

From Howard I. Schwartz, *Freedom, Capitalism and Religion* (in progress). First published April 2007 on www.freedomandcapitalism.com. Version 7.

**Liberty Is Not Freedom To Do What You Like:
How Notions of Public Good Constrain Liberty In
John Locke and the Early Liberty Tradition.**

By

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Many people still have the mistaken notion that liberty means absolute freedom. They assume that "to be free" is to do "what one wants". When they think of liberty they think of the protection of "life, liberty and property." Or they think of Jefferson's word in the Declaration of Independence, "life, liberty and the pursuit of happiness." They see big government with lots of rules as an infringement on liberty. They believe that freedom implies maximizing individual choices and minimizing government. They insist that "economic freedom is part of freedom" as if any infringement on one's right to buy or sell, or any restrictions on markets by governments is a restriction in one's liberty. Government should remain small, markets should work without interventions, and individual choices should be maximized. They believe these ideas are at the heart of what the liberty has meant and should mean in the modern tradition and the vision that the United States was founded on.

But in the modern liberty tradition, as it developed originally in Britain, where it principally started, and as it came to be appropriated in the American colonies before the Revolution, liberty did not mean total freedom, or the ability to do whatever one wanted with no constraints. On the contrary, liberty referred to the ability to exercise one's will, *within a set of known constraints and limitations set by legitimate law, which was the outcome of government.*

The existence of law and government, or what earlier writers called simply "constitution", was thought to provide a framework that both set limits within which the individual could rightfully act and provided a platform that in effect expanded the individual's liberty. Somewhat paradoxically then, government and law in this earlier tradition are thought to ensure liberty while at the same restricting individual freedom and making it possible. This is a different notion of liberty than is typically meant today. Without society, and law that made society possible, freedom is thought to be unfulfilled, unrealized and even undesirable. On this view of liberty, true freedom is possible only through limitation. One has to give up some of one's freedom to achieve

liberty. And while there are constraints on what those limitations can be, and how they should be developed, those limitations, or law, are necessary for the individual to have society and thereby achieve and maximize freedom.

The paradox, then, is that the individual only gains real liberty by giving up freedom and becoming subject to the rules of society, designed to protect the public good. The public good is, as many writers repeated over and over again, “the end of government” and as such a concept that regulates and structures law. The concept of “public good” differs from but intersects with the notion of individual rights and liberty. On the view of liberty revived here, the legitimate institutions of government strive for and attend to the public good, and therefore both expand the public good, while overriding and restricting individual freedoms, even as they make both better and in some sense more free. Some rights that exist outside of society are given up in society. But the gain outweighs the loss. Government or “Constitution” is what makes true liberty possible.

This “lost tradition of liberty”, which we might also call, “the real view of liberty” or the “progressive view of liberty” is quite different than the one that has gained popular mind share of late among libertarians and some so-called liberals of recent persuasion.¹ They see liberty as the right to maximize or enlarge the individual’s sphere as far as possible, without sacrificing security and basic laws of contract and harm. On this view, government is perceived to be principally an infringement on individual liberty and to be minimized as much as possible or made into what one might call “a thin veneer”. Any time that government reaches beyond its most basic sphere, it oversteps its boundaries and curtails human freedom. It abuses its power and becomes tyranny.

This essay explores what I am calling this “lost” or “original” notion of liberty. It argues that this lost tradition of liberty was very much in play in many of the critical discussions of liberty in both the earlier British and early American contexts. And those two contexts, because they were part of one tradition, shared many common assumptions about liberty, government and the public good. British thinkers who were contesting the absolute power of monarchy still believed that society needed an absolute sovereignty or a final source of legitimate power. Their concern was to shift that absolute power from an arbitrary will of a single individual to the predictable and public rules of institutions that attended to the public good, held in trust by public officials. They never argued that individuals should be as “free as possible” or that government should be “as small as possible”. They had other things on their minds. On the contrary, they saw the role of government, and the strong legislature and executive, as playing a critical role in making liberty possible. The same conception of liberty traveled across the ocean from England to the American colonies in the period leading up to the Revolution. Early American writers stood in and interpreted the same tradition and embraced the same conceptions of liberty. Many of the early American thinkers were lawyers by

training and their conception of law was heavily shaped by the legal tradition in Britain. They were also readers of Locke, Sidney, Grotius, *Cato's Letters*, and other European thinkers who had thought deeply about the relationship of liberty and government, the individual and the public good. They too saw law and government as critical in making liberty possible. They too saw the public good as the end of government. In the American context, the concern was less with the arbitrary will of an absolute monarchy, as it had been in the seventeenth century in Britain, and more with the arbitrary legislation of the British Parliament and the House of Commons. How much power did Parliament have over the colonies? The colonies' argument with Parliament was substantively the same as the earlier writers' arguments against absolute monarchy. But now the context was different and the colonies' principal concern was the arbitrary power of an elected legislature and the ways in which Parliament did and did not adequately represent the colonial interests.

It was natural, really, that once the arbitrary power of the monarchy was formally restricted in the Glorious Revolution of 1688 that the earlier concern with absolute monarchy would shift to the nature of the elected legislature and representation generally. This is what happened both in England in the early eighteenth century and in the British Americas in the 1760's. With an elected legislature (Parliament) that had increasing power, how could people be ensured that this source of power and sovereignty, elected though it might be, would not be arbitrary and that law would be focused on the public good? What would protect the people from the passions, interests, personal agendas of the elected officials? We shall return to the similarity and differences of the American and British contexts later.

The key point here is that liberty in both traditions, which was actually one tradition, was thought as a state of living within a body of rules, promulgated by a society focused on ascertaining the public good. The public good as conceived by these writers was quite broad. It included not only security, but human happiness, prosperity and quiet, among other things. It was not a "minimalist" view of public good, defined simply as "security", "contracts," and "doing no harm", a view that dominates libertarian, conservative and neo-liberal thinking today. The public good was a broad regulative concept that was instantiated by the majority and the representation of the social body. Already in the mid-seventeenth century, Hobbes had talked about the public good as a "man writ large." Locke would develop the notion of the public good and equate it with the view of the majority. Thinkers such as Algernon Sidney, John Trenchard and Thomas Gordon, in the British tradition, and James Otis, in the early Colonial period would all appeal to the public good as the end of government. To be sure, the notion of the public good was not carefully or fully thought out. On these grounds earlier writers could be criticized for not realizing perhaps how difficult and even problematic it would be to determine what the public good would be. They did not yet fully realize that the majority could be a tyranny too, a view that would emerge in the debates over the American Constitution and was already

bubbling up in the debates on Parliament’s power over the colonies. The point, however, in this essay is: first, that liberty was usually conceived as a state of living within a set of promulgated rules, second, that those rules circumscribed the liberties of individuals, and third that there was a larger good, thought of as “the public good” that superseded some aspects of individual freedom, in exchange for more secure basic liberties and a better life with more conveniences. The “public good” in this tradition is a “twin” to “liberty” and serves as a regulative concept that defines what liberty is in society. These writers thought there was a collective good that transcended individual liberty and that was achievable only by limiting individual free choice. The individual gave up something to share in this public good. And at the heart of social life was a trade, a sacrifice and responsibility. With social life, came benefit. But one had to give up something for those benefits. Nothing, so to speak, was “for free.”

To uncover this alternative conception of liberty, we look first and most deeply at John Locke’s *Second Treatise on Government*. Locke is important not only because he advanced some of the most developed ideas about liberty but because of his importance for and impact on the early American revolutionaries. Locke had, by most accounts, a very significant impact on the British Whig tradition that made its way to America and that defined the meaning of liberty in both the British Whig and American Whig tradition.² As we shall see, Locke’s sees liberty as a state that is achieved within and through law and government and that is constrained by the public good. After an extensive look at Locke, we will see how other thinkers in the British and American traditions held similar views.

John Locke and the Conception of Liberty

In a passage that summarizes much of Locke’s philosophy of freedom and government, Locke writes that:

The *Natural Liberty* of Man is to be free from any Superior Power on Earth, and not to be under the Will or Legislative Authority of Man, but to have only the Law of Nature for his Rule. The *Liberty of Man, in Society*, is to be under no other Legislative Power, but that established, by consent, in the Common-wealth, nor under the Dominion of any Will, or Restraint of any Law, but what the Legislative shall enact, according to the Trust put in it. *Freedom* then is not what Sir R. F. tells us, O.A. 55 [224]. *A Liberty for every one to do what he lists, to live as he pleases, and not to be tyed by any Laws: But Freedom of Men under Government*, is, to have a standing Rule to live by, common to every one of that Society, and made by the Legislative Power erected in it; A Liberty to follow my own Will in all things, where the Rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, Arbitrary Will of another Man. As *Freedom*

of Nature is to be under no other restraint but the Law of Nature. (II 4, 22)³

This passage points to many of Locke's key points about liberty that are developed in more detail elsewhere in his *Second Treatise*, many of which are repeated or shared in one form or another by many other writers in the liberty tradition that followed him.

For Locke there are two states of Liberty, "Natural Liberty" and "liberty in society". Natural liberty is the original liberty in the State of Nature before one has entered into society or the social compact. As is well known, all sorts of criticisms have been leveled at Locke's notion of a State of Nature. But the concern here is not whether the idea of natural rights makes sense (a topic of interest in its own right), but rather with the question of how liberty and law are thought to complement each other in this earlier tradition. As we shall see, these two states of liberty (Natural and Civil Liberty) are somewhat different from one another. But in both cases, in nature and society, liberty is constrained by Law. There is no pure freedom.

In the State of Nature, people are subject to the Law of Nature which is known through both Reason and Scripture.

But though this be a *State of Liberty*, yet it is *not a State of License*, though Man in that State have an uncontrollable Liberty, to dispose of Person or Possessions, yet he has not Liberty to destroy himself, or so much as any Creature in his Possession but where some nobler use, than its bare Preservation calls for it. The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty or Possessions. (II 2, 6)

Even in the State of Nature a person does not have total freedom or what Locke calls "a state of license." In the State of Nature, people are created equal and as the workmanship of God. Therefore one person has no right to take the life of another person, or enslave them, or take their property. It should be noted that people also do not have the right to take their own lives or sell themselves to slavery.⁴ Their lives belong to God who created them. They are his property. So even in this state anterior to society, Locke does not imagine a "total freedom." Even here in this state outside society, there is the Law of Nature (Reason) that people are expected to follow.

In this original state, people do have core "natural" or original rights given to them by God and the Law of Nature. Specifically people have a right to "Life, Health, Liberty or Possessions," as Locke puts it here, or as he puts it elsewhere, to "the Preservation of Life, the Liberty, Health, Limb or Goods of another" (II 2, 6) or the power "to preserve his Property, that is, his Life, Liberty and Estate" (II 7, 87).

Often people tend to think of, or summarize the core individual rights as, “life, liberty and property” as it appears in the American Bill of Rights or “life, liberty and the pursuit of happiness,” as formulated by Thomas Jefferson in the Declaration of Independence. And because we have often taken these rights for granted, we often miss the specific significance of these terms and misunderstand them.

To begin with, it is significant that Locke mentions “Health” here and not just “life, liberty and possessions.” It is also significant that he mentions “possessions” and not “property.” It is clear that Locke construes the original rights of individuals in the State of Nature broadly to include anything that is linked to or preserves life. Indeed, for Locke the right to life is the basic right from which flows other “derivative or secondary” rights such as the right to liberty and property. That the right to possessions and liberty are secondary to the right to life is evident in several places in Locke.

For example, when explaining why people have no right to take another person’s life, he explains, “unless it be to do Justice on an Offender, take away, or impair the life, or what tends to the Preservation of Life, the Liberty, Health, Limb or Goods of another.” (II 2, 6) Here “Liberty, Health, Limb or Goods” are explicitly described as rights that tend to protect Life. They are thus derivative from the original right to life, which is the core right which itself flows from the fact that people are the workmanship of God. But these derivative rights are so closely linked to life that they are also original rights that derive from the Law of Nature and do not depend on any social agreements.

Locke explains the prohibition on slavery in similar ways. Slavery is forbidden because it is a fence around the right to life. Therefore, I should view a person who is trying to enslave me as someone who is trying to kill me. Locke writes:

To be free from such force [i.e. slavery-my addition] is the only security of my Preservation: and reasons bids me look on him, as an Enemy to my Preservation, who would take away that *Freedom* [i.e. freedom from slavery], which is the Fence to it: so that he who makes an *attempt to enslave me*, thereby puts himself into a State of War with me. He that in the State of Nature, *would take away the Freedom*, that belongs to any one in that State must necessarily be supposed to have a design to take away every thing else, that *Freedom* being the Foundation of all the rest... (II 3, 17)

Just as the right not to be enslaved is a fence around the preservation of my life, so too possessions are thought of as a right in so far as they support life and preservation.

Whether we consider natural *Reason*, which tells us, that Men, being once born, have a right to their Preservation, and consequently to Meat and Drink, and such other things, as Nature affords for their Subsistence: Or *Revelation*, which gives us an account of those Grants God made of the World to *Adam*, and to *Noah*, and his Sons, 'tis very clear, that God, as King *David* says, *Psal, CXV. Xvj. has given the Earth to the Children of Men*, given it to Mankind in common. (II 5, 25)

But in addition to enabling human preservation, Locke also recognizes another reason for possessions:

God, who hath given the World to Men in common, hath also given them reason to make use of it to the best advantage of Life, and convenience. The Earth, and all that is therein, is given to Men for the Support and Comfort of their being. (II 5, 26)

Thus God did not intend that people merely survive but that they have support and comfort from nature.

Property is the Right to Preservation

We can now understand why Locke does not use the term "property" in his statement that original rights include "life, Health, Liberty or Possessions." Locke thinks of "property" as including more than just material possessions. Property is the term that is synonymous with one's overall rights to "life, health, liberty, possessions and goods."

Man being born, as has been proved, with a Title to perfect Freedom, and an uncontrouled enjoyment of all the Rights and Priviledges of the Law of Nature, equally with any other Man...hath by Nature a Power, not only to preserve his Property, that is, his Life, Liberty and Estate, against the Injuries and Attempts of other Men... (II 7, 87)

This broader meaning of Property as "life, liberty and possessions" puts a very different slant on Locke's comments periodically that "government has no other end but the Preservation of Property" (II 7, 94). Locke means that the end of government is the protection of one's original rights to Life, Liberty, Health and Possessions.

Liberty is the Opposite of Slavery

Just as property does not mean only "possessions" in Locke's list of original rights, "liberty" does not mean freedom "generically speaking" or "freedom from law". On the contrary, Locke like many writers in the liberty tradition uses liberty in his list of rights with a more specific meaning. Liberty refers to my specific right "not to be enslaved". There is an important and often

overlooked difference between this notion of liberty as a “right to own my own body and labor” and the notion of liberty as “freedom in general”. What is the difference?

If I am enslaved, another person owns my body and my labor. But if I am not enslaved (at liberty) I can still be subject to government law. This notion of liberty as the opposite of slavery differs from the more general notion of liberty as “freedom to do what one likes.” This is a critical distinction which is often overlooked in discussions of liberty. In most formulations of “life, liberty and property,” liberty has this very specific and delimited meaning. One can have a right to liberty, therefore, in the sense of having a right not to be enslaved or owned, but still be subject to extensive social laws. The fact that I am under the obligation of law does not mean that I have lost my liberty. And this is because social life, when governed by a legitimate and just social law, is not the same thing as slavery. Just what are legitimate social laws remains to be clarified later. For if laws are unjust the government is a tyranny which is in Locke’s conception like slavery. But it is important to see that in Locke the original right to liberty is not “freedom to do what one lists” as he puts it, but “not to be enslaved”.

There is one additional point to make about Locke’s notions of original rights in Nature. These are not only rights to protect my individual self. I also have rights and duties to preserve the species as a whole. “When his own Preservation comes not in competition, ought he, as much as he can, *to preserve the rest of Mankind* (II 2, 6).” Or as he puts it elsewhere:

If a person transgresses the Law of Nature” which being a trespass against the whole Species, and the Peace and Safety of it, provided for by the Law of Nature, every man upon this score, by the Right he hath to preserve Mankind in general, may restrain, or where it is necessary, destroy things noxious to them... (II 2,8) ⁵

It is from these two rights of individual and species preservation that the further right to punish transgressors arises. Because we have a right to preserve ourselves, we have a right to kill a person who tries to kill or enslave me, or even to take my property. In Locke’s view, we can even kill a thief because any theft of my property is the first step towards the total control of my self (II 3, 18). Moreover, as an individual I have a right to punish not only a person who threatens me in particular, but who threatens anyone in general because we have a right to Preserve “Mankind” and the species as a whole.

To summarize so far, we have seen that for Locke even “Natural liberty”, as it is conceived to exist outside of society, does not mean “freedom in general.” Liberty has a specific meaning. It means one has the right to limit others in ways that lead to one’s own preservation or the preservation of the species as a whole. No one has a right to take my life, to compromise my health, to enslave me or to take my property. All of these things are fences

around my fundamental right to preserve my life. And because of these rights, I have a further right to judge and punish those who offend the Law of Nature. But I am still obligated to live within the Law of Nature, even if there is no common human authority that enforces it.

Liberty In Society

Unfortunately human life is not ideal outside the political structures of society. According to Locke, there are a number of challenges of living outside civil societies that drive people to form and live in commonwealths with political structures and laws. In part, the tendency to join societies is both the attempt to avoid the problems in the State of Nature but also because God intended people to live together. "God having made Man such a Creature, that, in his own Judgment, it was not good for him to be alone, put him under strong Obligations of Necessity, Convenience, and Inclination to drive him into Society, as well as fitted him with Understanding and Language to continue and enjoy it." (II 7, 77).⁶ As we shall see, Locke believes these political frameworks make life better overall for individuals. Why God created humans needing society, Locke does not speculate.

With respect to human liberty, these political frameworks that we consent to, both expand and contract liberties, but the "net net" is that the overall gains outweigh the loss. Thus there is a trade that individuals make when they join (or choose to live in) political societies.⁷ They give up some of the rights that they had outside of society to reap the benefits of living in society. The benefits are quite various and extensive as we shall see and are tied to the notion of the public good. But in order to gain these benefits, individuals have to relinquish some of the rights and liberties they otherwise would have living outside or without political societies. It is not just that the overall benefits in society are better than outside. It is also that political institutions actually enlarge liberty. It is through law that liberty flourishes and is expanded. Let's see how Locke comes to this seemingly paradoxical conclusion.

What liabilities drive people into political society? The first one that Locke mentions is the lack of a supreme human authority for making and enforcing laws.

I easily grant, that *Civil Government* is the proper Remedy for the Inconveniencies of the State of Nature, which must certainly be Great, where Men may be Judges in their own Case, since 'tis easily to be imagined, that he who was so unjust as to do his Brother an Injury, will scarce be so just as to condemn himself for it. (II 2, 7)⁸

To avoid this State of War (wherein there is no appeal but to Heaven, and wherein every least difference is apt to end, where there is no Authority to decide between the Contenders) is one great *reason of Mens putting themselves into Society*, and quitting the State of Nature. (II 3, 21)

Though people can appeal to the Law of Nature, people are biased in their own cases and this often leads to enmity and even loss of liberty. Though Locke does not offer an example, one could think of the situation where a river runs through your property and my property and you dump waste into the river upstream of me. Does this constitute a violation of rules of property and who gets to decide? Or suppose I damn up the river upstream from you and divert the water to my fields for irrigation and severely curtail the flow of the river to your property. Have I violated your right to property? Who gets to say?

Situations like these which are a normal part of social life cannot easily be resolved without a political framework and an enforcement agency. This lack of a final, human “supreme authority” in society to resolve such cases leads to a conflict which can lead to loss of life and property. So though we each have a right to life, liberty and possessions, we have no “neutral party” to establish and enforce the rules for us or to provide the specificity of how these rights are implemented in the concrete minutiae that human interactions require. The result is that we can end up in squabbles and potentially a State of War where we try to kill each other.

It is human nature that ultimately drives people together into society. In part, “...Men being partial to themselves, Passion and Revenge is very apt to carry them too far, and with too much heat in their own Cases; as well as negligence and unconcernedness, to make them too remiss, in other Mens.” (II 9, 125). So people join social life in part out of fear for their liberties

If Man in the State of Nature be so free, as has been said; If he be absolute Lord of his own Person and Possessions, equal to the greatest, and subject to no Body, why will he part with his Freedom? ...To which 'tis obvious to Answer, that though in the state of Nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the Invasion of others... the enjoyment of the property he has in this state is very unsafe, very unsecure. This makes him willing to quit this Condition, which however free, is full of fears and continual dangers:” (II 9, 123)

But it is not just human passions, conflict and fear that drive people to society. It is also human nature to want sociability and the comforts of society.

God having made Man such a Creature, that, in his own Judgment it was not good for him to be alone, put him under strong Obligations of Necessity, Convenience, and Inclination to drive him into *Society*, as well as fitted him with Understanding and Language to continue to enjoy it. (II 7, 77)

The desire for sociability which derives from human nature and the human capacity for reason and speech is also one of the drivers that leads humans to prefer society. Society then both provides not just security of "life, liberty and possessions" but sociability and many conveniences.

The only way whereby any one devests himself of his Natural Liberty, and *puts on the bonds of Civil Society* is by agreeing with other Men to joyn and unite into a Community, for their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it. (II 8, 95)

For being now in a new State, wherein he is to enjoy many Conveniences, from the labour, assistance, and society of others in the same community, as well as protection from its whole strength; he is to part with as much of his natural liberty in providing for himself, as the good, prosperity, and safety of the Society shall require, which is not only necessary, but just, since the other Members of the Society do the like. (II 9, 130)

Civil Society as the Platform for Liberty

To choose to live in society is both to have more freedom and less freedom at the same time. Living in society has a number of benefits: more security, more comforts, and sociability. But at the same time, one loses some of one's freedom because now one has to live within a set of rules defined by a governing body that is focused on the public good. Social life thus has a gain and a cost. And part of the cost is that one's freedom is changed. In part, one's freedom is curtailed in some fundamental ways. In this sense, Locke speaks of social life as a kind of "trade," in which one "devests", "alienates" or "parts with" some of one's rights. But in other ways, it is also possible to say that one's freedom is enlarged. Thus social life has the seeming paradox of both curtailing freedom and expanding freedom at the same time. Locke puts it this way:

So that, however, it may be mistaken, *the end of Law* is not to abolish or restrain, but *to preserve and enlarge Freedom*: For in all the states of created beings capable of laws, *where there is no Law, there is no Freedom*. For *Liberty* is to be free from restraint and violence from others which cannot be, where there

is no *Law*: But Freedom is not, as we are told, *A Liberty for every Man to do what he lists*: (For who could be free, when every other Man’s Humour might domineer over him?) But a *Liberty* to dispose, and order, as he lists his Person, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is; (II 6, 57)

What rights or freedom’s does one lose when entering in society? One gives up, for example, the right to be a judge and to punish offenders of crime. These originally individual rights are now placed in the people as a whole, and specifically in the hands of their representatives, the legislature and executive powers. In giving power to a legislative body to make law and to an executive to enforce law, one has significantly narrowed the scope of one’s own individual liberty. Now the social / political machinery will make laws that I as an individual have agreed to obey. No such human-made laws existed outside of society and I have agreed to live within this umbrella of human laws in exchange for the benefits and securities of society. These laws are much more detailed than was known from the Law of Nature. While these human laws should not override but build upon the Laws of nature, they add a layer of specificity and control over human action that does not exist outside civil society.

For example, my original rights in property are vague and general and they lack the specificity needed in social life. They do not say, for example, whether you have a right to divert a stream to irrigate your land when the same stream also flows into my property. But in a civil society there will be many rules such as these with a great deal of specificity. As long as the original core right is protected (my stream = my property), there can be many laws that regulate the interaction of your right and mine about that stream (e.g., how much water I can divert). With a legislature that makes laws, I as an individual face a set of laws that constrain and limit action.

This is why Locke stresses over and over again that freedom means the right to act according to my own will, *within the limits of law as defined by that society*.

The *Liberty of Man, in Society*, is to be under no other Legislative Power, but that established, by consent, in the Common-wealth, nor under the Dominion of any Will, or Restraint of any Law, **but what the Legislative shall enact, according to the Trust put in it....** *But Freedom of Men under Government*, is, to have a standing Rule to live by, common to every one of that Society, and made by the Legislative Power erected in it; A Liberty to follow my own Will in all things, **where the Rule prescribes not**; and not to be subject to the inconstant, uncertain, unknown, Arbitrary Will of another Man. (II 4, 22) (bold added)

But a *Liberty* to dispose, and order, as he lists his Person, Actions, Possessions, and his whole Property, **within the Allowance of those Laws under which he is;** (II 6, 57) (bold added)

If this layer of human law constrains my actions, in what sense can we say that my freedom enlarged? Because my core rights of Life, Liberty and Possessions are now better protected in a civil society, since there is less likelihood that someone will kill me, enslave me, or take my possessions. And there is far less likelihood that we will come to blows over disputes, as there is now an "Umpire" (II 7, 87) or final human authority to decide and enforce cases. So I have in effect given up some decision making powers for more protection of my core freedoms. My basic liberties are more secure, but to achieve that goal I consent to live within the framework of human law. Living in civil society and under a human institution of law is therefore a platform by which liberty is expanded, even though it constrains human choices and gives us more regulations to live by.

Another reason that law in civil society expands liberty, rather than contracts it, is because it provides a predictable, known and non-arbitrary framework in which members of society live their lives. Locke emphasizes over and over again that what distinguishes tyranny from a just civil society is that law is "not arbitrary" and that the law is published or known. This contrasts with a government run by an absolute monarch which is at the whim of the will of a single individual. As long as people know the law in advance, so they can act within its boundaries, as long as the law is not arbitrary in how it applies to different people, and as long as the law does not violate the core principles of liberty, then the law enhances rather than detracts from liberty.

What ensures that the law is "not arbitrary" is that the legislature has to do what is best for the public good. As we shall see, there is no requirement that law and government "be as small as possible" or that the "individual's freedom be maximized.

The Public Good and the Majority

The reason that the legislature can make laws to constrain our actions is that we confer that power on the legislature. The legislative body has "a trust" or "fiduciary" relationship to the people who constitute that society. For this reason, the legislature must enact law with the end of the public good in mind. In a statement that summarizes the whole thrust of his argument, Locke writes:

But though Men, when they enter into Society, give up the Equality, Liberty, and Executive Power they had in the State of Nature, into the hands of the Society, to be so far disposed of by the Legislative, as the good of the Society shall require; yet it being only with an intention in every one the better to

preserve himself his Liberty and Property; (For no rational Creature can be supposed to change his condition with an intention to be worse) the power of the Society, or *Legislative* constituted by them, *can never be suppos'd to extend farther than the common good*; but is obliged to secure every ones Property by providing against those three defects above-mentioned, that made the State of Nature so unsafe and uneasy. And so whoever has the Legislative or Supream Power of any Common-wealth, is bound to govern by establish'd *standing Laws*, promulgated and known to the People, and not by Extemporary Decrees; by *indifferent* and upright *Judges*, who are to decide Controversies by those Laws; And to imploy the force of the Community at home, *only in the Execution of such Laws*, or abroad to prevent or redress Foreign Injuries, and secure the Community from Inroads and Invasion. And all this to be directed to no other *end*, but the *Peace, Safety, and publick good* of the People. (II 9, 131)

All of Locke's major assumptions become explicit in this one statement. The Legislative body makes laws "as the good of the Society shall require", "yet" people enter society "being only with an intention in every one the better to preserve himself his Liberty and Property". The use of the word "yet" is significant here. Locke underscores that the individual intention and the legislative goal are not identical. The individual's intention is to better preserve life, liberty and property *but* the Legislature has a different goal, which is to promulgate law which "the good of the Society shall require."

Locke here recognizes that the "good of Society" is a concept that is not identical with the aims and goals of individuals. The public good is a broader concept that has different ends which include the "Peace, Safety, Prosperity" of the society. Or as he says it in another place, a person "is to part also with as much of his natural liberty in providing for himself, as the good, prosperity, and safety of the Society shall require:" (II 9, 130).

The only way whereby any one devests himself of this Natural Liberty, and *puts on the bonds* of Civil Society is by agreeing with other Men to joyn and unite into a Community, for their comfortable, safe and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it. (II 8:95)

If the notion of common or public good were reducible to the core liberties of Life, Liberty and Possessions, Locke would not have needed a separate concept to designate the government's end. The public good and the individual rights would have been one and the same. But Locke does not see it that way. The public good is something more than the individual intention to preserve life, liberty and possessions. Locke does not fully specify what the good, peace, prosperity and safety of society shall require. He sees the

content of the public good as something that can only be discovered in social life by consulting the people themselves.

The Role of the Majority and Representation

The public good of society cannot be known in advance like the Law of Nature but is known by consulting the majority. As a society attempts to implement the core liberties, it faces many choices and decisions: how to resolve disputes about the shared river, or speed limits, or size of cars, or smoking, or hiring and firing decisions, or what rights to give to corporations, or the host of other regulations that are never specified in the basic core rights. Since these issues can be resolved in many ways that are all compatible with the basic liberties, a society has to consult its members on the best way for this particular society to implement liberty. Societies can look different from one another because there are many ways to implement core liberties. This is how a society defines the public good which is a concept that sits on top of the core liberties of the individual. Locke insists that the way to decide social law and the public good is by appealing to the majority or to its representatives. Ideally, all members of a society should be consulted on the public good. But ultimately it is the majority that has to make a decision.

For when any number of Men have, by the consent of every individual, made a *Community*, they have thereby made that *Community* one Body, with a Power to Act as one Body, which is only by the will and determination of the *majority*. For that which acts any Community, being only the consent of the individuals of it, and it being necessary to that which is one body to move one way; it is necessary the Body should move that way whither the greater force carries it, which is the consent of the *majority*, or else it is impossible it should act or continue one Body, *one Community*, which the consent of every individual that united into it, agreed that it should; and so every one is bound by that consent to be concluded by the *majority* (II 8, 96)

When people choose to live in civil society they form a single social entity or single body. This body must to have the ability to act and to make laws and enforce those laws, or otherwise the very notion of a society is meaningless. If the social institutions have no mechanism to make decisions, there is no civil society. Therefore there must be some mechanism to drive consensus.

But such a consent is next impossible ever to be had, if we consider the Infirmities of Heath, and Avocations of Business, which in a number, though much less than that of a Commonwealth, will necessarily keep many away from the publick Assembly. To which if we add the variety of Opinions, and

contrariety of Interests, which unavoidably happen in all Collections of Men, the coming into Society upon such terms, would be only like Cato's coming into the Theatre, only to go out again...For where the majority cannot conclude the rest, there they cannot act as one Body, and consequently will be immediately dissolved again. (II 8, 98)

Pragmatically speaking, a consensus of every member of society is impossible because not everyone can or will vote and because differences of opinion make consensus impossible. Since a perfect consensus is impossible, societies have to settle for the agreement of a majority. But individuals agree to live in societies knowing this. They can't have their cake and eat it too. They want the benefits of society and therefore have to deal with the costs. The cost is that they have to conform to decisions by the majority.

And thus every Man, by consenting with others to make one Body Politick under one Government, puts himself under an Obligation to every one of that Society, to submit to the determination of the majority... (II 8, 97)

Societies have the right to structure their search for the public good in different ways. They can choose a democracy, an Oligarchy or Constitutional Monarchy. As long as the structure of government is consented to by the majority, the way in which society structures its search for the public good is consistent with the basic liberties of nature.

Liberty Is Not Freedom and Property is Not Possessions

The goal of this essay was to show that one of the most important thinkers in the liberty tradition, one who did much to popularize the natural rights conception of liberty and who is credited with an emphasis on individual rights, in fact placed significant limits on individual liberty in society. Liberty was not conceptualized in Locke as “maximizing individual freedom” or “minimizing government restrictions,” the way liberty is so often talked about today by libertarians or republicans. On the contrary, in this major theorist on liberty, whose ideas profoundly shaped both the British Whig and American Whig traditions, liberty was a set of freedoms within a set of restraints that were set by society for the public good. More than that, these restraints were thought to provide a kind of platform that in some sense made freedom possible and expanded liberty generally. We have seen that for Locke a kind of trade is involved in social life. One gains tremendous benefits from society. One is no longer subject to the vagaries of life without a human law and supreme authority for enforcing it. Without that law, an impartial judicial system and an enforcement arm, one faces the conflicts and disagreement that are part of living with other people. In such a situation, one could be enslaved, one's possessions could be taken and one could even lose one's life. To better secure these original rights most individuals prefer

civil life. Life in civil society is more secure, provides a more peaceful life, and provides "quiet." But more than shoring up one's core rights, we also want to live in society because we are social animals who want to interact with others and have the conveniences of social life.

To have those benefits, we make a trade, not unlike a commercial transaction. We curtail some of the freedoms that we would otherwise have. We agree to live under a legislature that represents the interests of the society as a whole. This legislature can make laws that restrict our actions. It can define the boundaries between my rights to property and yours. It can define what the right to possessions mean. The law of society thus creates an umbrella of human law within which one consents to live and by which one is restricted. This law thus constrains freedom even as it makes more freedom possible. My core original rights are expanded, even as specific laws now limit my individual actions.

The original rights of individuals that Locke believe exist outside of social life are "life, liberty and possessions". But freedom does not mean the liberty to do what I wish. We have seen that life or preservation is the primary right from which flow the secondary rights of liberty and possessions. Liberty has the specific meaning, not of freedom in general, but the right not to be enslaved. The right not to be enslaved is a fence around one's life, for if one can enslave me, they can take my life. Similarly the right of possessions derives originally from my right to preservation. My original right to take from nature derives from my right to preserve myself and the species.

The reason individuals prefer civil life over living on their own is their own personal interests in security and comfort. But the end of the social laws is the "public good," which is not identical to the original rights of "life, liberty and possessions." The social good is defined by the majority or by the representatives of the majority. While an individual may prefer to drive at 80 miles an hour, or smoke cigarettes in a public office, or a host of other actions, the majority may have a different view. Thus Locke envisions the representatives of the majority making a great many laws that constrain individual action but develop and create the public good.

One could reasonably argue that Locke did not anticipate the problems that might emerge in giving the majority power. That problem of government would be raised more fully and thoughtfully by others after him. But the point here is that one of the major thinkers in the early liberty tradition never saw liberty as identical with "maximizing individual liberty" or with "minimal government interference."

The importance of the public good, as a concept above and beyond individual core rights, provides a powerful critique of libertarian and conservative republican tendencies which defend a minimal government that maximizes individual liberties. There is another clear tradition, one articulated in the founding texts of the modern liberty tradition, that sees constraint on

individual freedom as part and parcel of what liberty means. To be sure, there needs to be some careful thought about what limits should be placed on the definition of the public good. But to imply that the liberty tradition, in its inception, emphasized only individual liberties at the expense of other values and concerns of society as a whole, is to fundamentally misread the early classic texts of this tradition.

The Public Good and Liberties Among Other Whig Writers

Although this essay focuses primarily on Locke as a seminal thinker for the liberty tradition, similar conceptions of liberty and the public good are present in other British Whig writers such as Algernon Sidney, John Trenchard, Thomas Gordon, and in the writings leading by American colonists leading up to the American Revolution, in the writings of James Otis and others. It is beyond the scope of the present essay to do an exhaustive survey of such thinkers, but to show that Locke-like conceptions of liberty and the public good were articulated by some in the tradition leading up to the American revolution and constitute one important strand of liberty that shaped American conceptions of the topic.

There was a strong impulse in the liberty tradition emphasizing that individuals give up some of their natural liberties to benefit from society and that good governments are attentive to the public good. Bad governments or tyrannies are run by people whose self-interests were not aligned with the public good. While debates continued on which form of government was best for protecting the public good, there was a consistent sentiment that the end of government was the public good.

There are, to be sure, some interesting differences between Locke and other writers in the Anglo-American tradition. These writers were developing and extending ideas beyond where Locke himself gone. Writers like Trenchard and Gordon, for example, were concerned about corruption among public officials who seemed more concerned with their own interests than those of the public. As a result, they developed more detailed ideas about the nature of the public servant and public spiritedness than did Locke. The American colonial writers for their part were more concerned about the meaning of “representation.” If government had to represent the individuals’ collective interests, what status did the colonies have in the British constitution? Could they be represented in a government by officials who did not live among them or know enough about their conditions? These differences are interesting and worth pursuing in another context. But here the point is that a stress on the public good is present in the writings of subsequent British Whigs and the early American writers on liberty.

Other British Whig Writers

Let's start with Algernon Sidney, another Whig writer, whose writings like Locke also influenced the American colonists. Sidney was put to death for treason in 1683 for his opposition to King Charles. Sidney had himself been actively engaged in supporting Parliamentary power against the monarchy in the 1640's and took up cause on the side of Parliament in the English Civil Wars. When King Charles was restored to the throne in 1660, Sidney refused to renounce his earlier actions and had to flee the country to protect his life. Sidney was later involved in supporting the planned revolution against King Charles in 1680's when the Whig's feared Charles would convert England into Monarchy modeled on the Louis XIV's France, dispensing with Parliament and with Catholicism as the state sponsored religion.⁹ It was at this time that Filmer published his *Patriarcha: A Defense of the Natural Power of Kings against the Unnatural Liberty of the People* (1680).

Like Locke, Algernon Sidney wrote a lengthy critique of Filmer's *Patriarcha* called "Discourses Concerning Government." Sidney's dense style has none of the abstract and readable quality today of Locke's *Second Treatise*, as Sidney's entire argument is organized as a critique of Filmer's book, not unlike Locke's First Treatise. But Sidney is clearly moving along similar lines of thought as Locke in seeing the "principle of liberty in which God created us" as individual rights not dependent on society initially. These liberties are partly given up as individual choose to join together into societies for the benefits of social life.

Speaking here about the difference of regal and patriarchic power, Sidney writes:

that the first fathers of mankind left all their children independent on each other, and in an equal liberty of providing for themselves: that every man continued in this liberty, till the number so increased, that they became troublesome and dangerous to each other; and finding no other remedy to the disorders growing, or like to grow among them, joined many families into one civil body, that they might the better provide for the conveniency, safety, and defence of themselves and their children. This was a collation of every man's private right into a publick stock; and no one having any other right than what was common to all, except it were that of fathers over their children, they were all equally free when their fathers were dead; and nothing could induce them to join, and lessen that natural liberty by joining in societies, but the hopes of a publick advantage. (Chapter 2, Section 1, p. 57)¹⁰

In another passage that is very close in thinking to Locke's, Sydney rejects Filmer's claim that liberty is of no use to us:

It were a folly hereupon to say, that the liberty for which we contend, is of no use to us, since we cannot endure the solitude, barbarity, weakness, want, misery and dangers that accompany it whilst we live alone, nor can enter into a society without resigning it; for the choice of that society, and the liberty of framing it according to our own wills, for our own good, is all we seek. This remains to us whilst we form governments, that we ourselves are judges how far 'tis good for us to recede from our natural liberty; which is of so great importance, that from thence only we can know whether we are freemen or slaves; (Section 10, p. 36)

Cato's Letters and the Public Good

Shifting now to the 1720's, some forty years after Locke and Sidney wrote, two journalists, Thomas Gordon and John Trenchard, would write a series of essays about liberty published as *Cato's Letters*. *Cato's letters* were also widely read by the colonists and shaped their reception of liberty in the colonies. Trenchard and Gordon wrote about liberty in ways that Locke could easily have approved. Trenchard, in Letter 59 entitled “Liberty Proved To Be The Unalienable Right of All Mankind,” writes that

All men are born free; liberty is a gift which they receive from God himself; nor can they alienate the same by consent, though possibly they may forfeit it by crimes. No man has power over his own life, or to dispose of his own religion; and cannot consequently transfer the power of either to any body else....

That right being conveyed by the society to their publick representative, he can execute the same no further than the benefit and security of that society requires he should. (Letter 59, 252)¹¹

Gordon puts it this way in Letter 25 on “Considerations On The Destructive Spirit of Arbitrary Power. With The Blessings of Liberty, And Our Own Constitution.”

The good of the governed being the sole end of government, they must be the greatest and best governors, who make their people great and happy; and they the worst, who make their people little, wicked, and miserable. (Letter 25, p. 114).

Cato's Letters explain the necessity of government in much the same way as Locke, emphasizing the need to “quit” part of one's natural liberty to gain the benefits of society. *Cato's Letters* like Locke's thinking have a strong concept

of the public good which is thought to be the end of government. Gordon puts it this way

Hence grew the necessity of government; which was the mutual contract of a number of men, agreeing upon certain terms of union and society, and putting themselves under penalties, if they violated these terms, which were called laws, and put into the hands of one or more men to execute. And thus men quitted part of their natural liberty to acquire civil security. But frequently the remedy proved worse than the disease; and human society had often no enemies so great as their own magistrates; who, where-ever they were trusted with too much power, always abused it... (Letter 33, p. 149)

Or as Gordon puts it in Letter 24 entitled "Of the Natural Honesty Of The People, And Their Reasonable Demands. How Important It Is To Every Government To Consult Their Affections and Interest: "

The first principles of power are in the people; and all the projects of men in power ought to refer to the people, to aim solely at their good, and end in it: And whoever will pretend to govern them without regarding them, will soon repent it....But government executed for the good of all, and with the consent of all, is liberty; ...(Letter 24, p. 112)

Gordon regards the attention to the public good as one of the key benefits of the ancient British constitution in which the people have a large share.

But, thanks be to heaven and our worthy ancestors, our liberties are better secured. We have a constitution, in which the people have a large share: They are one part of the legislature, and have the sole power of giving money; which includes in it every thing that they can ask for the publick good; and the representatives, being neither awed nor bribed, will always act for their country's interest; their own being so interwoven with the people's happiness, that they must stand and fall together. (Letter 24 , p 113)

In another passage that could almost have been written by Locke himself, Trenchard explains how individuals only give up part of their rights when consenting to live in social life.

Nor has any man in the state of nature power over his own life, or to take away the life of another, unless to defend his own, or what is as much his own, namely, his property. This power, therefore, which no man has, no man can transfer to another...

No man in his senses was ever so wild as to give an unlimited power to another to take away his life, or the means of living, according to the caprice, passion, and unreasonable pleasure of that other: But if any man restrained himself from any part of his pleasures, or parted with any portion of his acquisitions, he did it with the honest purpose of enjoying the rest with the greater security, and always in subserviency to his own happiness, which no man will or can willingly and intentionally give away to any other whatsoever. (Letter 60, p. 257)

Cato's Letters go further than Locke's writing in thinking about the relationship of the individual ends and the nature of the public good. Locke never thought very deeply about how individual intentions and the public good intersect or conflict. He had implied that though individuals seek specific individual ends, the end of government is larger than those ends and focused on the public good. *Cato's Letters* goes further in asking about how individual interests and the public good interact. But the letters gives somewhat contradictory answers and does not give a fully worked out theory. *Cato's Letters* acknowledges the importance of the public good and the responsibility of the individual to the good of the whole.

What is government, but a trust committed by all, or the most, to one, or a few, who are to attend upon the affairs of all, that every one may, with the more security, attend upon his own? ...

What is the publick, but the collective body of private men, as every private man is a member of the publick? And as the whole ought to be concerned for the preservation of every private individual, it is the duty of every individual to be concerned for the whole, in which himself is included. (Letter 38, p. 166, 169)

Here, Gordon goes further than Locke who treats the appeal to the majority as a pragmatic decision that enables social bodies to avoid paralysis. For Locke, individuals assented to be governed by the majority or its representatives when they agreed to benefit from social life. *Cato's Letters* takes it a step further and argues that the individual is also to be concerned for the whole, a point that Locke made only about individual responsibility in the State of Nature, but does not emphasize in his discussion of social life. *Cato's Letters* thus extends beyond Locke, by thinking more deeply about how individual interests and public interest interact.

In this following passage, contradicting other statements, Gordon argues innovatively that individuals are always “self-interested.” Thus when we talk about public officials who are “disinterested,” we mean, not that they ignore

their self-interest, but that their personal self-interest is aligned with the public good.

Every passion, every view that men have, is selfish in some degree; but when it does good to the publick in its operation and consequence, it may be justly called disinterested in the usual meaning of that word. So that when we call any man disinterested, we should intend no more by it, than that the turn of his mind is towards the publick, and that he has placed his own personal glory and pleasure in serving it. To serve his country is his private pleasure, mankind is his mistress; and he does good to them by gratifying himself. (Letter 40, p. 174)

But in a contradictory viewpoint, Gordon goes on to essentially argue that people should choose to do good, which seems to contradict his view that people are only "self-interested."

But every man, who consents to the necessary terms of society, will also consent to this proposition, that every man should do all the good, and prevent all the evil, that he can. (Letter 42, p. 181)

Cato's letters, then, begins to explore in a deeper way the question of how individual interest and public good interact and conflict. A full theory is not yet worked out and the letters remain contradictory on how personal interest and public interest interact. But the public good is clearly a strong stream in the thinking of Gordon and Trenchard.

Liberty and Public Good in the Writings of the American Colonists

Notions of individual liberties and public good were very much on the minds of some American colonial writers on liberty in the decade leading up to the Revolutionary war. Although there is some disagreement among historians about how important Locke was to these writers, the recent evidence strongly suggests that Locke was widely read and influential on the American colonists in the decade before the revolution.¹² But whether or not the ideas came from Locke is really not the point here. The point is that notions of liberty very similar to Locke's, whether picked up by Locke directly, or picked up from Sidney or *Cato's Letters*, shaped the thinking of the American colonists. We shall see a few examples here in the literature leading up to the *Declaration of Independence*.

Indeed, one can read the American colonists writings in the decade before the Revolutionary war as *at times* using a partly Lockean style theory of liberty and government to dispute the legitimacy of Parliament’s policies in the colonies. We call this a “Lockean style theory” because they did not buy all of Locke’s notions, such as his theory “*natural rights*.” Indeed, whether colonists had rights independent of the colonial charters was a point of debate in the unfolding discussion and not all colonial writers used an argument for natural rights and some viewed the debate on the origin of rights as “metaphysical” nonsense. Be that as it may, many writers agreed that individuals had a right to “life, liberty and property”, and that those rights belonged to them both by the British constitution and, in many writer’s views, by God’s grant if not by nature. Most accepted the view that civil society needed an absolute uncontrollable power to manage social life and put to end the frictions of social life. And many, like Locke, believed the end of government was to pay attention to some kind of notion of the public good. Indeed, one can read one strand of the American colonists’ writings as thinking through and developing a much deeper theory of what it means for government to represent the public good.

At the heart of the debate was the question of whether a legislative body in England did and could represent colonial interests in America. Much of the debate between the colonists and the British Parliament centered around the question of whether a governing body could represent people who did not actually send representatives to it and who lived geographically distant from it. In making the argument that Parliament did not and could not represent them, Americans were appealing to what they regarded as common and recognized notions of government, a view with which some British officials, although not all, agreed.

As one example, consider James Otis, one of the early American pamphleteers, who wrote a widely read essay in 1765 called “*The Rights of the British Colonies Asserted and Proved*” in response to the British Sugar Act of 1764. It is interesting that Otis begins his essay by surveying theories of government’s origin and explicitly rejecting the contract theory of government. But his theory of liberty in the end is not that different from Locke’s. He argues that government is founded on “the necessity of our natures” and is thus not really a “choice”. God creates us as social animals at birth. There is no “pre-social” State of Nature. But as Otis’s argument unfolds, there is much common ground between his view and that of Locke, at least when it comes to understanding individual liberties and the role of government. In fact Otis quotes Locke several times in the essay and cites him with approval over other thinkers such as Grotius.

Let no Man think I am about to commence advocate for *despotism*, because I affirm that government is founded on the necessity of our natures; and that an original supreme Sovereign, absolute, and uncontroulable, *earthly power must*

exist in and preside over every society; from whose final decisions there can be no appeal but directly to Heaven. It is therefore *originally* and *ultimately* in the people. I say supreme absolute power is *originally* and *ultimately* in the people; and they never did in fact *freely*, nor can they *rightfully* make an absolute, unlimited renunciation of this divine right.* [footnote in original]. It is ever in the nature of the thing given in *trust*, and on a condition, the performance of which no mortal can dispense with; namely, that the person or persons on whom the sovereignty is confer'd by the people, shall *incessantly* consult *their* good.¹³

We see that Otis, like Locke, Sidney and *Cato's Letters* before him, also views the public good as the ultimate end of government, beyond the individual rights of the individuals.

But let the origin of government be placed where it may, the end of it is manifestly the good of the whole. *Salus populi* supreme *lex esto*, is of the law of nature, and part of that grand charter given the human race, (tho' too many of them are afraid to assert it,) by the only monarch in the universe, who has a clear and indisputable right to absolute power; because he is the only One who is omniscient as well as omnipotent.¹⁴

Otis' description of the end of government shares a great deal linguistically with Locke's and we know Otis was reading Locke as he wrote this essay.

The *end* of government being the *good* of mankind, points out its great duties: It is above all things to provide for the security, the quiet, and happy enjoyment of life, liberty, and property. There is no one act which a government can have a *right* to make, that does not tend to the advancement of the security, tranquility and prosperity of the people. If life, liberty and property could be enjoyed in as great perfection in *solitude*, as in *society*, there would be no need of government. But the experience of ages has proved that such is the nature of man, a weak, imperfect being; that the valuable ends of life cannot be obtained without the union and assistance of many. Hence 'tis clear that men cannot live apart or independent of each other: In solitude men would perish; and yet they cannot live together without contests. These contests require some arbitrator to determine them. The necessity of a common, indifferent and impartial judge, makes all men seek one; tho' few find him in the *sovereign power*, of their respective states or any where else in *subordination* to it.¹⁵

Such assumptions would be repeated often, although not by all, the colonial writers. For example, similar assumptions appear in the Connecticut Resolutions on the Stamp Acts in December 19, 1765.¹⁶

Resolved, 1st. That every form of government rightfully founded, originates from the consent of the people.

2d. That the boundaries set by the people in all constitutions are the only limits within which any officer can lawfully exercise authority.

3d. That whenever those bounds are exceeded, the people have a right to reassume the exercise of that authority which by nature they had before they delegated it to individuals.

4th. That every tax imposed upon English subjects without consent is against the natural rights and the bounds prescribed by the English constitution.

5th. That the Stamp Act in special, is a tax imposed on the colonies without their consent.

6th. That it is the duty of every person in the colonies to oppose by every lawful means the execution of those acts imposed on them, and if they can in no other way be relieved, to reassume their natural rights and the authority the laws of nature and of God have vested them with.

Not all early colonial writers shared all of these assumptions about natural rights. The Virginia Stamp Act Resolutions for example did not make any reference to natural rights at all. One can argue, as I hope to do in another essay, that the colonists had not completely decided whether to base their disagreements with the mother country on the basis of preexisting individual rights or on the basis of British constitutional rights. Even the same writers appealed inconsistently to natural rights and the public good, sometimes using such arguments and sometimes not.

In another essay, I hope to show that one point of the debate among the American colonists was precisely whether to rely on the notion of rights that lie outside of the British constitution.

Conclusion

Liberty, as it developed in Britain, and was articulated in the American colonies leading up to the Revolutionary war, was not a concept that simply celebrated individual freedom and minimal government. Individual rights did

set boundary conditions on government. But government was also the means by which liberty was thought to be achieved and realized. It was through law, developed by consulting the public good, that individual liberty was fully achieved. There was widespread agreement that individuals curtailed some of their freedoms to gain the benefits of civil society and that the end of the government was ultimately the general good of the people. This shared notion of liberty, articulated in detail by Locke, but shared by other British writers such as Sidney and the writers of *Cato's Letters*, was carried into America where it also shaped early American thinking that ultimately culminated in the revolution. This notion of liberty, as we have seen, emphasized a notion of the public good that was thought to be the end of government. Though individuals consented to government because of the individual benefits of social life, government itself was expected to consult the public good and to make decisions with a larger good in mind.

As is clear, a strong tendency within the liberty tradition viewed social life as both a fulfillment of liberty but one that required sacrifice of some freedoms. This notion of individual sacrifice for the public good is one that has been lost in recent discussions of liberty which instead describe liberty as the maximization of individual rights and the minimizing of government controls.

¹ See my essay “Why ‘Market Liberals’ Are Not ‘The True Liberals’ or Who Really Inherits the Liberty Tradition Anyway? Published on www.freedomandcapitalism.com.

² See Hirsch, *A Theory of Liberty*, 36-44, and the recent discussion and survey in Zuckert, *Natural Rights*, 18-25 which makes a strong case for Locke’s influence on colonial writers.

³ All quotations to Locke refer to the edition of the *Second Treatise* as printed in Peter Laslett (2002).

⁴ For a discussion on the idea that we are the workmanship of God and the resulting prohibition against suicide see my essay “Liberty and the Public Good: Endorsing Suicide and Slavery as Part of a Free Society.” In www.freedomandcapitalism.com. February 2007.

⁵ For a similar concept, see Locke II 2, 11.

⁶ Laslett (xxx, xxx_ notes that this section might be a later addition in 1689.

⁷ Locke’s “State of Nature” is an ambiguous term. But it is clear that he understands the State of Nature not only as a historical moment in the unfolding of history but also as any time human beings live outside societies with political frameworks. See Simmons, “Locke’s State of Nature”, for a nice exposition of this term in Locke. Moreover, Locke makes it clear that he views everyone who is born into a political society as having to reaffirm that choice. Though one does not affirm that choice until maturity, once one reaches the age of reason one can decide to stay or leave the society of birth. Thus even a person born into a society has the choice to consent at maturity to the social contract.

⁸ For a similar comment, see also Locke II 3, 20.

⁹ For background on Sidney, see Thomas West, “Algernon Sidney.”

¹⁰ All quotes from Sidney come from: Algernon Sidney, *Discourse Concerning Government* (1698). The Liberty Fund. Online Library of Liberty. 2005. Published online

http://oll.libertyfund.org/EBOOKS/Sidney_0019.pdf.

¹¹ All quotes from *Cato's Letters* come from Thomas Gordon and John Trenchard, *Cato's Letters*. 4 Vols. 1720-1723. Liberty Fund, Inc. 2005. The Online Library of Liberty. Published on http://oll.libertyfund.org/EBooks/Gordon_0226.05.pdf .

¹² On the debate regarding Locke's impact on the American Colonists, see note 2.

¹³ The footnote is in the original. Otis writes that "The power of GOD Almighty is the power that can properly and strictly be called supreme and absolute. In the order of nature immediately under him comes the power of a simple democracy or the power of the whole over the whole. Subordinate to both these are all other political powers, from that of the French monarch to a petty constable." See Bailyn, *Pamphlets*, p. 424.

¹⁴ James Otis, "The Rights of British Colonies Asserted and Proved" in Bailyn, *Pamphlets*," 424.

¹⁵ Otis, "Rights", In Bailyn, *Pamphlets*, 425.

¹⁶ Published in The Massachusetts Gazette, December 19, 1765. Cited by the Avalon Project of Yale University. http://www.yale.edu/lawweb/avalon/amerrev/amerdocs/ct_resolutions_1765.htm

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