

# Introduction

In November of 1688, William of Orange landed in England with a substantial force of infantry and cavalry. The English king, James II, had been anticipating his son-in-law's attack for some time, and had already defeated a nephew's attempt to drive him from the throne three years earlier. In the end, however, William's invasion resembled a triumphal parade more than a military confrontation. James fled as his armies dissolved, leaving England in a delicate situation. A Convention Parliament was assembled to decide just what had happened, at least from a legal point of view. Had James II *abdicated* the throne in leaving the country? If so, why did this not make his newborn son king? Or did it? Or if his son were also to be excluded from the throne, on whatever pretext, was William the new king (he was descended from Charles I on his mother's side)? Or was his wife Mary instead a sovereign queen, being James II's eldest daughter? Was Parliament going to *decide* these issues, or simply *recognize* the legitimate heir to the throne? The answers to these questions would in effect constitute a declaration of which principles were at the root of the English system of government.

We can view what came to be known among Whig historians as the Glorious Revolution as a continuation of the imperfectly resolved Civil War. But this means, therefore, that we must recognize that it was just as ambiguous in its causes. The struggle between Catholicism and the Protestant Reformation, and between factions within the Reformation, was entangled with struggles between Parliament and the Crown, the House of Commons and the House of Lords, court and country lords. William emphasized that he was a Protestant; others, that he had the support of the people, from whom all rightful authority flows.

For a number of reasons, therefore, William's victory had to be consolidated. James II had found support in Ireland and Scotland, as did his son and grandson after him; the suppression of this Jacobitism played a major role in the ruin of those two countries. Beyond the consolidation of the

*military* victory, however, was the matter of the political victory. This was not simply a question of discrediting Jacobitism in the public mind, but of establishing the nature of the alternative to counter-revolution. What sort of government did England have? What was the character of the revolution?

What followed was a barrage of pamphlets, tracts, and treatises. This was nothing new in England. There had been a push to exclude James II from the line of succession while his older brother, Charles II, was still on the throne, and the resulting Exclusion Crisis prompted a flurry of pamphleteering all its own. It is a testament to the diffusion of political power that partisans sought to influence men without speaking to them, or that the ambitious thought the opinions of the merely literate important—just a generation earlier, treatises had served an entirely private and local purpose.<sup>1</sup>

Most of what was written makes for tedious, uninspiring reading. It was no doubt different for those embroiled in the political contests of the time, just as most of the political commentary that is published today will thankfully be a magnet for some library's dust and mold tomorrow. Historians alone seem interested in wading through the piles of material, assembling them into critical editions, and then (what is strangest of all) reading them. And, to my knowledge, the intrepid historians who subject themselves to this tedium do not claim to find anything interesting about the perennial questions of politics. Indeed, some return from the archives to declare that there can be *nothing* of permanent or enduring interest if anyone, anywhere, at any time found what they just read interesting.

An exception to this near-universal disregard is John Locke's *Two Treatises of Government*, or at least the *Second Treatise*. In fact, I suspect that there continues to be a market for Robert Filmer's and Richard Hooker's works primarily because of the enduring popularity of Locke's. Once, when I was visiting a new doctor for a physical exam, we got to talking and I told him that I was writing a book about Locke. "Get out!" he exclaimed. It turns out that he had an intense interest in Lockean philosophy and was delighted to have the opportunity to discuss it with one of his patients. Not every physician is part of a philosophically inclined reading group, of course, but I cannot help but wonder if I would have received the same level of care had I been working on George Lawson or William Lloyd. Locke is frequently dry, but he is not irrelevant to our concerns.

It might be objected that we find Locke interesting because we misread him, or read more into the text than what he put there. I grant that it would be absurd to deny the influence of chance on what we find relevant. The *Two Treatises* receives a hearing because of its reputation, and Whig historians had an incentive to claim the great philosopher of *An Essay Concerning Human Understanding* as an intellectual forebear.<sup>2</sup> We might legitimately wonder whether the *Treatises* would still be among the required readings in

any survey of the history of political thought worth an undergraduate student's tuition if Locke had not finally acknowledged authorship in a codicil to his will. But we should not be overawed by the differences the accidents of history can make. The *Two Treatises* was still being plagiarized by the anonymous author of the *Political Aphorisms* while Locke was very nearly ending friendships over the suggestion that he had indeed composed it.<sup>3</sup>

The *Two Treatises* comes to sight as the only thing written surrounding the Glorious Revolution worth reading. Yet it was not written in support of the Glorious Revolution. It certainly supports a revolution on the basis of the arguments it contains, but Locke appears to have composed the bulk of it in 1681–82, or even as early as 1679. He fled England in 1683 under a cloud of suspicion regarding the alleged Rye House Plot, and his fellow partisans had a hand in convincing the Duke of Monmouth to launch his ill-fated rebellion in 1685. Locke's conclusion certainly sounds like a call to arms. Yet it is not as though Locke published his treatises *before* any of the great upheavals of his day. It wasn't waiting for the Duke of Monmouth when he landed on the shores of Lyme Regis. It didn't play John the Baptist to William of Orange's redemptive invasion. Its part in the most immediate political struggles was not one of incitement to action. The timing of its publication suggests that it was always intended to be an argument that reconciled its readers to a *fait accompli* or, at most, to fight against a counter-revolution.<sup>4</sup>

But this was not its only purpose. After all, had that been enough, Locke might well have written something like William Lloyd's *Discourse of God's Ways of Disposing of Kingdoms*, which argued that the success of William III's invasion proved that James II had lost God's mandate to rule. Lloyd presents a bizarre argument, one bordering on the absurd, that boils down to the assertion that might is right because God rules the universe. Yet if his preface can be believed, the new king and queen were quite pleased when they heard his little sermon and directed him to publish it. The divine right of kings, as Locke had suggested in regard to Filmer, can support usurpers just as well as established inheritors of the crown (cf. TT I 121). And when you consider that a usurper must gain God's favor individually, while a Rehoboam may rule only because of his grandfather's particular merit, divine right might seem to actually favor the usurper's claim. Not surprisingly, Locke did not attempt this route. The particular principle that convinced the English people to accept William III was of decisive importance. The *Two Treatises* presents an account of government that is not tied to any particular revolution but is instead intended to "co-opt," as it were, *any* revolution.

Men do not by and large undertake earthshaking revolutions out of a calculation of narrow self-interest. They do so because they believe that their cause is just. A divination of what would be to our more material advantage may unconsciously guide our arguments about justice, but it does not

supplant them. Even criminals tend to believe that they are the victims of some injustice or another that absolves them from guilt.

Yet there are always so many justifications to choose from! Perhaps Charles II had actually married Lucy Walter while in exile, making the Duke of Monmouth the legitimate heir to the throne in preference to his uncle James. Perhaps the divine right of kings applies only to kings who are faithfully Protestant. Perhaps it is the king-in-Parliament that is sovereign, and so any king who attempts to rule without Parliament in fact commits treason against the sovereign. These are only some of the justifications that were floated.

Accepting the first alternative would require either clear rules of succession as a matter of English law, together with an account of why that law must be respected over the kings' declarations, or similarly clear rules as a matter of natural law. The second would require an elaboration of what it means to be a Christian commonwealth. The third would require some sort of explanation for why Parliament was not simply the king's council; hidden within this justification is an appeal to historical accident or the right of the nobility.

The *Two Treatises* by and large privileges the claims of Parliament over the king, insofar as the presentation of the English constitution is that of the Whigs. Yet these claims gain what potency they have from the people's consent, not from Parliament's rights or its members' dignities. Locke is studiously ambiguous regarding the ultimate source of his political convictions, be it secular or Socinian or Protestant, yet he cannot seriously be accused of having intended the *Two Treatises* to be justified more by the *Reasonableness of Christianity* than by his *Letter Concerning Toleration*. And while he hints that the English people are so far from abolishing the monarchy that even in revolution they generally look to the deposed's line for a replacement, he never suggests that they would have to.

Locke does not attempt to support the Glorious Revolution on the basis of legitimate descent since that would encourage the perception that a legitimate heir *could* rule as he liked. He does not derive its goodness from an arrangement of biblical verses because that would support the principle of theocracy. And he ignores the arguments from law and history since that would make pettifoggery an authority before which common sense must bow. Locke's purpose in writing the *Two Treatises* was to influence how the people perceived a revolution that would have just happened, and to do so in order to direct the sort of government that would rule afterward.

We may safely say, then, that the *real* revolution was to take place after Locke had justified whatever events pushed one or the other Stuart brothers from the throne. The military campaigns or assassinations would get the name of the "revolution"; Locke wanted the substance of it for himself.

Locke's justification for revolution was the revolution that mattered. He published his justification, when he published it, in order to bring about the Lockean commonwealth.



In this book I am going to try to retell a somewhat familiar story about John Locke and his *Two Treatises of Government*. Before the final page is turned, a new, more radical, and significantly more interesting Locke will be available for criticism or acceptance. My focus is on the political doctrine that is presented, primarily in the second of the two treatises. That is, what I am revising is our understanding of the conclusion of Locke's reasoning, not so much our understanding of his somewhat obscured premises. At present, there is a great deal of discussion on questions like, Was Locke a Hobbesian? and How entirely wedded to the medieval natural law tradition was he? It is assumed that we know pretty much where he gets to, even if Locke scholars retire to separate intellectual ghettos when it comes to where he started from. But it is precisely the political doctrine that I think needs revisiting. The standard view of it does not adequately address what he says about prerogative. The failure to make prerogative the center of analysis distorts the image we have of the Lockean commonwealth, the kind of society that Locke sought to bring about with his book. The commonwealth appears too stable, too legalistic; it is interesting to look at only when it is broken. This image is unsustainable once the problem of prerogative is taken into view. Prerogative requires of us a reorientation. What is important to Locke, or what appears to us to be important to Locke, shifts. His concerns seem different. He seems more preoccupied with what preoccupies us.

I argue that Locke speaks to a particularly pressing and uncomfortable issue, namely, the problem of unlawful executive action. He addresses the possibility that the public safety and comfort might not always be achievable by strictly legal means, and that ambition might tempt a leader to claim that this is the case even when it is not. There are many who feel that the war on terrorism has brought about one of these possibilities or the other. Ascertaining the truth of the matter is a difficult enough challenge in itself. The greater difficulty arises, however, when we move beyond the question of fact—i.e., whether it is a concern for the public good that has motivated certain presidential decisions or rather a contempt for our Constitution's system of checks and balances—and ask how we should address either possibility should it prove to be the case. Our liberal principles demand that we not allow our government to proceed unlawfully. But as the good of the people—our good—lies at the heart of liberalism, our principles also demand that we permit it to act for that good in whatever mode necessary. It is the

reconciliation of these competing principles which forms the uncomfortable problem of unlawful executive action.

What would it mean for prerogative to be central to Locke's political system? Prerogative is extralegal. Locke's point, then, is not simply to agitate for the supremacy of Parliament. Prerogative is extraconstitutional. Locke is not, then, strictly a constitutionalist. Rather, Locke is an ambivalent friend of legalism, of a disposition at once both necessary to communal life and dangerous. He is consequently also a close-cutting critic of that disposition. The tendency to look to the law in deliberations about what is to be done must be encouraged for there to be lawful governance, but it is wise only insofar as the law is a good guide to prudent action. The centrality of prerogative means that for Locke the insufficiency of the politics of law is the central problem of political practice.

In considering Locke's political doctrine through the lens of a conflict between the public good and the strict rule of laws, I am aware that I break from the approach taken by many interpreters. Some argue that the operative tension is instead one between consent and reason.<sup>5</sup> This difference results largely from my goals in this study. The relationship of consent and reason becomes problematic only once we move beyond Locke's political rhetoric and instead interrogate its foundations. On the surface, however, Locke conceals any difficulties that might arise from how he argues for his political doctrine, whereas the tension between legalism and necessity is plainly visible in his presentation. My contribution is to show that it is in fact a fundamental core of his presentation.

Part of what I will argue is that considerations regarding prerogative are employed by Locke to move his readers, and not just his more discerning readers, away from a focus on questions of authority, or the suspension of one's private judgment in favor of obedience to obligatory commands and guidelines. Put another way, the style of political theory attributed to Locke by Greg Forster, Ruth Grant, Kirstie McClure, A. John Simmons, and Alex Tuckness, among others, is instead what Locke attempts to move his readers away from.<sup>6</sup> Still, as political authority comes about only by consent, and as only reasonable consent can generate that authority, and as it is reasonable to accept as authoritative only those actions clearly undertaken pursuant to a general law made for the public good by those entrusted by the community to do so—for these reasons, this shift toward an emphasis on the public good, and the assertion that this good can be safeguarded only by a sometimes extralegal prudence, might seem to be an unusually exposed element of the ubiquitous debate between consent and reason.

Locke's antinomy of authority/law and the public good/prudence does not perfectly track that between consent and reason, however. Because the people must judge prerogative, for example, reason never competes with

consent as a basis for authority.<sup>7</sup> Moreover, Locke's antinomy is set up by his having already declared that irrational acts of consent do not count, i.e., there can be no authority established by consent that puts those consenting to it in a worse condition than they were in before.

Locke may indeed intend to direct his best readers' attention to the problems raised by the peculiar character of his assault on absolute monarchy, but such subtleties are not a part of the public political doctrine which I am dealing with here. One may conceal or reveal esoterically the grounds of one's counsel, but one cannot dissemble regarding what one actually advises, at least if one wishes to be heeded. This is not to say, however, that I take the *Two Treatises* to be as demonstrative in nature as it might at first glance appear to be. Locke's public doctrine has a rhetorical purpose, and it contains a movement away from established ways of thinking about politics and toward Locke's own way. Locke revises his statements.

According to the now-standard account of the *Two Treatises*, the text we have was intended to be a manifesto of sorts. Locke was called upon to express the views of the more radical Whigs that had clustered around his friend and employer, Anthony Ashley-Cooper, the 1st Earl of Shaftesbury. For years they had opposed what they saw as the increasingly dictatorial stance adopted by Charles II with regard to the powers of Parliament—a stance that in their mind was either supported by the Catholic religion or was intended to foster and promote it without parliamentary meddling. When it became apparent that Charles's openly Catholic brother, James, would inherit the throne, Shaftesbury's party sought to enact a law that would exclude him from the line of succession. Charles said that they couldn't do that, and dissolved Parliament. Parliamentarians objected that he couldn't do that. Parliament mysteriously remained dissolved.

The *Two Treatises*, we are told, grew out of these conflicts. At some point, Shaftesbury's party became convinced that the ambition of the Stuart kings to rule in their own right, like the king in France, could not be checked through simply conventional means. The idea began to circulate that the king may have to be unseated. A general framework developed to argue—discreetly, of course—for that end, much of it borrowed from the contests surrounding the Civil War and the Commonwealth. Government exists by the consent of the governed, for example. Another common theme was that, just as the people have rights which others must respect or else be sanctioned by a court, so too do they have *natural* rights which the king must respect. The Parliament, as the legislature, is supreme over the king, who is just an executive of its will, went another. Locke was charged with crafting these rhetorically powerful slogans into a manifesto that would more or less make sense. There is some dispute as to whether he limited himself to this task, and I do not think he did. In any case, once William, Prince of Orange,

invaded from the Netherlands and drove James II into exile, and once it was clear that a Convention Parliament would decide issues surrounding the Crown, Locke published the *Two Treatises of Government*.

The standard account of what Locke produced goes something like this. From the natural equality of every human being, it is apparent that no one has the right to command another's obedience. Life without government, however, exposes one to criminal violence. The law of nature condemns the deprivations of unjust men, of course, but that law is ineffectual. What is needed is a government that makes it effective, but that does not itself violate it. The people, therefore, come together and consent to the creation of a government that will rule them according to law, not the whim of its chief magistrate. The legislative power must be distinct from the executive, and the latter must be entirely subordinate to the former. Should anyone in the government violate the principle of legislative supremacy, they have abdicated their authority and may be opposed by the people. In short, there can be no argument against what the Parliament does, or what the people do in support of Parliament.

The influence of this standard account can be seen in the scholars noted above, as well as in Carl Schmitt's assault on Locke's politics. I will discuss Schmitt at greater length in chapter 6, yet I will note here that he refers to Locke's statements regarding prerogative as proof that Locke's theoretical project was doomed to failure. Many contemporary "Lockeans" do not so much rebut Schmitt's reading of the *Two Treatises* as stubbornly defend the errors he attributes to Locke. This seems, at best, an impolitic way of defending liberal government.

But what if this accepted story about the *Two Treatises* were somehow deficient? What if it actually focused on the window dressing to the exclusion of Locke's view? Prerogative is not some undiscovered chapter, a piece of the Lockean apocrypha. Scholars of the American presidency, for example, pay it great attention, albeit with mixed results. When Locke scholars take notice of prerogative, however, they tend to try to tack it on to this now-familiar story. The result is about as satisfying as the Christian elements in the *Beowulf* epic. We are denied the easy shortcut of saying that the *Two Treatises* was written by two or more people, however. If Locke was torn—if he was both poet and interpolating scribe, in this analogy—then should not this tension loom large in our understanding of what he wrote?

Locke's purpose was not to fashion an account of political authority out of whole cloth. There were certain well established tropes which he could not avoid using without rendering the *Two Treatises* irrelevant and failing in his effort to direct the course of English politics. Locke does not emerge from those statements which mirror or imitate what had been said in various radical pamphlets surrounding the Exclusion Crisis, the Rye House Plot,



the Monmouth Rebellion, and finally William's success. Rather, it is the systemization of these statements, their synthesis, that forms Locke's original contribution, and in which his mind can best be seen. Attentiveness to how he fits the pieces together, however, reveals a mind concerned with issues very different from political authority. In other words, the standard account of Locke focuses on what he could not have failed to say, rather than on what he chose to say. For a number of reasons, Locke chose his words very carefully.

Let us begin at the surface of the standard account. The king is to be ruled by law. His possession of a power above and beyond the law, therefore, would undermine this goal, and some scholars as a result have attempted to force prerogative into a purely legal framework, or at least subordinated it to Parliament. The motivation for doing so, however, is that the doctrine of prerogative as Locke plainly states it stands against the strict subordination of the executive to the law—it contradicts what we *know* about Locke's purposes. Except—why do we know this to have been Locke's purpose? Why would Locke argue for the subordination of government to *law*?

In a grand rhetorical reversal, Locke presents the right of revolution as nothing more than defending oneself against a criminal, as the support rather than the overthrow of the existing legal order (cf. TT II 226). Yet every criminal knows that it is not the *law* that stands in between him and his activity. It is the police. And they don't do that so much with a badge as with billy clubs. The whole point of revolution is that law cannot be relied upon to bring about good government. It is the threat of revolution which gives teeth to the threats of those who press Parliament's rights against the king's encroachments. As it is these encroachments, and not the battle against them, that constitute the true nature of rebellion, the people's possession of a right of revolution, and their awareness of it, constitutes "*the best fence against Rebellion*" (TT II 226).

So at first glance it appears that prerogative undermines Locke's society governed by laws, but this is misleading. The Lockean commonwealth is not sustained by laws but rather by the people's spirited vigilance. How then would prerogative undermine this? How would extralegal action be an anomaly in a community regulated by the deterrent of legitimate military opposition?

Prerogative is no longer so anomalous. Locke concludes his discussion of prerogative with how to control abuses of that power. Should any question of prerogative arise between an executive and a legislature that depends on him for its meeting, he says, there can be no judge on earth. The same is true for any conflict between the legislature and the people. In every case where there is disagreement over the rightness of an extralegal government act, there remains only what Locke calls the "appeal to Heaven." Whatever else

may be said about that appeal, it is not an institutional solution, and most of the time (if not every time) it is nothing more than a military solution. That is, Locke ends his thematic treatment of prerogative the same way that he ends the *Two Treatises* as a whole.

Where is the constitution in what is left, then? Where is the law in Locke's system, if everything hinges on popular revolution? I will address this question at greater length in chapter 5, but I hope to have suggested that the rule of law plays a far lesser role in the Lockean commonwealth than the standard account would lead one to believe. It does play an important role, but mainly as a tripwire, a sort of dummy's guide to identifying tyranny.



We may compare what Locke says with how Robert Ferguson supported the revolution. Ferguson, in 1689, published *A Brief Justification of the Prince of Orange's Descent into England*.<sup>8</sup> And we see that it touches upon a number of familiar themes. It may be that government is ordained and instituted by God, Ferguson concedes, but the significance of this is limited to the fact that rulers are obliged to respect the laws of nature and what is vouchsafed by plain revelation. Beyond that, all government power results from explicit grants by the people, who can place what limits on it they wish. No ruler can claim any authority beyond these grants, for everyone was equally master of his property and liberty before they compacted to establish a government. Force and conquest can provide no title to rule until the people give their consent, either tacitly or explicitly. Nonresistance is a doctrine incompatible with the preservation of liberty. Any transgression of the laws is an immediate abdication of the right to rule and restores the people to the state of their primitive freedom. The real traitors, the real rebels, are those who violate the constitution in this way, not those who oppose them.

Ferguson was also a supporter of Shaftesbury's party, and like Locke fled to the Netherlands on suspicion surrounding the Rye House Plot (though, unlike Locke, he returned to England to aid the Monmouth Rebellion, after which he fled again). Not surprisingly, Ferguson's *Brief Justification* reads a lot like what certain historians tell us to find in Locke's *Two Treatises*.<sup>9</sup>

But note what is absent: there is no prerogative in Ferguson's description of legitimate government. He not only omits it, but he flatly denies that any such thing could legitimately be claimed in England. He goes so far as to declare it *treason* to suggest that any king or magistrate possesses more power than was explicitly granted to him by the constitution.<sup>10</sup> "Tis upon this account affirmed by an English King, That he can do no wrong, because he can do nothing but what the Law impowers him. For though he hath all things Subjected to his Authority, while he acts according to Law, yet there is nothing left to his Arbitrary Will."<sup>11</sup> Two pages later, Ferguson says that

there isn't even anything left to the king's discretion, let alone arbitrary will. It is instead Parliament where all questions of policy and government are decided. Ferguson represents a line of argument that suggests James II unkinged himself because he broke the law or because he did not recognize the supremacy of Parliament (which amounts to the same thing).

The principle Locke advances is not simply that of his party. Ferguson remarks that he will not consider government in general except insofar as is absolutely necessary. Six and a half pages later, he is done. Most of his forty-page tract deals with English history and law, various transgressions of James II, and the Convention Parliament's right to offer the crown to the Prince of Orange. Locke, by contrast, attacks Filmer and then does nothing but give general considerations of government. He does not mention James II or Charles II at all. One would almost never know from the text that there was a revolution underway, Locke's slapdash preface aside. And while Robert Ferguson mentions in passing that there is a condition of primitive freedom which precedes the agreement to form a government, John Locke provides extensive presentations of the state of nature, the law of nature, property, the family, the purposes of government in general, and what it means for government to be dissolved. Ferguson argues for a policy. Locke advances an entire stance toward politics.



I am suggesting that the rhetoric that Locke was compelled to employ was one of legalism, but that the essence of his teaching is anti-legalistic. Schmitt's criticism of liberalism would have been much easier had it been Ferguson who had achieved Locke's stature (however unlikely Ferguson's lack of subtlety made this). Locke had to speak in terms of law. He would have been irredeemably irrelevant had he not. The whole question was one of the king's rights, Parliament's rights, the people's rights, etc., and one cannot speak of rights without conjuring images of law. It was to be expected that the majority of the Whigs followed Hugo Grotius, a Dutch jurist, in attempting to explain their opposition to the Stuarts.<sup>12</sup> Yet my argument is that Locke saw the prevailing rhetoric of his day as a hindrance, as something which obscured the real issue. He, and the more astute of his political comrades, would have to have realized this as soon as Shaftesbury's party moved away from legislative attempts at exclusion and toward actual revolution. The securing of rights is not done by *magna chartae*, petitions of right, or Coke's rulings in court, but rather by the threat and application of force. The most important right, therefore, is the one that Blackstone later remarked could never be recognized by any legal order, namely, the right to declare the legal order dissolved and oppose all who deny its dissolution.<sup>13</sup>

That the people possessed this right was denied, and even many who supported the revolution balked when called upon to declare that they had actually *unseated* James II, rather than simply driven him into exile. There was the danger that William might have been allowed only to rule as regent, leaving the country in an awkward position should James or his son attempt to return. There was also the question of whether William would accept so limited a title. This uncomfortable situation could hardly be resolved if the people had no right to resolve it. Locke addresses himself to this problem. His immediate purpose was to persuade his countrymen that they did have a right to drive out James II and to declare him king no more. He presents the right of revolution as a matter of common sense. He therefore intimates that the problem in England was that its people lacked common sense.

And here lies the crux of the argument. Here the importance of prerogative comes to the fore. Consider what were *not* redressable problems in England in the seventeenth century, according to Locke. The problem was not that her kings sought tyranny. That was of course a problem, but there really wasn't anything that could be done about that. Reminding rulers of their duties is a bit like celebrating diet and exercise in order to combat obesity.

The problem also was not that the kings could persuasively claim to possess certain powers which they then went on to misuse. I should say that again because it forms part of the core of my thesis. It is also contentious. It is where I think that the standard account of Locke's *Two Treatises* gets things wrong. To repeat, the problem was not the recognized powers of the Crown. The problem was not that the king could convoke and dissolve Parliament. The problem was not even that the king could suspend the operation of the laws. Rather, it was that the people did not acknowledge that they had as much a right as the king to judge whether he had abused these prerogatives; they were obedient subjects, not engaged citizens. And convincing them that they should remain obedient subjects, but of the *law*, would not just result in a somewhat servile society but an ineffectual one to boot.

Let me say a bit more about this. The months and years following the revolution saw the Bill of Rights (1689), the Triennial Act (1694), the Act of Settlement (1701), the Act of Union (1707), etc. Each of these increased the power of the English Parliament. Its power over the purse was reaffirmed, as were certain legal protections for the subject from the Crown. For example, Coke's conclusion in *Prohibitions del Roy*,<sup>14</sup> namely, that the king could not sit in judgment of any case, was written into the law of England, nor could the king subvert the judiciary by the simple step of just establishing his own courts. Parliament had to meet every year, with an election every three, and was responsible for setting the line of the king's succession. Scotland, its Parliament absorbed into the English, now jointly styled the Parliament of Great Britain, could not cause trouble by selecting a different king.

These are legal reforms. They are important to the extent that the law is important. I do not wish to be taken to demean the significance of this. Behavioralist accounts of the U.S. Constitution ran into trouble insofar as they disparaged the importance of the text in determining and making sense of behavior. Yet they were correct to note that something more than the text is necessary for understanding the American regime, and in this they share Locke's insight into the efficacy of law. What is crucial is not the structures and activities that the constitution demands, but those that will be enforced. In a democracy it is the structures and activities that will be enforced by the people. What is most important, then, is the stance toward politics adopted by the people.

Politics, Locke tells us, is a human affair. There is no divinely ordained government. It was created by human beings, and created to serve their temporal ends of survival and material well-being. Human beings, moreover, *had* to create governments. God's care for individuals does not extend to this world, if what Locke says about the state of nature, property, and the appeal to Heaven are any guide. We are free, therefore, to guide our politics by reason alone. We must watch the government, and this requires that the governors rule by settled, standing laws. Yet these same governors cannot rule only by law, for prudence cannot be reduced to an algorithm. We both need and cannot have the strict rule of laws.

To put the point bluntly, the problem that Locke faces is this: Secular government can exist only if secular government is somehow justified. There can be no separation of church and state unless the state can convince human beings to support it without the aid of divine inducements. What was believed both religiously and politically, however, prevented the acceptance of this. The purpose of the *Two Treatises of Government*—the purpose which makes it what it is, rather than Ferguson's *Brief Justification*, Lloyd's *Discourse*, or even the anonymous *Political Aphorisms*—is the presentation of a secular account of government. It is this idiosyncratic goal that accounts for what J. G. A. Pocock sees as Locke's being "isolated from the Whig-Tory debate, as this actually proceeded, by the ancient-constitution premise on the one hand and by the *de facto* premise on the other."<sup>15</sup> Locke's purpose was to nudge his countrymen closer to believing this secular account and thereby take a step away from subjection and toward citizenship. As a secular government must serve secular ends, which for Locke are materialistic ends, Locke could not long avoid the ambiguous nature of legalism. For a commonwealth like Locke's, the problems which necessitate prerogative and the danger of prerogative constitute the central problems of politics.



This book begins with a discussion of Locke's state of nature. He presents his account of government as answering the defects of this state, and so we

cannot understand the rhetoric he employs in discussing political society and the rule of law (chapter 2), the necessity of prerogative (chapter 3), and what it means for government to be dissolved (chapter 4) without first obtaining a deep appreciation for the condition of man without government, too.

Chapter 2 explores the rule of law. The initial reaction to the state of nature is to establish the kind of authority whose absence defines that state. Locke asks how this might arise from consent and what constraints this sets upon the resulting authority. The theoretical problem that must be addressed if men are to escape from the state of nature is how individuals may take obligations upon themselves such that they no longer exercise their private judgment. In establishing limited government as the alternative to absolutism, Locke must address why these obligations can be accepted only so long as the government is lawful.

Prerogative, the subject of chapter 3, however, is occasioned by the inability of law to secure the public good. The main cause of legalism's political failure is what Locke calls the flux of things. But this failure, whatever its cause, means that from within a Lockean understanding the establishment of authority is an insufficient answer to the problem of politics. Put at its starkest, the elimination of states of nature is an insufficient answer to the problem of politics.

The turn away from authority and obligation as the sole touchstone of political legitimacy, moreover, complicates the question of revolution. This is especially significant because Locke is universally considered to be a theorist of revolution. The simple command, favored by many interpreters of Locke, to resist those who exceed their authority can no longer be Locke's message, for prerogative is exercised without authority in the strict sense. This complication is taken up in chapter 4.

Chapter 5 attempts to give a coherent account of what Locke is trying to do in the *Two Treatises*, drawing together the insights of the previous four chapters. The Lockean commonwealth is a mixture of authority and private judgment and so cannot be captured by a constitution that clarifies to whom and under what circumstances the commonwealth's members are obligated. It instead requires a popular diffusion of something like Locke's doctrine; it represents an outlook more than a constitution. This outlook, moreover, carries with it problems of its own.

Several questions remain about the Lockean commonwealth, however. Why should authority and obligation not be the central questions of political theory, for example, especially as Locke's more manifestly theological opponents and comrades took their cues from the fact that the Bible is more unequivocal about a duty to obey the rulers now on earth than about profiting and avoiding suffering? Why does the conflict between the need for the rule of law and the inability of rule by law to provide for the

public good form the core of Locke's political theory? An answer to these questions is presented in chapter 6: Locke's politics are secular, pursuing secular goals justified by secular reasons. This is seen clearly in that work of Locke's that is both undeniably political and theological in content, the *Letter Concerning Toleration*.