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Locke on Equality

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Abstract

Scholars overlook that Locke has two distinct concepts of equality entrenched in his political theory. By recovering the centrality of natural law in Locke, these two concepts of equality can be easily identified. The first I call "natural equality," which includes every human being regardless of rational capacity, each possessing rights to life, liberty, and property. The second is "law-abiding equality," which includes the subset of people who adequately recognize the dictates of natural law. This distinction is significant because it helps overcome the conflict in liberalism between universal dignity and the necessarily exclusionary character of citizenship.

Keywords: Locke, equality, rights, natural law, citizenship, democracy

Human beings all being equal, should the political rights of anyone—e.g. voting, jury participation, running for office—ever be restricted within society?[1] Some political scientists say "yes" in cases where democratic ideas are viewed with suspicion or even hostility: "as [Robert] Dahl argues, simple insistence on the majority formula *per se* will not do anything until the appropriateness of the [political] unit is established" (Linz and Stepan 1996, 27). Prematurely establishing full democratic rights within any given political unit can therefore (and unfortunately) increase the probability of democratic failure.

This piece of empirical prudence, however, lacks a normative framework that could mitigate the appearance (or reality) of injustice. For this very reason, restricting rights must raise risky prospects for political order. Fortunately, a justified way of approaching this has been available for some three centuries in the theoretical works of John Locke.

Influential interpretations of Locke today wrongly conclude that equality implies full political rights for all (Strauss 1968, 22). On the other hand, scholars that do see limitations on political rights typically view this as a product of historical circumstance, including influences of racism, classism (Macpherson 1962), and/or sexism (Hirschmann 2003). Opposed to each of these camps, I argue that Locke's political theory limits political rights, but does so in order to protect the universal dignity of all, rather than to violate it. Nor are the criteria for granting political rights strictly related to race, class, or gender. Instead, these rights are reserved for those with a sufficient *commitment to the belief* that everyone has equal rights to life, liberty and property.

Essential to my argument is that, for Locke, natural law mandates respect for rights, and this law is perceptible through reason. The importance of this claim will become apparent in the first section of this paper, where I engage with the interpretative stance of Michael Zuckert (1994, 2004, 2005). I focus on Zuckert's work mainly because it provides the best opportunity to review and engage with two popular arguments for equality deeply rooted in Western consciousness: (1) that human beings have equal dignity in their possessing of the same fundamental capacities, and (2) that nearly all human beings have sufficient reasoning capacity for, and thus are entitled to, equal citizenship.

By carefully reassessing Locke's views on how the concepts of natural law, equality, and rights inter-relate, it can be seen that there are two distinctive tiers to his understanding of equality. I refer to the first of these as "natural equality," which is inclusive of all human beings, even those that reject this concept. This equality implies rights to life, liberty, and property, according to Locke. The second tier of equality is referred to as "law-abiding equality" (LAE), which includes the potentially very large subset of people who sufficiently recognize and abide by the principles of civility and decency codified in natural law. This awareness, in turn, entrusts law-abiders with the legitimate power and duty to punish, a power at the heart of all rights inherently political. Though everyone is entitled to their natural rights to life, liberty, and property, only the law-abiding can legitimately secure these rights via the establishment and enforcement of positive law.

Lockean Equality as Self-Ownership

For Zuckert, Lockean equality is based on the self-ownership one naturally enjoys over oneself.[2] His interpretation primarily relies on Locke's statement that, "every Man has a Property in his own Person" (ST § 27),[3] combined with select passages from the *Essay Concerning Human Understanding* that emphasize man's nature as a self-aware being (Locke 1975).

Despite the strengths of this reading, however, there are important limitations that warrant consideration. Primarily, this concept of equality is insufficient for going beyond establishing universal dignity to justifying society-specific political rights. It this it significantly weakens the coherence of Locke's social compact, which inherently relies on an exclusive membership of citizens. That Locke's compact is "signed" only by those who recognize other "signers" as political equals is evidence of this. This equality also obscures Locke's clear sanctioning of both democratic and undemocratic forms of government in his *Second Treatise of Government.*[4]

Let us first examine whether self-ownership is indeed universal—a concern posed by James Stoner. Perhaps this concept in fact points away from human equality—both in dignity and political rights—as "surely some people are more conscious of themselves than others" (Stoner 2004, 563). Those that are very self-aware might be, under this principle, considered more 'equal' or dignified than others. This raises doubts regarding whether this equality can satisfactorily support Locke's main theoretical principles, such as placing government's ultimate power in 'the people' as a whole. Self-aware self-ownership may instead be a more natural complement to an aristocratic society—

suggesting that the less self-aware majority may be subordinated to the enlightened and philosophic few.

To this, however, Zuckert responds that, "consciousness of self . . . is not a matter of degree" (2004, 569). What matters is that human beings are conscious of themselves at all. This is the universal and democratic manner in which Locke conceives of self-ownership, he argues, and why human beings are each other's equals.

Zuckert's reply is a valuable and insightful one. The self-ownership principle does compellingly ground some sort of basic right. Locke explicitly states with regard to the self-owner, "[t]his [property] no Body has any Right to but himself" (§ 27). No one can claim a property right to my individual person superior to my inherent ownership thereof.

Where things get more difficult is in Zuckert's additional inference that this self-conscious self-ownership preserves "the equal rights of all persons" (2004, 569). This is a common inference in discussions of equality, but to suggest that 'a right' automatically leads to "the equal rights" is a questionable move. In contrast, it would seem perfectly consistent to conclude from self-ownership alone that a person indeed has a right to life, but not any additional rights, e.g. *equal* liberty or *equal* political authority. This restricted catalogue of rights is recognized for incarcerated (and presumably self-owning) criminals, for example. Prisoners must have several rights respected as dignity-possessing human beings, such as the right to due process of law, protection from cruel and unusual punishment, and the like, yet their rights as human beings do not shield them from

extensive rights denials imposed on them. Although the self-ownership principle sufficiently grounds our universal rights to not be enslaved, full and equal rights, including political rights, are less persuasively accounted for.

Political rights therefore require more than self-ownership equality. They may potentially be justified through the ability to be rational and/or obedient to legitimate laws, and denied to those who lack such ability. An apocalyptic religious group, for example, may seem irrational to its fellow members of society. It may mistreat animals, children, the members themselves, and even seriously harm those outside the group. The members of such a group, an ISIL or a Taliban, may reasonably be seen by others in society as rightfully excluded from the political process. Another example would be a violent revolutionary group seeking regime change within its nation, such as the FARC inside of Colombia. We could consider a large population of undocumented immigrants, as currently exists in the United States. Should such people be allowed the right to vote? It seems only reasonable to expect that reliably law-abiding people within their social compact could want more rights than these others.

These questions help to show that relying on a single concept of equality hamstrings Locke's theory into an all-or-nothing gambit concerning rights. If equal rights emerge out of self-ownership, then the exclusionary social compact would seem impossible. Equality in all rights would amount to a global political society. If self-ownership does not ground political rights for all, then even basic equality itself seems thrown into question.

We see this playing out in debates over the treatment of undocumented immigrants in the U.S. Since this group is not currently regarded as entitled to the equal rights of legal citizens, its members are frequently spoken of in public discourse as less than equal simply. Tellingly, the most draconian calls for mass deportation have been accompanied by (often unsubstantiated) charges that undocumented immigrants violate many of the basic rights of citizens. Lawful respect for the rights of others dictates equal dignity here, not humanity as such, and not self-ownership. What kind of treatment are they entitled to? What policies should be off limits? Those barred from political power are left lacking a clearly defined ethical status, and are relegated to a vulnerable position. The dispute over what self-ownership may or may not logically imply for equality and rights therefore carries major consequences.

What Stoner illuminates is the complicating matter that human beings are quite diverse (both in their abilities and circumstances). This poses challenges for those who wish to establish the recognition of human equality, let alone connect such an idea to political power. Should reason be asserted as equality's basis, one may object that some people reason better than others. If integrity is asserted, then perhaps only those with the most integrity should influence politics. This meritocratic alternative menacingly lingers about, of course with questions regarding what defines "merit." A ready response, which Zuckert employs, is that we ought to first observe that the possession of reason, or integrity, or consciousness, or awareness, are all equal in the following sense: we all possess them—none of us lack them entirely. Though this answer raises other questions,

it does initially overcome some of the issues threatening the universality of, if not all rights, at least basic human dignity.

In a later piece, Zuckert improves on these weaknesses by claiming that for Locke, all normal human beings have "minimal rationality" (2005, 431). That is, most have enough reason to exceed some intellectual threshold, beyond which we *should* all be considered free and equal beings in political society. This idea ambitiously aims at connecting basic human dignity (justified above with self-ownership) to Locke's thoughts on liberty attained through the "right reason" of mature adulthood. Not only do all human beings have dignity based on possessing reason as such, but they have sufficient reasoning capacity mandating a right to political equality. The addition of the word "minimal" is another seemingly minor modification that carries far more weight than may be immediately apparent. We have here, essentially, the missing bridge from universal dignity to political rights. It may not immediately resolve all of the problems concerning justifying the exclusivity of the social compact, but it would move toward establishing why the members of this contract could or should view each other as political equals. But does it even go this far? I doubt so, and this is the point where Zuckert's reading of Lockean natural law becomes relevant.

Generally following the reading of Leo Strauss, Zuckert denies that Locke is serious when he speaks of natural law.[5] This interpretative stance, aiding the establishment of universal equality, raises several theoretical problems. What "minimal rationality" lacks without natural law is a meaningful way to describe either the intellectual threshold being minimally exceeded, or the ethical

boundaries at work in establishing individual liberty. Because natural law is put aside, it is necessary to assume into the equation an equally meaningful substitute. We are left having to ask: to what threshold might 'minimal rationality' refer? What do you have to be able to know or to do? To claim that man has enough rationality for "freedom," say, is insufficient: there are many understandings of freedom that lead off in radically different theoretical directions, e.g. the standard distinction in political theory between positive and negative liberty, or the more philosophical distinction between agency and autonomy.

Whatever the threshold may be, moreover, could not be set too high under the single equality thesis. If dignity is to be universal, then it cannot require much by way of means testing. Consider Forde's convincing claim that from Locke's objective standpoint, he expects mature adults to at least grasp "the simpler logic of equity and civility and of their place in human happiness . . . in tandem with acceptable notions of divinity" (2006, 255), and to act in accord with these beliefs. Could such a standard ever be universally met for establishing human dignity? I think not. Human freedom itself would have to be snuffed out in order to achieve such agreement across an entire people, let alone the entire human race. If the threshold is too low, however, we fail to justify that political equality in which people are assumed to be aware of various norms and notions of civilized society.

Furthermore, to be unclear on this moral line for Locke's supposed "minimal rationality" is *ipso facto* to struggle with distinguishing between categories fundamental to law and politics, such as child and adult, citizen and

non-citizen, oppressor and oppressed, or just and unjust. Who is who? The conventional reading of the *Second Treatise* suggests that, a person's obedience to natural law, or capital 'R' Reason, answers many of these vexing questions. Such human distinctions legitimize power relationships—an adult's directing of his or her children's lives, the community's punishment of criminals, and just law-making within civil society. For each of these, the distinction needs to be drawn between different statuses of human beings in relation to their ability and willingness to exercise "right reason." Taking natural law out of Locke's political theory leaves behind a major theoretical gap, which 'minimal rationality' does not sufficiently supply.

Some sense of the interpretational alternatives relative to Lockean natural law is helpful to have here. Consider, for example, John Dewey's representative pre-Strauss reading: for Locke, "Reason is a remote majestic power that discloses ultimate truths" (2000, 29). Under this view, Reason could not be more foreign to minimal rationality, which at bottom seems to mean for Zuckert a version of instrumental rationality, completely purged of perceptions of ethical truths.

Jeremy Waldron offers another influential interpretation of Lockean equality, making an interesting and warranted effort to address the normative weaknesses of accounts of Lockean equality like Zuckert's (2002, 2005). In his own words, Waldron interprets Lockean equality as grounded in "the capacity to form and manipulate abstract ideas, which enables a person to reason to the existence of God and to the necessity of finding out what if anything God requires of him" (2002, 83). This seeks to be an egalitarian account of the human

condition in that every human being can presumably abstract from particulars, conceive of an idea of God, and contemplate it. This formulation supports at least some of Locke's broader theory. Governments should not interfere with anyone's basic moral standing under God and his or her pursuit of personal salvation. However, it is doubtful that this understanding is entirely satisfactory.[6]

Zuckert himself identifies many of Waldron's most significant problems, the most important of which concerns the ethical implications for this natural faculty, the ability to think of God and discern the duties owed, which only has potential use. There is indeed an extreme unlikelihood that this faculty would experience universal use among all human beings in real life (Zuckert 2005, 426-30). Something that human beings can merely do potentially serves as a discomfortingly weak theoretical basis for equality, dignity, and rights. It is thus not, it seems, particularly useful to contemporary discussions of equality, nor is it likely the product of a mind such as Locke's.

If Zuckert is right about natural law, then equality will admittedly need to be married to some other set of normatively substantive criteria. The key problem is that the secular criteria proposed—self-ownership and minimal rationality—have been shown to be insufficient. Normative criteria such as Waldron's, which relies on God, promises to be more substantial, but then flounders under the familiar problem of non-universality.

For Locke, the main complicating factor for universal respect for rights, which Zuckert relies on to argue against natural law, has to do with an individual's choice of whether or not to be self-governed by reason; "Men being

biased by their Interest, as well as ignorant for want of study of [the law of nature]" (§ 124). Some men will not restrain themselves by the law of nature, even perhaps if they can perceive it, and will unjustly harm others. Others will not see the law of nature correctly because of self-interested bias, or because they fail to spend enough time "studying" it. There will consequently be cases where a lack of self-restraint is evident, and force will be wrongly used against others. These are difficult problems for any theory of equality and universal rights. But do they necessarily imply that the natural law does not exist?

Surely not. In the state of nature or in civil society, there is a knowable natural law, perceivable by reasonable people, setting ethical boundaries on the actions of human beings. There will always emerge a clear division between people who perceive and respect natural law and the rights it dictates on one side, and those who either do not perceive, do not obey, or both, on the other. There therefore is directly contrary Zuckert's assertion, an implicit need for natural rights to be enforced by "good men" through "good means" (1994, 237). Lockean equality must, therefore, somehow be made compatible with these postulations, or be deemed untenable. It is not valid to assume away natural law in support of equality simply because it creates this normatively salient division, which indeed does effectively amount to a type of inequality.

Let us apply this discussion to a real world example. We have seen Western powers overthrow dictatorships, sometimes in defense of people's rights. Iraq, Libya, and Syria come to mind. In efforts to subsequently erect a unity government, some of the people (may, let us assume) want a patriarchal

theocracy, others military rule, others retribution and civil war. Not everyone will see each other as free and equal members of a new social compact. Yet, rule of law must be established, so what is to be done? If we appeal to self-ownership equality, we should invite every mature adult residing within the territorial borders into the political system. We may justify doing so because people, under this view, are entitled to equal rights as self-owners and are minimally rational. This course, however, would seem to portend violence. Even resulting stability could, depending on the particular rules established, confirm the suspicions of sexism and classism in Locke's theory lodged by scholars such as Hirschmann and Macpherson. Namely, that Locke's theory protects and institutionalizes the unjust power inequalities that prevail within the broad legal boundaries of civil society.[7]

Fortunately, I think the above analysis of equality has begun to prefigure the means of saving Lockean liberalism from such conclusions. Beyond human beings' "like faculties," we consistently find an ethically important distinction between those who abide by natural law and those who do not. In drawing this distinction, the population of law-abiders may indeed in some countries, at some times, not look the same as the general population. But as the example from the previous paragraph shows, when this is the case, the cause may at least formally be traceable to a flaw in the original compact. This flaw could result in a serious moral indictment of the original compactors and the prevailing powers-that-be as unlawful, illegitimate, and harmful.[8] And here we should not forget that Locke's

theory does include a right to violent revolution under such circumstances (§ 220).

Defining and Locating Locke's Two Equalities

By restoring natural law to a central place in Locke's thought, we can quickly begin to see Locke's implicit understanding of equality. There are, in fact, two tiers of equality working together in Locke's political theory grounding a just political society. The first I call natural equality, to which Locke includes every human being, regardless of manifested rational capacity, each possessing natural rights to life, liberty, and property. The second is law-abiding equality (LAE), which includes the potentially large subset of people who adequately recognize and abide by the dictates of natural law through their matured reason. Such people meet the normative prerequisites for full and equal political rights, whether they are members of an existing social compact, seeking to join, or in need of establishing a new compact entirely.[9]

Let us look at the key passages in the *Second Treatise* for the evidence that this distinction is authentically Lockean. We will find that natural equality is not directly derived from man's being God's creation. What it does depend on, rather, is the presumption of God, allowing equality to be presented deductively as a rational maxim of natural law. The distinction here is between claiming equality under God simply versus an inference of mankind's inherent equality, under God. These two ways of arriving at natural equality are often confused with each other, but the latter's approach is far more akin to a "rational truth" than a "revealed truth."

Locke reasons that there is, “nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another without Subordination or Subjection” (§ 4). The subordination forbidden under this passage is, “that [which] may Authorize us to destroy one another” (§ 6). Despotic power cannot be legitimately exercised between members all participating in these four common conditions: species, rank, advantages of Nature, and use of same faculties. This is a far cry from simply claiming that human beings are all equal in the eyes of God. Natural equality is instead derived from an empirical judgment that human beings are *created with* these evident similarities. Being similar, and otherwise ignorant of divine grants to superior stations, men ought not to be arbitrarily subordinated to other men. To assume otherwise is to risk divine punishment, once again indicating the need to presume God’s existence (see e.g. § 176). This argument for natural equality incorporates worldly reasoning with a sort of pragmatic theology (cf. Forde 2001), which consequently entitles each of us to our own persons against the forceful designs of others.

Although Locke may seem vague here, this particular construction bridges the problem of species identification from the *Essay* [10] with practical concerns of politics. The very vagueness surrounding natural equality allows Locke to minimize when a particular creature could ever be supposed unworthy of recognition as an equal human being. If Locke were to have specified, for example, that a creature receives the equal dignity of a human being by virtue of

his or her skill with abstract reasoning, then philosophers may seemingly rule by right over non-philosophers. What Locke instead combines in this class of equal creatures is biological pedigree, a common environment, and *supposed access* to the same faculties. It is a straightforward task to draw similarities here with Zuckert's self-ownership based equality. We are all self-owners, in that we possess the same capacities (access to reason, self-awareness) that support self-ownership, and a strong standard of moral recognition flows from this commonality. The unbridged space between Zuckert's account and Locke's natural equality is that Locke views the presumption of God to be necessary for such reasoning to hold up (see e.g. ST, ch. 2).[11]

The supposition of universal human access to the same faculties is therefore a deceivingly powerful construction. It obstructs anything like slavery or racial genocide based on the inherent superior faculties of one group over another. Biological species membership is also much easier to determine, because this criterion mainly relies on outward appearance. We know from the *Second Treatise*'s chapter on parental power that even if some faculties never manifest in a child, there is still a duty to take care of him or her by virtue of this ineradicable supposition tied to biological species membership. This in some ways brings us full circle to the more common, nearly ubiquitous idea of human equality today: human beings are equal by virtue of their common humanity. While Locke agrees with this to a certain extent, his view is stronger in its theoretical implications for incorporating the ethically significant criterion of access to the "use of the same faculties."

Locke's justification for natural equality grounded in shared human dignity has now been described. But how does he get from the natural equality of human beings to a legitimate polity of law-abiders within a social compact? What makes a person a law-abider? To answer this, Locke's account of parental and despotic power is essential, as it demonstrates the centrality of rational maturity to justifying and directing each of these powers. Who is able to legitimately exercise these powers, who is subject to them, and why? The answers require recognizing law-abiding equality (LAE), Locke's implicitly described second tier of equality.

First, one must be a law-abider in order to be a legitimate parent or guardian. Parental power entails "a sort of Rule and Jurisdiction [parents have] over [their children]" (§ 55). It "arises from that Duty which is incumbent on them, to take care of their Off-spring, during the imperfect state of Childhood" (§ 58). As opposed to the artificial compact that gives rise to political power, "Nature gives" parental power (§ 173). However, "the bare act of begetting" does not warrant nature's endowment of parental power, but rather it goes to whoever gives the child their entitled "Nourishment and Education" (§ 65). It does seem, as an aside, that it is primarily the natural parents who possess "a tenderness for their Off-spring" (§ 67, see also §§ 63, 170), but this fact is non-essential to the power itself. Rather, this simply "makes evident, that this [parental power] is not intended to be a severe Arbitrary Government, but only for the Help, Instruction, and Preservation" (§ 170) of children. This claim is crucial, because it implies

that parental power never can unilaterally change into despotic power, which in turn signals the moral status of children in the care of parents or guardians.

Parental power is not exclusively exercised over children, but also "Lunaticks," "Ideots," "Innocents," and "Madmen" (§ 60). He who "comes not to such a degree of Reason, wherein he might be supposed capable of knowing the Law, and so living within the Rules of it" (§ 60) needs to be under the parental authority of a "Free man" (§ 60). A free man is a person where "Age and Education [has] brought him Reason and Ability to govern himself, and others" (§ 61). This "freedom . . . is grounded on his having Reason, which is able to instruct him in that [Natural] Law he is to govern himself by" (§ 63). If this condition does not come, then he is "continued under the Tuition and Government of others, all the time his own Understanding is uncapable of that Charge" (§ 60).

LAE is thus what authorizes a parent to exercise his or her authority in raising a child. How is it a form of equality? In the sense that parents have equal jurisdiction—to say society's best parents have a right to raising everyone's children is anathema to Locke's theory.

Raising a child to be law-abiding is the end to which his or her upbringing should be directed. Prior to the attainment of LAE, children possess by virtue of their species membership the natural equality afforded to all human beings under Reason and God. But is there then a potential condition here between childhood and the full state of maturity? Yes. Locke describes this as "a state as wretched, and as much beneath that of a Man" as "brutes" (§ 63). This is because the unbounded rules of the passions are not consistent with human freedom or

equality. Locke states that, "To turn him loose to an unrestrain'd Liberty, before he has Reason to guide him, is not allowing him the priviledge of his Nature, to be free" (§ 63).[12]

Calling freedom "the priviledge of his Nature" is revealed as the logical complement to his earlier remark stipulating the "the full state of Equality" that children "are not born in . . . though they are born to it" (§ 55). Equality in this context clearly emerges as a teleological concept, one constituted of "that equal Right that every Man hath, to his Natural Freedom" (§ 54). Maturity is not a natural function of simply getting older, but rather comes from a willfully provided education from a good parent, who must be a Freeman (a law-abiding equal).

Full equality, however, still can once attained later be forfeited by unjust appeals to force.[13] Those who participate in unlawful aggression no longer carry the presumption of potential rationality as children do by nature. Locke thus speaks of "Captives" (§ 172), who become so as an "effect only of Forfeiture" by "having quitted Reason" (§ 172). This is "the state of War continued," and results in the need for authority "which neither Nature gives . . . nor Compact can convey" (§ 172). The crucial difference between the "Captive" and the child is that where a child needs help "manag [-ing] his property," the captive has "no property at all" (§ 173). That is, he is "not Master of his own Life" (§ 172); *not a self-owner*,[14] yet still "a Man" (§ 172). A new compact cannot be negotiated between the victim and the captured aggressor because compacts require the use of reason, which the aggressor has demonstrated a willingness to give up or reject.

Even this openly unequal despotic relationship is mediated by justice, and Locke's principle of natural equality is always maintained. If Locke seems to condone severity, then this should be seen simply as the necessary result of not being able to restore peace between an injured person and an aggressor by either natural forces (as with children) or compact (as among reasonable adults). Absolute[15] power necessarily has to fill this void. What else can be done? If the injured party releases the criminal, he risks his later destruction by holding society with an unreasonable aggressor. Should he have to rehabilitate the criminal back to reasonableness? Such a warrant cannot easily be presumed, nor should the paradoxical conclusion be made that an aggressor deserves more service from their victim than an innocent child does his or her parent. In all cases, the law of nature still governs the actions of the Freeman, who has both a right (§ 11) and an obligation (§ 6) to preserve all mankind. The Freeman must remember that, "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*" (§ 176, emphasis mine).

The two tiered understanding of equality carries many advantages over the alternatives proposed by Locke scholars. The former accounts for the various power relations among mankind, demarcated by the presence or absence of reasonable law-abiding self-ownership, while strengthening and mediating with dignity and justice the power relationships between the free and the un-free that emerge as a result. It provides a vocabulary and ethical structure in which to understand the relationships between those who honor and respect human equality

and those who do not, and to judge what rights and duties preside in these dynamics.

Political Significance of Two Equalities

Scholars have supposed these two forms of equality to be the same, and consequently either downplay (e.g., Zuckert 1994) or ineffectively struggle with (e.g., Waldron 2002) the central issue: combining dignity on one side with the matured reason (natural law) basis for social compact membership on the other. The thesis that there are two-tiers to equality, described above, surmounts this major theoretical obstacle.[16] It provides a clearer blueprint for the types of political institutions that are called for in a Lockean political society. It also clarifies other persistent ambiguities having to do with whether human beings naturally come to the age of maturity (*viz*., not without a particular kind of education and guidance). Finally, this thesis illuminates the broader distinction between political rights—especially suffrage—and private rights which animate social disputes throughout political history and around the world today.

It has been shown that LAE is not a one-way graduation out of basic equality. Rather, LAE can be forfeited—in some cases for a time, in others permanently—depending on the nature and the circumstances of the rights violation perpetrated. LAE thus can be lost from one moment to the next, but also can be reinstated. In this it is important to see that there is an objective aspect to this form of equality, and a subjective aspect. To understand who qualifies and who does not, we need to consider whether an individual abides by natural law. This judgment is limited by our limited abilities to know the truth, i.e. our

fallibility. Who can see into the heart of another? Yet all societies form justice systems to make these kinds of determinations. Those who are living freely participate in LAE from society's subjective perspective, while those who are undergoing some form of punishment do not.

It could of course be the case that rights-violating people, including those obeying the unjust laws of tyrannical governments, could be viewed by their regime as "law-abiding." Such people would not qualify for LAE, given Locke's absolutist ideas regarding rights. Such people, in extreme cases, may be indicted by rights-respecting countries for prosecution in international courts, and/or face a military intervention from a foreign power.

This leads us to consider the fast diversity of belief systems around the world, some of which deny basic equality and human rights. Subscribers to such beliefs would be unsuitable to wield political power, according to Locke. Those who harbor beliefs that purport to justify the enslavement or oppression of one group over another are certainly not participants in LAE, and are not suitable to enter into a social compact at all, with anyone. Certainly some forms of radical religious ideology would fall into this category. A compact among such people would be an association, but an association completely devoid of legitimate political power.

Recall that for Locke, government must rule by consent of a people that have formed a legitimate social compact with each other. He states that government's power arises from "*Voluntary Agreement* . . . [which] *gives Political Power to Governours* for the Benefit of their Subjects, to secure them in

the Possession and Use of their Properties" (§ 173). What does this mean? He states earlier, "that, which begins and actually constitutes any Political Society, is nothing but the consent of any number of Freemen capable of a majority to unite and incorporate into such a Society" (§ 99, see also § 117). Later he speaks of the social compact as the "Act therefore, whereby any one unites his Person, which was before free, to any Commonwealth" (§ 120).

The words "Freemen" and "free" have two separate implications here, each of which is essential to understand. First, men already explicitly contracted into one political society are not free to voluntarily enter into another, and are "perpetually and indispensably obliged to be and remain unalterably a Subject" to their original commonwealth.[17] Second, the term "Freemen" also connotes man's natural freedom, which requires the attainment of a "State of Maturity wherein he might be suppos'd capable to know . . . [the] Law [of nature]" (§ 59).

It has been shown that outside full equality are both children and those adults who either reject or are ignorant of the basic principles of natural law. Indeed, the existence of such adults is precisely what leads to the need for political society by explicit social compact in the first place. Locke states that, "were it not for the corruption, and vitiousness of degenerate Men, there would be no need of any other [community than] . . . this great and natural community of mankind" (§ 128). In other words, the social compact is made necessary by the distinction between corrupt men and the LAE of Freemen.

Moreover, we can infer that societies can corrupt their people. He uses the classical polity-as-organism metaphor to describe political power as, "a Power to

make Laws . . . as may tend to the preservation of the whole, but cutting off those Parts, and those only, which are so corrupt, that they threaten the sound and healthy" (§ 171). Even inside the social compact, corruption is not permanently rooted out, but requires constant attention through the propagation and enforcement of natural law, by Free-men.[18] This work is carried out through parental guidelines, the education system, the immigration system, and the establishment of treaties that politically bond those societies that recognize each other as reasonable and trustworthy.

This law is not instinct, but reason, which most importantly tells "who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions" (§ 6). Perception of the law of nature involves active *belief* in human rights. Thus, only those who have some sense of human rights have the functional capability, and the will, to manifest respect *for rights*. These are Locke's "Freemen capable of a majority to unite and incorporate" (§ 99), who clearly are, when one looks around the globe at any point in history, in a non-universal group. These men do not need to be experts in the natural law or in legislation themselves. What Locke has in mind is for this group to erect a just government, which may or may not be a democratic one (§ 132). They thus need to be "capable of a majority" having authority and capacity under the social compact to erect "lawful government" (§ 99), as opposed to non-Freemen who would be incapable of establishing sufficient consent.

It is challenging to infer a great deal about Locke's constitutional thought,[19] but the guiding principles and goals are there to be considered. An

example he provides of a legitimate social compact is portrayed in Josephus Acosta's account of the peoples of America. There in America, Locke states, "these Men, 'tis evident, were actually free . . . [and] *by consent* equal, till by the same consent they set Rulers over themselves" (§ 102, emphasis mine). Those reasonable individuals that perceive the natural law are the very same who are able to join together politically, *viewing each other* as free and equal beings to erect lawful government. Their equality in reason, or LAE, like the broader natural law itself, exists independently of recognition, but is also in need of acknowledgement to be given real-world political effect.[20]

Although Locke recognizes under-development and corruption among some human beings, he is indeed quite careful to circumscribe the implications. This is especially so with regard to children, even those who have parents or caretakers that give no heed to the basic rights of human beings. He reaffirms as much when he states that, "Children, whatever may have happened to their Fathers, are [nevertheless] Free-men" (§ 189). Children are afforded certain moral presumptions regardless of their parents' beliefs or actions.

This aspect of Locke's theory perhaps still poses some residual challenge to my interpretation. There is the possibility that maturity could be, for Locke, the effect of natural processes. If nature alone bestows reason, rather than as a matter of education and breeding, parents need only avoid corrupting their children's natural development. Upon reaching a certain age, all children should be automatically and naturally provided the *presumption* of rationality, and hence

full political rights. In this sense, children develop into law-abiding equals naturally, because they can do so quite reliably.

I strongly reject this view. Crucial to keep in mind are the environmental distinctions between nature and civil society that influence human development, values, and attitudes. Certainly, in healthy societies, presuming all children to eventually develop rationality often works as practical public policy, and is consistent with the natural innocence that Locke ascribes to children. But such development would be due to the just laws aiming to ensure that children are raised to abide by natural law (which has been outlined above). The political lesson should therefore point to properly instituting educational institutions in society in that the best way to avoid social corruption is to prevent it, rather than to treat an unwieldy outbreak of it.

Indeed, it is in the context of healthy societies that matured reason comes closest to sounding like a natural function. Locke mentions, for example, that an adult's liberty is derived from consciously operating within the boundaries of *English* law. "What made him free . . .? A capacity of knowing that Law. Which is supposed by that Law, at the Age of one and twenty years, and in some cases sooner" (§ 59). In this case, Locke is making a conceptual point; that his notion of a "State of Maturity" (§ 59) is not artificial, or even unusual, because it is acknowledged under existing statute. This should not, in contrast, be interpreted as meaning that human beings all naturally acquire reason-based LAE by age twenty-one. Locke is simply showing here that an evident distinction exists between the freedom of mature adults and the unbounded liberty of immature

human beings, usually (see ST, chs. 2, 15), but not always (see §§ 60, 172), being a condition confined to childhood. These passages therefore merely point to the kind of political environment that Locke has in mind to perpetuate healthy society, but not that matured "right reason" naturally develops unerringly.

Conclusion

This essay began by noting the scientific finding that, "complex negotiations, pacts, and possibly territorial realignments and consociational agreements are often necessary before the majority formula will be accepted as legitimately binding" (Linz and Stepan 1996, 27). I have since tried to show the manner in which Locke's theory could provide the guiding normative complement to such an empirical claim. The key issue is for members of the social compact to all acknowledge the natural equality of human beings, their equal dignity, and their natural rights. The people for whom they legislate need not be so sure, for they might otherwise wage wars of retribution and/or conquest based on past grievances and competing political visions. The people within the territory and excluded from political power need only consent to abide by the rules put in place by their rights-respecting leaders. Erecting government instead on force and will would likely threaten the rights of at least some, if not all.

Because Locke views children as naturally susceptible to accepting his rights doctrine, such rights constriction could indeed only be permissible for a time—namely, until rights-rejecting ideology and/or prejudices can be learned out of society. It would depend on the wisdom and justice of those entrusted with political power to ensure that the population of members abiding by natural law

increases and that political rights are likewise expanded to all those legitimately entitled to them.

Though this interpretation of Locke's theory may seem a stretch to some, I leave any skeptics with the following consideration: given the opening propositions of the *Second Treatise*, the two-tiered equality thesis is difficult, if impossible, to logically avoid. With the invocation of a natural law, knowable through reason, and defining political power as enforcement of this law, Locke forever separates basic equality from the particular manifestations of mind and character necessary to the consistent and reliable facilitation of it. One tried way of getting around such a conclusion is to reject Locke's explicit assumption of natural law. Yet, as has been shown, the political component substantially weakens in its logical coherence as a result. The interpretation here, in contrast, offers new insights into why democracy not only cannot be, but should not be, hastily instituted. It does this while affirming what all Locke scholars agree on, that legitimate government must be grounded in respect for basic rights and universal human dignity.

[1] This question points away from other debates on equality over the just distribution of goods among legal and political equals. Walzer (1983, 62), for example, rejects that members of society can be excluded from citizenship: “the rule of citizens over non-citizens, of members over strangers, is probably the most common form of tyranny in human history.” Exclusivity seems to be legitimately justified for Walzer only by denying territorial admittance to prospective immigrants. There is a prudential claim he makes that widely sharing political power is safer than not sharing, but this assumes more than explains the normative justification for anyone—let alone everyone—wielding political power in the first place.

[2] This is a consistent, long-held position. See Zuckert (1994, chs. 8-9; Cf. Stoner (2004), Zuckert (2005, 2004, 2002). Here, I will be focusing on the critiques of Zuckert’s position by Stoner (2004) and Waldron (2005). For more perspective on the general debate, see also Waldron (2002). Cf. Dunn (1967) and Dunn’s (1997) review of Zuckert (1994).

[3] Henceforth, this work will be cited as ST, by section number in the text.

[4] Locke is frequently cagey about towards democracy—see e.g., ST, chap. 10; see also Grant (1987, 190).

[5] Strauss portrays Locke as “a crypto-Hobbesian hedonist” in the words of Sigmund (2005, 407).

[6] See the ‘Symposium on God, Locke, and Equality’, *The Review of Politics*, (Summer 2005)

[7] Cf. Hirschmann (2003, 48): Both women and the poor "are excluded from political power and freedom because of a lack of rationality." Hirschmann (2003, 42) also summarizes Macpherson as arguing that, "Locke attributed different natural abilities to people by virtue of their class and that poverty was a sign of natural irrationality."

[8] Cf. Ta-Nehisi Coates' influential article, "The Case for Reparations," in which the author begins his essay with three quotations, one of which is taken from Locke's *Second Treatise*, citing the right of anyone who has been damaged by the actions of an unlawful person to seek retribution.

[9] It has long been observed that the basis for legitimacy and popular obligation for Locke may lie more in the goodness of government than in the presence of consent. See especially Pitkin (1966). Central to this thesis is Locke's discussion of tacit consent (ST, § 119-122), which can be interpreted as amounting to little-to-no consent at all. Indeed, even bad government could still warrant obedience (or what might be called tacit consent) short of 'a long train of Abuses' (§ 225). This discussion, though related to the present study, misses how Locke understands the formation and preservation of good government.

[10] Locke struggled with philosophically identifying what a 'human being' is it its essence, and what should be implied by the term. For some discussion of this, see e.g. Waldron (2002, 49-63), Ward (2010, 50-53), P. Myers (1998, 50-53); Cf. Locke, *Essay* 3:5-6.

[11] Cf. C. Taylor (1989, 241): "God has to exist for humans to give some order to their life. That is why Locke was induced to except atheists from his otherwise

wide rule of toleration. Such people had spurned the very basis of human civil life." See also Waldron (2002, 13): "I actually don't think it is clear that we — now — *can* shape and defend an adequate conception of basic equality apart from some religious foundation."

[12] This category may in fact constitute something of a third-tier of equality below the two being described here, which space limitations unfortunately preclude me from exploring.

[13] For Waldron's Locke, a criminal "forfeits his moral status of freedom and equality" (2002, 143). Waldron continues: "This position of Locke's is highly problematic and in my view it is not carefully thought out . . . I certainly don't know how to reconcile it with the background theory of basic equality." Separating basic equality from the full equality of law-abiders would seem to provide a solution.

[14] This highlights the subtle fact that self-ownership is not the same as self-hood for Locke, marking the distinction between being a person entitled to individual freedom implying property rights and being a person simply.

[15] See ST, § 139 on the distinction between absolute and arbitrary power. Absolute power is "still limited by that reason, and confined to those ends, which required it in some Cases." It is unclear whether Locke's later blurring of these two concepts in § 172 is intentional. More likely, it is capturing the difficulty of securing justice inside such relationships.

[16] It is perhaps incumbent upon the author to give an idea as to why Locke was not clearer about these two equalities. My considered position is that Locke's

genuine egalitarianism left him averse to excluding anyone from the full and complete dignity of a human being. The difficulty with leaving equality as a basic universal concept is that in political society, for this dignity to be respected, not everyone can be trusted with political power. Some unfortunately want to violate the rights of others. This problem of self-love, ignorance, and bias forced him to establish the criteria that could justify the wielding of political power, which logically resulted in the two tiered equality described. Locke does, as has been discussed, use the suggestive terminology of a "full state of equality" (§ 55).

[17] A third form of ownership seems to emerge here, beyond divine and self-ownership, between the society and the citizen. Regarding the supposed centrality of self-ownership found in Zuckert's interpretation, this seems to pose another complicating factor.

[18] Cf. Ward (2010, 193): "Locke presents epistemic autonomy not as a realistic goal only of a few, but as a cultural expectation of liberal society."

[19] Cf. Ward's (2010, 131) overview of this difficult area in Locke studies.

[20] I will also recall to the reader the United States Founders who once collectively asserted that, "*We hold* these truths to be self-evident." This revered clause is illuminated by the two equalities thesis. It implicitly acknowledges both forms of equality argued for, distinguished by the crucial Lockean criterion for what makes a people free and entirely unfit for absolute rule: affirmation of natural law.

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