Foreword:

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# Locke and the Jesuits on Law and Politics

## Introduction

Any evaluation of the influence of the Jesuit intellectual tradition on John Locke's thought about law and politics faces obvious difficulties. Locke often speaks about the worthlessness of the scholastic method of proceeding in philosophy. Following this, Locke's moral philosophy aims at demonstrative certainty grounded in empirically derived ideas; he is not interested in casuistry and disputation. Furthermore, much of Locke's political work can be seen as a defense of the 1688 Glorious Revolution in which the Catholic James II of England was replaced by the Protestant William of Orange and his wife Mary, James II's daughter. Finally, Locke famously did not extend toleration to Catholics. Given the seemingly anti-Catholic tenor of Locke's thinking and political orientation, it would be unsurprising if one were to conclude that Locke and the Jesuits were strict opponents in their views of ethics and politics.

Some critics contemporary with Locke, however, grouped him with the Jesuits in political matters. In a sermon preached several years after Locke's death, Luke Milbourne, a Tory cleric, defended the scriptural basis of the doctrine of passive obedience. In the sermon, he collectively labels 'Mariana, Suarez, Bellarmine, Sanctarellus, Hotman, Buchanan, Bradshaw, Milton, Baxter, Owen, Goodwin, Sidney, [and] Locke' as opponents to this view; furthermore, he labels them all as one 'Loyal and Religious Fraternity'.[1] What is interesting is that the first four figures are all Jesuits. One, of course, needs to be careful in treating claims like these as evidence. A polemic context is not the best place to find accurate representations of the views of a given figure's enemies. Indeed, Tories were wont to exploit the emotive appeal of associating Whigs like Locke with Jesuits and other characters who might be seen as seditious and revolutionary. Nevertheless, the label above prompts a comparison between Locke and the Jesuits with whom he was grouped by his opponents. I argue that there are some important and interesting points of continuity between Locke and the Jesuit intellectual tradition in the 16th and 17th centuries (especially Francisco Suárez). The purpose of this essay is to draw out these continuities in a way that helps to illuminate Locke's thought in the area of law and politics.

## I: Law and Theological Voluntarism

Locke's theory of natural law bears some important similarities to that of Francisco Suárez in that both are moderate theological voluntarists about the moral laws of nature. It is best to think of theological voluntarism not as a single position, but as a spectrum of views ranging from extreme to moderate. In relation to ethics, an extreme voluntarist holds that no moral properties obtain prior to an act of divine willing and that there is no essential connection or congruence between human nature and certain actions. The extreme voluntarist, for instance, will say that it is possible for God to command us to steal and that there are no facts about our nature that could constrain God's command in this case. A moderate

[1] Luke Milbourne, *The Measures of Resistance* (London, 1710), p. 3. The sermon was preached on a day of fasting set aside to lament the execution of Charles I in 1649. For a brief discussion of the Whig use of Jesuit sources and the Tory response, see Mark Goldie, 'John Locke and Anglican Royalism', 73.

voluntarist, however, holds that there are some moral properties that obtain prior to an act of divine willing or that human nature conditions the kinds of commands that God can make with respect to it. But for the moderate voluntarist, a divine command is necessary for ethical precepts to have their full normative force. In contrast, a theological intellectualist or naturalist will hold that the moral precepts of the natural law obtain prior or apart from any commands (and may even obtain, *per impossibile*, if God did not exist or did not exercise any providence over human beings). This, of course, is to examine theological voluntarism from the perspective of moral properties, but related to this is a view of the divine psychology.

The basic distinction between theological voluntarism and intellectualism is that the former position holds that the divine will is prior to the understanding in the creation of moral properties and that the latter holds that the understanding is prior to the will. For the voluntarist, God understands what is good and evil in reference to what has in fact previously been decreed to be good or evil by God's will. The intellectualist, however, holds that God understands the nature of good and evil without reference to any act of will. And the moderate voluntarist holds that God understands some moral properties without reference to an act of will. Both Locke and Suárez are moderate voluntarists as they hold that the content of the law of nature is given by the nature of human beings, but that the full normative force of the law can only come from a divine command.

Concerning the character of the natural law, Suárez takes himself to be steering a middle course between the extremes of both an overly intellectualistic and an overly voluntaristic account of law. The first extreme holds that the natural law is entirely demonstrative (or indicative): in other words, the law merely indicates what is intrinsically good and should be done, and what is intrinsically evil and should be avoided.[2] In this view, the natural law consists of the set of actions that are in conformity with the rational nature (and which are respectively prescribed or prohibited). Suárez ascribes this view to Gregory of Rimini and others, but his principal target is Gabriel Vásquez, a fellow Spanish Jesuit, with whom he often disagreed.[3] The second extreme holds that the natural law is entirely preceptive: in other words, the natural law consists entirely of divine commands.[4] The list of figures who hold this view,

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[2] *Tractatus de Legibus ac Deo Legislatore* (hereafter DL) II.vi.3. 'On this point, the first opinion which we shall discuss is, that the natural law is not a preceptive law, properly so called, since it is not the indication of the will of some superior; but that, on the contrary, it is a law indicating what should be done, and what should be avoided, what of its own nature is intrinsically good and necessary, and what is intrinsically evil.' *Selections from Three Works of Francisco Suárez* (hereafter SFTW), vol.II, 189.

'In hac re prima sententia est, legem naturalem non esse legem praecipientem proprie, quia non est signum voluntatis alicuius superioris, sed esse legem indicantem, quid agendum, vel cavendum sit, quid natura sua intrinsece bonum, ac necessarium, vel intrinsece malum sit.' *Opera Omnia,* vol. V (hereafter OO), 104.

[3] The list of intellectualists is given in DL II.vi.3, but a discussion of Vásquez occurs in II.v.2 and following sections. For a fuller discussion of Suárez's dispute with Vásquez, see J.A. Fernández-Santamaría, *Natural Law, Constitutionalism, Reason of State, and War: Counter-Reformation Spanish Political Thought* (vol.I), 97-103. Luis de Molina also held a more naturalist or intellectualist position. For an account of Molina's view that law is an act of reason, see Annabel Brett 'Luis de Molina on Law and Power' in *A Companion to Luis de Molina*, 175-176. For a general account of Molina's view of the natural law, see Diego Alonso-Lasheras, *Luis de Molina's De Iustitia et Iure: Justice as Virtue in an Economic Context,* 67-84. Unlike Suárez, Molina countenances the impious hypothesis according to which our moral obligations would obtain even if, *per impossibile*, God did not exist or did not exercise providence.

[4] DL II.vi.4. 'The second opinion, at the opposite extreme to the first, is that the natural law consists entirely in a divine command or prohibition proceeding from the will of God as the Author and Ruler of nature; that, consequently, this law as it exists in God is none other than the eternal law in its capacity of commanding or prohibiting with respect to a given matter.'

according to Suárez, include William of Ockham and two of his prominent followers at the University of Paris, Pierre d'Ailly and Jean Gerson. In this view, the natural law is basically divine positive law that is 'natural' only in the sense of being known through natural reason. Suárez's *via media,* though, holds that natural law is simultaneously both preceptive and demonstrative.[5] There are actions that are intrinsically good or evil and the set of these actions provides the content of the natural law. But in order for these actions to properly form the subject matter of a law, they must be either be prescribed or prohibited by the will of a sovereign.[6] A consideration of an action's conformity or non-conformity with our nature is not enough to generate an obligation to respectively perform or avoid that action.[7] An act of will is required in order to impose such an obligation. Accordingly, it is essential to the natural law that it both indicates to us what is good and what is evil and obligates us to perform and avoid these things: God's command thus presupposes the intrinsic goods and evils, but it is the divine will that imposes an obligation.[8]

Locke expresses moderate voluntarism about the laws of nature quite clearly in his 1664 *Essays on the Law of Nature* (hereafter, ELN). In this text – written while he was Censor of Moral Philosophy at Christ Church, Oxford – Locke describes the law of nature as the decree of the divine will, the formal cause of law being the decree of a superior; but he also identifies the law with what is in conformity with rational nature:

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SFTW, 190.

'Secunda sententia huic extreme contraria, est, legem naturalem omnino positam esse in divino imperio, vel prohibitione procedente a voluntate Dei, ut auctore et gubernatore naturae, et consequenter hanc legem ut est in Deo, nihil aliud esse quam legem aeternam et praecipientem, vel prohibentem in tali materia.' OO, 105.

[5] DL II.vi.5. 'Not only does the natural law indicate what is good or evil, but furthermore, it contains its own prohibition of evil and command of good.' SFTW, 191.

'Lex naturalis non tantum est indicativa mali et boni, sed etiam continet propriam prohibitionem mali, et praeceptionem boni.' OO, 105.

[6] DL II.vi.7. '[T]he natural law, as existing in man, points out a given thing not only as it is in itself, but also as being forbidden or prescribed by some superior.' SFTW, 193.

'[L]ex naturalis, prout in homine est, non solum indicat rem ipsam in se, sed etiam ut prohibitam, vel praeceptam ab aliquo superiori.' OO, 106.

[7] Suárez has a subtle position here. He thinks that there are natural *debita* that exist apart from a divine command, but that these *debita* do not rise to the level of an *obligatio.* Suárez makes a similarly subtle distinction between *peccata* and *transgressiones.* The key idea is that a complete moral obligation requires a command. Reijo Wilenius notes that while Suárez thinks that certain features of the moral order are independent of God's will (as expressed in the counterfactual situation that acts would be sinful even if God had issued no commands) this does not commit him to the view that the natural law would still have the same legal character if God did not exist (*The Social and Political Theory of Francisco Suárez*, 59-60).

[8] DL II.vi.13. '[A]lthough the additional obligation imposed by the natural law is derived from the divine will, in so far as it is properly a preceptive obligation, nevertheless [such action on the part of] that will presupposes a judgment as to the evil of falsehood, for example, or similar judgments.' SFTW, 199.

'[Q]uamvis ergo obligatio illa quam addit lex naturalis, ut proprie praeceptiva est, sit ex voluntate divina, tamen illa voluntas supponit judicium de malitia, verbi gratia, mendacii et similia.' OO, 109.

> The law of nature can be described as being the decree of the divine will discernible by the light of nature and indicating what is and what is not in conformity with rational nature, and for this very reason commanding or prohibiting.[9]

While Locke thinks that the natural law has an indicative capacity (i.e., it indicates to us what conforms to our rational nature), he does not think that the law consists in a dictate of reason (*dictatum rationis*), as it is something given to us by a superior power (ELN I). Unlike an intellectualistic understanding of the natural law, a simple consideration of our rational nature does not yield this law. (Reason, however, is important as it is the tool by which we grasp the natural law.) To understand what Locke means here, it is important to discuss the distinction that Locke develops between an effective and a terminative obligation. An effective obligation refers to the source of an obligation – namely the will of a sovereign legislator – while terminative obligation refers to the content of an obligation.[10] A complete obligation, we might say, requires both an effective and a terminative obligation. In order to be bound by the natural law, it is not enough to know that God has willed a law, if we do not know the content of the law; this content must be promulgated in some way. Locke thinks that we can infer some of the content of the natural law from a consideration of our nature.

Locke thinks that our constitution shows us that we are sociable beings, for whom society is necessary in order to preserve ourselves (*Essay* IV, 157). And since God has designed our constitution, we can infer that God has made us to be sociable. From this we infer that we have a duty to be sociable. Locke thinks that the law that God has willed can be inferred from the ends set for us and that these ends are evident in our constitution. What undergirds this inference is the idea of harmony – or *convenientia* – for we know that God will harmonize the natural law with our constitution:

> [The law of nature] is a fixed and permanent rule of morals, which reason itself pronounces, and which persists, being a fact so firmly rooted in the soil of human nature. Hence human nature must needs be changed before this law can be either altered or annulled. *There is, in fact, a harmony between these two*, and what is proper now for the rational nature, in so far as it is rational, must needs be proper forever, and the same reason will pronounce everywhere the same moral rules.[11]

Locke says that there is a harmony between human nature and the natural moral law given by God. And there is a necessity involved in this harmony, for presuming that human nature remains the same, the natural law is immutable. Accordingly, we can determine the content of the natural law, i.e. the terminative obligation of the law, from a consideration of our capacities. But only knowing that there is some determinate content – i.e. a set of actions that include things we should perform and avoid – does not yield an obligation unless we know that the content is willed into law by God. And as we know that

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[9] ELN I, 111.

'[L]ex naturae ita describi potest quod sit ordinatio voluntatis divinae lumine naturae cognoscobilis, quid cum natura rationali conveniens vel discoveniens sit indicans eoque ipso jubens aut prohibens.'

[10] Locke discusses this distinction in ELN VI, 185-187.

[11] ELN VII, 199. '[Lex naturae est] fixa et aeterna morum regula, quam praesenti commodo natum, quam dictat ipsa ratio, adeoque humanae naturae principiis infixum haeret; et mutetur prius oportet humana natura quam lex haec aut mutari possit abrogari; *convenientia enim est inter utramque,* quodque jam convenit naturae rationali, quatenus rationalis est, in aeternum conveniat est necesse, eademque ratio easdem dictabit ubique morum regulas.' Ibid*,* 198.

the content derives from God's will, we also have an effective obligation to follow the law.

It follows from what Locke has to say about obligation that he has a voluntaristic understanding of morality. Human nature, for Locke, does not serve as a sufficient foundation for the natural law, for God must will the law in order for it to be effectively binding. We should see God's will and human nature, then, as complementary features of a single theory of obligation. God wills the law of nature according to what is in conformity with human nature. The terminative aspect of the law is supplied by our nature, but the effective aspect is supplied by God's will. The divine will is not superfluous here, for it is necessary to generate an obligation. Without it, the natural law would not obtain. This view of the natural law is also reflected in Locke's mature work on moral philosophy. In 'Of Ethick in General', a draft intended to be the final chapter of the *Essay concerning Human Understanding*, Locke describes what is involved in knowing the duties of the natural law in a way that is similar to his earlier *Essays*: establishing morality 'upon its proper basis' involves both knowing (1) that God exists and issues commands and (2) the content of those commands (§12, 304). Locke never felt satisfied with his treatment of the natural law, which is evident from the fact that he never published his early *Essays,* despite pleas from friends, nor did he develop 'Of Ethick in General' in this regard and include it in later editions of the *Essay.* But while Locke never offered a complete treatment of moral philosophy in his later works, he still maintains a moderate voluntarism about the laws of nature. I have also argued elsewhere that there are good reasons for thinking that developments in Locke's thinking about ethics, including his adoption of hedonism, represent not a divergence from his commitment to the natural law, but an evolution of this commitment.[12]

Locke, like Suárez, is a moderate voluntarist about the law of nature. God's will is conditioned by features of human nature in determining the law of nature. But human nature on its own is insufficient to generate moral obligations; for the law of nature to obtain, God must will that certain actions be performed and others avoided. A possible historical point of contact between Locke and Suárez is Nathaniel Culverwel's 1652 *Elegant and Learned Discourse on the Light of Nature*; in the work, Culverwel explicitly cites and defends at length the theory of natural law that Suárez develops in his *Tractatus de legibus ac deo legislatore*. Wolfgang von Leyden thinks that Culverwel provides a 'stimulus' for the doctrines that Locke develops in the *Essays*: he argues that Locke and Culverwel are similar with regard to both their voluntarism and empiricism about the law of nature.[13] And in a footnote on the passage described above on their being a harmony between the law of nature and human nature, von Leyden cites Culverwel as a source.[14] While von Leyden holds that Culverwel (and Suárez by extension) is only one among other sources that influence Locke, it is still important to qualify the emphasis that he places on Culverwel by noting that there are no references to Culverwel in Locke's early notebooks and that Culverwel's text is not included in the recorded catalogue of Locke's personal library. Nevertheless, the absence of concrete textual evidence of influence doesn't necessarily mean that Locke read neither Culverwel nor Suárez in preparing his lectures on the natural law. Indeed, the texts of both Culverwel and Suárez would have been available to Locke. And indeed, later on in life, Locke makes explicit reference to Suárez's *De legibus* in his interleaved Bible.[15] What is interesting, however,

[12] See Rossiter, 'Hedonism and Natural Law in Locke's Moral Philosophy', *Journal of the History of Philosophy* (forthcoming April 2016).

[13] ELN, 'Introduction', 39-43.

[14] Ibid, 199n1.

[15] MS Locke 16.25, f 812. It is unclear which edition of the *De legibus* Locke used, but it is plausible that he may have used an edition published in London by Benjamin Tooke and associates in 1679. There were, though, older editions of the *De*

is that Locke and Suárez share some important similarities in their respective treatments of the natural law. Both hold that a divine command is necessary to establish moral obligations, but that the scope of God's legislative will is conditioned by the nature of the creatures that God has made.

## II: Politics

Concerning politics, Locke's theory of natural rights and political power bears important affinities with the work of Juan de Mariana, Robert Bellarmine, and Suárez. Like the Jesuits, Locke thinks that the basis of *potestas politica* ultimately lies with the people. Locke's *Two Treatises of Government* are largely directed against the doctrine of the divine right of kings advanced in Robert Filmer's *Patriarcha*. In arguing for the connection between regal authority and paternal authority, Filmer explicitly sets himself against Bellarmine and Suárez. In refuting Filmer, Locke comes to a position that is, in many ways, quite close to these earlier Jesuits. In this section, I want to focus on two related conceptual connections between moderate theological voluntarism about the moral laws of nature and theories of limited government: first, moderate voluntarism coheres with a rejection of absolute sovereign power; and second, regarding social contract theory, it shapes a view of the state of nature in which the laws of nature obtain and moderate the kind of contract made entering into civil society.

### *Moderate Voluntarism and Civil Authority:*

Following Thomas Aquinas, the Jesuit Spanish Neo-Scholastics think that sovereign power is bounded by the natural law and oriented to the common good. Human law – the law enacted by civil authority – represents a further specification of the general principles of the natural law. Summarizing Aquinas, Suárez says the following about the nature and necessity of human law:

> [The] necessity [of the human law] springs from the fact that the natural, or the divine law, is of a general nature, and includes only certain self-evident principles of conduct, extending, at most, to those points which follow necessarily and by a process of obvious inference from the said principles; whereas, in addition to such points, many others are necessarily involved in the case of a human commonwealth in order that it may be preserved and rightly governed, so that it was necessary for human reason to determine more particularly certain points relating to those matters which cannot be defined through the natural reason alone, a determination that is effected by means of human law; and therefore, such law was most necessary.[16]

Suárez goes on to argue that our social nature leads us to community and that each community requires a law to govern it toward the common good in its particular circumstances.[17] The civil magistrate takes

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*legibus* circulating in England prior to this time.

[16] DL I.iii.18 (SFTW, 48)

'[N]ecessitas [lex humana] manat ex eo, quod lex naturalis vel divina generalis est, et solum complectitur quaedam principia morum per se nota, et ad summum extenditur ad ea quae necessaria, et evidenti illatione ex illis principiis consequuntur; praeter illa vero multa alia sunt necessaria in republica humana ad ejus rectam gubernationem et conservationem; ideo necessarium fuit ut per humanam rationem aliqua magis in particulari determinarentur circa ea, quae per solam rationaem naturalem definiri non possunt, et hoc fit per legem humanam, et ideo fuit valde necessaria.' OO, 12.

[17] Suárez gives a fuller discussion of the relationship between human law and the common good in DL I.vii.4-5.

the natural law as a set of general principles guiding its authority; the magistrate crafts laws that represent further determinations of law oriented toward the human good. Suárez describes the supreme civil authority in a community as a legislative power (*potestas legislativa*), following the argument that the civil authority must govern through law.[18] Francisco T. Baciero Ruiz notes that the idea of the supreme authority as a legislative authority represents an important conceptual similarity between Locke and Suárez.[19] Beyond this, Locke sees the role of the magistrate as similar to Suárez; the magistrate, bound by the set of general principles contained in the natural law, crafts more determinate laws that help to realize the common good in a particular community.

Locke first addresses the issue of the law of nature and the scope of the magistrate's authority in his *Two Tracts on Government* – written in the early 1660s against the Nonconformist Edward Bagshaw. The basic question of the debate with Bagshaw is whether or not the authority of the civil magistrate extends to the regulation and determination of *adiaphora* – things indifferent – in the context of religious worship (such as the wearing of surplices, bowing at the name of Jesus, kneeling at the sacrament, etc.). Locke's defense of the magistrate's authority to regulate these *adiaphora* rests on his understanding of subordinate forms of law. It is important to note that Locke later changes his view on the regulation of public worship, not by changing his view of the nature of law, but by excluding these things from being relevant to the common good (and thus placing them outside the purview and competency of the magistrate's authority.)

In the *Second Tract on Government*, Locke divides laws into four categories: divine, political, fraternal, and private[20]. Divine law represents the highest form of law, which has God as its author, and all other laws are subordinate to it. Political – or civil – laws represent the next highest form of law and they have the magistrate as their author; both the fraternal and the private law are subordinate to them. There are two important senses in which the lower forms of law are subordinate to those which are higher. First, the precepts of a lower law can never legitimately trump the precepts of a higher one. If, for example, the divine law forbids theft, the magistrate cannot authorize a law commanding theft (as such a law would contravene the divine law). Second, the scope of each lesser form of law is the set of things left indifferent by the higher forms of law. The divine law leaves a set of actions that are morally neutral and it is these actions that lie within the purview of the magistrate's power. According to Locke, the magistrate has responsibility for the care of the community, which includes the power of determining and altering laws in accordance with what the magistrate decides to be best for the common good and the preservation of peace.[21] By creating and promulgating laws, the magistrate adds a new set of obligations beyond the divine law. In other words, the civil law decreases the set of things that are indifferent. Locke is clear that the magistrate also has the authority to change the civil law within the bounds of providing for the welfare of society:

> But since the responsibility for society is entrusted to the magistrate by God and since on the one hand all the evils likely to befall a commonwealth could not be guarded against by an unlimited number of laws, while on the other to have exactly the same constitution would not always be an advantage to a people, God left many indifferent things

[18] DL III.i.6.

[19] Francisco T. Baciero Ruiz, 'Francisco Suárez como gozne entre la filosofía política medieval y John Locke', 270-271.

[20] *Second Tract on Government* in *Political Essays*, 63.

[21] *Second Tract*, 56. Furthermore, Locke is explicit that this responsibility has been given to the magistrate by God (64).

> untrammelled by his laws and handed them to his deputy the magistrate as fit material for civil government, which, as occasion should demand, could be commanded or prohibited, and by the wise regulation of which the welfare of the commonwealth could be provided for.
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> *Second Tract*, 64

Locke is clear here that he thinks that the magistrate is above the civil law as he says that the 'authors of laws are, by their power, superior to the laws themselves and to the subjects they govern' (*Second Tract*, 63). In the *First Tract on Government*, Locke describes the magistrate as having 'an absolute and arbitrary power over all the indifferent actions of his people'.[22] The magistrate exercises authority for the sake of the common good, and should the magistrate enact laws designed to advance private interest then the magistrate will be subject to God's judgment. So it is important to emphasize that Locke doesn't mean that the magistrate exercises God's authority according to random determinations of the will: indeed, the magistrate's authority is circumscribed by the natural law (which promotes the common good). In his mature work, Locke will identify the civil authority as a legislative authority bound by the common good.

It is worthwhile to compare Locke and Suárez with Aquinas in relation to law and authority. According to Aquinas, law represents a promulgated ordinance of reason directed toward the common good that is made by one who has care of the community (*Summa Theologiae* I-II, q.90, a.4). Like Aquinas, Locke thinks that law has its source in one who has care of the community and that law should promote the common good. But Locke does not describe the law as an ordinance of reason: he states that it is the magistrate's 'expressed will which establishes obligation' (*Second Tract*, 62). Furthermore, Suárez is also clear that right reason alone in the mind of the prince does not constitute law; rather, an act of will in addition to this reason is necessary for there to be a law (DL I.vi.23).[23] This is not to say that the law is irrational in Locke's estimation, but that the relevant and primary faculty in the creation of an obligation is will and not reason (and similarly for Suárez). Accordingly, Locke speaks in the language of power and command. But while Locke uses this kind of language, it is useful to contrast his view with a more voluntarist conception of regal power.

In describing regal authority and the divine right of kings, James I argues that kings are the 'authors and makers of the Lawes, and not the Lawes of the kings'.[24] He goes on to support this point by arguing that all of his subjects receive and maintain their holdings based on his authority. Furthermore, parliament on its own may enact no laws; it is only by adding the king's scepter to a law that it has its force. All of this comports with the voluntarist idea that it is the will of the sovereign that legitimates laws. But the key difference between James I and the moderate voluntarism expressed by Locke and Suárez is that James I thinks that the only limit to kingly authority is not through natural law, but through covenant. The king binds himself to a particular legal order through a covenant with this people; in other words, the king is bound to a certain legal order by virtue of making an oath to uphold it.[25] But in Locke's

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[22] *First Tract of Government*, 9.

[23] For an account of law as the act of the prince, see Harro Höpfl, *Jesuit Political Thought: The Society of Jesus and the State, c. 1540-1630,* 277-280.

[24] 'The Trew Law of Free Monarchies', *Political Works of James I*, 62. Both Suárez and Bellarmine opposed James I's political writings in numerous works. For an account of the controversy between Bellarmine and James I, see Stefania Tutino, *Empire of Souls: Robert Bellarmine and the Christian Commonwealth,* 117-158. See also Bernard Bourdin, *The Theological-Political Origins of the Modern State: The Controversy Between James I of England and Cardinal Bellarmine.*

[25] See J.H.M. Salmon, 'Catholic Resistance Theory, Ultramontanism, and the Royalist Response', 247-249. For the connection

view, the authority of the magistrate is circumscribed by the natural law. The magistrate does not have absolute authority to issue laws; the will of the magistrate must be conditioned by the divine law and the common good in order to produce legitimate commands.

I want to suggest that Locke's moderate view of civil authority is conceptually connected to moderate voluntarism concerning God's legislative authority. In the *Second Tract*, Locke's discussion of the subdivision of laws suggests that each of these categories are structurally similar (63). Thus there is a certain analogy between the divine legislator and the civil legislator. Just as the magistrate is above the civil law, God is above the divine law and may act supra-legally in the determination and alteration of the divine law. What this means is that, prior to an act of legislation, things are neither morally good nor evil; in other words, they are indifferent. The reason for this is that an act of will on the part of a legislator is necessary to turn an action from something indifferent into something that is morally obligatory. But Locke is clear that God cannot make a creature and issue a law that frustrates its nature. The *telos* of the creature sets bounds to the kinds of laws that God can frame. What this means is that God as divine legislator must realize the common good of creatures through the divine law. Likewise, civil legislators are bound by the common good of their subjects in the laws that they enact.

This basic picture remains in Locke's mature work. In the *Essay concerning Human Understanding* and a short fragment titled 'Of God's Justice', Locke maintains a perfect being theology in which he makes clear that God's power is regulated by perfect wisdom and goodness.[26] This means that God's providence must be exercised in the most perfect way, which includes framing commodious laws for the creatures under his care. Divine authority, then, is bound by the common good of creatures. In the *Second Treatise on Government*, Locke argues that the civil authority is bounded by the natural law and that its power can be exercised no further than the preservation of society:

> The Obligations of the Law of Nature, cease not in Society, but only in many Cases are drawn closer, and have by Humane Laws known Penalties annexed to them, to inforce their observation. Thus the Law of Nature stands as an Eternal Rule to all Men, *Legislators* as well as others.
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> *Second Treatise*, §135, 357-8

In this section, Locke is clear that the legislative power does not have an absolute, arbitrary authority: as in the *Two Tracts*, the civil authority is bound by the law of nature and further determines rules in accordance with it. One key difference, however, between Locke's earlier and mature work is that the magistrate has a more limited scope of authority. In the *Two Tracts*, the magistrate is accorded the authority to craft rules governing everything left indifferent by the natural law, including forms of worship. But Locke's later work on toleration limits the scope of the magistrate's authority in this regard: the magistrate's purview concerns solely those things related to the common good. Forms of worship, so long as they do not conflict with the common good, fall outside the magistrate's authority. Nevertheless, the same conception of moderate authority is maintained throughout Locke's work and, as I have shown above, it coheres with moderate voluntarism about the laws of nature. This moderate voluntarism also shapes the conception of the state of nature from which civil society emerges.

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between covenant and the distinction between absolute and ordained powers, see Francis Oakley, 'The Absolute and Ordained Powers of God and King', 679-686.

[26] *Essay* III.vi.11 and 'Of God's Justice', in *Political Essays,* 277-278.

*Natural Law and the State of Nature:*

Both Locke and the Jesuits discussed above are committed to the thesis that the moral laws of nature both obtain and are intelligible apart from civil society. The Spanish Neo-Scholastics held that civil society is something that is deliberately brought into being by human community in which there is knowledge of the natural law. In this sense, there is an idea of a state of nature from which civil society is formed, all in accord with the natural law and the common good. As we saw above, Suárez holds that civil authority is both bound by the natural law and necessary for the realization of the common good in particular community. In accord with later social contract theory, he also thinks that we leave the pre-political condition through the medium of consent.[27] Furthermore, Luis de Molina even uses the phrase '*status naturae*' to describe the pre-political condition of human beings. Mariana describes a two-stage process of contracting: first, in the *pactum societatis*, there is an agreement to form a society; and, second, in the *pactum subjectionis,* there is an agreement to set up a particular ruler over that community.[28] And against the view that Adam held both domestic and political power, the Jesuits hold that the state of nature is one of equality.[29] Consequently, there exists no right of dominion in the state of nature. This serves to undermine the patriarchal defense of the divine right of kings by holding that Adam held only domestic power and political power given the equality in the state of nature.

In his work *Patriarcha,* Robert Filmer defends the divine right of kings by means of equating royal and paternal power. The *Patriarcha* was first published posthumously in 1680 in the context of the exclusion crisis in which certain members of the House of Commons attempted to exclude the Catholic James, Duke of York, from the line of succession to the throne. In his text, Filmer takes aim explicitly at Suárez and Bellarmine as defenders of the view that Adam's authority was restricted to the domestic sphere. In one of his criticisms of Suárez, Filmer argues that there is no sharp boundary between domestic and political authority in the case of Adam given that he lived for 930 years and would thus be the *paterfamilias* to a great number of people (including his children, children's children, etc.).[30] Filmer also raises a number of objections to Suárez's view that political society is formed by a decision of the community. The conception of sociability, however, employed by the Jesuits contains within it the idea that human beings are social creatures who need one another to flourish. And so, political communities are formed by social human beings who authorize government bound by the end of realizing the common good of society. And in this view, the community maintains its ability to choose and even alter its form of government as befits the maintenance of the common good. Another text that was published (as a reprint in 1681 – the original being published in 1594) during the polemics of the exclusion crisis was

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[27] Daniel Schwartz argues against some commentators that Suárez does employ a doctrine of consent and that he should be placed in the tradition of social contract theory. See his 'Francisco Suárez on Consent and Political Obligation'. And for a general view of Suárez's view of the social contract, see Höpfl, *Jesuit Political Thought: The Society of Jesus and the State*, *c. 1540-1630,* 248-253.

[28] For a discussion of this distinction, see Arthur P. Monahan, *From Personal Duties Towards Personal Rights: Late Medieval and Early Modern Political Thought*, *1300-1600*, 163. And for an account of Mariana's view of the beginning of civil society, see Höpfl, *Jesuit Political Thought: The Society of Jesus and the State*, *c. 1540-1630,* 239-248.

[29] For a fuller discussion of this theme, see Quentin Skinner, *The Foundations of Political Thought*, II, 156-157. And for a specific comparison of Locke and Suárez, see Baciero Ruiz, ''Francisco Suárez como gozne entre la filosofía política medieval y John Locke', 268-269. For an account of the medieval origins of the concepts of the state of nature and social contract in the neo-scholastics, see Monahan, *From Personal Duties Towards Personal Rights: Late Medieval and Early Modern Political Thought*, *1300-1600*, 131-142.

[30] *Patriarcha*, 15-16.

the English Jesuit Robert Parsons' *A Conference About the Next Succession to the Crown of England*. Parson's book denies the necessity of hereditary succession and argues for the community's power to choose the authority governing it. Parsons holds that the community may replace its head for the sake of the common good if it turns out that the prince is destructive of the common weal.[31] In making this point, Parsons text supports the Whig cause. Locke – a great supporter of the Glorious Revolution that saw James II replaced by William and Mary – owned a copy of Parsons' text.[32]

In *The Two Treatises of Government*, Locke effectively presents a defense of the Glorious Revolution of 1688. In the *First Treatise,* Locke offers a sustained critique of Filmer's *Patriarcha*. In the *Second Treatise,* Locke presents an account of civil society opposed to the divine right of kings and one that bears important similarities with earlier Jesuit thought. Locke holds that both natural equality and the law of nature obtain in the state of nature:

> The *State of Nature* has a Law of Nature to govern it, which obliges everyone: 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. For Men being all the Workmanship of one Omnipotent and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one anothers Pleasure.
>
> *Second Treatise*, §6, 271

Locke thinks that the knowledge of both the law of nature and ourselves as God's workmanship is evident to reason. According to Locke, we are 'sent into the world by his order and about his business'. In Locke's view, God creates us with specific ends, namely to be sociable and to seek ultimate happiness in God. Indeed, Locke describes God as 'an infinitely wise Maker' prior to saying that we are about his business. It is best to interpret this 'business' as the ends that are set for us since Locke considers it contrary to wisdom to work with no design or purpose. Furthermore, Locke describes law as 'the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under that law' (*Second Treatise*, §57, 305). What this means is that law in general, including human law framed by the magistrate, has a teleological function: it directs us toward the ends set for us. And so, it is entirely consistent that Locke conceives of the first and fundamental natural law as the preservation of society, which in turn governs the civil legislative power authorized through consent (*Second Treatise,* §134). All this is to say that Locke's account of the state of nature bears some important conceptual similarities with the Jesuits; both hold that the natural law and equality obtain in the state of nature and that civil authority is legitimated by consent and bound by the natural law.

## Conclusion

In the end, it is not worth concluding with Milbourne that Locke and the Jesuits form one 'Loyal and Religious Fraternity'. For despite the similarities described above, Locke has a very different ecclesiology. In his estimation, the church represents a voluntary association that is separate from the magistrate's purview, given that the civil authority is competent in dealing only with temporal goods and not speculative positions relating to eternal welfare. But likewise, churches are not competent in realizing

[31] *A Conference About the Next Succession to the Crown of England,* ch.3.

[32] Harrison and Laslett, *The Library of John Locke,* No. 1533.

the public good. Church and state are separate entities in Locke's conception. For this reason, Locke cannot accept the idea that the Pope has any kind of authority in secular matters – whether according to the doctrine of *plenitudo potestas*, in which the Pope has direct temporal authority, or according to Bellarmine's doctrine of *potestas indirecta*[33], in which the Pope can affect temporal matters indirectly through his spiritual authority. Locke did not think that toleration should be extended to Catholics as their loyalty to the Roman Catholic Magisterium would compromise their political loyalties to the state. But despite these differences and some of the anti-Catholic tenor of his thinking, Locke falls within the lineage of the natural law tradition influenced by the Jesuit Neo-Scholastics. In some of his most important views in law and politics, Locke echoes positions already formulated by Jesuits, including moderate voluntarism about the laws of nature, a theory of limited government, and a certain view of the social contract. Given these conceptual similarities, it is not unreasonable to think that Locke followed a path that had, in some important respects, already been trodden by figures like Bellarmine, Suárez, Mariana and Molina.

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[33] For an account of this doctrine, see Bernard Bourdin, *The Theological-Political Origins of the Modern State: The Controversy Between James I of England and Cardinal Bellarmine,* 132-156.

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