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# Locke on Prerogative Democracy, Libertarianism, and Proto-Utilitarianism

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### Résumé de l'article

John Locke's role in the advent of modernity has been debated widely. His work has been (ab)used by those arguing from libertarian, democratic, communitarian, socialist, feminist, or postcolonial points of view, either portraying him as a forefather of their preferred political theory or as an antagonist to their avowed political and philosophical goals. In this paper, we are primarily concerned with highlighting the importance of the executive's prerogative in Locke's philosophy, as we argue that this concept, often banished to the side-lines, is indeed central to Locke's political theory. This partial neglect entails that some of the most popular readings of Locke are potentially based on faulty premises. We focus on how Locke's prerogative is antithetical to the project of seeing Locke as a forefather of libertarianism. Furthermore, this paper's arguments could also support challenges to interpretations of Locke as an early and important proponent of democracy. Rather than seeking to find support for modern theories through anachronistic and dubious readings of Locke, we focus on how he conceived of an exceedingly strong executive whose actions are exclusively restricted by the public good. We conclude that there is good reason to consider his philosophy proto-utilitarian, something that further highlights the conflict with libertarianism. As such, we conclude that libertarian or democratic theories postulating Locke as their direct predecessor should be re-examined to account for these findings.

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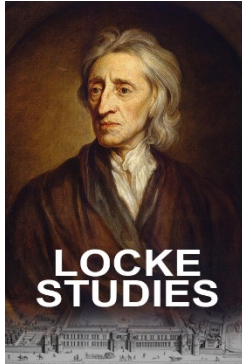
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## Locke on Prerogative: Democracy, Libertarianism, and Proto-Utilitarianism

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### *Abstract:*

John Locke's role in the advent of modernity has been debated widely. His work has been (ab)used by those arguing from libertarian, democratic, communitarian, socialist, feminist, or postcolonial points of view, either portraying him as a forefather of their preferred political theory or as an antagonist to their avowed political and philosophical goals. In this paper, we are primarily concerned with highlighting the importance of the executive's prerogative in Locke's philosophy, as we argue that this concept, often banished to the side-lines, is indeed central to Locke's political theory. This partial neglect entails that some of the most popular readings of Locke are potentially based on faulty premises. We focus on how Locke's prerogative is antithetical to the project of seeing Locke as a forefather of libertarianism. Furthermore, this paper's arguments could also support challenges to interpretations of Locke as an early and important proponent of democracy. Rather than seeking to find support for modern theories through anachronistic and dubious readings of Locke, we focus on how he conceived of an exceedingly strong executive whose actions are exclusively restricted by the public good. We conclude that there is good reason to consider his philosophy proto-utilitarian, something that further highlights the conflict with libertarianism. As such, we conclude that libertarian or democratic theories postulating Locke as their direct predecessor should be re-examined to account for these findings.

*Keywords:* John Locke, liberalism, democracy, libertarianism, prerogative, executive power

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## 1. Introduction

John Locke's role in the advent of modernity has been debated widely. His work has been (ab)used by those arguing from libertarian, democratic, communitarian, socialist, feminist, or postcolonial points of view either, portraying him as a forefather of their preferred political theory or as an antagonist to their avowed political and philosophical goals. The central claim of this paper is that Locke's chapter on prerogative—prerogative being the power of the executive to act against and outside the law for the public good of the community (*Two Treatises*, II.159, 168)<sup>1</sup>—ought to be read as central to his political theory. This contrasts with the treatment of many who see it as merely an afterthought to be explained away to preserve a more coherent and comfortable reading of Locke, be it as a proto-libertarian, proto-democrat, or any other preferred interpretation. We claim that doing so is a mistake.

First, we argue that much of the previous literature has failed to appropriately pick up on Locke's concept of prerogative. For example, Ian Shapiro, in his attempt to make plausible the claim that Locke defended some type of minimalist democratic theory, mentions prerogative only once.<sup>2</sup> This treatment of prerogative, or lack thereof, is not entirely uncommon in the wider literature offering broad interpretative accounts of Locke's thought. For instance, Dunn's introductory text to Locke does not give an account of how prerogative interacts with Locke's political theory at all.<sup>3</sup> Dunn only mentions the term three times overall, once in referring to the historical prerogative of James II,<sup>4</sup> and the other times as a side thought in the treatment of revolution.<sup>5</sup> In *God, Locke, and Equality*, Jeremy Waldron only mentions prerogative twice, once on the topic of the leadership qualities of the executive and a second time when discussing the issue of forfeiting one's moral status, a passage he concludes with the statement that he remains “not sure [he] know[s] how to deal with this tangle of issues”.<sup>6</sup> He then does not consider prerogative any further. A. John Simmons also only mentions prerogative twice in the

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<sup>1</sup> All parenthetical citations to the *Two Treatises of Government* refer to Laslett's student edition of Locke and will be in the treatise-section-page format. For example, “II.48, 301” will refer to the *Second Treatise*, section 48, page 301 in John Locke, *Two Treatises of Government*, ed. Peter Laslett, student ed. (Cambridge: Cambridge University Press, 1988).

<sup>2</sup> Ian Shapiro, “John Locke's Democratic Theory,” in *Two Treatises of Government and a Letter concerning Toleration*, ed. Ian Shapiro (New Haven, CT: Yale University Press, 2003), 325.

<sup>3</sup> John Dunn, *Locke: A Very Short Introduction* (Oxford: Oxford University Press, 2003).

<sup>4</sup> Dunn, *A Very Short Introduction*.

<sup>5</sup> Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the ‘Two Treatises of Government’* (Cambridge: Cambridge University Press, 1982), 57.

<sup>6</sup> Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (Cambridge University Press, 2002), 135, 43.

main text of *On the Edge of Anarchy*,<sup>7</sup> correctly identifying its nature but failing to engage with its implications for the overall project any further. Richard Ashcraft picks up the concept of prerogative several times, though remains in a largely historically descriptive mode that shies away from giving a complete picture of the extent of prerogative for Locke's theory.<sup>8</sup> Even more, James Tully's chapter on Locke never even refers to prerogative, and M. J. C. Vile hardly engages with it either.<sup>9</sup> This treatment suggests that prerogative has not been sufficiently recognised as central to Locke's project, and has been largely ignored by many central Locke scholars.

However, our claim is not that prerogative has been ignored to such a large extent by everyone, and it is certainly a live issue in some parts of Locke scholarship. For example, In *The Political Thought of John Locke*, Dunn spends a full chapter on prerogative,<sup>10</sup> in which he situates prerogative historically in such a way that the theory is not meant to explain the "actual confrontations between the prerogative and [the] populace,"<sup>11</sup> but rather to function as an explanation of the theory's structure.<sup>12</sup> Moreover, there has been more focused and recent scholarship on prerogative specifically, though many of these pieces do not aim at providing an overarching account of Locke's political thought and are concerned with smaller, more technical details of his view. For example, Mark Goldie discusses prerogative and an activist executive in the context of federative power and shows its connections to Carl Schmitt's concept of the "state(s) of exception."<sup>13</sup> Further, Assaf Sharon provides an attempt to understand Locke's legalism in a reconciliatory way with his endorsement of the extra-legal powers of prerogative,<sup>14</sup> while Philipp Schönegger

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<sup>7</sup> A. John Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton, NJ: Princeton University Press, 2014).

<sup>8</sup> Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton, NJ: Princeton University Press, 1986), 35, 38, 111, 19, 252, 86, 478.

<sup>9</sup> James Tully, "Locke," in *The Cambridge History of Political Thought 1450–1700*, ed. J. H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), 616–52; M. J. C. Vile, *Constitutionalism and the Separation of Powers* (Carmel, IN: Liberty Fund, 2012).

<sup>10</sup> Dunn, *The Political Thought of John Locke*, 148–56.

<sup>11</sup> Dunn, *The Political Thought of John Locke*, 155.

<sup>12</sup> Though note that in later work, such as "What Is Living and What Is Dead in the Political Theory of John Locke?," Dunn is again fully silent on prerogative and its role. In *Interpreting Political Responsibility: Essays 1981–1989* (Princeton, NJ: Princeton University Press, 1990), 9–25.

<sup>13</sup> Mark Goldie, "Locke and Executive Power," in *The Lockean Mind*, ed. Jessica Gordon-Roth and Shelley Weinberg (Oxfordshire, UK: Routledge, 2022), 446–55. See also Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (University of Chicago Press, 2005).

<sup>14</sup> Assaf Sharon, "Locke, Liberty, and Law: Legalism and Extra-Legal Powers in the *Second Treatise*," *European Journal of Political Theory* 21, no. 2 (2022): 230–52.

argues that Locke's concept of prerogative cannot be a natural power but has to be political instead.<sup>15</sup>

The few counterexamples mentioned above notwithstanding, we claim that prerogative has been systematically underappreciated in the literature on Locke's political thought overall, to the detriment of its interpretation. Further, we claim that this applies in particular to commentators continually attempting to see Locke as a predecessor of modern political projects like libertarianism or democracy. While we support John Rawls's suggestion that we read philosophy classics charitably in order to try to derive an impression of "how the overall view might go, if you put it in the best way,"<sup>16</sup> we also believe that overlooking or downplaying prerogative leads to a non-Lockean overall view that misrepresents what Locke was trying to convey.

In this paper, we proffer a reading of Locke's political thought that puts prerogative at centre stage. This might ultimately come to mean that no easy story of "Locke as a libertarian" or "Locke as a democrat" will remain coherent (a finding that may generalise to other interpretations too). Although it makes sense to seek the lineage of inspiration of modern ideas in history, it should nevertheless come as no surprise that trying to shoehorn Locke into modern categories comes with significant difficulties that have to be acknowledged in full.

We ultimately claim that Locke's political thought has the features of an exceedingly strong executive that draws its power from prerogative, trumps the legislative, and can override individual rights not only in emergencies but also generally.<sup>17</sup> The aims and limitations of his political theory are proto-utilitarian, and its right of rebellion, which may seem to give the people at large a semi-democratic power of resistance, is limited significantly by severe epistemic challenges. Such a reading of Locke takes him significantly closer to Hobbes than is commonly thought, despite the obvious differences in style and rhetoric between them. In discussing prerogative and its relation to the libertarian and democratic interpretations, we will draw on these characteristics before synthesising the account to give a full picture of a prerogative-centric Lockean political theory that restores prerogative to the place of centrality it had enjoyed in British politics since the late 1620s.

We do this by first showing how Locke's philosophy has been used as the basis of various proponents of libertarianism and democracy. We then proceed to explore Locke's view on prerogative, while also arguing that there is a proto-utilitarian strand in his political thought. We close by discussing the implications of taking Lockean prerogative

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<sup>15</sup> Philipp Schönegger, "The Lockean Prerogative, Natural Law, and Political Power," *Locke Studies* 20 (2020): 1-22.

<sup>16</sup> John Rawls, *Lectures on the History of Political Philosophy* (Cambridge, MA: Harvard University Press, 2007), 52.

<sup>17</sup> Larry Arnhart, "'The God-Like Prince': John Locke Executive Prerogative, and the American Presidency," *Presidential Studies Quarterly* 9, no. 2 (1979): 121-30.

and his proto-utilitarianism into account, as these aspects of Locke's philosophy potentially undermine the readings of Locke as a libertarian or democrat.

## 2. Locke, libertarianism, and democracy

Locke's writing has often been understood as foundational to libertarian and, to a lesser extent, democratic theory. For example, Locke's theory of property rights has given rise to a tradition of libertarians tracing back their intellectual heritage directly to Locke,<sup>18</sup> claiming that Locke's thinking is fundamental to their deontological libertarianism, i.e., libertarianism based on inviolable rights of person and property.<sup>19</sup> Further, Shapiro portrays Locke as a something resembling a democratic thinker who had in his time already embodied a set of important claims fundamental to democracy such as majoritarian institutional decision-making.<sup>20</sup> Both strands of interpretation see Locke as articulating some central claims relevant to their political theory, be it democracy or libertarianism. Of course, these two approaches do not exhaust the scholarship on the matter and may not even be the most popular interpretations. However, for the purposes of this paper, we will focus on these two and operate from the claims of some that, in at least some cases, Locke is indeed taken to be standing in a direct and positive relation to the traditions of democratic thought and libertarianism.<sup>21</sup>

On the first line of reading Locke, the libertarian interpreters draw heavily on his emphasis of a right to self-ownership and his view of property rights more generally.<sup>22</sup> As Michael Otsuka points out, Locke's thought provides direct "inspiration for the right-wing libertarian political philosophy of Robert Nozick."<sup>23</sup> The inspiration is directly taken from his account of property rights, which is premised on three restrictions on the

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<sup>18</sup> E.g., Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974); C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962).

<sup>19</sup> Carl Watner, "The Proprietary Theory of Justice in the Libertarian Tradition," *Journal of Libertarian Studies* 6, no. 3–4 (1982): 289–316.

<sup>20</sup> Shapiro, "John Locke's Democratic Theory."

<sup>21</sup> It is important to point out here that terms like "libertarianism" and "democracy" (or "democratic") have had different meanings at different points in time. We do not mean to say that Locke was, in any substantive sense, a democrat or a libertarian in the manner of self-identifying democrats or libertarians today. Rather, we mean to argue that Locke's thought had elements that are shared by such thinkers and that those thinkers were influenced by Locke without committing to some anachronistic understanding of what it would mean for Locke to be a libertarian or a democrat.

<sup>22</sup> David G Duff, "Private Property and Tax Policy in a Libertarian World: A Critical Review," *Canadian Journal of Law & Jurisprudence* 18, no. 1 (2005): 23–45.

<sup>23</sup> Michael Otsuka, "How to Be a Libertarian without Being Inegalitarian" (English version of "Comment être libertarien sans être inégalitaire," *Raisons politiques* 23 [2006]: 9–22), SAS-Space (Online Library Archive), University of London, School of Advanced Study, 1, [https://sas-space.sas.ac.uk/639/1/M\\_Otsuka\\_Libertarian.pdf](https://sas-space.sas.ac.uk/639/1/M_Otsuka_Libertarian.pdf); Nozick, *Anarchy, State, and Utopia*.

accumulation of property in the state of nature. First, one may only appropriate as much as can be used before it eventually spoils (II.31, 290). Second, every appropriation must leave “enough and as good” (II.27, 299) for others. Third, just appropriation is only possible through one’s labour (II.27, 287–88). For C. B. Macpherson,<sup>24</sup> these three restrictions allow unrestricted accumulation of capital, a claim shared by right-libertarians and taken as highly objectionable by others. Furthermore, Locke’s theory of property is pre-political and arguably has little value in political societies where there is no longer an abundance of land or resources,<sup>25</sup> highlighting the challenges associated with trying to make texts from a very different context speak directly to modern issues.

This Lockean reasoning has been the basis for several libertarian thinkers’ own theorising. Drawing on this strong view of property rights, Murray N. Rothbard describes Locke as “the earliest theoretician of libertarian classical liberalism” and motivates his *For a New Liberty* on this basis.<sup>26</sup> Like Nozick and later libertarians, Locke does not present a full (enough) theory of property and liberty, though what all later theorists have in common is that Locke’s thinking is seen as fundamental to their theorising. As Helga Varden states, “the influence of Locke’s political ideas [on libertarianism] can hardly be exaggerated,”<sup>27</sup> and although most thinkers go beyond Locke in some respects to provide a fully fleshed out political theory of libertarianism, most still hold his views as central to their theory in defence of a limited government and personal liberty.<sup>28</sup>

The second interpretation we wish to discuss is that of Locke as a democratic theorist. Compared with libertarian theorists, those who read Locke as a democratic philosopher face the challenge of relating very simple ideas of majority decisions, for example, to modern theories of democracy. There are many models of democracy currently being used,<sup>29</sup> and as we shall later see, some accounts of Locke as a proponent of democracy are only peripherally related to concepts in modern democratic theory, such as Joseph A.

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<sup>24</sup> Macpherson, *The Political Theory of Possessive Individualism*.

<sup>25</sup> Leigh Raymond, “Allocating the Global Commons: Theory and Practice,” in *Political Theory and Global Climate Change*, ed. Steve Vanderheiden (Cambridge, MA: MIT Press, 2008), 3–24; Mark Sagoff, *The Economy of the Earth: Philosophy, Law, and the Environment* (Cambridge: Cambridge University Press, 2007).

<sup>26</sup> Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto* (New York: Macmillan Publishers, 1973), 3.

<sup>27</sup> Helga Varden, “John Locke–Libertarian Anarchism,” in *Philosophy of Justice*, ed. Guttorm Floistad (Dordrecht, NL: Springer, 2015), 159.

<sup>28</sup> This is not to say that right libertarians accept Locke uncritically. In fact, both Nozick and Rothbard point out challenges in the Lockean theory, e.g., Nozick, *Anarchy, State, and Utopia*, 174–75, 79; Murray N. Rothbard, *The Ethics of Liberty* (New York: Humanities Press, 1982), 250. However, this does not detract from the claim that their thinking directly draws on much of Locke and most deviations from it are additions to Locke’s thought, not subtractions from it.

<sup>29</sup> David Held, *Models of Democracy* (Redwood City, CA: Stanford University Press, 2006).

Schumpeter's focus on elections and political leadership, Robert A. Dahl's focus on pluralism and the role of organisations, or deliberative democracy's focus on communicative action and individual change through political processes.<sup>30</sup>

On the other hand, one example of a reading of Locke as a democratic philosopher is provided by Shapiro,<sup>31</sup> who situates Locke firmly on the democrat spectrum, an interpretation that has previously been the topic of contention.<sup>32</sup> He claims that Locke's view on the moral equality of persons and his strong commitment to majority rule give us reason to claim, up to a point, that the "historical Locke was a democrat."<sup>33</sup> Importantly, Locke grounds moral equality between humans in our status as God's property. As Locke himself points out, this keeps us from owning each other in almost all circumstances except special cases like that of prisoners of war in just wars. It also entails limitations on what a person can do to themselves, as "God and nature" would not allow someone to take their own life, and by consequence people cannot provide others the power to do so either (II.168, 380). Further, as Shapiro points out, Locke understood "all men by nature [to be] equal" (II.54, 304), based on "God's decision."<sup>34</sup> This is the same kind of equality between persons established by Hobbes,<sup>35</sup> who initially establishes natural equality without tying this to God. While it is possible to connect such equality to democratic principles, this need not necessarily be the case. Hobbes, for example, uses equality as a descriptive factor that explains the causes of conflict and the need for government without this equality having implications for each individual's role in political decision-making. For a philosopher to be considered a meaningful proponent of something resembling modern democracy, more than this is required.

For Shapiro, the justificatory mechanism of institutional arrangements is the element of Locke's theory that signals a democratic element beyond a simple reliance on equality. Specifically, he locates "a strong defence of majority rule as well as [a] wellspring of

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<sup>30</sup> Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (London: Routledge, 2013); Robert A. Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 2008); Jon Elster, "The Market and the Forum: Three Varieties of Political Theory," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (Cambridge, MA: MIT Press, 1997), 3–33.

<sup>31</sup> Shapiro, "John Locke's Democratic Theory."

<sup>32</sup> Though Shapiro does not go so far as to call him a radical democrat, largely because basic features like "participatory and deliberative [...] traditions" do not make an appearance in Locke. Shapiro, "John Locke's Democratic Theory," 310 Willmoore Kendall, *John Locke and the Doctrine of the Majority Rule* (Urbana: University of Illinois Press, 1941); Mark Goldie, "John Locke's circle and James II," *The Historical Journal* 35, no. 3 (1992): 557–86; Ellen Meiksins Wood, "Locke against Democracy: Consent, Representation and Suffrage in the *Two Treatises*," *History of Political Thought* 13, no. 4 (1992): 657–89.

<sup>33</sup> Shapiro, "John Locke's Democratic Theory," 310.

<sup>34</sup> Shapiro, "John Locke's Democratic Theory," 315.

<sup>35</sup> Thomas Hobbes, *Leviathan* (London: Basil Blackwell, 1946), ch. XIII.



institutional legitimacy” in Locke,<sup>36</sup> a point that is amplified by Kendall.<sup>37</sup> Shapiro points out that it is majoritarian consent, rather than individual consent, that is at the core of Locke’s theory of politics. Drawing on Locke’s claim that “by the Law of Nature and Reason, [majority rule has] the power of the whole” (II.96, 332), Shapiro points out that for Locke, the majority may distribute power in whichever way they see fit, be that a “perfect democracy” or any other arrangement.<sup>38</sup> Ashcraft agrees with this interpretation, raising the possibility that a democracy is chosen by this mechanism, which would be “closest to the institution of the political community itself.”<sup>39</sup> However, he also points out that this does not suggest that Locke thought democracy was indeed the preferable arrangement. Rather, it was the mechanism by which one might arrive at any such arrangement. Clearly, something can be a justified mechanism without being the optimal political structure. Here Locke again aligns with Hobbes, who also acknowledged the potential for popular rule while finally arguing in favour of a rule of one or few after a consideration of the merits of the various forms of government.<sup>40</sup>

As Laslett draws out helpfully, on this Lockean view political authority is derived not from the “power that men have over themselves” but from the “power that men have over others,”<sup>41</sup> and Locke’s political theory on the democratic reading is ultimately not one of contract but one of trust, with the power legitimising the polity ultimately remaining in the people, who retain the right to overthrow their government if it violates its trust. However, while the right to revolt does not constitute a democracy either, it adds to the set of features that would make such a categorisation justified. As there can be no judge on earth (II.168, 379), Shapiro reminds us, the people shall be judge of whether one may appeal to God.<sup>42</sup> As before, this mechanism is one of “majority rule.”<sup>43</sup> This

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<sup>36</sup> Shapiro, “John Locke’s Democratic Theory,” 309.

<sup>37</sup> Kendall, *John Locke and the Doctrine of the Majority Rule*.

<sup>38</sup> Shapiro, “John Locke’s Democratic Theory,” 327.

<sup>39</sup> Ashcraft, *Revolutionary Politics*, 183.

<sup>40</sup> Hobbes, *Leviathan*, ch. XVIII, XIX; Henrik Skaug Sætra, “Toward a Hobbesian Liberal Democracy through a Maslowian Hierarchy of Needs,” *The Humanistic Psychologist* 50, no. 1 (2022): 70-92.

<sup>41</sup> Peter Laslett, introduction to *Two Treatises of Government*, by John Locke, ed. Peter Laslett, student ed., (Cambridge University Press, 1988), 111.

<sup>42</sup> Though note that for Locke, God remains the judge of whether a government’s overthrow by the people was just. The people are, however, the judges on the question of whether one may justly appeal to God in seeking a judgement.

<sup>43</sup> Shapiro, “John Locke’s Democratic Theory,” 329.

understanding of Locke as a democrat is mirrored by Faulkner, who sees Locke wishing to “induce over time [...] something like [a] parliamentary government.”<sup>44</sup>

These theorists can consequently be seen as proposing different varieties of Lockean arguments in favour of modern democracy. However, some of the arguments related to how the people rule do not explicitly point towards democracy as we know it today, as discussed above. Furthermore, one might also argue that the fact that people can overthrow the government is neither unique to Locke nor proof that he favoured democratic rule. Hobbes discusses opposition to the sovereign in different terms, but he is similarly adamant that a sovereign that does not fulfil its role—which does not secure order—can demand no allegiance from its subject. The contract entered would immediately lose its effect, and people would be back in the state of nature;<sup>45</sup> however, we would not argue that this makes Hobbes a democratic philosopher.

Anticipating the criticism that one may lodge against this portrayal by pointing out that much of the participatory qualities typically demanded of a democratic political theory are absent in Locke, Shapiro points out that while Locke was not a “theorist of democratic participation, he was an innovative theorist of democratic legitimacy” precisely because of the right to rebellion and the notion of majority rule, as well as his commitment to moral equality.<sup>46</sup> The claim that Locke is a democrat had been advanced prior to this by Kendall, who believes Locke to be a majoritarian democrat,<sup>47</sup> largely based on passages like these:

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 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. (II. 96, 331–32)

Whether arguments and passages like these ought to lead one to conclude that one is merely facing a “coincidence of outlook between Locke and the majority-rule democrats” or whether Locke is indeed best understood as a democrat may depend on how one

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<sup>44</sup> Robert Faulkner, “The First Liberal Democrat: Locke’s Popular Government,” *The Review of Politics* 63, no. 1 (2001): 5.

<sup>45</sup> Hobbes, *Leviathan*, ch. XVIII.

<sup>46</sup> Shapiro, “John Locke’s Democratic Theory”; cf. Andrew R. Volmert, “Arguing with Authority: Democratic Legitimacy and the Public use of History” (PhD diss., Yale University, 2008): <https://www.proquest.com/docview/304393864>.

<sup>47</sup> Kendall, *John Locke and the Doctrine of the Majority Rule*.

understands democracy.<sup>48</sup> As Frank Marini points out, “one might say that Locke is or is not a democrat depending upon the meaning one assigns to ‘democracy.’”<sup>49</sup> However, we hope to have shown in this section that there has been considerable contention with this matter and that a number of influential positions do indeed position Locke at some point on the democrat and libertarian spectrums.

### **3. Prerogative and its Relationship to the Rest of the Second Treatise: A Proto-Utilitarian Locke**

In the introductory section, we showed how prerogative has been neglected by a variety of influential interpreters of Locke.<sup>50</sup> In this section, we give a positive account of Lockean prerogative. Further, we will attempt to situate chapter 14, *Of Prerogative*, within the project of the *Second Treatise*. Finally, we also develop an argument in favour of reading Locke as a proto-utilitarian.

#### Lockean Prerogative

Locke’s most straightforward definition of prerogative is that it is that “power to act according to discretion, for the publick good, without the prescription of the Law and sometimes even against it” (II.160, 375). He goes on to specify later that this prerogative is in the hands of “Princes” (II.165, 377)<sup>51</sup>—the executive(s).<sup>52</sup> This initial definition draws out two crucial elements of prerogative for Locke: a focus on the public good and the executive’s power to act without or against the law. Both facets are integral to a proper

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<sup>48</sup> Kendall, *John Locke and the Doctrine of the Majority Rule*, 53.

<sup>49</sup> Frank Marini, “John Locke and the Revision of Classical Democratic Theory,” *Western Political Quarterly* 22, no. 1 (1969): 13.

<sup>50</sup> Cf. Felix Engelhard, “Die Prärogative in John Lockes System geteilter Gewalten,” *Zeitschrift für Politik* 62, no. 3 (2015): 243–62

<sup>51</sup> At one point, Locke suggests that the terms “prince” and “king” might have to change, as a proper executive is best understood as an “Image, Phantom, or Representative” of the community, “acted by the will of the Society, declared in its Laws” (II.151, 368), which is different from the previous definition of the term.

<sup>52</sup> For Locke, the executive and the federative are “almost always united” (II. 147, 365) in one person, which raises the question of whether prerogative is thus also a power of the federative. Leonard C. Feldman argues that prerogative might be understood as an inwardly focused federative power. “Judging Necessity: Democracy and Extra-Legalism,” *Political Theory* 36, no. 4 (2008): 16–17. However, the role of the federative and its relation to prerogative is still an open question, with some arguing that it is fully unconstrained by laws, while others understand prerogative to be wielded by the federative in a manner similar to the executive. Ian Roth Zuckerman, “The Politics of Emergencies: War, Security and the Boundaries of the Exception in Modern Emergency Powers” (Phd diss., Columbia University, 2012) <https://doi.org/10.7916/D8CZ3F5V>; Mark Neocleous, *Critique of Security* (Edinburgh, UK: Edinburgh University Press, 2008), 16, 17.

understanding of prerogative and its relation to the *Second Treatise* as they directly bear upon the kind and extent of executive power present in Locke's thought.

First, prerogative is partially extra-legal. Thomas S. Langston and Michael E. Lind divide this extra-legal status into the prelegal and the anti-legal components of prerogative.<sup>53</sup> The former addresses the situation in which the executive must act (because of an emergency or an opportunity to further the public good, for example) even though "the municipal Law has given no direction" (II.159, 374). Because the executive cannot rely on timely passing of proper laws for novel situations and circumstances, it must act quickly and decisively to safeguard its community, with prelegal prerogative sanctioning this action. Sometimes, however, prerogative can draw on its anti-legal component in sanctioning an executive's acts that go directly against established laws. Locke tells us that sometimes, the law "must in some Cases give way" (II.159, 375) because laws may sometimes be "inflexible" and unable to "foresee" (II. 160, 375) future conditions that necessitate swift executive for the public good.<sup>54</sup>

This extends the reach of the executive significantly and contrasts with Lockean readings that leave out prerogative. On those, the legislative has substantive power and the executive's power is built on the consent of the governed, being unable to transcend their mandate. This reads nicely if one attempts to derive some form of constitutionalism from Locke, and as we show in this article, there is no shortage of supporters for the position that Locke supported rule of law and democracy, two of the three elements in the "trinitarian formula" of modern constitutionalism.<sup>55</sup> However, with prerogative at their full disposal, the executive can, on this reading of Locke, both act for the community where there is no law present and act against already established laws should doing so be in favour of the public good overall. As such, we argue that including prerogative in a bigger picture of political theory vastly stretches the reach of the executive, crowding out the legislative elements in numerous domains of politics. This move has far-reaching consequences for Lockean political theory.

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<sup>53</sup> Thomas S. Langston and Michael E. Lind, "John Locke & the Limits of Presidential Prerogative," *Polity* 24, no. 1 (1991): 49–68.

<sup>54</sup> Locke writes:

For since in some Governments the Law-making Power is not always in being, and is usually too numerous, and so too slow, for the dispatch requisite to Execution: and because it is impossible to foresee and so by laws to provide for all, all Accidents and Necessities, that may concern the publick; or to make such Laws, as will do no harm if they are Executed with an inflexible rigour, on all occasions, and upon all Persons, that may come in their way, therefore there is a latitude left to the Executive power, to do many things of choice, which the Laws do not prescribe" (II.160, 375).

<sup>55</sup> Mattias Kumm, "The Cosmopolitan Turn in Constitutionalism: An Integrated Conception of Public Law," *Indiana Journal of Global Legal Studies* 20, no. 3 (2013): 605–628.

According to Locke, prerogative is defined as a power acting precisely and exclusively for the public good.<sup>56</sup> On this view, the public good functions as a justificatory element of exercises of prerogative power and harshly restricts its scope;<sup>57</sup> if prerogative is directed towards the good of the public or the commonwealth (II.200, 400; II.3, 268; II.164–66, 377–78), it is “undoubted” (II.161, 375), Locke tells us. Locke goes on to claim that “a good Prince, who is mindful of the trust put into his hands, and careful of the good of his People, cannot have too much Prerogative, that is, Power to do good” (II.164, 377). If it is aimed at any other end, prerogative stops being justified and turns tyrannical (II.199, 389–99; II.202, 499–501). This role of prerogative once more aligns Locke’s philosophy explicitly with that of Hobbes. The foundation of the sovereign’s power is the extent to which it serves its subjects’ interests, and Hobbes is adamant that only laws and executive actions that promote the public good are legitimate – a good law is one that is *necessary*.<sup>58</sup> He does not introduce political mechanisms for controlling the sovereign but does argue that tyrannical rule is not conducive to peace, and once the sovereign undermines itself to such a degree that it does not serve the public interest, the subjects are not obliged to consider themselves bound by the social contract – they are in effect back in the state of nature.<sup>59</sup> The Lockean executive also has as its foremost goal and ultimate restriction the welfare of its people.

### Lockean Proto-Utilitarianism

The preceding considerations take us to what we label the *proto-utilitarian* strand in Locke’s philosophy. We call it “proto-utilitarian” because (i), although it is a central part of Locke’s theory, it does not constitute a fully fleshed out moral theory as he does allow for other competing moral considerations and (ii), because Locke’s circle of moral relevance here is that of the agent’s commonwealth, not all of mankind (though he does grant universal moral equality on the basis of all humans being God’s children).

Restricting prerogative by the public good and not the legislative boundaries given to the executive is a baffling characteristic of prerogative that perhaps explains why many interpreters shy away from letting this aspect of executive power take centre stage in their readings of Locke. In essence, this restriction relates to what we argue to be a proto-utilitarian element in Locke’s thought on the level of the executive and of politics more generally.

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<sup>56</sup> As Schönegger recently argued, public good in the role of restricting prerogative is best understood as the public good of any one community as opposed to the good of all of mankind (Schönegger, “The Lockean Prerogative”).

<sup>57</sup> Harvey C. Mansfield, *Taming the Prince; The Ambivalence of Modern Executive Power* (London: Collier Macmillan, 1989).

<sup>58</sup> Hobbes, *Leviathan*, ch. XXX.

<sup>59</sup> Hobbes, *Leviathan*, ch. XVIII.

By utilitarianism as a concept, we refer to the classical approach of Jeremy Bentham and John Stuart Mill, but also to the precursors of the classical approach. In broad terms, we understand utilitarianism as the claim that the goodness of a state of affairs is determined by its total overall utility (or happiness). It is a consequentialist theory that judges actions or policies by their contributions to utility, and a key tenet is that such contributions be considered on an aggregate—not individual—level.

As noted by Albert Perley Brogan, despite almost unanimous acknowledgement that key utilitarian philosophers (e.g., William Paley and Bentham) developed utilitarianism “in an intellectual atmosphere largely dominated by John Locke,” the idea that Locke himself was a utilitarian of sorts is usually denied.<sup>60</sup> Brogan contradicts these nay-sayers and argues, in line with this article, that much of what Locke wrote is largely compatible with the basic theses of utilitarianism. Brogan relies on John Gay as the source of systematised utilitarian ethics and presents three foundational propositions of utilitarianism. First, that the voluntary acts of every individual are their own pleasure or happiness. Second, that the good—interpreted as the happiness of all—is the criterion or standard of morality. Third, that there are four sanctions that tend to make individual action align with collectively good outcomes, namely *physical*, *legal*, *social*, and *religious* or *theological*.<sup>61</sup> He then proceeds to explore Locke’s writings to provide evidence that Locke was largely in line with these foundations and may very well have been their originator or inspiration.

One text that provides critical support for understanding Locke as a proto-utilitarian is his discussion of how law should not stand in the way of the executive, should it need to, for example, spare the guilty in order to promote the public good:

‘Tis fit that the Laws themselves should in some Cases give way to the Executive Power, or rather to this Fundamental Law of Nature and Government, *viz.* That as much as may be, *all* the members of the Society are to be *preserved*. For since many accidents may happen, wherein a strict and rigid observation of the Laws may do harm; (as not to pull down an innocent Man’s House to stop the Fire, when the next to it is burning) and a Man may come sometimes within the reach of the Law, which makes no distinction of Persons, by an action that may deserve reward and pardon; ‘tis fit, the Ruler should have a Power, in many Cases, to mitigate the severity of the Law, and pardon some Offenders: For the *end of Government* being the *preservation of all*, as much as may be, even the guilty are to be spared, where it can prove no prejudice to the innocent. (II. 159, 375)

As is evident in this passage, the main restrictions on the executive’s acts are no longer the consent of the community, individual rights held by community members, or the legal framework given by the legislature. Rather, the executive’s actions are restricted by the good of the community, which may often come apart from actions justified by popular

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<sup>60</sup> Albert Perley Brogan, “John Locke and Utilitarianism,” *Ethics* 69, no. 2 (1959): 79.

<sup>61</sup> Brogan, “John Locke and Utilitarianism,” 79–80.

consent or prescribed by the legislative branch. In other words, the executive may sometimes violate rights conferred by the consent mechanism of the legislature in favour of the common good. Brian Calvert also emphasises Locke's focus on the public good and how Locke states that the basic law of nature—and the foundation of positive law—is the preservation of humankind, and not merely individuals.<sup>62</sup> This leads Calvert to conclude that Locke's justification for the law is utilitarian, in line with the argument we here present.

In addition, the public good is not only a side-constraint for justified action but also grounds positive duties. As Goldie pointed out in the 2021 Carlyle Lectures, Locke was an “ardent pro-natalist” who held that an increase in the public good may be accomplished by an increase in the number of happy lives lived.<sup>63</sup> Worth noting at this point is how the violation of rights is problematic for libertarian readings of Locke but not necessarily for democratic interpretations. A democracy can perfectly well be based on utilitarian principles and can even be authoritarian,<sup>64</sup> so it is only readings of Locke as a theorist of *liberal* democracy that are undermined by accounting for prerogative and Lockean proto-utilitarianism. Readings of Locke as a proponent of constitutionalism similarly suffer from how the rule of law is undermined through the aspects of his views here emphasised.

At a first look, this conception of prerogative seems to be rather different from a standard picture of how Locke's thought. On the standard view, Locke is understood to be a defender of legislative supremacy, i.e., the view that the legislature has the primacy in the polity.<sup>65</sup> As Faulkner points out, prerogative is directly “at odds with Locke's elevation of law and legislature” over executive action.<sup>66</sup> For some, taking seriously chapter 14 reveals the *Second Treatise* to be even more internally inconsistent than has previously been suggested.<sup>67</sup> For others, though, prerogative is consistent with the rest of the treatise, though not with some of its modern interpretations as, once prerogative is properly put onto centre stage, many interpretations become untenable.

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<sup>62</sup> Brian Calvert, “Locke on Punishment and the Death Penalty,” *Philosophy* 68, no. 264 (1993): 211–29.

<sup>63</sup> Mark Goldie, “The Grievances of Virginia: Land, People, and Arbitrary Government,” (lecture, online, February 2 2021)..

<sup>64</sup> Friedrich August Hayek, *The Constitution of Liberty* (Chicago, IL: University of Chicago Press, 1978).

<sup>65</sup> Faulkner, “The First Liberal Democrat,” 30. Though note that, historically, the separation between powers has been a lot more muddled than it is now understood to be, and an increase in the legislative's power was not necessarily followed by a proportionate decrease of the power of the crown.

<sup>66</sup> Faulkner, “The First Liberal Democrat,” 32; Schönegger, “The Lockean Prerogative, Natural Law, and Political Power.”

<sup>67</sup> Cf. Mwangi wa-Githumo, “Inconsistencies and Contradictions in some of John Locke's Economic and Political Theories: A Critique,” *Journal of Eastern African Research & Development* (1994): 229–36.

### The Implications of Taking Prerogative Seriously

In the following, we will show how prerogative as outlined above does not lead to an incoherent picture of Locke's political philosophy. Rather, the new picture is one in which the executive is markedly stronger, and its countervailing mechanisms are comparatively weaker. By consequence, our reading of Locke makes him much closer to Hobbes than what is often assumed in both libertarian and democratic readings of Locke. For a fuller picture, it is important to point out that prerogative is not a power only reserved for outward or federative use, as some have claimed.<sup>68</sup> It is also not restricted to mere internal emergencies, in which the executive has to step in under exceptional circumstances to save the commonwealth from ruin.<sup>69</sup> Rather, we have shown that for Locke, prerogative is an essential characteristic of the executive that can be aimed outwards as well as inwards, in emergencies and in standard executive practice, and that interacts fruitfully with the rule of law in the context of a constitutional government.<sup>70</sup> This sentiment is shared by Kathleen R. Arnold, who claims that prerogative is perhaps best understood as now being "deployed through administrative (now bureaucratic) means" in domestic contexts,<sup>71</sup> suggesting a coherent picture of a rather pervasive prerogative from Lockean political theory up until the modern political context.<sup>72</sup>

Further, recall that the only restrictions that Locke places on prerogative are the public good, a violation of which marks the boundary between executive power and to tyranny (II.200, 400), and the right to resistance (II.168, 379-380), which restricts prerogative to what is in the interest of the public.<sup>73</sup> Both of these restrictions are meant as a continual

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<sup>68</sup> Cf. Neocleous, *Critique of Security*, 16–17; Zuckerman, "The Politics of Emergencies"; Feldman, "Judging Necessity," 77.

<sup>69</sup> Cf. Douglas Casson, "Emergency Judgment: Carl Schmitt, John Locke, and the Paradox of Prerogative," *Politics & Policy* 36, no. 6 (2008): 944–71; Goldie, "The Grievances of Virginia."

<sup>70</sup> Clement Fatovic, *Outside the Law: Emergency and Executive Power* (Baltimore, MD: Johns Hopkins University Press, 2009).

<sup>71</sup> Kathleen R. Arnold, *America's New Working Class: Race, Gender, and Ethnicity in a Biopolitical Age* (University Park, PA: Penn State University Press, 2007), 3.

<sup>72</sup> As an example of the relevance of the notion of prerogative to modern political discourse, consider US President Trump's use of Section 232 of the Trade Expansion Act in 2018, in which he imposed tariffs on steel and aluminium on national security grounds without taking recourse to the legislative body of government. Doing so is an act of prerogative, and the arguments proffered, national security concerns in this case, are directly related to the safety of the people, i.e., the public good. As such, we argue that understanding prerogative does not only give us a deeper insight into Locke's thought but also into topics of modern political debate. For an additional case study on the case of Nigeria (1999–2007), see Akuva. Isaac Iorhen Akuva, "Prerogative in John Locke's Two Treatises of Government and the Tyranny of the Obasanjo Presidency in Nigeria's Nascent Democracy: 1999–2007," *Journal of Pan African Studies* 9, no. 6 (2016): 166–85.

<sup>73</sup> George Thomas, "As Far As Republican Principles Will Admit: Presidential Prerogative and Constitutional Government," *Presidential Studies Quarterly* 30, no. 3 (2000): 534–52; Benjamin A. Kleinerman, "Can the Prince rReally Be Tamed? Executive Prerogative, Popular Apathy, and the



check on the executive, ensuring that their actions are in accord with the public good and that the populus functions as the ultimate check on these actions. As such, for Locke, the executive's prerogative is an integral and ordinary part of politics. Historically, this was true because parliament only sat infrequently and for short periods, but it is also a normative consequence of Locke's political theory as we have interpreted it.

We have provided a rough account of Lockean thought that takes prerogative seriously and does not banish it to the side-lines. In what follows, we articulate how this reading of Locke generates challenges for both libertarian and democratic interpretations of Locke that aim to draw a lineage from Locke to their preferred theories.

#### 4. Revisiting Locke and Libertarianism

We argue that Locke should, if at all, be understood as a quite imperfect and uncomfortable predecessor to libertarian thought once prerogative is taken fully into the picture. Locke's licensing of extra-legal prerogative and the overriding force of the public good pose substantive problems for readings of Locke that have drawn heavily on his picture of individual, natural executive power and the primacy of rights of person and property.<sup>74</sup> This critique extends to both right-wing and left-wing libertarianism,<sup>75</sup> though it is especially poignant for the right-wing variant and, in effect, means that any rights-based libertarian theory will at best be able to rely on isolated parts of Locke's philosophy.

A cornerstone for Lockean right-libertarianism is Locke's concept of self-ownership of one's own body and mind. This is extended to other objects outside oneself, such as land or acorns. The process of acquiring those justifiably, Locke tells us, is by mixing it with one's labour, which confers property rights. Rothbard calls this the basic assumption of "natural-rights libertarianism" and states that Locke's thought is "one of the first systematic elaborations of libertarian, individualistic, natural-rights theory."<sup>76</sup> In this section, we show how prerogative poses a serious challenge to libertarian interpretations of Locke and that it is diametrically opposed to the basic libertarian claim of inviolable property rights. One cannot, we argue, claim that Locke was a (proto-)libertarian or ought to be used as a source for libertarian theorising without accounting for the role of prerogative and extra-legal executive powers premised on securing the public good on proto-utilitarian grounds. At best, the relationship is strained, and at worst, untenable.

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Constitutional fFrame in Locke's *Second Treatise*," *American Political Science Review* 101, no. 2 (2007): 209–22.

<sup>74</sup> Lee Ward, *John Locke and Modern Life* (Cambridge: Cambridge University Press, 2010).

<sup>75</sup> Barbara H. Fried, "Left-Libertarianism: A Review Essay," *Philosophy & Public Affairs* 32, no. 1 (2004): 66–92; Peter Vallentyne and Hillel Steiner, *The Origins of Left Libertarianism: An Anthology of Historical Writings* (London: Palgrave Macmillan, 2000).

<sup>76</sup> Rothbard, *The Ethics of Liberty*, 21–2.

The textual passage that best illustrates this deep contradiction is found in the first paragraph of Locke's chapter on prerogative and pertains to the use of prerogative in civil society. In his introduction to the extra-legality of prerogative, Locke goes on to discuss cases in which prerogative might sanction executive actions that transcend human-made law and perhaps also natural law by drawing on the overriding normative claim that, at least from the executive's point of view, the public good ought to trump other values such as individual property rights. However, we do, of course, acknowledge that Locke values individual rights as instrumental and that he, most times, suggests that upholding such rights is the path to achieving the public good. Nevertheless, prerogative and his proto-utilitarian elements preclude turning this reading of Locke into an reasonable portrayal of his general philosophy.

Recall the previous example of the burning house. Locke reminds us that if a house is burning, we ought not to follow the law, be it man-made or natural, blindly and refrain from interfering with the property rights of the individuals owning that house and those next to it if doing so would endanger the public good more generally: laws and natural property rights have to be overridden if the public good is on the line. That is, individuals witnessing this event have an obligation to infringe upon another person's property rights for the public good, thus making them, by definition, violable, a claim that those drawing on Locke for their libertarian project might find it difficult to accept.<sup>77</sup>

We argue that any picture of Lockean political thought that includes prerogative must be compatible either with the notion that private property rights can sometimes be violated if doing so is in the interest of the greater good or with an executive that can pardon those who do violate private property rights, representing a *de facto* legality of exactly this action. Deontological libertarians cannot accept either. The first interpretation directly contradicts the basic libertarian commitment to inviolable individual rights, and the second comes close to the same thing while also explicitly sanctioning an overreaching executive. Either way, a Lockean political theory that properly incorporates prerogative can only with great strain and contortion be labelled libertarian.

The point of this argument is not merely to show that some aspects of Locke's political theory are not inherently supportive of libertarianism. Such a claim would be rather common and largely uninteresting. The main point here is that an essential element of Lockean political theory that is central to his understanding of political power and rights

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<sup>77</sup> It is important to point out here that Locke does not write in the modern terms of weighing up the common good against rights, which is why no specific account of how much common good must be at stake in order to override rights is present. There are multiple interpretations of this specific passage as to who the person who wields the prerogative is. Some claim that the person pulling down the nearby house is rightfully acting against the law by infringing upon another's property rights, while others (e.g., Feldman and Schönegger) argue that the relevant possessor of the anti-legal prerogative is the executive who pardons the individual who infringed upon another's property rights, thus voiding the violation. Irrespective of this dispute, both interpretations agree that in this passage, Locke sanctions action against the law and against property rights for the common good, a notion wholly alien to deontological right-wing libertarian interpreters of Locke. Feldman, "Judging Necessity," 558; Schönegger, "The Lockean Prerogative," 16–17.

is directly contradictory of a main libertarian tenet. As such, we argue libertarians cannot fully embrace Locke as a predecessor and that doing so shows a failure to appreciate the full picture of Lockean political thought and executive power. That is, one cannot justifiably claim, as Rothbard does, that Locke is “the earliest theoretician of libertarian classical liberalism” without accepting deep conceptual contradictions in relation to the extent and power of the executive’s prerogative.<sup>78</sup> In other words, Locke cannot be the “inspiration” for libertarianism that he has been held up to be,<sup>79</sup> and employing notations like “Lockean Libertarian” is mistaken.<sup>80</sup>

## 5. Revisiting Locke and Democracy

We argue that in light of the nature and extent of the executive’s prerogative, a reading of Locke as a democratic theorist is also potentially problematic. This is specifically because of the relationship that prerogative has to the populus: for Locke, the commonwealth’s public good is primary, and prerogative is a fundamental mechanism with which the executive achieves that good. The fact that this prerogative was given to the executive by the people is of secondary nature, as prerogative’s justificatory status depends on the public good in a utilitarian sense, not in a person-respecting sense that would be central to a democratic understanding. By this we mean that a theory that has individual rights at its centre would be at odds with the Lockean picture of the public good we have developed, as the former must sometimes be sacrificed for the latter, as Locke tells us.

Further, the social contract itself is insufficient for democracy. The two main arguments for portraying Locke as a democratic theorist are the majoritarian institutional framework and the power vested in the people to overthrow a tyrant. We hold that both fail in light of a properly understood Lockean executive wielding prerogative for the public good. Furthermore, we have already shown that it is problematic to argue that someone is directly linked to modern democratic theory simply based on these two arguments.

However, note that there are additional, previously advanced, reasons for why Locke ought not to be read as a democrat. Ellen Meiksins Wood, for example,<sup>81</sup> has analysed concepts of representation and suffrage and places Locke firmly within the Whig camp, albeit on the less conservative end, and fails to see a convincing argument in favour of Locke as a quasi-Leveller.<sup>82</sup> Further, the conclusion defended in this paper has, in effect, already been made clear in the late 18th century by John Shebbaere in response to Richard Price: “those who prate of Locke, respecting his inclination to democracy, have

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<sup>78</sup> Rothbard, *For a New Liberty*, 3.

<sup>79</sup> Otsuka, “How to be a Libertarian,” 9.

<sup>80</sup> Varden, “John Locke—Libertarian Anarchism,” 177.

<sup>81</sup> Wood, “Locke against Democracy.”

<sup>82</sup> Cf. David McNally, “Locke, Levellers and Liberty: Property and Democracy in the Thought of the First Whigs,” *History of Political Thought* 10, no. 1 (1989): 17–40.

never examined and compared with it, what he says of the prerogative royal: or they never could, with justice, have applied him, to serve their purposes, as they have done.”<sup>83</sup> This is, effectively, the argument we propose to revive in this article.<sup>84</sup>

Regarding equality of persons, Shapiro claims that because of Locke’s staunch support of the moral equality of persons and his endorsement of majoritarian consent (as opposed to an accumulation of individual consent), the “historical Locke was a democrat.”<sup>85</sup> We do not deny that majoritarian consent is a cornerstone of Locke’s political theory. However, we claim that for anyone to count as a democratic thinker, they cannot regard democracy as merely instrumentally valuable. Recall that for Locke, the moral equality of persons is rooted in God’s ownership of all and, as such, is both universal and (arguably) of non-instrumental value. Yet we claim that the same cannot be said for the democratic decision-procedure of majoritarian consent.

On some interpretations of this majoritarian mechanism, it is the people who democratically grant the executive their power by directly conferring it to them. We find this directly in Locke when he claims that it is the people who “indefinitely left [that Power]” (II.163, 376) in the executive’s hand precisely for the “good of the Community” (II.163, 376). All of government, Locke tells us, cannot have “any other end” (II.163, 376), and the interests of the executive cannot be “distinct and separate” (II.163, 376) from the good of the people. On this reading, it is true to say that the people (quasi-)democratically bestowed upon the executive its powers, though this is ultimately only done for the public good.

We take this to mean that for Locke, democratic decision-making is not an end in itself but rather a mechanism to ensure the best outcomes for all. In the same way in which teleological conceptions of freedom, in which freedom is taken to be only instrumentally conducive to the good, might be seen as problematic, so too, we claim, is the analogous reasoning here, which ultimately results in a picture of Locke as a strange example of a proponent of democratic theory. After all, this proto-utilitarian conception of the executive’s scope of power can be considered to be deeply undemocratic, allowing as it does for blatant deviation from the law. However, non-ideal democratic theory might also allow for democracies that build and support governments that rule on utilitarian principles.

While the scope of the executive’s prerogative is plausibly reined in by Locke’s claim that all humans are equal due to being God’s property, this recourse to God as the limit raises another question for standard interpretations. This is because, as Goldie

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<sup>83</sup> John Shebbeare, *An Essay on the Origin, Progress and Establishment of National Society: In which the Principles of Government, the Definitions of Physical, Moral, Civil, and Religious Liberty, Contained in Dr. Price’s Observations, &c. are Fairly Examined and Fully Refuted: Together with a Justification of the Legislature, in Reducing America to Obedience by Force. To which is Added an Appendix on the Excellent and Admirable in Mr. Burke’s Second Printed Speech of the 22d of March, 1775* (London, 1776), 175.

<sup>84</sup> We were unable to find even a single citation of Shebbeare’s remark.

<sup>85</sup> Shapiro, “John Locke’s Democratic Theory,” 310.

points out,<sup>86</sup> Locke is an ardent pro-natalist who supports his pro-natalism by appealing to a providential framework grounded in God. This suggests that proto-utilitarian, and possibly even fully utilitarian,<sup>87</sup> tendencies are at play in Locke's understanding of the divine limits to prerogative. We argue that such a pro-natalist line of reasoning is hardly compatible with democratic theory, as it does not give person-respecting reasons much weight. However, it is also at odds with standard utilitarianism, which gives maximising reasons precedence over rights.

The second feature of Lockean political thought often taken to be emblematic of his democratic tendencies is his concept of the appeal to heaven (II.168, 379). Locke writes:

Tho' the People cannot be Judge, so as to have by the Constitution of that Society any Superiour power, to determine and give effective Sentence in the case; they have, by a law antecedent and paramount to all positive Laws of men, reserv'd that ultimate Determination to themselves, which belongs to all Mankind, were there lies no Appeal on Earth, viz. to judge whether have just Cause to make their Appeal to Heaven (II.168, 379–80).

This “ultimate determination” to which all mankind has a right is a distinctly democratic notion. As Harris points out, though, the people are not “entitled to settle a disagreement between themselves and government according to their judgment as to the rights of wrongs of the situation.”<sup>88</sup> Rather, the “people shall be judge of whether or not the power they have entrusted the magistrates has been properly used.”<sup>89</sup> Although important, this popular right of judgment seems to give more support to constitutionalist readings of Locke that emphasize rule of law than to democratic readings.

Further, consider Locke's claim that “if there comes to be a question between the Executive Power and the People, about a thing claimed as a Prerogative; the tendency of the exercise of such Prerogative to the good or hurt of the People, will easily decide that question” (II.161, 375). Note Locke's specific ranking of the good (or the hurt) of the people as ultimately deciding that question, again reverting to (proto)-utilitarian justifications of mechanisms otherwise seen as final. In other words, the right to rebellion is not properly seated in the people themselves without recourse to a further value; a violation of individual rights or moral equality does not necessarily justify such an action. Importantly, public decisions about what has harmed the people face a number of serious

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<sup>86</sup> Mark Goldie, “The Grievances of Virginia: Land, People, and Arbitrary Government,” lecture, online, February 2, 2021.

<sup>87</sup> By this we mean the population ethical term denoting a theory according to which the goodness of a world is determined by the total overall happiness or utility.

<sup>88</sup> James A. Harris, “Treatises of Government and Treatises of Anarchy: Locke versus Filmer Revisited,” *Locke Studies* 19 (2020): 23.

<sup>89</sup> Harris, “Treatises of Government and Treatises of Anarchy,” 23.

epistemological challenges, from concerns of group knowledge to peer disagreement. However, the central point on a Lockean picture is that the ultimate value at stake here is, again, not the individual rights but rather the people and their welfare—a proto-utilitarian notion that is potentially opposed to stronger democratic readings of Locke. As such, we again find in the public good, and not in the democratic notion of majority, a “wellspring of institutional legitimacy.”<sup>90</sup>

In summary, then, for Locke, the public good and prerogative as the best way of ensuring it have primacy and are at the centre stage of his political theorising. What people can democratically consent to or rebel against is best understood as secondary to the public good, as the prince is only a prince for as long as his actions promote the public good, and the appeal to heaven is predicated on a notion of the public good. A democratic theory might reverse this picture and give the people primacy. As we have argued, this is not the case for Locke, and we agree with Shebbaere that those who read Locke as a democrat “have never examined...what he says of...prerogative.”<sup>91</sup>

## 6. Conclusion

In this paper, we have pointed out how prerogative has been underappreciated in much of the scholarship on Locke, despite being a live issue that is clearly not settled or sufficiently understood. We went on to show how this neglect undermines two lines of interpreting Locke. We have argued that it certainly undermines and potentially invalidates the libertarian interpretation, while it is possible but not fully certain that it invalidates the democratic interpretation. If democracy is mainly understood as popular rule, accounting properly for prerogative need not change the core of these interpretations, but it will undermine the portrayal of Lockean democracy as liberal or even libertarian.

Rather than being compatible with libertarianism and democracy, we have argued that Locke is better understood as proposing a proto-utilitarian theory, in which majoritarian decision-making institutions and property rights are primarily instrumentally valuable and are guided by exceedingly strong executive power. We have shown that the libertarian, and in part democracy-centred, interpretations of Locke are thus untenable and ought to be revised in favour of understanding Locke’s political thinking as revolving around the executive’s prerogative. That is, we have drawn a picture of Locke in which the executive’s power is restricted only by the public good, which also functions as a normative foundation for pro-natalist policies justified on the same grounds. This (proto) utilitarian reading of Locke has so far been largely underappreciated to the detriment of a proper understanding of Locke’s political philosophy.<sup>92</sup>

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<sup>90</sup> Shapiro, “John Locke’s Democratic Theory,” 309.

<sup>91</sup> Shebbaere, *Origin, Progress and Establishment of National Society*, 175.

<sup>92</sup> We are grateful for helpful feedback from James Harris and Theron Pummer on an earlier version of this paper.

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