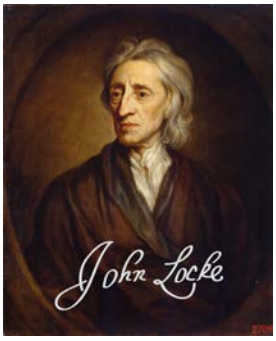

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Treatises of Government and Treatises of Anarchy: Locke versus Filmer Revisited

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Abstract:

I argue that one of John Locke's intentions in writing *Two Treatises of Government* was to turn the tables on Sir Robert Filmer and his followers when it came to the question of practical consequences of writing and publishing political philosophy. According to Locke, it was Filmer's thesis of natural subjection that had seditious ramifications. I show first that Locke is correct in his claim that in *Patriarcha* Filmer is, by his own admission and according to the logic of his own argument, a theorist of *de facto* political power. This meant, according to Locke, that Filmer has no account of the moral basis of allegiance. To that extent, Filmer has no case to make against the usurper. On other hand, I then argue, there is evidence in the Second Treatise that Locke was attuned to the worries that Filmer raises about the consequences of the thesis of natural liberty. Locke sought, in a number of ways, to contain the potentially destabilizing implications of his own conclusions. In conclusion I make a tentative suggestion as to how this concern with the practical consequences of flawed political theory might explain Locke's decision to publish both of the two Treatises in 1689.

Keywords: John Locke, Sir Robert Filmer, Philip Hunton, *Two Treatises of Government*, sovereignty, right of resistance, Glorious Revolution

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There cannot be done a greater Mischief to Prince and People, than the Propagating wrong Notions concerning Government.
— John Locke, *Two Treatises of Government*

1. Section One

In his political thought Sir Robert Filmer makes two central claims: first, that the sovereign power possessed by kings over their subjects is absolute and unlimited and, secondly, that kings have this power *naturally*, in exactly the same way that fathers naturally have absolute power over their children (and over the rest of their households).[1] In his commitment to an uncompromisingly absolutist theory of sovereignty, Filmer was deeply influenced by Jean Bodin. Filmer shared Bodin's sense of the absolute political necessity of a power that is above the law and, precisely because it is above the law, has the capacity to make law.[2] There could be no law, Filmer insisted, where such a power did not exist. Filmer's writings on this topic were directed against the parliamentarian propagandists of the 1630s and 1640s in general, and, in the case of *The Anarchy of a Limited or Mixed Monarchy* (1643), against Philip Hunton in particular.[3] In his belief in the naturalness of monarchical power Filmer took himself simply to be following the Bible, especially the Old Testament.[4] He stood against a range of what he regarded as innovators in political philosophy, including both Jesuits, such as Robert Bellarmine and Robert Parsons, and Protestant resistance theorists, such as George Buchanan, as well as

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[1] On Filmer's political thought, see: Peter Laslett, Introduction to *Patriarcha and Other Political Works*, by Robert Filmer, ed Peter Laslett (Oxford: Basil Blackwell, 1949); James Daly, *Sir Robert Filmer and English Political Thought* (Toronto: University of Toronto Press, 1979); Gordon J. Schochet, *Patriarchalism in Political Thought: The Authoritarian Family in Political Speculation and Attitudes Especially in Seventeenth-Century England* (Oxford: Basil Blackwell, 1975), chs. 7 and 8: 115-58; Johann P. Sommerville, Introduction to *Patriarcha and Other Writings*, by Robert Filmer ed. Johan P. Sommerville (Cambridge: Cambridge University Press, 1991); and Cesare Cuttica, *Sir Robert Filmer (1588–1653) and the Patriotic Monarch: Patriarchalism in Seventeenth-Century Political Thought* (Manchester: Manchester University Press, 2012).

[2] Filmer's *The Necessity of the Absolute Power of All Kings* comprises nothing but quotations from the Richard Knolles translation of Bodin's *Les six livres de la République*. The first quotation states that "To majesty or sovereignty belongeth an absolute power not subject to any law." Filmer, *Necessity*, in *Patriarcha and Other Writings*, 173.

[3] *The Anarchy of a Limited or Mixed Monarchy* is an attempted refutation of Hunton's *A Treatise of Monarchie*, published in 1643. "We do flatter ourselves," Filmer begins, "if we hope ever to be governed without an arbitrary power. No, we mistake. The question is not, whether there shall be an arbitrary power, but the only point is who shall have that arbitrary power, whether one man or many? . . . For to make a law according to law, is *contradictio in adjecto*." Filmer, *Mixed Monarchy*, in *Patriarcha and Other Writings*, 132.

[4] As Laslett puts it, Filmer's "prime assumption" was that the Bible "contained the whole truth about the nature of the world and the nature of society." Laslett adds later: "The enormous variety of political constitutions in the world as he knew it, and the obvious fact that political authority was being exercised in a way which contradicted his theory about its origin, he explained by the fact that the truth about politics had been preserved in only one of the world's peoples—that is among God's Chosen People—amongst the Israelites." Laslett, Introduction to *Patriarcha and Other Political Works*, 11, 14.

more recent writers, like Hugo Grotius, John Milton, and Thomas Hobbes. Filmer was well aware that one might have an absolutist conception of sovereignty without believing in the naturalness of sovereign authority. His fellow royalist and exact contemporary Hobbes (born, like Filmer, in 1588) was an especially significant case in point. Filmer's view, however, was that without the naturalness thesis, an absolutist theory of sovereignty had no secure foundation. He worried that a denial of the naturalness thesis would lead not to Hobbes's conclusions, which Filmer approved of,[5] but rather to the kind of mixed and limited monarchy argued for by Hunton. Establishing the naturalness thesis was Filmer's main concern in *Patriarcha* (1680), the subtitle of which is "The *Naturall* Power of Kinges Defended against the Unnatural Liberty of the People." In *Patriarcha* Filmer argued that the first kings were fathers of families; that it is unnatural for the people to govern or choose their governors; and that positive laws do not infringe the natural or fatherly power of kings. The first draft of the book appears to have been written over a period of several years in the 1620s and early 1630s, but for reasons which remain obscure, Filmer himself never published it.[6]

Filmer's texts began to be reissued piecemeal in 1679 and a collected works including *Patriarcha* appeared in 1680.[7] In the preface to an edition of *Patriarcha* published in 1685, the pro-Stuart pamphleteer (and later licenser of the press) Edmund Bohun asked his reader to remember the circumstances of 1679 and 1680 and the "extravagant hopes some Men then had that there was a Change at Hand, and that the Commonwealth of *England* might take another turn upon the Stage."[8] The sense that the Exclusion Crisis might lead England back to the violence of the 1640s was heightened by the republication of political works from the Civil War period. Hunton's *Treatise on Monarchie* (1643) was reissued in 1680. Henry Parker's *Political Catechism* (1643), to take another example of a key Parliamentarian text, was brought out in a new edition in 1679. The revival of these and similar books was, presumably, part of what made Filmer look so relevant as to be worth re-publishing.[9] The preface, written by "a friend," to a 1680 printing of Filmer's

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[5] "I consent with [Hobbes] about the rights of exercising government," Filmer says in the Preface to *Observations concerning the Originall of Government*, "but I cannot agree to his means of acquiring it." Filmer, *Observations*, in *Patriarcha and Other Writings*, 184.

[6] On the dating of the composition of *Patriarcha*, see Richard Tuck, "A New Date for Filmer's *Patriarcha*," *Historical Journal* 29, no. 1 (March 1986): 183–86 and Sommerville, Introduction to *Patriarcha and Other Writings*, xxxii–xxxiv. On why Filmer did not publish *Patriarcha* in the 1630's, see Cuttica, *Sir Robert Filmer*, chap. 5, 143–60. Tuck's dating makes it clear that the composition of *Patriarcha* predated the controversies that led to the Civil War, and predated also the first published iteration of Hobbes's political thought. Seeking to explain why Filmer never published *Patriarcha*, Daly remarks that "Filmer's work was all of a piece, and he might well feel that there was no point in publishing his first work when occasion seemed to prompt him to expand parts of it instead." Daly, *Sir Robert Filmer*, 14.

[7] *Political Discourses of Sir Robert Filmer, Baronet* (London, 1680). Filmer's *Patriarcha: or The Natural Power of Kings* appears to have been published simultaneously as a self-standing work, in London, printed for Walter Davis and, separately but with the same pagination, for Richard Chiswell et al.

[8] Sir Robert Filmer, *Patriarcha: or the Natural Power of Kings*, ed. Edmund Bohun (London: printed for R. Chiswel *et al.*, 1685), "Preface" [no pagination].

[9] The paradox, of course, is that no one had taken Filmer to be very relevant thirty years earlier, when most of his books were originally published. Laslett claims that "when *Patriarcha* appeared in print in 1680 its thesis had a cogency which it might have lacked in any other year in English history . . . . Charles II, his

The Power of Kings asserted that Filmer's "Political Writings are chiefly levell'd against a Doctrine but too generally embrac'd of late, *That all men are born equal*."[10] The reader of Filmer in 1679 and the early 1680s was meant to learn that the doctrine of natural equality was subversive of the sovereignty properly possessed by all kings, English kings no less than others. According to Bohun, Filmer "asserts two things: First, that no Prince is, or is intended to be, so bound by his Coronation Oath as not to have a Power left him of Consulting the Good of his Subjects and his own Preservation notwithstanding his Oath. And secondly, that if he breaks his Oath, and Acts against his Laws, he is not responsible to, or punishable by his Subjects."[11] It was Algernon Sidney's refusal to accept the second of these assertions, and his criticism of Filmer on this score in a manuscript discovered in his desk, that led to his execution.[12] As Bohun put it, Sidney might possibly have died a natural death had he not "left the Multitude at liberty to change the form of Government, which was set up, as often as they pleased."[13] It was with the assertion of such a right this, so Filmer had shown, that the doctrine of natural equality always ended up. The doctrine of natural liberty put subjects on a level with their rulers, and so gave subjects reason to challenge, and seek to replace, their rulers whenever they came to dislike them. Sedition, disorder, and bloodshed were the inevitable consequences.

Court and ministers and the whole body of opinion which favoured the continuance of the Restoration stood in desperate need of an argument which would vindicate legitimacy. Without it it looked as if the monarchy would be swept away." Laslett, Introduction to *Patriarcha and Other Political Works*, 33. Mark Goldie explains Filmer's relevance in 1679 and 1680 in terms of the fact that "to caricature, his theory amounted to Bodin plus the Bible." Mark Goldie, "John Locke and Anglican Royalism," *Political Studies* 31, no. 1 (March 1983): 61–85. What Filmer offered, in other words, was a theory of absolutism untainted by the "populism" (to use Schochet's term) that was, regardless of the conclusions they in fact sought to establish, inherent in the contract theories of Grotius, Hobbes, and Pufendorf. As Glenn Burgess puts it, "it was of immense value to the Tory rejection of both resistance theory and republicanism to be able to show that the people did not have, and never had, any political authority independent of their rulers." Glenn Burgess, *Absolute Monarchy and the Stuart Constitution* (New Haven: Yale University Press, 1996), 215. Daly, on the other hand, claims that Filmer was highly atypical among English political thinkers, both in the 1640s and in the 1670s and 1680s, precisely in virtue of his commitment to a Bodinian theory of sovereignty. This helps Daly explain why Locke took Filmer rather than some other Tory propagandist as his target, but obstructs an account of why Filmer was republished during the Exclusion Crisis. Daly, *Sir Robert Filmer*, chap. 6, 124–50.

[10] Sir Robert Filmer, *The Power of Kings: And in Particular, Of the King of England . . . With a Preface of a Friend, Giving an Account of the Author and His Work* (London: printed for W.H. and T.F., 1680), "Preface" [no pagination].

[11] Bohun, Preface to *Patriarcha*, n.p. This would seem to speak against Burgess's claim, made in defence of Daly's reading of Filmer, that Bohun was uninterested in Filmer's absolutism: see Burgess, *Absolute Monarchy*, 215.

[12] Jonathan Scott, *Algernon Sidney and the Restoration Crisis, 1677–1683* (Cambridge: Cambridge University Press, 1991), chap. 14, 317–47.

[13] Edmund Bohun, *A Defence of Sir Robert Filmer, Against the Mistakes and Misrepresentations of Algernon Sidney, Esq.* (London, 1684), 9.

One of John Locke's intentions in *Two Treatises of Government*,[14] I shall argue here, was to turn the tables on Filmer and his followers when it came to the question of practical consequences. It was, according to Locke, Filmer's thesis of natural subjection that had seditious ramifications. Locke's argument in the First Treatise is that the *moral* authority of government over an individual cannot be established if that government's authority is said to be *natural*—or, what amounts to the same thing, if its authority is taken to have nothing to do with the individual subject's consent. For if natural liberty is denied and consent is taken to be irrelevant, then there is no way of distinguishing between legitimate rule and usurpation. Then *de facto* power is, necessarily, legitimate power. No king has any better claim to authority than a usurper such as Oliver Cromwell. And this could only give encouragement to potential usurpers in the future.

I show in what follows that in *Patriarcha* Filmer was indeed, by his own admission and according to the logic of his own argument, a theorist of *de facto* political power. The importance for any viable form of politics of an absolutist mode of sovereignty, is, Filmer thinks, such that it does not matter in the end how sovereign power is acquired. *A fortiori*, it does not matter that a claimant to political power be able to justify his claim by proving himself to be an heir to the first king, Adam. Exegesis of the Old Testament turns out not to be the heart of Filmer's political thinking. I then argue that there is evidence in the Second Treatise that Locke was attuned to the worries that Filmer raises about the consequences of the thesis of natural liberty. I depict the Locke of the Second Treatise as wanting to show that, despite the fact that it follows from the doctrine of natural liberty and equality that governmental power is by definition limited and that there is therefore a right of resistance, the doctrine of natural liberty and equality does *not* provide a justification for rebellion. Locke seeks, in a number of ways, to contain the potentially destabilizing implications of his own conclusions. Filmer and Locke were both of their time, in other words, in having an acute sensitivity to the question of the practical consequences of theorizing about politics, and especially to the dangerous consequences of theorizing about politics badly. In conclusion I make a tentative suggestion as to how this concern with the practical consequences of flawed political theory might explain Locke's decision to publish *both* of the two Treatises soon after the Glorious Revolution.

2. Section Two

Locke's engagement with Filmer in the First Treatise has received a fraction of the scholarly attention given to the “essay on civil government” laid out in the Second. Nineteenth-century readers of Locke found it unintelligible that Locke had spent so much time refuting the ideas of a nonentity like Filmer when he could, and should, have concentrated his fire instead upon Hobbes. In his *Introduction to the Science of Politics* (1890), for example, Frederick Pollock simply ignored the First Treatise, and discussed the Second Treatise as if, in fact, Locke was arguing against Hobbes. T. H. Green did the same in *Lectures on the Principles of Political Obligation* (1895). Early twentieth-century

[14] John Locke, *Two Treatises of Government*, ed. Peter Laslett, Student Edition (Cambridge: Cambridge University Press, 1988). Parenthetical citations of the *Two Treatises* will be to this edition in standard treatise-section-page format, for example II.13, 275–76 for Second Treatise, section 13, pages 275–76.

textbooks followed suit.[15] This was the trend in Locke scholarship that, in his work on Filmer and Locke in the 1940s and 1950s, Peter Laslett undertook to replace with an approach that paid much more attention to what, given the political circumstances of the late 1670s and early 1680s, Locke could be supposed to have been actually trying to do in the *Two Treatises*.[16] Yet Laslett himself appears not to have found much of interest in the First Treatise. He dismisses it as "cumbersome," "uninviting," and "unreadable," and argues that it was written *after* the Second Treatise as a kind of prelude.[17] Those who have written specifically about the First Treatise have tended to follow the Straussian line that Locke's real agenda was the secularisation of politics. Thus according to Michael Zuckert, "the issue between Locke and Filmer . . . is the Biblical understanding of politics,"[18] and according to Charles Tarlton, Locke's objective is to show "that God says nothing that bears on the political conscience."[19] Such claims are, plainly enough, at odds with the now generally accepted argument made by John Dunn to the effect that Locke's political thought is unintelligible when separated from his theology.[20] Even so, Tarlton is absolutely right in his account of the argumentative strategies used by Locke in the First Treatise. As Tarlton shows, what Locke wants to establish is, first, that Filmer fails to elucidate the *moral* basis of political power and, secondly, that as a result Filmer's theory

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[15] On nineteenth and early twentieth-century readings of Locke, see Duncan Bell, "What is Liberalism," *Political Theory* 42, no. 6 (December 2014): 682–715; and also James A. Harris, "The Interpretation of Locke's *Two Treatises* in Britain, 1778–1956," *The British Journal for the History of Philosophy*, published ahead of print, November 7, 2019. https://www.tandfonline.com/doi/full/10.1080/09608788.2019.1677215.

[16] Laslett's 1949 edition of Filmer was followed by his challenge to the traditional dating of the composition of the *Two Treatises* in Peter Laslett, "The English Revolution and Locke's *Two Treatises of Government*," *The Cambridge Historical Journal* 12, no. 1 (1956): 40–55. That article was then incorporated into the introduction to Laslett's First Edition of the *Two Treatises* (1960).

[17] Laslett asks "Who would deliberately choose to begin the exposition of a complicated theme by the refutation of another man's system without laying down his own premises?" Peter Laslett, Introduction to the *Two Treatises of Government*, by John Locke (Cambridge: Cambridge University Press, 1988), 62. This is not the most impressive moment in Laslett's treatment of the composition of the *Two Treatises*.

[18] Michael P. Zuckert, "An Introduction to Locke's First Treatise," *Interpretation* 8, no. 1 (January 1979): 65. Zuckert et al. conclude that, from Locke's point of view, "the Bible, almost to the same degree as Filmer himself, fails to lay the groundwork for a free politics." Michael P. Zuckert, Jesse Covington, and James Thompson, "John Locke: Towards a Politics of Civil Liberty," in *Freedom and the Human Person*, ed. Richard Velkley (Washington, D.C.: Catholic University of America Press, 2007), 180.

[19] Charles D. Tarlton, "A Rope of Sand: Interpreting Locke's First Treatise of Government." *The Historical Journal* 21, no. 1 (March 1978): 64.

[20] John Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of "Two Treatises of Government"* (Cambridge: Cambridge University Press, 1969). There remains, of course, substantial disagreement as to what, exactly, the character of Locke's theology is and what role it plays in his political thought. For contrasting views, see Jeremy Waldron, *God, Locke and Equality: Christian Foundations in Locke's Political Thought* (Cambridge: Cambridge University Press, 2002), and Timothy Stanton, "Christian Foundations, or Some Loose Stones? Toleration and the Philosophy of Locke's Politics," in "Toleration Re-examined," ed. Derek Edyvane and Matt Matravers, special issue, *Critical Review of International Social and Political Philosophy* 14, no. 3 (June 2011): 323–47.

has destabilizing consequences, such that it will encourage usurpation, sedition, and rebellion. In this section I enlarge and elaborate upon Tarlton's account of how the argument of the First Treatise works.[21]

Filmer's "great Position," Locke says, correctly, "is that *Men are not naturally free*" (I.6, 144). Men are born into subjection—"slavery" is Locke's word[22]—to their parents and the power of kings over their subjects is that of a father over his children. The power of kings, on Filmer's view, is not merely *analogous* to the power of a father over his children. It is *identical* to the power of a father over his children.[23] This is not to say that kings are, literally, fathers of their subjects—though that was so in the case of the very first kings. It is, rather, to say that kings have exactly the same *kind* and *extent* of power over their subjects as fathers have over their children. How do we know what the rightful power of a father over his children is? Filmer's answer is that we know this by considering the power given by God to Adam, who was not only the very first father but also the very first king. Having amassed a large number of quotations from *Patriarcha* in which Adam's paternal power is described, Locke summarizes it as "a Divine unalterable Right of Sovereignty, whereby a Father or a Prince hath an Absolute, Arbitrary, Unlimited, and Unlimitable Power, over the Lives, Liberties, and Estates of his Children and Subjects; so that he may take or alienate their Estates, sell, castrate, or use their Persons as he pleases, they being all his Slaves, and he Lord or Proprietor of every Thing, and his unbounded Will their Law" (I.9, 148). In the First Treatise, Locke concentrates his fire upon on two aspects of Filmer's thought: first, Filmer's account of Adam's sovereign power (I.15–77, 151–99) and second, Filmer's account of how Adam's sovereign power was transferred to the kings who came after him (I.78–169, 199–263). Locke's contention in I.15–77 is that Filmer has no coherent account of what in virtue of which Adam might have had the kind of sovereign power that Filmer ascribes to him. Locke considers four possibilities in turn, all of which are used at some point by Filmer in either *Patriarcha* or his critiques of Hobbes, Milton, and Grotius in *Observations concerning the Originall of Government* (1652). Locke argues that none of these accounts could justify Filmer's claim as to the nature and extent of Adam's paternal authority. Locke spends most time on the idea that Adam's power over his children was a part of the property, or dominion, that God gave him over the entire world and on the idea that Adam's power derived simply from his having fathered or "begotten" his children.

Filmer's account of how Adam's sovereign power was transferred to the kings who came after him is, Locke notes, just as important as his account of the origin and extent

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[21] Daly offers a brief but suggestive account of Locke's agenda in the First Treatise. He claims that "Filmer had made it possible for Locke to present his own alternative as both politically acceptable and genuinely related to the social facts of both history and contemporary family and political life." Daly, *Sir Robert Filmer*, 163.

[22] "Slavery" is in fact the first word of the first chapter of the First Treatise (I.1, 141).

[23] Laslett points out that the idea of an analogy between the family and the state was commonplace in the early modern period. It was to be expected, he claims, "that sooner or later . . . thinkers would be found who could claim that the king *was* the father and the family *was* the state": "Filmer's originality, in so far as he was an original writer at all, consisted in the boldness and clarity with which he formulated these two propositions." Laslett, Introduction to *Patriarcha and Other Political Works*, 28. See also Schochet, *Patriarchalism*, 146–47.

of that power. It is not enough to know what kind of authority Adam had over his family. We need to know who has Adam's authority now. "'Tis in vain . . . to talk of Subjection and Obedience," Locke remarks, "without telling us whom we are to obey" (I.81, 202). He adds later: "The great Question which in all Ages has disturbed Mankind, and brought on them the greatest part of those Mischiefs which have ruin'd Cities, depopulated Countries, and disordered the Peace of the World, has been, Not whether there be Power in the World, nor whence it came, but who should have it" (I.106, 218–19). Locke points out that Filmer describes no fewer than four ways in which sovereignty is transferred: by succession (that is, inheritance), by grant (or donation), by election, and by usurpation (I.78, 200). In the original full version of the First Treatise, Locke probably considered each of these modes of transferral in turn.[24] He says at one point that he will "leave [Filmer's] Title of Usurpers to be examin'd in its due place" (I.121, 229), but there is no such examination in the published text. In the text as we have it, Locke examines only monarchy by inheritance, which is, as he says, "that which [Filmer] chiefly insists on" (I.84, 204). Thus, Locke rejects the heritability of sovereignty considered as property (I.85–97, 204–13) and the heritability of sovereignty derived from begetting (I.98–103, 213–16). Then Locke argues that even if sovereign power were heritable in the way Filmer says it is, Filmer would still lack a means of telling us whom we are to obey now. Filmer's argument leads either to the conclusion that there is at any one time only one proper king in the world (the eldest son of the eldest son of the eldest son . . . stretching all the way back to Adam) or to the conclusion that every descendant of Adam is properly a king (I.105, 217–18). In the concluding chapter, by some way the longest chapter of the entire *Two Treatises*, Locke expands on Filmer's problems in avoiding the latter conclusion and in identifying who in a given set of historical circumstances might be the proper heir to Adam's sovereign authority. It turns out, according to Locke, that Filmer in fact understands this right of inheritance to be not a matter of natural law but the result of special divine institution. Crucially, this, and only this, is how an eldest son can be said to inherit from his father authority over his brothers. An eldest son, obviously enough, cannot inherit from his father an authority derived from his father's having begotten both himself and his brothers (I.119, 227–28; I.128–29, 234–36). What Locke is especially keen to bring out is that Filmer's necessary recourse to special institution has the consequence that it may very well be, from the human point of view, impossible to know who the rightful heir is. "This *Divine Institution*," he adds, "which assigns [right to power] to a Person, whom we have no Rule to know, is just as good as an Assignment to no body at all" (I.127, 234).

Locke spends a lot of time on the inherent inscrutability of the line of succession in Filmer's reading of the transfer of regal power in the Old Testament. What might well have been the grand conclusion of Locke's complete treatment of Filmer is mentioned only in passing, when Locke observes that "Filmer is fain to resolve all into present

[24] Locke says in the Preface to the *Two Treatises* (137) that what he presents to the reader is "the Beginning and End of a Discourse concerning Government." "The Papers that should have filled up the middle," he also says, "were more than all the rest." It seems likely that what is missing is the rest of Locke's answer to Filmer and that this missing part was "more" in the sense of being longer, not in the sense of being of greater importance. "I imagine," Locke adds, "I shall have neither the time, nor inclination to repeat my Pains, and fill up the wanting part of my Answer, by tracing *Sir Robert* again, through all the Windings and Obscurities which are to be met with in the several Branches of his wonderful System."

Possession, and makes Civil Obedience as due to an *Usurper* as to a lawful King; and thereby the *Usurper's* Title as good" (I.121, 229–30). Locke's ultimate aim is to show that the actual consequence of Filmer's thought, when it comes to the exigencies of the present day, is a dilemma: either *no one* should be accorded sovereign authority because we cannot tell who the real heir of Adam is, which would mean the dethroning of all princes and so anarchy, or *present possession* is sufficient evidence for title to authority because there is no better source of evidence. And if present possession is sufficient, "all this ado about *Adam's Fatherhood*," as Locke puts it, was a waste of time and effort (I.125, 232). It transpires that in fact it does not matter how power was acquired, whether by inheritance, or donation, or election, or even usurpation. As Locke remarks earlier on in the First Treatise, Filmer "might have spared the trouble of speaking so much, as he does, up and down of Heirs and Inheritance, if to make any one *properly a King*, needs no more but *Governing by Supreme Power, and it matters not by what Means he came by it*" (I.78, 200). Such a position, Locke points out, leads to exactly the conclusion that, presumably, Filmer was most concerned to avoid: that the usurper Oliver Cromwell was "*as properly King*, as any one else he could think of" (I.79, 201). Filmer, Locke continues, "is the first Politician, who, pretending to settle Government on its true Basis, and to establish the Thrones of Lawful Princes, ever told the World, That he was *properly a King, whose Manner was by Supreme Power, by what Means soever he obtained it*" (I.79, 201). Locke calls this a "strange Doctrine" (I.80, 201). It is strange because it amounts to giving up on the question of how to distinguish between legitimate from illegitimate power and on the whole problem of what justifies power and gives it a claim to the obedience of subjects. Power, it turns out, justifies itself.[25]

Locke is not being unfair to Filmer here. One of Filmer's main objectives in *Patriarcha* is to discredit the idea that sovereign power naturally inheres in "the multitude," such that kings have sovereign power—the right to make law—only in so far as the multitude bestows it upon them. Filmer admits that this idea is likely to look plausible especially where a king dies without a living son. For then it looks as though no one is *naturally* entitled to sovereign authority. However, Filmer says, in such circumstances the kingly power "escheats," not to the multitude, but to "the prime and independent heads of families," who then "consent in the uniting or conferring of their fatherly right of sovereign authority on whom they please."[26] But, in doing so, heads of families do not, properly speaking, *make* someone king. They elect, but they do not confer authority.

[25] As noted above, Tarlton's claim is that the conclusion drawn by Locke in the First Treatise as a whole is that "God says nothing that bears on the political conscience." Tarlton, "A Rope of Sand," 64. It would be better to say that Locke's conclusion is that the Old Testament *as interpreted by Filmer* says nothing that bears on the political conscience. Locke himself holds, of course, that no reading of the Old Testament could tell us whom we are to obey now. But it does not follow from that that God says nothing that bears on the political conscience. No more than the Old Testament does the law of nature instruct us whom to obey, but it does establish limits on whose power it is permissible for us to consent to. See Dunn, *Political Thought*; Dunn, "Consent in the Political Theory of John Locke," *The Historical Journal* 10, no. 2 (1967): 153–82. On the other hand, Dunn makes Locke sound rather too much like Filmer when he says that for Locke "All legitimate authority . . . exercised by one human being over another is an authority conferred upon him by God." Dunn, *Political Thought*, 127. While political authority as such derives from God's having determined that government is necessary for human beings, it is, according to Locke, human beings themselves who choose who gets to exercise it.

[26] Filmer, *Patriarcha*, in *Patriarcha and Other Writings*, 11.

Filmer explains (if that is the right word) that "he that is so elected claims not his power as a donative from the people, but as being substituted properly by God, from whom he receives his royal charter of an universal father, though testified by the ministry of the heads of the people."[27] Heads of families, in other words, act as a kind of conduit through which God's will singles out one man as sovereign. This, then, is what Filmer means by the *natural* power of kings: negatively, that it is *not* given by the people or by any human being; positively, that it *is* given by God. And God's will may well be obscure. Filmer goes on immediately to say this:

> If it please God, for the correction of the prince or punishment of the people to suffer princes to be removed and others placed in their rooms, either by the factions of the nobility or rebellion of the people, in all such cases the judgment of God—who hath power to give and to take away kingdoms—is most just. Yet the ministry of men who execute God's judgments without commission is sinful and damnable. God doth but use and turn men's unrighteous acts to the performance of His righteous decrees.
>
> In all the kingdoms or commonwealths in the world, whether the prince be the supreme father of the people or but the true heir of such a father, or whether he come to crown by usurpation, or by election of the nobles or of the people, or by any other way whatsoever, or whether some few or multitude govern the commonwealth, yet still the authority that is in any one, or in many, or in all of these, is the only right and natural authority of a supreme father. There is, and always shall be continued to the end of the world, a natural right of a supreme father over every multitude, although, by the secret will of God, many at first do most unjustly obtain the exercise of it.[28]

In Chapter Three he makes the point again: "It skills not which way kings come by their power, whether by election, donation, succession or by any other means, for it is still the manner of government by supreme power that makes them properly kings, and not the means of obtaining their crowns."[29] Thus, Filmer appears to anticipate the arguments of those Royalists who, in the context of the Engagement Controversy of 1649, argued that possession of *de facto* power is sufficient for the possession of political authority.[30]

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[27] Flimer, *Patriarcha*, in *Patriarcha and Other Writings*, 11.

[28] Filmer, *Patriarcha*, in *Patriarcha and Other Writings*, 11.

[29] Filmer, *Patriarcha*, in *Patriarcha and Other Writings*, 44. The *Oxford English Dictionary* gives as one of the meanings of the verb "skill" "To make a difference, to be of importance, to matter." OED Online, s.v. "skill (*v*.1)," December 2019.

[30] On the *de facto* element of Royalist political thought after the execution of Charles I, see Kinch Hoekstra, "The *de facto* Turn in Hobbes's Political Philosophy," in *Leviathan after 350 Years*, ed. Tom Sorell and Luc Foisneau (Oxford: Clarendon Press, 2004), 33–73. Schochet (*Patriarchalism*, 153–58) notes that after 1649 Filmer appears to have modified his view of the authority of usurpers. This is suggested especially by the "Directions for Obedience to Government in Dangerous or Doubtful Times," appended to *Observations upon Aristotles Politiques* (1652), where Filmer distinguishes between usurpers and lawful governors on the grounds that "some things . . . are unlawful to an usurper to enjoin." Filmer, "Directions,"

It is worth stopping to ask why, according to Filmer, heads of families cannot make a king out of one of their number. In Chapter Two of *Patriarcha*, replying to the objection that there are examples of the election of kings in Scripture, Filmer says that "It is plain by an evident text, that it is one thing to choose a king, and another to set a king over the people. This latter power the children of Israel had, but not the former."[31] But does Filmer have an argument to show that kings can only be *chosen* by God? Fathers have absolute sovereignty over their families. Why can't they give that power to one of their fellow fathers? Filmer's thought must be that the authority of fathers is not theirs to give away. Fathers have it naturally, in virtue simply of being fathers, and you cannot give away the fact that you are a father—no more than you can give to someone else your attribute of being six feet tall. But what about the other aspect of Adam's sovereignty, not that which comes from begetting but that which comes from having been given as his personal property the Earth and everything in it, including Eve and the children they will have? Might fathers of families not be said to have property in their families, and might they not be able to give this property to someone else, namely to the one man they choose to be king? Then that king's authority might indeed properly be said to come from them, the fathers, rather than from God; and then the king's authority would not be, on Filmer's terms, *natural*. Filmer might reply that while this is conceivable, such that one man might be given power over the *families* of other fathers, what is at issue is the possibility of one man acquiring, by way of donation, power over other *fathers*. And perhaps he would go on to say that it is not the case that fathers have a power over themselves, which they are free to give to another. Fathers are absolutely free in respect of how they treat their families but are at the same time absolutely subject to the will of God their maker. They do not have dominion over themselves such that they can give themselves—give their lives—to another man. Locke is himself explicit about this being so with respect to all human beings. A "Man," he says, "not having the Power of his own Life, *cannot*, by Compact, or his own Consent, *enslave himself* to any one, nor put himself under the Absolute, Arbitrary Power of another to take away his life, when he pleases" (II.23, 284). I think Filmer would have agreed. Both Locke and Filmer hold that human beings cannot give others absolute power over themselves. The conclusion Locke draws from this is that there can be no such thing as legitimate absolute power. The conclusion Filmer draws is that absolute power must be given to human beings by God.

Locke does not engage directly with Filmer's theory of sovereignty in the First Treatise, except to make it clear that he thinks that there is a distinction to be drawn between power that is *capable* of making law and enforcing it and power that is *entitled* to make law and that deserves our obedience. That this distinction can be drawn matters for practical reasons. The deepest problem with Filmer's political thought, on Locke's view, is that it makes questionable the authority of any king whatsoever, and thus invites subversion and disorder. As we have seen, according to Locke Filmer faces a dilemma: either *no* king should be accorded legitimacy because it cannot be known for sure that any king is heir to Adam's sovereign power, or *every* king should be accorded legitimacy because possessing kingly power is sufficient evidence of title to that power. Both horns of the

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in *Patriarcha and Other Writings*, 286. This qualification of the argument of *Patriarcha* goes unmentioned by Locke in the First Treatise.

[31] Filmer, *Patriarcha*, in *Patriarcha and Other Writings*, 21–22.

dilemma, Locke points out, have disastrous political consequences. On the first horn, there would, on Filmer's own terms, no longer be sovereign power in the world, hence no source of law and hence no laws. There would be anarchy. Filmer chooses the second horn when he says—as he has to—that it does not matter *how* a king acquired his crown. It does not matter, this is to say, whether or not a king can trace a line of inheritance back to Adam. Present possession of sovereign authority is sufficient for title to that authority. By Filmer's own admission, then, a usurper can be made into a lawful prince. And if that is so, then the distinction between legitimate and illegitimate political power has been surrendered.[32] Filmer's notion of omnipotent fatherhood "can serve for nothing but to unsettle and destroy all the Lawful Governments in the World, and to Establish in their room Disorder, Tyranny, and Usurpation" (I.72, 194). If there is no means of saying who is a rightful prince, "there would be no distinction between Pirates and Lawful Princes, he that has Force is without any more ado to be obey'd, and Crowns and Scepters would become the Inheritance only of Violence and Rapine" (I.81, 203). If it is left disputable who should have power, "the skill used in dressing up Power with all the Splendor and Temptation Absoluteness can add to it, without shewing who has a Right to have it, will only serve to give a greater edge to Man's Natural Ambition, which of it self is but too keen. What can this do but set Men on the more eagerly to scramble, and so lay sure and lasting Foundation of endless Contention and Disorder, instead of that Peace and Tranquility, which is the business of Government, and the end of Humane Society?" (I.106, 219). Any would-be usurper of authority—any would-be Cromwell or Jack Cade—will only be further incited by the belief that, if he succeeds, he will be entitled to the obedience of his subjects, simply in virtue of the fact that he has succeeded in gathering sovereign power into his hands. Therefore, having both argued for the slavery of absolutism and failing to provide the means whereby to identify who should have absolute power, Filmer has both "exposed all Subjects to the utmost Misery of Tyranny and Oppression," and also "unsettled the Titles, and shaken the Thrones of Princes" (I.3, 142).[33]

Why did Filmer not see things this way? The answer may lie in his conviction that the present possession of sovereign power must be a manifestation of the will of God. This

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[32] As Ashcraft puts it, from Locke's point of view the *de facto* upshot of Filmer's argument undermines "the very point or meaning of a political theory, viewed in terms of its practical utility." "Indeed," Ashcraft says, "a poor political theory is worse than none at all, because by raising questions about the lawfulness of government and the subject's obligation to obey the magistrate that it cannot answer it actually has the effect of calling into question all grounds of obligation." Richard Ashcraft, *Locke's Two Treatises of Government* (London: Allen and Unwin, 1987), 78; see also 160, where Ashcraft observes, rightly, that according to Locke "Filmer's theory actually turns into a justification for usurpation, which means that any *de facto* government automatically becomes legitimate."

[33] On Filmer on usurpation and conquest, see Daly, *Sir Robert Filmer*, chap. 5, 104–23. As Daly (109) points out, it is puzzling why Filmer continues to use the word "usurper" at all: "Of whose claim would [the usurper's] be a usurpation? Why not pronounce him legitimate and avoid ambiguity? . . . He seems to have been anxious to veil usurpation in decent obscurity and let its practitioners have the benefit of the doubt." Daly (72) remarks that Filmer's system "is often called patriarchalism, and yet fatherhood itself turns out to be the least secure and the most easily discredited foundation for the authority of Filmer's patriarch." The consequence Daly draws is surely the correct one: that the core of Filmer's thought is his theory of sovereignty, not his patriarchalism. See also Sommerville, Introduction to *Patriarcha and Other Writings*, xxiii.

follows directly from the fact that—as we have seen Locke emphasise in his examination of Filmer's text—for Filmer *every* instance of the transference of sovereign authority from one man to another is by way of special divine institution. Anyone rebelling against a present possessor of sovereign power, then, is rebelling against God's will. God's will, as made manifest in the Bible, is that the present possessor of sovereign authority be obeyed. It might be that it is God's will that a particular king be replaced by someone else—but no one is in a position to know that that is God's will beforehand. God's will, as Filmer says in a passage quoted from above, is very often "secret." A successful usurper is an instrument of God's will, just as all things and people are instruments of God's will. But that no more detracts from the sinfulness of usurpation than it detracts from the sinfulness of any other violation of the laws that God commands human beings to obey. Filmer, perhaps, was so concerned with the dangers inherent in dissociating political authority from the will of God and with the dangers inherent especially in contractarianism and the doctrine of natural liberty that he was unable to interest himself in the possible consequences of, in Locke's phrase, resolving all into present possession. The consequences of the doctrine of natural liberty were plainly so very much more rebarbative. That doctrine led inevitably—despite what Hobbes had argued—to a putative justification of a right of resistance. And resistance, Filmer claims, is always a remedy worse than the disease—the disease of tyranny—which it is supposed to cure. "The judgment of the multitude in disposing of the sovereignty may be seen in the Roman history," Filmer points out, "where we may find many good emperors murdered by the people, and many bad elected by them."[34] The idea of a right of resistance vested in naturally free human beings was, according to Filmer, a recipe for political disaster. This is one of the themes of his reply to Hunton in *The Anarchy of a Limited or Mixed Monarchy*. The conclusion of Hunton's argument is that "every man must oppose or not oppose the monarch according to his own conscience." Hunton thus makes every man his own judge, and the result of that, Filmer claims, can only be "utter confusion."[35]

3. Section Three

Filmer's case against Hunton in *The Anarchy of a Limited or Mixed Monarchy* concludes with the declaration that Hunton "instead of a treatise of *monarchy* . . . hath brought forth a treatise of *anarchy*."[36] The fundamental problem with Hunton's position, Filmer urges, is that it provides no rule whereby disputes about legitimacy can be settled in a limited monarchy. It is essential to a limited monarchy, as defined by Hunton, that the monarch "hath a Law beside his owne will for the measure of his power" in the form of "an originall constitution."[37] But when a question arises as to whether or not the king has violated that constitution, there is no political or legal process whereby the issue can be decided, for no

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[34] Filmer, *Patriarcha*, in *Patriarcha and Other Writings*, 33.

[35] Filmer, *Mixed Monarchy*, in *Patriarcha and Other Writings*, 153–54.

[36] Filmer, *Mixed Monarchy*, in *Patriarcha and Other Writings*, 150. On Hunton's political agenda in the *Treatise of Monarchie*, see John Sanderson, "Philip Hunton's 'Appeasement': Moderation and Extremism in the English Civil War," *History of Political Thought* 3, no. 3 (Winter 1982): 447–61.

[37] Philip Hunton, *A Treatise of Monarchie* (London, 1643), 12–13.

one is empowered to cast judgment on the sovereign power in the realm. In circumstances of crisis, Hunton says, government has to be regarded as dissolved, and each individual is thrown back upon the resources of his conscience to decide the dispute. Here the power of judgment, Hunton insists, is moral, not political. That is how it has to be if the king's sovereignty is to be respected. No constituent of the body politic can be elevated above the king. "Every man (as farre as concernes him)," Hunton writes, "must follow the evidence of Truth in his own soule, to oppose, or not oppose, according as he can in conscience acquit or comdemne the act of carriage of the Governour."[38] Hunton himself is sure that subjects will find themselves in this kind of position very rarely. In all but the most extreme cases of the misuse of power, what is required of citizens is patience and obedience. But the fact that there are *some* conditions in which subjects are thrown back upon the moral resources of conscience is sufficient, according to Filmer, to show the dangerousness of Hunton's position. For, Filmer points out, there is no reason to think that individual subjects will judge the case in an impartial way. This, Filmer insists, is "a main point, since every man is prone to flatter himself in his own cause and to think it good, and that the wrong or injustice he suffers is apparent, when other moderate and indifferent men can discover no such thing."[39] Filmer makes the same argument in his consideration of Grotius in *Observations concerning the Originall of Government*. Grotius, according to Filmer, appears to allow that resistance might be justified when men find themselves in "in great and certain danger" from their governors, but he does not say who should be judge of such matters, "so that for aught appears to the contrary, his mind may be that every private man may be judge of the danger." Grotius's silence here is reprehensible, Filmer adds, "considering how prone most of us are to censure and mistake those things for great and certain dangers which in truth many times are no dangers at all, or at the most but very small ones."[40]

Earlier on in the *Observations*, Filmer criticizes Hobbes on the same grounds. In allowing that a man cannot give up the right of resisting an attack upon his life, even if that attack is authorized by the sovereign, Hobbes, according to Filmer, surrenders his main argument. This is a doctrine "destructive to all government whatsoever, and even to the *Leviathan* itself" for it gives the individual subject the right to resist the sovereign when he judges that he is being assaulted with the intention of taking away his life.[41] It is more usual to read Hobbes as having agreed with Filmer about the extent to which individual judgment is destructive of all government whatsoever.[42] One of "the *Diseases* of a Common-wealth," Hobbes argues in *Leviathan*, is precisely the doctrine "*That every*

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[38] Hunton, *Monarchie*, 18.

[39] Filmer, *Mixed Monarchy*, in *Patriarcha and Other Writings*, 152.

[40] Flimer, *Observations*, in *Patriarcha and Other Writings*, 220.

[41] Filmer, *Observations*, in *Patriarcha and Other Writings*, 195. For a consideration of seventeenth-century criticism of Hobbes on this score, including Filmer's, see Susanne Sreedhar, *Hobbes on Resistance: Defying the Leviathan* (Cambridge: Cambridge University Press, 2010), 16–24.

[42] See especially Richard Tuck's account of how, according to Hobbes, the judgments of the sovereign should stand in for the judgments of individual subjects in all matters of controversy: Richard Tuck, *Philosophy and Government 1572–1651* (Cambridge: Cambridge University Press, 1993), chap. 7, 279–345.

private man is Judge of Good and Evill actions." "From this false doctrine," he claims, "men are disposed to debate with themselves, and dispute the commands of the Common-wealth; and afterwards to obey, or disobey them, as in their private judgements they shall think fit. Whereby the Common-wealth is distracted and *Weakened*."[43] Filmer's criticism of Hobbes's residual right of resistance and his rejection of contract theory generally, should not obscure a fundamental agreement between the two philosophers about the fragility of political order and about the dangers inherent in granting individuals the right to judge when they are obliged to submit to authority and when they are not. A writer such as Hunton deserved criticism, according to Filmer, not just because of the incoherence of the idea that sovereign power has its origin in an original contract made by the people.[44] Just as lamentable, if not more so, was the practical consequence of Hunton's theory. It intended to persuade the reader to understand himself to be a subject of a limited and mixed monarchy, and so could only be an encouragement of the reader in the time of crisis that was the 1640s to feel entitled to make up his own mind as to whether or not Charles I had violated the constitution. Hunton claimed that he wrote for "Peace and the re-uniting of this divided Body,"[45] but in fact his kind of theorizing only made civil war more likely.

I read Locke as sharing Filmer's—and Hobbes's—anxiety about the practical consequences of the writing and publishing of political philosophy.[46] We have seen that in the First Treatise, Locke in effect turns Filmer's argument against Hunton, and against contract theory generally, back upon Filmer himself. The difficulty of knowing in the here and now who is a rightful inheritor of Adam's authority, Locke claims, leaves the individual subject with no sure rule whereby to determine to whom obedience is owed. As a direct result, the potential usurper has all the encouragement he is likely to need to try to prove himself an instrument of divine providence by replacing a king with a weak grip on power. And that will force everyone else into precisely the position that Filmer says is most dangerous, the position of having to try to decide the rights and wrongs of

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[43] Thomas Hobbes, *Leviathan*, ed. Richard Tuck, Revised Student Edition (Cambridge: Cambridge University Press, 1996), 223.

[44] See especially *Mixed Monarchy*, in *Patriarcha and Other Writings*, 139–44, where Filmer argues that by "the people" the contract theorist must mean, in the first instance, every member of the (adult) human population of the world, such that *everyone*, or else a majority of everyone, must consent to the erection of a system of world governance or to the division of the human race into separate nations. It is striking that Locke simply ignores these arguments of Filmer's in the Second Treatise, presumably because he was not concerned there with laying out a systematic and complete theory of government.

[45] Hunton, *Monarchie*, 78.

[46] I think that A. John Simmons is right to ascribe to Locke a "constant concern for consequences," though, as will become plain in what follows, I do not agree with his claim that "Locke's practical political aims were (in part) to precisely to rouse a sluggish people to resist tyranny." A. John Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton: Princeton University Press, 1993), 165–66. I prefer Ruth W. Grant's way of putting it, when she observes that, according to Locke, "a successful political theory must establish a criterion for legitimate government that is a practicable standard. The task requires an explanation for the integrity of independent political communities and clear practical guidance for determining who should be obeyed and when . . . a theory that can meet these requirements will lay the foundation for peace." Ruth W. Grant, *John Locke's Liberalism* (Chicago: University of Chicago Press, 1987), 56.

fundamental political disputes. The first task of political philosophy is to tell the subject whom to obey, and Filmer's patriarchalism fails completely in this regard. But—and now I introduce the main theme of the second half of this paper—the conclusion to draw is not, for Locke, simply that Hunton was right and Filmer wrong. To a significant extent, I shall now argue, Locke was as worried as Filmer and Hobbes about the idea that the question of the extent of political obligation could be settled by the individual subject and his use of his conscience.[47] Political argument which had the effect of empowering the individual subject to decide when the magistrate was to be obeyed and when he could be disobeyed was just as dangerous in Locke's eyes as it had been in the eyes of Royalists in the 1640s. Filmer's critique of Hunton, in other words, presented Locke with a particular kind of problem to solve. Locke needed to vindicate Hunton's fundamental claims that there is such a thing as limited monarchy and that where a monarch exceeds the limits of his authority active resistance is justified. But he needed also to show that this claim did not have potentially seditious practical consequences. He needed to be able to show that it could be articulated in a way which did not stand to be read as an incitement of subjects to resist their governors whenever their consciences told them that that would be permissible. It mattered to Locke that the Second Treatise be a treatise of government, not a treatise of anarchy.[48]

4. Section Four

Locke says at the beginning of the Second Treatise that what Filmer's political thought shows is that, if "perpetual Disorder and Mischief, Tumult, Sedition and Rebellion . . ." are to be avoided, then we "must of necessity find out another rise of Government, another Original of Political Power, and another way of designing and knowing the Persons that have it" (II.1, 268). In other words, we must look to natural liberty, original contract, and consent as the way of knowing who has political authority. This will make it possible clearly to distinguish political power from other kinds of power, notably the power of parents, and to show that political power is limited in its extent to the protection of life,

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[47] There is much that is difficult to accept in Leo Strauss's reading of Locke, but he is right to say that Locke followed Hobbes's lead in regarding private conscience as nothing but private opinion. "Conscience," Strauss concludes, "cannot therefore be a guide; still less can it supply sanctions." Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 222. One might add that the whole reason why the state of nature inevitably degenerates into a state of war is, according to Locke, our inability to make proper use of the executive right of the law of nature. The reasons why we go wrong in the exercise of that right are the reasons why we can go wrong in the exercise of the right of resistance. As James Tully observes, Locke cannot finesse Filmer's criticism of Hunton "because he accepts that men are partial in their judgements and uses it to partly explain why men enter political society and why they adopt the majority principle." James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993), 303.

[48] In this paper I follow Gordon Schochet in seeing not only the First Treatise but the whole of the *Two Treatises* as a response to Filmer. See Gordon Schochet, "The Family and the Origins of the State," in *John Locke: Problems and Perspectives*, ed. John W. Yolton (Cambridge: Cambridge University Press, 1969), 82; see also Grant, *Locke's Liberalism*, chs. 2 and 3: 52-178, where the *Two Treatises* is read in terms of a debate between Locke and Filmer about how to draw the distinction between legitimate and illegitimate power. For a contrary view according to which the Second Treatise "should be understood independently of Locke's relationship with Filmer," see Kiyoshi Shimokawa, "A Critique of Laslett's Treatment of the *Two Treatises*," *The Locke Newsletter* 16 (1985): 35–52.

liberty, and property. In the process, the moral authority of political power will be explained, and *de jure* government differentiated from the merely *de facto*. There will then be—as there is not in Filmer's theory—a clear way of distinguishing lawful government from usurpation and tyranny. And at the same time, it will be made obvious that a tyrant may be resisted. That is, it will become apparent that, in Locke's careful words, "whosoever in Authority exceeds the Power given him by the Law, and makes use of the Force he has under his command, to compass that upon the Subject, which the Law allows not, ceases in that to be a Magistrate, and acting without Authority, may be opposed, as any other Man, who by force invades the Right of another" (II.202, 400–401). Locke knows that this cannot but raise Hunton's question as to who should decide when the power given by law has been exceeded. Indeed, Locke himself repeatedly raises the question in the Second Treatise. His answer is complex, and I shall return to it below, but it is clear at least that it does not involve Hunton's appeal to the moral judgment of each individual. In a mixed monarchy, Hunton had argued, no one "estate" had the right to judge of the actions of another.[49] With respect to the most salient political controversy in England in the first half of the seventeenth century, this meant that the "democratical" element of the constitution did not have the ability to decide questions concerning the conduct of the monarch. That would have been to accord sovereignty to the House of Commons, and so would have been at odds with the basic principles of a mixed monarchy. Locke agrees with this, but, instead of giving the right of judgment to the individual conscience, he gives it to "the people."[50] Where there is a dispute between subjects and their governors, it is the body of the people who decide. "*The People shall be* Judge; for who," Locke asks at the end of the Second Treatise, "shall be *Judge* whether his Trustee or Deputy acts well, and according to the Trust reposed in him, but he who deputes him, and must, by having deputed him still have a Power to discard him, when he fails in his Trust?" (II.240, 427). We will see, however, that this does not mean that the people are unequivocally sovereign in their relationship with their government.

Having first made out his case for a right of resistance on the part of the people, though, Locke immediately subjects it to question: "May the *Commands* then *of a Prince be opposed*? May he be resisted as often as any one shall find himself aggrieved, and but imagine he has not Right done him?" "This," the not so imaginary objector continues, "will unhinge and overturn all Polities, and instead of Government and Order, leave nothing but Anarchy and Confusion" (II.203, 401). Such, as we saw above, was Filmer's objection to consent theory. Locke's reply is that it is *not* the case that an individual may resist the prince as often as he finds himself aggrieved and imagines that he has been done wrong: "*Force* is to be *opposed* to nothing but to unjust and unlawful *Force*; whoever makes any opposition in any other Case, draws on himself a just Condemnation both from God and Man." It follows that "no such Danger or Confusion will follow, as is often

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[49] Hunton, *Monarchie*, 289.

[50] This move on Locke's part is the central concern of Julian Franklin *John Locke and the Theory of Sovereignty: Mixed Monarchy and the Right of Resistance in the Political Thought of the English Revolution* (Cambridge: Cambridge University Press, 1978). Franklin depicts Locke as having been shown the way toward the idea of a popular right of resistance by George Lawson's *Politica Sacra et Civilis* (1660), where, on Franklin's reading, the problems inherent in the position espoused by Hunton were finally overcome. I indicate some of my differences with Franklin's interpretation below.

suggested" (II.204, 402). Locke's point here is that the prospect of "a just Condemnation both from God and Man" will be sufficient to restrain subjects from making opposition to their prince in all situations other than those where the force used by the prince is plainly unjust and unlawful. With the English case specifically in mind, Locke observes that where the prince himself is incapable of being subject to judicial censure, there cannot be even the *prospect* of lawful resistance except in the extreme case of the prince "actually putting himself into a State of War with his People," thus dissolving the government and returning his people to the state of nature (II.205, 402). There can be resistance to those who pretend to act in the prince's name and yet exceed the authority they have been given, but this is not resistance against the authority of the prince himself and so constitutes "*no danger to Governor or Government*" (II.206, 403).[51] Even in countries where the prince is *not* above the law, it is extremely unlikely that the prince could pose such a threat to a subject as to elicit the kind of self-defensive violence that is justified in the face of, for example, highway robbery. The dispute is almost always going to be of the kind that can, and so should, be resolved in a court of law. Moreover, in the rare case where individuals do find their lives directly and immediately threatened by actions of the prince, though they may have a right to resist, "yet the Right to do so, will not easily ingage them in a Contest, wherein they are sure to perish," "it being as impossible for one or a few oppressed Men to *disturb the Government*, where the Body of the People do not think themselves concerned in it, as for a raving mad Man, or heady Male-content to overturn a well-settled State; the People being as little apt to follow the one, as the other" (II.208, 404). This last point shows that Locke's response to the objection he has raised against his own position consists as much in what considerations of prudence will suggest to subjects as it does in how subjects will be moved by the prospect of judgment by their fellows and by God.[52]

A concern with what, as a matter of empirical fact, subjects are likely to do with a right of resistance reappears in the final chapter of the Second Treatise, where, having completed his account of the distinction between the dissolution of government and the dissolution of society, Locke again interrogates his own position. "To this perhaps it will be said," he acknowledges, "that that the People being ignorant and always discontented, to lay the foundation of Government in the unsteady Opinion and uncertain Humour of

[51] Hunton too is keen to make it clear that in a limited monarchy resistance is only permissible against the officers of the king, not against the king himself. Hunton, *Monarchie*, 49–50.

[52] Franklin finds Locke's appeal here to empirical generalisations about the character of the people "awkward and perhaps unfortunate": "He is looking for a rule of morality or law that will enjoin a people from initiating civil law upon light and transient causes. But what he actually provides is a mere prediction of how a people is likely to behave. He might have done better to have said that isolated acts of tyranny must be tolerated by the public, with only peaceful protest, in consideration of the peace and good order of society." Franklin, *Locke and the Theory of Sovereignty*, 96. As I read Locke, by contrast, there is no hope of a "rule of morality or law" that is sufficient to tell a people when they can resist and when they cannot. That is what is implicit in Locke's conception of an "appeal to heaven." Furthermore, it is, so I am arguing, an absolutely central question for Locke, how people can be predicted to behave when they are shown that they have a right of resistance. For a helpful explanation of where Franklin goes wrong here, see J.K. Numao, "Right of Resistance Non-Anarchic: A Consideration of the Character of Locke's Defence," *Locke Studies* 13 (2013): 65–96. I am not as confident as Numao, though, that Locke's defence of the right of resistance is "anarchy-free" (79) nor (relatedly) that Locke "maintains confidence in the rationality of the people as a matter of principle" (81).

the People, is to expose it to certain Ruin; And *no Government will be able long to subsist*, if the People may set up a new Legislative, whenever they take offence at the old one." "People," he replies, "are not so easily got out of their old Forms, as some are apt to suggest" (II.223, 414). But he knows this is not sufficient. It will be said even so, he accepts, that "this *Hypothesis* lays a *ferment* for frequent *Rebellion*" (II.224, 414). In the next seven paragraphs Locke explains why he does not think that his hypothesis will help to provoke frequent rebellions and why he thinks that it is, on the contrary, the doctrine of absolutism that is likely to provoke civil unrest by encouraging rulers in the arbitrary exercise of their power (II.224–30, 414–18). His reasoning is, again, empirical. The people will revolt when they are made extremely miserable and exposed to constant ill usage of arbitrary power, and they will do so regardless of what political philosophers say. But this will not happen "upon every little mismanagement in publick affairs" (II.225, 415). The truth is that the doctrine of a right of resistance vested in the people is "*the best fence against Rebellion*" (II.26, 415) because magistrates, whether possessed of executive or legislative power, are much less likely to rebel—that is, return the country to a state of war by violating the terms of the trust that gave them their powers—if they know that the people takes itself to be empowered to fight back. When arbitrary power does excite resistance, that is not rebellion but rather self-defence. Those who say that resistance is never legitimate on account of the disturbance it causes "may as well say upon the same ground, that honest Men may not oppose Robbers or Pirates, because this may occasion disorder or bloodshed. If any *mischief* come in such Cases, it is not *to be charged* upon him, who defends his own right, but *on him*, that *invades* his Neighbours" (II.228, 417). Finally, Locke returns to the question of the character of the people "who . . . more disposed to suffer, than right themselves by Resistance, are not apt to stir." "The examples of particular Injustice, or Oppression of here or there an unfortunate Man," Locke claims, "moves them not" (II.230, 418). Where there have been great disorders in commonwealths, the cause has more often been the insolence of rulers than the wantonness of the people.[53]

How the right of resistance would be used depended, to a significant extent, on how exactly resistance was defined by those who took it upon themselves to tell the people that they had a right to it. Locke wanted it to be clear that a right of resistance was different in kind from a right to rebellion. The very idea of a right of rebellion was in fact a contradiction in terms: it was the idea of a right to act against natural law in the pursuit of war rather than peace.[54] The right of resistance was a reactive right, a right to repair

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[53] Richard Ashcraft claims, unconvincingly, that Locke's remarks about the slowness and aversion of the people to resist their rulers are all "heavily laden with irony." Like Simmons (see above 15n45), he takes Locke to be engaged in "*urging* the people to engage in resistance." Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton: Princeton University Press, 1986), 309; emphasis in the original. Locke's view, though, is that the people will need no urging if sufficiently oppressed: "*The People generally ill treated*, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them" (II.224, 415) Locke, as I read him, thinks that is a *good* thing that the people will not generally be disposed to resist when the burden that sits upon them is not unbearably heavy. Tully remarks that, in his explanation of why a right of resistance will not lead to anarchy, "Locke plays the conservative trump card of partiality and habit against his conservative opponents, showing that these causal factors make popular sovereignty more stable than absolutism." Tully, *Approach*, 45.

[54] Locke's position is that it is usurpers and tyrants who "*Rebellare*, that is, bring again the state of War, and are properly Rebels" (II.226, 416). Harris argues that, strictly speaking, Locke was not a theorist of

damage done to the peaceful rule of law by the rebellious usurper or tyrant.[55] It mattered also that the right of resistance be understood as possessed, in most cases, by the people as a whole, not by solitary individuals or minority groups. Locke was uncomfortable with the idea of a right to resist on the part of individuals. As we have seen, he does not completely rule out an individual right of resistance. He is willing to admit that there are circumstances in which individuals may resist their prince alone. "Private men," he says, "have a right to defend themselves, and to recover by force, what by unlawful force is taken from them" (II.208, 404). It is a man in the singular who may cast about how to save himself when he finds himself in a ship bound for Algiers (II.210, 405). But, in line with his view that ultimately it is *the people* who judge how political power is used, Locke's default position is to speak in terms of controversy between the government and the people and to describe resistance as an act on the part of the people to reinstate legal order and civic peace. Throughout the climactic Chapter XIX "Of the Dissolution of Government," the right of resistance is described as vested in the people, not in individuals.[56] And a *people* is likely to be slower to act on such a right, more cautious and deliberate, than an individual, if only because it is very far from clear how Locke imagines a *people*, lacking a government to represent and speak for it, might make decisions and do anything at all. The general difficulties here would surely be exacerbated in the fraught circumstances of the dissolution of a system of government.

Filmer, as we saw above, doubted "the judgment of the multitude in disposing of their sovereignty." Another way in which Locke addressed the worry about what subjects would do with the right of resistance lay in his reticence when it came to the concept of sovereignty itself. Just as in the First Treatise Locke does not directly engage with Filmer's theory of sovereignty, so in the Second he does not explicitly develop a theory of

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resistance at all, since the "rebel" had forfeited his authority and so was no longer a superior. What Locke calls resistance, according to Harris, is really just the protection of life, liberty, and property. Ian Harris, *The Mind of John Locke: A Study of Political Theory in its Intellectual Setting* (Cambridge: Cambridge University Press, 1994), 250.

[55] Though it has to be acknowledged that in II.220 (411) Locke allows that the people have a right not only to get out of tyranny but also to prevent it. "The state of Mankind is not so miserable," he says there, "that they are not capable of using this Remedy, till it be too late to look for any." Here "capable of using" surely means "entitled to use." Nathan Tarcov comments that "Even Hobbes admits that when a society dissolves the people return to the state of nature and can set up a new one. Locke's new doctrine is that instead of waiting until it is too late we can act in the spirit of anticipation . . . Resistance is prevention and not a last resort, as it was traditionally viewed." Nathan Tarcov, "Locke's 'Second Treatise' and 'The Best Fence against Rebellion'," *The Review of Politics* 43, no. 2 (April 1981): 211.

[56] On Locke's hesitancy with regard to the idea of a right of resistance on the part of individuals, see Jacqueline Stevens, "The Reasonableness of John Locke's Majority: Property Rights, Consent, and Resistance in the *Second Treatise*," *Political Theory* 24, no. 3 (August 1996): 423–63. Individual resistance, according to Stevens, is in fact "precisely what [Locke] is careful to avoid" (445). It needs to be admitted, though, that Locke is not as clear as one might wish as to whether or not tyranny dissolves society as well as government, leaving individuals in the state of nature. As I read "Of the Disolution of Government" (II.211–243), it does not. Such is, I think, the implication of what Locke says at the very beginning of chapter: "He that will with any clearness speak of the *Dissolution of Government*, ought, in the first place to distinguish between the *Dissolution of the Society*, and the *Dissolution of the Government*" (II.211, 406).

sovereignty of his own.[57] His priority is what does—and what does not—follow from natural liberty. This is his priority because his main concern is with the moral legitimacy of political power. For Locke, the first question is how the possessor of political power acquires a moral entitlement to the subject's obedience. And the answer to that question lies in the naturally free individual's consent. A theory of sovereignty is downstream, in terms of the flow of argument, from a workable account of political obligation. That said, there is nevertheless plainly a sense in which Locke conceives of the people as possessing sovereignty. The people are the ultimate source of law, that is to say the source of the authority of laws made by the legislature in its name. In most constitutions (though not in the English one) the power of the prince is, or should be, merely executive, even if he does, necessarily, also possess considerable prerogative power. Yet Locke is, again, nervous about the implications of unambiguously ascribing sovereignty to the people and writes as if it is only in a highly mitigated sense that, in the everyday run of things, they are sovereign. The Lockean people are not the Rousseauian people. Their "general will" is not the sole determinant of what is law and what is not. It is essential to Locke's vision of politics that the people's will needs to accommodate itself to God's will, in the form of the law of nature, before it can be said to make through its representatives binding laws that demand the obedience of subjects. When government is dissolved and power returns to the people, the people are not free to do absolutely anything they might want to do. No more than the state of individuals prior to government is the state of the people prior to government a state of license. This is one way of marking the full significance of Locke's theory of property. Individuals do not hold rights of property against the executive alone. They hold those rights against the people too. At the end of Chapter V "Of Property," Locke says that "in Governments the Laws regulate the right of property, and the possession of land is determined by positive constitutions" (II.50, 302; see also II.120, 348). But there are limits, imposed by the law of nature, to what governments are able to effect in the name of the people.[58]

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[57] Locke does not, for example, address the dispute between Hunton and Filmer about the possibility of sovereignty in a limited monarchy. Nor does he have anything to say in *Two Treatises* about how political sovereignty stands with respect to the laws of nature. Locke may have been influenced by Lawson's conception of the sovereignty of the people, as Franklin argues in *Locke and the Theory of Sovereignty*, but it could not be said that he himself addressed the conceptual issues that interested theorists such as Bodin, Hobbes, Rousseau, and Sièyes. Locke uses the word "sovereignty" only five times in the Second Treatise and never in the context of his theory of the proper nature and extent of the powers of government. In this regard, Locke's vindication of the right of resistance stands to be compared with that of the Glasgow professor of moral philosophy Gershom Carmichael, who in his commentary on Pufendorf approaches the question by way of a theory of sovereignty. Gershom Charmichael, "On the Limits of Sovereign Power and the Right of Resistance," in *Natural Rights on the Threshold of the Scottish Enlightenment: The Writings of Gershom Carmichael*, eds. James Moore and Michael Silverthorne (Indianapolis: Liberty Fund, 2002), 162–74. A comparison of Locke's and James Tyrrell's responses to Filmer exceeds the scope of this paper, but it can be noted that, unlike Locke, Tyrrell engages closely with Filmer's critique of Hunton: see James Tyrrell, *Patriarcha Non Monarcha* (London, 1681), chap. 4, 97–260.

[58] As David McNally argues in reply to Ashcraft's claim that Locke shared the radical agenda of the Levellers, Locke "provided a theory of property which invalidated attempts by *any government* to interfere with the properties of the individual without his consent." David McNally, "Locke, Levellers, and Liberty: Property and Democracy in the Thought of the First Whigs," *History of Political Thought* 10, no. 1 (Spring 1989): 34.

Another important way in which Locke limits the significance of popular sovereignty is by emphasising that, in the aftermath of the institution by the people of a form of government, sovereign power is *permanently* (albeit conditionally) delegated by the people to their representatives. The legislative power, Locke says, is "*the supream power* of the Common-wealth . . . and unalterable in the hands where the Community have once placed it" (II.134, 356). While the community perpetually retains a supreme power of saving itself from the designs of tyrants, the community is *not* supreme "as considered under any Form of Government, because this Power of the People can never take place till the Government be dissolved" (II.149, 367), which is to say, until the government is dissolved, not by the people, but by those in government when they misuse the power with which the people have entrusted them. The point is made again in the final paragraph of the Second Treatise, where Locke writes that "when the Society hath placed the Legislative in any Assembly of Men, to continue in them and their Successors, with Direction and Authority for providing for such Successors, the *Legislative can never revert to the People* whilst that Government lasts" (II.243, 428). This is the constitutionalist element of Locke's thought.[59] Here again there is a contrast with Rousseau, for whom the single most important truth in politics is that popular sovereignty *cannot* be alienated by the people so as to be exercised in the people's name by a government of representatives.[60] The constitution, according to Rousseau, always stands to be revised by the will of the people, in regular and scheduled Machiavellian moments when government is dissolved and the sovereign people decides whether or not things should go on as they have hitherto. By contrast, sovereignty only returns to the Lockean people either when the government has acted tyrannically or when it has failed seriously in the execution of the laws. In normal circumstances, the people are properly said to be subject to a sovereign, or "Supream," legislator or legislature (see II.134, 427–28). They may also, Locke allows, be said to be subject to the executive as well.[61] In other words, the people cannot decide, of their own accord and without provocation, to change the form of government—for example, in order to make government more democratic. The people do not have that power. They have the power to alter the constitution only when government has in effect caused the constitution no longer to exist. Until that time, the people are just as bound by the terms of the original contract as is the government. Not only that, the

[59] Grant claims that Locke *replaces* sovereignty theory with constitutionalism: "Once it is understood that the law is supreme over any private will and the people are supreme in the sense that they determine when their trust has been violated, the central issue for political theory no longer is to identify whose will is sovereign." Grant, *Locke's Liberalism*, 201. One of the referees for this journal suggested that what Locke does is replace sovereignty with, simply, *government*.

[60] On the significance of Rousseau's distinction between the *sovereignty* of the people and the delegated powers of *government*, see Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge University Press, 2015).

[61] See II.151, 368, where Locke argues, with the English case in mind, that "In some Commonwealths where the *Legislative* is not always in being, and the *Executive* is vested in a single Person, who has also a share in the Legislative; there that single Person in a very tolerable sense may also be called *Supream*." As we saw above, Locke makes sure to accommodate also the English principle that the monarch is above the law.

people are, in normal circumstances, bound to obey the government. The government is not, in normal circumstances, answerable to the will of the people.[62]

The final mitigation of popular sovereignty that I want to draw attention to here comes into view with Locke's full account of the legal dynamics of the situation where there is a stand-off between people and government, where the people accuses the government of tyranny, and where the government denies (as it is likely to do) that that is the right description of what is going on. This is where Hunton's question of who shall be judge is of critical importance. As we saw above, Locke's answer is that the people shall be judge of whether or not the power they have entrusted to magistrates has been properly used. It is important, however, to see exactly what it is, according to Locke, that the people are judge of. For Locke does not claim that the people are entitled to settle a disagreement between themselves and government according to their judgment as to the rights and wrongs of the situation. He first spells out his answer to the Hunton's question—which he describes as "the old Question"—at the end of Chapter XIV "Of Prerogative" (II.159–68, 374–80). There he begins by making a move which shows that he does not mean simply to replace Hunton's appeal to the individual conscience with an appeal of his own to the collective conscience of the body of the people. "Should either the Executive, or the Legislative, when they have got the Power in their hands, design, or go about to enslave, or destroy [the people]," he writes, "there can be no *Judge on Earth*," because there is no court in which such a dispute could be settled. It follows, according to Locke, that "the People have no other remedy in this, as in all other cases where they have no Judge on Earth, but *to appeal to Heaven*" (II.168, 380). The power of judgment that the people have is, according to Locke, properly understood, the power "to judge whether they have a just Cause to make their Appeal to Heaven." And the right to make an appeal is, needless to say, not the right to a decision in one's own favour. Elsewhere in the Second Treatise Locke uses the Old Testament story of Jephthah in order to illustrate the point (II.21, 282; II.109, 340–41; II.176, 385–86; II.241, 427). There was no court on Earth to settle Jephthah's dispute with the Ammonites, so he had no choice but to go to war against his antagonists, in the hope that God would judge his cause to be the just one and give him victory. [63] The point of the story, as read by Locke, is that while Jephthah had the right to lead his army out to battle, it was God who was judge of the dispute. God, in his justice, could have decided against Jephthah and given victory to the Ammonites.[64]

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[62] The idea, argued for most comprehensively by Ashcraft, that Locke was in essence a theorist of democracy seems to me to have been thoroughly discredited by McNally, "Locke, Levellers, and Liberty"; Gordon J. Schochet, "Radical Politics and Ashcraft's Treatise on Locke," *Journal of the History of Ideas* 50, no. 3 (Jul.–Sep. 1989): 491–510; Ellen Meiksins Wood, "Locke Against Democracy: Consent, Representation, and Suffrage in the *Two Treatises*," *History of Political Thought* 13, no. 4 (Winter 1992): 570–602; and David Wootton, "John Locke and Ashcraft's Revolutionary Politics," *Political Studies* 40, no. 1 (March 1992): 79–98.

[63] The story is told in Judges 11. It is important to the story that the dispute between Jephthah and Ammonites is complex. It is possibly also significant, for Locke's purposes, that it is a dispute over property. Though God gives victory to Jephthah, it is at a cost: having sworn he would do so if God enabled him to defeat the Ammonites, Jephthah has to sacrifice his daughter, his only child, and "offer [her] up for a burnt offering."

[64] Dunn is, I think, exactly right in his explication of the appeal to heaven: "The right of resistance is an individual right of initiative in the making of an appeal. But neither in practical effect nor in legal determination has an individual the right to conduct the prosecution or execute the appropriate sentence."

The people's right of judgment, in other words, is the right to judge when they have been placed in a state of war with their government. This is not a right anyone can lay down, for it is the right to defend one's life, the life which one has been given by one's creator, in the face of a course of action that is a threat to it. "*Every man* is *Judge* for himself," Locke insists, ". . . whether another hath put himself into a State of War with him, and whether he should appeal to the Supreme Judge, as *Jephtha* did" (II.241, 427). Needless to say, one who has a right of appeal cannot be punished for making an appeal. But, given the cost in terms of the suffering inflicted upon a nation by the exercise of the right of resistance, one who appeals to Heaven by going to war against his government needs to be certain that this is a better course of action than remaining patient in the face of injustice.[65] And this means, Locke is confident, that no one is likely to engage in resistance lightly, without the most severe provocation: for "he that *appeals to Heaven*, must be sure he has Right on his side; and a Right too that is worth the Trouble and Cost of the Appeal, as he will answer at a Tribunal, that cannot be deceived, and will be sure to retribute to every one according to the Mischiefs he hath created to his Fellow-Subjects; that is, any part of Mankind" (II.176, 386).[66] This brings into relief what may, in the end, be the main reason for Locke's confidence that the right of resistance will not be misused and become an excuse for casual sedition, the fact that, as he sees it, human beings live sharply conscious of God, of his power, and of the consequences of displeasing him—while, at the same time, they live conscious of God's mysteriousness and of the difficulty of knowing for sure what his judgment will be.[67] This consciousness of the divine, at once vivid and elusive, is sufficient to prevent men from falling away into anarchy and violent disorder. There is no need of Filmer's earthly absolute sovereign.[68]

Dunn, *Political Thought*, 181–82. There is no discussion at all of the appeal to heaven in Franklin, *Locke and the Theory of Sovereignty*. Franklin states that Locke is consistent on the "central point" that "revolution is appropriate where a people is confronted with a calculated design to subvert its constitution and reduce it to a state of servitude" (97). As I read Locke, by contrast, the people are never in a position to know for sure that revolution is justified; see also Emily C. Nacol, "The Risks of Political Authority: Trust, Knowledge, and Political Agency in Locke's *Second Treatise*," *Political Studies* 59, no. 3 (October 2011): 580–95. The people revolt in the face of tyranny, in the hope that God will judge that their cause is superior to all the considerations that speak in favour of maintaining civil peace. Whether or not this hope is well-founded will be revealed only at the Last Judgment.

[65] Dunn suggests that where the costs to society at large of an act of resistance outweigh the suffering caused by tyranny, it is not that the right is trumped by another right but rather that there is no right to resist in the first place. Dunn, *Political Theory*, 186n2.

[66] Also, "I my self can only be Judge in my own Conscience, as I will answer it at the great Day, to the Supream Judge of all Men." II.21, 282.

[67] Francis Oakley, "Locke, Natural Law, and God—Again," *History of Political Thought* 18, no. 4 (Winter 1997): 624–51. Oakley (651), illustrating Locke's "theological temperament," quotes from Locke's *Examination* of Malebranche: "I think it more possible for me to see with other men's eyes, and understand with another man's understanding, than with God's."

[68] As Ashcraft puts it, "Locke's disagreements with Hobbes or Filmer are never merely political disagreements, but reflect a different conception of how things are in the universe, especially with regard to the relationship between God and man" Ashcraft, *Locke's Two Treatises of Government*, 46.

5. Section Five

My concern here has been with the practical consequences that Locke did and, especially, did *not* want *Two Treatises of Government* to have. An interest in the *practical* dimension of Locke's politics—in what he wanted to effect in writing and promulgating the *Two Treatises*—was, of course, central to the revolution in Locke studies initiated by Peter Laslett in the 1950s. On Laslett's reading, the *Two Treatises* was written not by Locke the philosopher but by Locke the physician, in the attempt to cure an English case of the French disease of absolute and arbitrary government.[69] Filmer's influence on the Tories during the Exclusion Crisis was Laslett's principal reason for dating the composition of the first draft of the *Two Treatises* to the very early 1680s. The book as a whole, according to Laslett, "is an Exclusion Tract, not a Revolution Pamphlet."[70] And even while the question of the exact date of the first draft remains unsettled, it seems indisputable that the book had its ultimate origin in Shaftesbury's campaign against Charles II. The problem, though, with the intense interest that there has been, since Laslett, in the precise character of Locke's intentions in *writing* the *Two Treatises* is that it becomes all too easy to lose sight of the question, surely just as interesting, of what Locke might have meant to achieve in *publishing* the book in late 1689, in the immediate aftermath of the replacement of James II by William and Mary.[71] How, exactly, was an Exclusion Tract to be turned into a Revolution Pamphlet? The main difficulty here is the First Treatise. It is easy enough to see how the Second Treatise might have been thought, in Locke's words from the Preface, "sufficient to establish the Throne of our Great Restorer, Our present King *William*," to show William's title to lie in the consent of the people, and to justify to the world the people of England.[72] But what was the relevance of a long refutation of Sir Robert Filmer in 1689? Why did Locke publish the First Treatise along with the Second? Two answers suggest themselves. The first is that Locke simply did not want to waste all the work he had done on Filmer, even if "Fate" had already "disposed of" a large part of it. We know, though, that Locke left unpublished many other works, major and minor. So, it seems rather more likely that answering Filmer was as important to Locke in 1689 as it had been ten years earlier. I shall end with a speculative hypothesis as to why this might have been.

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[69] See Laslett, Introduction to *Two Treatises*, 64; 86.

[70] Laslett, Introduction to *Two Treatises*, 61. Dunn comments that "There is no doubt that if the text of the *Two Treatises* as we have it now is exclusively or even predominantly an Exclusion tract, it is often a notably ham-fisted one." Dunn, *Political Thought*, 53. The key phrase in this sentence might well be "as we have it now," for there is no sure way of knowing how far the published text resembles the first draft.

[71] Locke, Preface to *Two Treatises*, 137. Locke's intentions in publishing the book have not, however, been completely ignored: see Charles D. Tarlton, "'The Rulers Now on Earth': Locke's *Two Treatises* and the Revolution of 1688," *The Historical Journal* 28, no. 2 (June 1985): 279–98, who argues that Locke meant the book as a warning to William when he seemed to be repeating the mistakes of the Stuarts and Ashcraft, *Revolutionary Politics*, 590–601, who argues that "Locke's decision to publish his work . . . was an act of solidarity with the radical cause as it existed in 1689–1690". See also the works cited below at 28n81.

[72] Locke, Preface to *Two Treatises*, 137.

In April 1689 the Convention Parliament passed an Act requiring all holders of civil and ecclesiastical offices to take a new oath of allegiance to William and Mary.[73] Those who did not take it by 1 August would be suspended and eventually deprived of office. Almost everyone took it, but not all for the same reasons. The oath generated an intense debate about why it was permissible for those who had previously sworn allegiance to James II to now bind themselves to obey the new regime even though James was still alive and maintained his claim to the throne, and even though he had a natural heir whose claim might be thought to remain intact if James himself had somehow lost his title. Close to two hundred contributions to this debate would be published between the spring of 1689 and late 1694. A number of them make use of *de facto* arguments from present possession.[74] The most notable, in terms of the number of copies sold, was William Sherlock's *The Case of Allegiance due to Soveraign Powers*. "He is our King," Sherlock argued, "who is settled in the Throne in the actual Administration of Soveraign Power."[75] We know what Locke thought of those who sought in this way to avoid answering the question of the present status of James Stuart's claim to the throne because he is explicit about it in a brief manuscript commentary on the matter, dating probably from the spring of 1690.[76] To distinguish between a king *de jure* and a king *de facto*, and to call William a king in the latter sense only, Locke claims in this manuscript, is effectively to call William a usurper: "For what is an Usurper but a King actually in a throne to which he has noe right."[77] This was the view of those who had denied that James had left his throne vacant and who had argued that William should only be accepted as regent. In so far as it was the view of men in positions of power, as it certainly was, it was plainly a threat to the entire Revolution settlement: "For how can it be expected the people should be firme to a government that is not soe to it self and does not assert its owne right."[78] It was "absolutely necessary to the very being and subsistance of our government" and to the securing of peace and the Protestant religion, that all, whatever their private opinions, "joyne in a sincere loyalty to his present Majestie and a support of his government."[79] It

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[73] Mark Goldie, "The Revolution of 1689 and the Structure of Political Argument: An Essay and an Annotated Bibliography of Pamphlets on the Allegiance Controversy," *Bulletin of Research in the Humanities* 83 (1980): 473–564.

[74] Goldie, "Revolution of 1689," 487–88; John P. Kenyon, *Revolution Principles: The Politics of Party 1689-1720* (Cambridge: Cambridge University Press, 1977), chap. 3, 21–34.

[75] William Sherlock, *The Case of Allegiance due to Soveraign Powers, Stated and Resolved* (London, 1691), 14.

[76] "On Allegiance and the Revolution," [April 1690?], Lovelace Collection, MS Locke e. 18, Bodelian Library, Oxford University, in "John Locke on the Glorious Revolution: A Rediscovered Document," by James Farr and Clayton Roberts, *The Historical Journal* 28, no. 2 (June 1985): 385–98. On the significance of the manuscript for understanding the argument of Second Treatise, especially for Locke's doctrine of tacit consent, see G.A. den Hartogh, "Express Consent and Full Membership in Locke," *Political Studies* 38, no. 1 (March 1990): 105–15.

[77] Locke, "On Allegiance," in "Locke on the Glorious Revolution," by Farr and Roberts, 397.

[78] Locke, "On Allegiance," in "Locke on the Glorious Revolution," by Farr and Roberts, 398.

[79] Locke, "On Allegiance," in "Locke on the Glorious Revolution," by Farr and Roberts, 395.

was necessary, in other words, for all to affirm William as rightful monarch and to explicitly abjure allegiance to James.

It is possible, I suggest, that Locke published the *Two Treatises* as a long and somewhat indirect argument to the same conclusion and that he thought that the First Treatise needed to be included precisely because of the *de facto* element of Filmer's political thought. That aspect of Filmer's argument made it possible, so Locke might have feared, for Filmer's texts to provide a rationale for those who had supported James II, but who now were willing to accept the authority of the Williamite regime, but only on *de facto* grounds.[80] To Locke, this would have seemed a dangerously mistaken understanding of the new regime's claim to authority because it left the regime unable to claim for itself a moral authority distinct from that of the successful usurper, and so, in effect, left intact the *de jure* claim of the Stuarts. Hence it left open the possibility that the Stuarts might, rightfully, return to press that claim at some point in the future. The point was not that Filmer gave intellectual justification for the position of the Non-Jurors, who refused to take the new oath of allegiance. They did not matter. Much more dangerous—practically speaking—was the fact that Filmer provided the wrong kinds of reason for swearing allegiance to the new regime. They were the wrong kinds of reasons because they did not preclude continuing allegiance to the Stuarts and kept open, morally speaking, the possibility of turning against William and Mary and of returning the country to a state of war. In this way it is possible to refine Laslett's ground-breaking insight that the *Two Treatises* was in part a work of practical politics, not solely a piece of political theory, and to apply that insight to the publication as well as to the composition of the text.[81] Seen in the context of the debate about the oath of allegiance to William and Mary, the *Two Treatises* is an Engagement, not an Exclusion, Tract. It is only proper, however, to end with an admission that the work necessary to properly substantiate this hypothesis has yet to be done. It is, for the moment, not entirely clear how significant a presence Filmer was in the debate about the legitimacy of the Williamite regime. We have Locke's explanation, in the Preface to the *Two Treatises*, that he would not have been so rough with an author unable to answer for himself "had not the Pulpit, of late Years, publickly

[80] It may also be, as Goldie notes, that Chapter XVI "Of Conquest" (II.175–96, 384–97) was written as a reply to those who argued that William's was a right of conquest. Mark Goldie, "Edmund Bohun and *Ius Gentium* in the Revolution Debate, 1689–1693," *The Historical Journal* 20, no. 3 (September 1977): 585.

[81] Laslett himself appears to have had little interest in the question why in 1689 Locke published what he had written against Filmer ten years previously, although he does accept that "There is force in the claim that it was still necessary for a Whig writer to go to some trouble to refute Filmer as later as 1689." Laslett, Introduction to *Two Treatises*, 51–52. Den Hartogh emphasises the importance to Locke of establishing William and Mary's full *de jure* claim to the obedience of their subjects. This, according to den Hartogh, is why Locke makes a categorical distinction between "tacit" and "express" consent. Den Hartogh, "Express Consent," 105–15. More recently Michael Davis has considered the *Two Treatises* as what he calls "a work of practical ethics," as opposed to a work either of political philosophy or of political rhetoric, polemic, or propaganda. "A work of practical ethics," Davis explains, "tries to resolve a particular *moral* problem of some individual or group" (464). As Davis argues, the moral problem Locke was trying to resolve was whether or not those whose who had sworn allegiance to James II might now swear allegiance to William and Mary. Michael Davis, "Locke on Consent: The *Two Treatises* as Practical Ethics," *The Philosophical Quarterly* 62, no. 248 (July 2012): 464–85.

owned his Doctrine, and made it the Currant Divinity of the Times."[82] It would be helpful, though, for the purposes of better understanding Locke's intentions in publishing the *Two Treatises* to know exactly what use the pulpit had made of Filmer's doctrine during the 1680s.[83] [84]

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[82] Locke, Preface to *Two Treatises*, 138.

[83] There is disappointingly little information on this score in Cuttica, *Sir Robert Filmer*, chap. 9, 231-45.

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