining that this was Locke's analysis, though he certainly did believe in a fundamental distinction between acting from morality and acting from interests, and thought that a good education instilled strong reactions to acting unjustly. The point, rather, is that Lockean anarchists underestimate the difficulties in achieving coordination on what the law of nature requires when each has arrived at a discordant private judgment about it. Even two who appreciate the important benefits of coordination on the requirements of the law of nature may not be able to secure it. However, if individuals unite in a "political society" effective coordination and order can be achieved. In a political society

every one of the members hath quitted his natural power, resigned it up into the hands of the community in all cases that excludes him not from appealing for protection to the law established by it. *And thus all private judgment of every particular member being excluded*, the community comes to be umpire by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, for the execution of those rules, decides all the differences that may happen between any members of that society concerning any matter of right...

.... And this puts men out of a state of nature into that of a commonwealth, by setting up a judge on earth, with authority to determine all the controversies, and redress the injuries that may happen to any member of the commonwealth: which judge is the legislative, or magistrate appointed by it.

... for the end of civil society being to avoid and remedy these inconveniencies of the state of nature, which necessarily follow from every man being judge in his own case, *by setting up a known authority*, to which every one of that society may appeal upon any injury received, or controversy that may arise, and which every one of the society ought to obey (ST: §§87, 89, 90. emphasis added).

What, then, does Locke mean by “all private judgment of every particular member being excluded?” It seems insufficient to interpret this as simply claiming that individuals in a political society do not to *act* on their private judgment but, instead, obey the law. This implies that, while they may do as the law says, they still maintain their full rights to authoritatively judge what natural law requires. But then we would not be in a position very different than Figure 1: an individual’s reasoning would easily incline him to disobey the law when, on his view, it is not just.

As Locke insists in the above passage, what is critical is that the government has the “authority to determine all the controversies” — that a citizen recognizes the magistrate’s judgments as authoritative even if, we might say, her private opinion leads to a different result. The essence of the Lockean contract is that a citizen gives up, not her private opinion as to what natural law requires, but its claim to authority. In a political society one has no authority to insist that others conform to one’s view of the law of nature, or to enforce one’s judgment. Indeed, it is not even authoritative for oneself: if one sees the magistrate as authoritative on this matter, one accepts that his judgment, not one’s own, determines what ought to be done. Thus, the “end of civil society being to avoid and remedy these inconveniencies of the state of nature, which necessarily follow from every man being judge in his own case, *by setting up a known authority*, to which every one of that society may appeal upon any injury received, or controversy that may arise, and *which every one of the society ought to obey*” (ST: §90, emphasis added).⁶ It is important that the authority must be impartial: “In the state of nature there wants a known and indifferent

[impartial] judge, with authority to determine all differences according to the established law: for every one in that state being both judge and executioner of the law of nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat, in their own cases" (ST: §125). Anyone interested in correctly determining the law of nature and applying it to resolve disputes should recognize her own tendency to self-bias, and so consider her own opinion of the merits of her case to be a generally unreliable guide, for herself as well as others.

There is nothing odd about the stance Locke requires of us — that we have an opinion but renounce its authority. Consider a prosaic example, such as a game of baseball. The batter hits the ball, runs to first base, and the impartial umpire calls her out. In her opinion she was safe, and perhaps she even gives the umpire an exasperated look. But she knows that her opinion counts for naught — not only does it fail to be directive for others, it is not directive for her. The only judgment that really matters is the umpire's.

Our baseball example illuminates another feature of public authority: we must know who the umpire is. Locke repeatedly stresses the importance of setting up a *known* authority. It is not enough to recognize the necessity of an impartial judge with the authority to decide disputes: we must be able to agree on who has that authority. "For if this remains disputable, all the rest will be to very little purpose" (FT: §106).⁷ Thus the end of civil society is a publicly known authority who can resolve our disputes about morality by providing public, determinate, judgments as to the boundaries of our rights and who has abridged the rights of others.

IV DRAWING LIBERAL BOUNDARIES: REASONABLE DISPUTES ABOUT NATURAL LAW

What, then, are the bounds of the competency of public authority in Locke's theory? In contrast to Hobbes, who spends so much effort seeking to establish that limits and bounds cannot be set to the authority of the sovereign, Lockean theory is all about

setting the bounds of public judgment and its authority. That is why Locke's is a liberal theory of public reason: within the bounds of certain sorts of disputes, the reasoning of the public authorities is definitive, but outside of these bounds the judgment of the magistrate is simply one more private judgment.

Because individuals in the state of nature disagree about the interpretation of the law of nature, we have seen that they require a public judgment with authority to umpire their disputes. However, Locke's theory of revolution supposes that, while the range of disagreement among rational persons is wide, it is not unlimited. At some point a citizen could well conclude the government has exceeded its justified authority by giving decisions that cannot plausibly be construed as a good-faith attempt to umpire disputes about the laws of nature. In cases of individual dissent, where the citizen believes that the civil government is forcing him to act against his conscience, Locke recommends civil disobedience. "What if the magistrate should enjoin any thing by his authority, that appears unlawful to the conscience of a private person? ... I say, that such a private person is to abstain from the actions that he judges unlawful; and he is to undergo the punishment, which is not unlawful for him to bear; for the private judgment of any person concerning a law enacted in political matters, for the public good, does not take away the obligation of that law, nor deserve a dispensation" (FLT: 43). However, Locke is convinced that lone dissent will not produce civil instability: the "the body of the people do not think themselves concerned in it, as for a raving madman, or heady malecontent, to overturn a well-settled state, the people being as little apt to follow the one, as the other" (ST: §208). However, if the overwhelming majority becomes convinced "in their consciences, that their laws, and with them their estates, liberties, and lives are in danger, and perhaps their religion too," "if a long train of abuses, prevarications and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under, and see whither they are going; it is not to be wondered, that they should then rouse themselves, and endeavour to put the rule

into such hands which may secure to them the ends for which government was at first erected" (ST: §§209, 225). In these cases the people "*universally have a persuasion, grounded upon manifest evidence, that designs are carrying on against their liberties, and the general course and tendency of things cannot but give them strong suspicions of the evil intention of their governors*" (ST: §230, emphasis added).

For Locke, then, there is some range of reasonable interpretative dispute that is defined by the convergence of judgments of the great body of people about the plausible interpretations of natural law. We might say that the Lockean public sphere is defined by a certain consensus about the broad requirements of morality; within this broad consensus we have a wide variety of disputes, especially about the application to specific cases. So long as the government remains within this broad consensus it will be seen by the great majority of citizens as performing its proper role of umpiring disputes generated by disagreements in private judgments about the law of nature; within its proper scope, the public authority of the umpire excludes all private judgment about the requirement of morality. However, when in the view of the citizens the decisions of government are systematically outside of the range of reasonable judgments — it makes decisions that our private judgments converge upon in deeming manifestly immoral — the people will conclude that it violates their conscience and is tyrannical. In the end, of course, they must rely on their private judgments about this.* We might sum up Locke's view in five critical theses.

1. Individuals employing their private judgment disagree about the requirements of the law of nature, especially in cases in which one's interests are involved.
2. Consequently, a peaceful cooperative social life, in which people have a common understanding of their rights, requires a known and impartial public umpire to provide a public definitive, authoritative, resolution of the disputes

between citizens. This is an authoritative public judgment that excludes the authority of conflicting private judgments.

3. The range of the authority of the umpire is not unlimited; the umpire only has the authority to make impartial judgments within the bounds of reasonable dispute about the law of nature.

4. The boundary of reasonable disputes is determined by the general consensus of the private judgments or reasoning of citizens.

5. When the umpire acts outside these bounds it has no public authority.

V DRAWING LIBERAL BOUNDARIES: THE PUBLIC AND PRIVATE SPHERES

One important liberal feature of Locke's view, then, is that public authority is limited by natural rights. But in contrast to the anarchist, who insists that each individual's private judgment about her rights is determinative for her (and so essentially denies the existence of public authority), on Locke's view an umpire is required to publicly, authoritatively, interpret natural rights. And this requires citizens to set aside (as non-authoritative) their private judgments on these matters. Nevertheless citizens do not renounce making private determinations: they remain active in ensuring that the umpire does not become a threat to the rights of citizens. In normal contexts private judgment must be self-effacing, but it always remains, ready to assert itself should the proper bounds of public authority be crossed.

A second important boundary for any liberal theory of political life is that between the public and the private — concerns that are the proper scope of public authority and those matters that are private, and over which the state has no authority. Locke identifies a clear boundary to public authority:

The commonwealth seems to me to be a society of men constituted only for the procuring, preserving, and advancing their own civil interests.

Civil interest I call life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like.

It is the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general, and to every one of his subjects in particular, the just possession of these things belonging to this life. If any one presume to violate the laws of public justice and equity, established for the preservation of these things, his presumption is to be checked by the fear of punishment, consisting in the deprivation or diminution of those civil interests, or goods, which otherwise he might and ought to enjoy....

Now that the whole jurisdiction of the magistrate reaches only to these civil concernments; and that all civil power, right, and dominion, is bounded and confined to the only care of promoting these things.... (FLT: 10).

These are the ends of government, and securing them is the reason free people enter it: no others should be admitted (SLT: 119). These define the public, political, sphere. Locke is especially concerned with demonstrating that religious matters lie outside the political realm. "I esteem it above all things necessary." Locke insisted, "to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other. If this be not done, there can be no end put to the controversies that will be always arising between those that have, or at least pretend to have, on the one side, a concernment for the interest of men's souls, and, on the other side, a care of the commonwealth" (FLT: 9-10). Outside of matters of civil interests and morality, the government has no authority — the judgment of the magistrate does not stand for public reason: "as the private judgment of any particular person, if erroneous, does not exempt him from the obligation of law, so the private judgment, as I may call it, of the magistrate, does not give him any new right of imposing laws upon his subjects [in matters such as

religion], which neither was in the constitution of the government granted him, nor ever was in the power of the people to grant" (FLT: 45). On the other hand, churches are voluntary organizations, and thus have no political authority over their members or right to use force (FLT: 17, 19). Thus, Locke insists, "the church itself is a thing absolutely separate and distinct from the commonwealth. The boundaries on both sides are fixed and immoveable" (FLT: 21).

VI LOCKE AND RAWSLIAN PUBLIC REASON

Locke, then, manifestly and repeatedly distinguishes the realm of the civil, where the public authority of the umpire about rights and core civil interests excludes private judgment, from the religious sphere, in which each rightfully acts on her private judgment, and where the judgment of the umpire is just one more opinion — it has no claim to public authority. Let us inquire further into the nature of this "fixed and immoveable" boundary between the civil and the religious.

One possibility is that Locke's entire theory of public authority, which I have explicated thus far, depends on purely secular arguments about civil interests and abjures all appeal to religious doctrines. If religion is a purely private matter, we might reason, it cannot enter into the case for a public authority; the argument for public authority must be premised only on the "worldly welfare of the commonwealth" (FLT: 54). This would be what John Rawls would call a "freestanding," secular, political argument.⁹ Rawls distinguishes two phases of a public reason justification.¹⁰ The first phase articulates and defends a theory of political right on the basis of a "freestanding" argument — one which is based simply on the shared, secular, reasons of all citizens, which ground the public sphere. If, as Rawls and Locke both recognize, we have deep and enduring disagreements about matters such as religion, then it looks as if we must "bracket" or set aside these reasons when defending the common, political, realm. In the

second stage of justification, which Rawls calls “full justification,” citizens draw on their own religious convictions, and beliefs about the good, to see if they can find support in these doctrines for the conclusions of the freestanding political argument. If many different religious doctrines support the freestanding political theory, then we can say that there is an “overlapping consensus” on the political theory. When such an overlapping consensus obtains, citizens are not torn between the demands of the political and the religious, and so we can expect a more stable compliance with the public laws.

Now it is quite clear that Locke engages in extensive argumentation that we would today classify under “overlapping consensus.” Throughout his *Letters on Toleration* Locke argues that the limitation of the magistrate’s authority to civil interests is endorsed from religious perspectives. Thus, in arguing that the civil government has no authority over belief, Locke appeals to the nature of true religious belief: “The care of souls cannot belong to the civil magistrate, because his power consists only in outward force: but true and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God” (FLT: 11). The aim, then, is to demonstrate to religious citizens that their religion does not conflict with the government observing a “fixed and immovable” boundary between the civil and religious; the religious should welcome this, since true religion and salvation cannot be achieved through the tools of law. One who accepts the law acknowledges that one’s private opinion about morality is without authority, but the law does not determine one’s private opinion. And salvation depends on genuine private belief. In any event, even if government could shape belief, a religious person should realize the folly of giving any government such power.

For, there being but one truth, one way to heaven; what hopes is there that more men would be led into it, if they had no other rule to follow but the religion of the court [ruler], and were

put under a necessity to quit the light of their own reason, to oppose the dictates of their own consciences, and blindly to resign up themselves to the will of their governors, and to the religion which either ignorance, ambition, or superstition had chanced to establish in the countries where they were born? In the variety and contradiction of opinions in religion, wherein the princes of the world are as much divided as in their secular interests, the narrow way would be much straitened; one country alone would be in the right, and all the rest of the world put under an obligation of following their princes in the ways that lead to destruction: and that which heightens the absurdity, and very ill suits the notion of a deity, men would owe their eternal happiness or misery to the places of their nativity (FLT: 12-13).

Again and again, Locke employs a type of “overlapping consensus” strategy to show that, from within the perspective of religious citizens, the immutable boundary between civil authority and private freedom of religion is justified. Showing that religious reasoning supports the political doctrine of public reason is critical, as Locke acknowledges that “obedience is due in the first place to God, and afterwards to the laws” (FLT: 43). Because “the principal and chief care of every one ought to be of his own soul first, and, in the next place, of the public peace” (FLT: 44), no reasonable person would respect the public/private boundary, no matter how important for civil peace, if it endangers her soul. However, while the “overlapping consensus” element of Rawlsian public reason is manifestly important to Locke, Jeremy Waldron has demonstrated that Locke cannot be attributed with a “freestanding,” *secular*, argument for his political doctrine.¹¹ On Waldron’s careful reading, Locke’s very conception of human equality, upon which his political doctrine is based, requires appeal to Christian belief.¹² To take a different but fundamental element, consider the idea of morality, which it is the chief task of the civil magistrate to publicly interpret. For the public realm to be thoroughly secular, it must be the case that full knowledge of the law of nature can be achieved through secular reason alone.¹³ But Locke denies this; not only does he think that the common

person — “the vulgar” —cannot, from secular premises alone, reason to all the conclusions of morality, but even philosophers fail:

it is too hard a task for unassisted reason to establish morality in all its parts, upon its true foundation, with a clear and convincing light. And it is at least a surer and shorter way, to the apprehensions of the vulgar, and mass of mankind, that one manifestly sent from God, and coming with visible authority from him, should, as a king and law-maker, tell them their duties; and require their obedience; than leave it to the long and sometimes intricate deductions of reason, to be made out to them. Such trains of reasoning the greatest part of mankind have neither leisure to weigh; nor, for want of education and use, skill to judge of. We see how unsuccessful in this the attempts of philosophers were before our Saviour’s time. How short their several systems came of the perfection of a true and complete morality, is very visible. And if, since that, the christian philosophers have much out-done them: yet we may observe, that the first knowledge of the truths they have added, is owing to revelation: though as soon as they are heard and considered, they are found to be agreeable to reason; and such as can by no means be contradicted (RC: 139-40).

And thus “it is plain, in fact, that human reason unassisted failed men in its great and proper business of morality. It never from unquestionable principles, by clear deductions, made out an entire body of the ‘law of nature.’ And he that shall collect all the moral rules of the philosophers, and compare them with those contained in the New Testament, will find them to come short of the morality delivered by our Saviour, and taught by his apostles; a college made up, for the most part, of ignorant, but inspired fishermen” (RC: 140). Moreover, not only is purely secular reason unable to grasp the full content of morality, but Locke insists that philosophical investigation fails to account for the authority and obligation of morality.

Did the saying of Aristippus, or Confucius, give it an authority? Was Zeno a law-giver to mankind? If not, what he or any other philosopher delivered, was but a saying of his. Mankind might hearken to it, or reject it, as they pleased; or as it suited their interest, passions, principles or humours. They were under no obligation; the opinion of this or that philosopher was of no authority.... These incoherent apophthegms of philosophers, and wise men, however excellent in themselves, and well intended by them; could never make a morality, whereof the world could be convinced; could never rise to the force of a law, that mankind could with certainty depend on (RC: 142-3).

Thus “a body of ethics, proved to be the law of nature, from principles of reason, and teaching all the duties of life... nobody will say the world had before our Saviour’s time” (RC: 143). The mistake of the secularist is in thinking of the laws of nature “that because reason confirms them to us, we had the first certain knowledge of them from thence; and in that clear evidence we now possess them. The contrary is manifest, in the defective morality of the gentiles, before our Saviour’s time; and the want of reformation in the principles and measures of it, as well as practice” (RC: 145-6).

Morality, then, bridges the secular-religious divide (FLT: 41). Without religious conviction a person will have incomplete knowledge of morality and, worse, will not see it as the authoritative command of a law-giver. Consequently, “[t]hose are not at all to be tolerated who deny the being of God. Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist. The taking away of God, though but even in thought, dissolves all. (FLT: 47).¹⁴ Without God there cannot be authoritative morality. Manifestly, then, Locke’s “freestanding” argument does not stand free of religious belief. But it is a mistake to think — as perhaps does Waldron — that a public reason argument, drawing on shared beliefs to articulate and justify a conception of a common public world, must abstract from all religious argument, or all conceptions of the good.¹⁵ Everything depends on the

society to which the account is being addressed. In our twenty-first century society, where many do not hold religious convictions, an analysis of the public sphere that made a necessary appeal to religion — a justification that only believers could accept — would clearly be inadequate. But in Locke's seventeenth century England, the supposition of the basic tenants of Christianity could form a common basis for reasoning: the vast majority plausibly accepted premises based on the most general and basic beliefs of Christianity. Just as Rawls draws on common beliefs of a democratic public, Locke could draw on common beliefs of a Christian public. It is fundamental to a public reason view that the nature of the shared, public, beliefs depend on the society being addressed. It is by no means a necessarily secular approach to political justification. The first stage of a Rawlsian public reason argument must abstract from the controversies that divide a society, about which there is deep and continuing reasonable disagreement. In seventeenth century England the critical dispute was among the divergent religious beliefs distinctive to the followers of the Church of England, a wide array of dissenting Protestants (groups ranging from Quakers and Shakers to Methodists and Presbyterians) and Roman Catholics.⁶ It is from these disagreements from which a public reason doctrine structured along the Rawlsian two-staged argumentative strategy must prescind.

VII LOCKE'S INSULATION THESIS AND ITS FAILURE

The way in which morality straddles the political/religious divide is not, then inconsistent with Locke advancing a public reason theory with a Rawlsian two-stage structure (though, of course, not one with a Rawlsian content): (i) the shared argument which stands free of the society's doctrinal disputes and (ii) an overlapping consensus justification in which each member of the society affirms the political argument from her own, controversial, religious viewpoint. However, I think it is clear that Locke's insistence that morality depends on religious

undermines the fundamental claim of his theory: that we can identify a shared reasoning in the public sphere that can be insulated from our disputes about private matters, and in Locke's case, crucially religious disagreement.

For the political doctrine I explicated in sections III and IV to be viable, there must be a basic shared understanding of the laws of nature and what they call for. Recall that Locke argues that there are limits to the authority of the public umpire, and that there will be a general consensus about when these limits are exceeded. If there is not such a consensus, there will always be significant groups claiming that the umpire has exceeded its authority, that it has strayed outside the bounds of a reasonable interpretation of the laws of nature. In his theory of revolution Locke is especially worried about that charge that individuals will take umbrage and rebel, and his answer is that "the people shall judge" whether the umpire has exceeded its authority (ST: §240). But this sort of collective decision presupposes a general consensus, and such a consensus arises from a broad consensus about the demands of the laws of nature. For such a broad, general, consensus, to persist, the population's beliefs about the laws of nature and their requirements must be relatively insulated from their deep and widespread doctrinal disputes.

I have argued elsewhere that Hobbes insisted that beliefs about political right could not be insulated from religious disputes, and that is why he rejected the idea of a private sphere in which religious groups could freely practice and espouse their doctrines.¹⁷ Locke's insistence that morality presupposes religious belief imperils his own attempt to insulate the political from the religious disagreement. Different religions advance vastly different interpretations of the Bible as well as their different views of the sources of religious truth. The Fifth Monarchy Men, who arose during the English Revolution, interpreted Daniel's dream (Dan. 7) as indicating that there would be five great legitimate monarchies: the last of which would be that of Christ. They believed that the fourth monarchy, the Roman Empire, had been overturned by the Church of Rome, and so were awaiting the fifth monarchy: the

reign of Christ. Consequently, on the basis of their reading of the Bible they denied the legitimacy of all states between the Roman Empire and the Reign of Christ — and so for the time being were anarchists. Less radically, Roman Catholics disagreed with Protestants such as Locke about the source of religious authority, viewing Church tradition as a source of authority equal with scripture. Catholics pose an especially thorny problem for Locke. In a number of places in his *Letters on Toleration* Locke seems to include Roman Catholics (usually referred to as “papists”) in his arguments, as a view of Christianity like others that ought to be tolerated (FLT: 40, 55; SLT: 102, 118; TLT: 147, 219, 229, 231, 280, 301, 322, 400, 528). Yet it is typically thought that Locke was unwilling to extend toleration to Roman Catholics when he writes: “Another more secret evil, but more dangerous to the commonwealth, is when men arrogate to themselves, and to those of their own sect, some peculiar prerogative covered over with a specious show of deceitful words, but in effect opposite to the civil rights of the community.... What can be the meaning of their asserting that ‘kings excommunicated forfeit their crowns and kingdoms?’ It is evident that they thereby arrogate unto themselves the power of deposing kings: because they challenge the power of excommunication as the peculiar right of their hierarchy” (FLT: 46). It is hard not to see this as aimed at Roman Catholicism. In his early nineteenth century introduction to John Fox’s *Book of Protestant Martyrs*, for example, the Reverend John Milner took this passage from Locke as a warning of the “dangerous and *unbounded* influence of the Romish clergy.”⁸ Overall, it is probably best to read Locke as holding that, as a body of religious doctrine, Roman Catholicism should be tolerated along with other forms of Christianity and Judaism, but not when it claims — as Popes did — an authority to cancel citizens’ obligation to civil government.⁹ A religion that does not itself respect the insulation of religious belief from political right and obligation, Locke concludes, cannot be tolerated.

And here lies the problem: because Locke insists that civil government concerns the public adjudication of disputes about morality and natural law, and he insists

that reason unguided by religious faith cannot discover the full content, and authoritative nature, of morality, religious belief cannot be insulated from the civil sphere. If Christianity is necessary to understand the law of nature, non-Christians will not have a proper understanding of the disputes that the civil magistrate is seeking to adjudicate, and so will not have a proper grasp of the reasonable bounds of these disputes. And presumably Catholics will also fail to have a proper grasp, as their understanding of natural law will be heavily influenced by Church tradition (including decisions of Church councils), a consideration absent from Protestant interpretations. And it is but a short step to conclude that the many Protestant sects, which radically disagree about some key parts of scripture, will also have deep differences about the content of natural law and God's commands (think again of the Fifth Monarchy Men).

It is important to stress that the worry is not simply that we disagree about morality. A power of Locke's account is that he directly focuses on such disagreement in his theory of public adjudication. The very point of government, we have seen, is that people will disagree about natural rights and natural laws. Locke, however, focuses on the distortions caused by self-interest in judging in one's case, not on deep and fundamental disagreements about the content of natural law. Indeed, Locke's liberal theory of public reason, which requires that the umpire only has authority to adjudicate within some reasonable range of disputes, requires a broad consensus among citizens to identify this range. The problem posed by Locke's doctrine that natural reason, shorn of religious belief, cannot reveal the complete content of natural law is that it dissolves the barrier between civil and religious dispute that his theory of public reason was meant to erect.

Locke's insulation thesis, I have argued elsewhere, has been absolutely critical to most liberal theories of public reason, including that of John Rawls.²⁰ The heart of two-staged liberal theories of public reason is to distinguish those political or civil matters about which there is broad agreement, and construct a theory of justice, or political right, on their basis. We need such a shared basis for thinking about justice, these liberal theorists of public reason have insisted, because we have such deep and wide disagreement over matters of religion, moral ideals, metaphysical convictions and so on, we must forge shared terms on which to live. For this project to succeed, these deep and wide disagreements must not invade the public sphere, for then the broad consensus, upon which such public reason theories depend, will dissolve into the very conflicts that it sought to set aside. Thus the need for what I have called the insulation thesis. Locke's great insight — which, alas, was also the undoing of his theory — was that our moral convictions are not freestanding from our broader commitments. Locke's hope, I think, was that there was enough consensus in Christian civilization about these matters that all Christians would agree about the broad contours of the public sphere. Atheists had to be excluded, but that was not a significant exclusion. But the uneasy place of Roman Catholics pointed to the problem. On the one hand Locke sought to include them in the broad Christian consensus, and on strictly theological issues they appeared to qualify for toleration. But then — without explicitly naming them, but identifying a doctrine long associated with Roman Catholics (after all, Henry the VIII was excommunicated) — a Church with a doctrine which says that its clergy has the authority to deny civil honor (obedience) to the magistrate is not due toleration. But that is simply a case where its religious tenets carry over into civil morality. It is not just Catholicism, however, that bridges the public private divide: indeed Locke has shown that it must be bridged.

One might think that Locke could have avoided all of this by simply supposing — as most of his contemporary followers have — that secular reason, is complete in

itself and needs no supplement from religious belief. But those contemporary followers cannot explain why there should be such consensus on natural rights and law: they often blithely assume it, though most of their fellow political philosophers, do not concur. Locke hoped that the broad agreement of Christian civilization could provide the foundation of the consensus while he sought to prevent its deep disagreements from undermining it. The trick, as it were, is to get sufficient consensus in the public sphere to define the limits of public reason while insulating this consensus from private disputes. We should not disparage Locke for failing — I am doubtful whether anyone has succeeded.

Notes

¹ See Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), pp. 10-11

² All references to Locke's writings are from *The Works of John Locke in Nine Volumes*, twelfth edition (London: Rivington, 1824). The following abbreviations are used in the text. FT: *First Treatise of Government* vol. 4 (by section); ST: *The Second Treatise of Government*, vol. 4 (by section); FLT: *First Letter on Toleration*, vol. 5; SLT: *Second Letter on Toleration*, vol. 5; TLT: *Third Letter on Toleration*, vol. 5; RC: "The Reasonableness of Christianity," vol. 6; STE: *Some Thoughts Concerning Education*, vol. 8.

³ The most famous of these is, of course, Nozick, *Anarchy, State and Utopia*, Part I. For an overview, of responses, see Eric Mack and Gerald Gaus, "Classical Liberalism and Libertarianism: the Liberty Tradition" in *Handbook of Political Theory*, edited by Gerald Gaus and Chandran Kukathas (London: Sage, 2003): 115-130.

⁴ See A. John Simmons, *On the Edge of Anarchy: Locke, Consent and the Limits of Society* (Princeton: Princeton University Press, 1993), esp. pp. 260-69.

⁵ Nozick, *Anarchy, State and Utopia*, pp. 10-11.

⁶ And: "To avoid this state of war (wherein there is no appeal but to heaven, and wherein every the least difference is apt to end, where there is no authority to decide between the contenders) is one great reason of men's putting themselves into society, and quitting the state of nature: for where there is an authority, a power on earth, from which relief can be had by appeal, there the continuance of the state of war is excluded, and the controversy is decided by that power" (ST: §21).

⁷ As Jeremy Waldron notes, Locke makes this point “again and again.” *God, Locke and Equality: Christian Foundations of Locke’s Political Thought* (Cambridge: Cambridge University Press, 2002), p. 65.

⁸ It is because private judgment must be relied on when citizens ask whether the public authority has stepped beyond its authority, and is no longer performing its designated task, that Jean Hampton insists that Hobbes’s contract ends up as a Lockean one. Whereas Hobbes seeks to entirely exclude private judgment, Locke admits that citizens must rely on it in these cases. See her *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), chap. 7.

⁹ John Rawls, *Political Liberalism*, expanded edition (New York: Columbia University Press, 2005), pp. 12, 144, 387. For a sketch of Rawls’ argument, see my essay “The Turn to a Political Liberalism” in *The Blackwell Companion to Rawls*, edited by David Reidy and Jon Mandle (New York: Wiley-Blackwell, 2014), pp. 235-50.

¹⁰ *Ibid.*, pp. 387ff.

¹¹ Waldron, *God, Locke, and Equality*, especially pp. 81, 236ff.

¹² Recall from our opening sketch, that the state of nature is a condition of “equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection” (ST: §4).

¹³ As one might well have concluded from the passage from the *Second Treatise* cited above: “The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that

being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions” (ST: §6).

¹⁴ See further Waldron, *God, Locke and Equality*, chap. 8.

¹⁵ *Ibid.*, pp. 236-7.

¹⁶ I return to Catholics in sections VII and VIII.

¹⁷ “Hobbes’ Challenge to Public Reason Liberalism,” in *Hobbes Today: Insights for the 21st Century*, edited by S.A. Lloyd (Cambridge: Cambridge University Press, 2013), pp. 155-177.

¹⁸ John Fox, *An Universal History Of Christian Martyrdom: Being a Complete and Authentic Account of the Lives, Suffering, And Triumphant Deaths of the Primitive As Well As Protestant Martyrs In All Parts of the World, from the Birth of Our Blessed Savior to the Latest Periods of Pagan and Catholic Persecution Together with a Summary of the Doctrines, Prejudices, Blasphemies, and Superstitions of the Modern Church of Rome with notes, commentaries by J. Milner* (London: B. Crosby and Co, 1807), p. x. Emphasis added.

¹⁹ For doubts, see Waldron, *God, Locke and Equality*, pp. 218-23.

²⁰ “Public Reason Liberalism” in *The Cambridge Companion to Liberalism*, edited by Steve Wall (Cambridge: Cambridge University Press, 2015: 112-40).