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SOCIABILITY AND SELF INTEREST: LIBERALISM AND THE LEGACY OF

NATURAL LAW

by

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ABSTRACT OF THE DISSERTATION

Sociability and Self Interest: Liberalism and the Legacy of Natural Law

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Seventeenth and eighteenth century liberalism emerged in the context of the evolution of natural law jurisprudence into a theory of natural rights. This dissertation traces the development of natural law theory into a theory of natural rights and liberalism through the work of Hugo Grotius, Samuel Pufendorf, John Locke and Adam Smith. I explore the ways that the concepts of sociability and self-interest emerge from the natural law tradition and shape liberal notions of the individual and his obligations to the community. The results of this analysis are, I hope, the recovery of a moral basis for liberal political thought and a more nuanced reading of the individual and individual obligation in that discourse.

The development of natural law and liberal political thought shows an increasing political and moral legitimacy accorded to self-love and self-interest. But if self-love has the capacity to be socially productive, so too does it always threaten to tend towards egoism and solipsism. My reading of the natural law and liberal traditions indicates that thinkers who seek to validate self-interest also acknowledge that this self-love must be contained and restrained by sociability. If individuals are self-interested and self-loving, they also sociable and potentially other-regarding. The tradition which is the subject of this dissertation reveals the ways in which self-love is conceived as legitimate and

socially productive because of the power of sociability to moderate and contain the potential excesses of self-love both ontologically and institutionally.

In this dissertation I seek to show that a close reading of the relationships between self-love and sociability point us to a more enriched understanding of the liberal individual and his formal relationships with his fellow men. Liberal self-interest, liberal rights and the liberal individual are always and already dependent on a sociable attitude towards others. The intellectual acknowledgment of this dependence and the subsequent creation of sociable institutions is essential to liberal political thought. This nuance will, I hope, enable us to conceive of the historical evolution of liberal political thought in more complicated terms than is usually done.

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Chapter 1. Introduction

The ‘liberal individual’ is a familiar character in political theory. We recognize him to be rational, self-interested, rights-bearing, atomistic, unfettered by pre-political obligations and the possessor of rights which he owns by nature and which shape and limit his relations with others. This is a crude picture, but nonetheless a familiar one. If one the of the chief achievements of liberal political theory is the constraint of arbitrary power¹ then this achievement rests largely on liberalism’s success in pointing to the conventional and contractual nature of political power and political obligation. Individual rights, whether a gift from God, from nature or from reason, make possible political relationships that are limited by consent, right and certain notions of equality and freedom. At the core of the conventional picture of liberal political thought is a rights-bearing individual with no obligations to others beyond those which he comes to via social and political contract.

It is this image that this dissertation seeks to challenge. While we tend think of rights as distinctively liberal (and in some ways they certainly are), their origins are to be found in the long tradition of natural law and take on an increasing constitutive significance over the course of the sixteenth and seventeenth centuries. Because the origins of rights—and the social contract—are to be found in a discourse rooted in questions about duty and obligation, their form within liberalism comes to be shaped not only by the role of rights within liberal political thought, but also in the pre-history of liberalism within the discourse of natural law. As we will see demonstrated throughout this dissertation, liberalism emerges in the explicit context of the natural law tradition and

¹ See Stephen Eric Bronner, *Reclaiming the Enlightenment: Toward a Politics of Radical Engagement* (New York: Columbia University Press, 2004).

begins with a similar array of orienting questions. Natural law thinking was philosophically and religiously dominant from the thirteenth century through the seventeenth, but in the seventeenth century it took on a more political and less religious cast, largely due to the innovative work of Dutch humanist Hugo Grotius and the radical contributions of Thomas Hobbes. The political aspects of natural law, at least in the beginning, focused on international relations: natural law became the language through which writers explored the possibilities of regulating war, determined rules to govern imperial conquest and argued over the competition for resources in the non-European world. Despite the overtly commercial aspect of these early discussions of international law in Grotius and in others, the problems animating the early modern natural lawyers would have a tremendous impact on the development of seventeenth and eighteenth century political thought. The establishment of an order of 'universal' natural laws governing all people in all nations required first the defense of the possibility of universal normative standards that could apply equally to Catholic and Protestant European nations and perhaps also to the 'savage' nations which were the objects of European imperial expansion.

It is this quest for universals in the face of religious diversity and economic competition that forms the direct ancestry of modern European liberalism and social contract theory. In order to uncover the 'universal' laws governing all the nations of Europe it was first necessary for the natural lawyers to determine (that is, construct) the pre-political status of individuals, to explore human nature and to deduce the rights and obligations to which pre-political individuals were subject. The first order questions underlying the natural law discourse became: what obligations and rights do individuals

have? Where do these rights and obligations come from? On what grounds can individuals be commanded to obey these laws and fulfill these obligations? The answers to these questions inevitably required an investigation of human nature which resulted in the ‘discovery’ of a natural inclination for self-preservation. But because of the claims of natural law to appeal to natural justice and equity above all, the natural lawyers were unable and unwilling to ground their theories in expedience, utility and the drive for self-preservation. If there was to be a law of nature and a natural justice, then this scheme could not revolve around the individual’s desire for his own preservation, despite the importance of this desire for the constitution of particular theories of natural law. For the early modern natural lawyers, the challenge was to discover a capacity in human nature that could respond to the dictates of a natural and universal code of justice based on something other than the narrow egoism of individuals. As this dissertation seeks to show, the foundations of justice and the qualities of human nature differ in the work of different theorists. Nevertheless, the very possibility of a natural law, a law of nations and the development of individual rights emerged from these questions about human nature and the human capacity for political, social and legal obligation.

In this dissertation, I explore these foundational questions motivating the early modern natural lawyers and trace their influence on the development of liberal political thought. In particular, I investigate the attempts of the natural lawyers and their liberal successors to found the natural law (and natural rights) on something other than individual egoism. I suggest that this project represents an attempt to domesticate self-interest and to render it compatible with social and political obligation at the level of an

essential human nature.² Self-interest, self-preservation, individual egoism and expedience are and remain crucial facets of human nature in the natural law tradition, but these are not, I argue, the only salient characteristics of human nature. In fact, the reliance of natural lawyers on human capacities *other* than egoism are what ultimately make natural rights and obligations conceptually possible, both for modern natural jurisprudence and liberalism itself.

A crucial category for this project, therefore, is the natural law category of sociability—a category that has always been indeterminate, vague and nonetheless constitutively and ethically essential to the natural law project. I will discuss sociability at greater length below, but, generally speaking, I suggest that sociability works together with self-interest to make natural rights conceptually possible. Sociability points to a social embeddedness and nascent other-regardingness that shapes the character of the liberal individual and his interactions with the political world. As we will see, the way that individual thinkers draw upon the tradition of natural law and navigate the tension between egoistic self-love and sociability greatly shapes the way in which they conceive of political obligation and the possibilities for deepened relationships among citizens. This dissertation will explore the dynamic relationships and tensions between self-interest and sociability in modern natural jurisprudence and early liberal political thought. I seek to show that by reading classical liberal thinkers, like John Locke and Adam Smith, through the lens of the natural law tradition that informs their projects, we are able to see a more complicated and nuanced relationship between the individual and his political and

² The language of ‘domestication’ is intentionally evocative, suggestive as it is of the ‘wild’ man emerging from a solitary state of nature and being tamed in order to participate in collective life. I do not wish, however, to overstress the temporal element of this domestication. In my reading, sociability is often as

social worlds than we normally imagine in liberal political thought. Ultimately, I will suggest that a capacity for sociability, together with an inherently social context is essential to the construction of the liberal individual. The complicated constitutive function of sociability, as it emerges from the natural law tradition and resonates within the liberal rights discourse, makes possible a particular kind of liberal individual and establishes the possibilities for a social and political life marked by shared goods and obligations as well as an abiding concern for self-interest. In other words, I hope to show that without engaging with the category of sociability, we risk losing important aspects of the rights-bearing individual and his capacity for assuming social and political obligations.

In order to explore these questions, I examine the role of sociability and its relation to self-interest in the work of two important natural lawyers of the early modern period: Hugo Grotius and Samuel Pufendorf. Perhaps more than any other two thinkers, Grotius and Pufendorf shaped seventeenth century natural law and natural rights discourse. Sociability is an important category in the work of each writer, but the significance of the category as an element of human nature and as a constitutive element of natural law theories has been a matter of some disagreement. I seek to flesh out the role of sociability in the jurisprudential system of each thinker and to trace the relationship between sociability and self-interest in the construction of rights and obligations within the paradigm of natural law. As I will explain below, sociability is often understood to be little more than a euphemism for property rights or a justification for imperial expansion, but I suggest that sociability has more substantive significance in

essential to human nature as the drive to self-preservation, even if it operates within the individual psyche at a different, less instinctual level.

the work of Grotius and Pufendorf than is usually allowed. I argue that sociability contributes importantly to the development of rights and obligations within both natural law theory and liberalism and I seek to show that sociability both makes the idea of rights possible and helps to constitute individuals capable of bearing them. In particular, sociability stands as the link between rights and the reciprocal obligations entailed by them. In this way, sociability makes the self-interested individual possible even while providing a counterweight to self-interest in the natural law and liberal conceptions of the individual.

By exploring the roots of the liberal tradition in natural law discourse we discover some new possibilities for thinking about the workings of obligation in liberal political theory, and in particular, we come to see a sketch of the liberal individual as a product of his social and political interactions with others. The domestication of self-love by sociability renders the liberal individual capable of harmonious social life. I will suggest that the natural law and liberal traditions do not depend exclusively on the coercive power of the state and the legitimacy of contracts in order to regulate the self-love of individuals and to portray the individual as inclined to assume social and political obligations. In drawing upon the natural law tradition and its attempts to render universal and natural an ethical code of justice, liberal thinkers participate in a discourse that constructs the individual and his relationship to his social and political world in a complex and nuanced way. The result of this engagement with natural law, I suggest, is a liberal individual who is capable and desirous of assuming obligations towards others and who is willing to act on inclinations and principles other than self-love. This re-reading of the relationship between the individual and political society in classical liberalism allows

us to challenge the account of the liberal state that seems to follow from its close relationship with capitalism. By understanding the relations between individual and the state more broadly, we are able to conceive of obligations among citizens more generously and equality more radically.

Because of the shared history of liberals and natural lawyers, it is possible and helpful to (re)view early liberal political theory in light of the discourse it shares with natural jurisprudence. Grotius and Pufendorf's attempts to reconcile a transcendent moral and political standard in the face of diversity very much inform the categories available to Locke and his successors. Throughout this dissertation, I will argue that to the extent that liberal political thinkers like Locke and like Smith employed the natural law discourse for their own thinking about the relationship between the individual and political society, they also employed the results of the efforts of the natural lawyers to navigate between the competing imperatives of self-love and sociability. I will discuss sociability in greater depth below, but I want to suggest that a closer examination of the role of sociability in natural law jurisprudence and liberal political theory reveals a nuanced relationship between individuals and the political community. In fact, sociability and its relation to self-interest enables us to see the ways in which the liberal individual is constructed within a social nexus comprised of equals, rights, duties and obligations that not only structures the political options available to the individual but also his psychology and obligations to those around him.

Sociability and Self-Interest

As I will explain in more detail below, the seventeenth century natural law tradition situates discussions about obligation and reciprocity within descriptive

arguments about human nature. The significant role of rational and moral faculties in discussions of obligation and in the deduction of the laws of nature mean that a theorist's assessment of human nature plays a tremendously important constitutive role in theories of natural law and political society. The capacity for obedience, morality and reason play a central part in structuring the shape and tone of any particular theory of natural law. Because the natural law primarily seeks to govern human social and political relationships, natural law theories ask and answer important questions about the human capacity and inclination for social life. The picture of human nature sketched in a theory of natural law, as in a social contract theory, is directly related to the kind of jurisprudence and the kinds of obligations that the theory will be able to produce. As a consequence, with natural law theories, as with the liberal theories that follow from them, the depiction of human nature is critical for delineating the possibilities for a peaceful and lawful social life. It is with these accounts of human nature and the possibilities for human social and political life that this dissertation is concerned.

One of the distinctive features of modern natural law theories is the prominent—and legitimate—place they accord to self-love and self-preservation. This emphasis on self-love and self-preservation is, of course, one of the important elements of human nature adopted by liberal thinkers—and perhaps Locke and Smith above all—to make natural rights theoretically possible. The role of self-love and self-preservation in liberal political theories is widely recognized: we are all familiar with the caricature of the rights-bearing, rational individual whose primary purpose in life is the pursuit of self-interest. Most particularly, we identify a pathological, unmediated self-love with Hobbes' theory of human nature. But the specific nature of self-love and its potential for moral

mediation are at the center of the debates among natural lawyers and liberals in the middle of the seventeenth century. In spite, or perhaps because of Hobbes's anthropological pessimism (which, it should be observed, was a response to Grotius and a key influence for Pufendorf), the modern natural law tradition sought to bring the role of self-love and self-interest to the center of moral and political thought, and to reconcile this self-loving individual with a moral and political order that turns on universal and substantive notions of right and justice.³ Self-interest and self-preservation are presented in the natural law and liberal traditions as natural and even positive components of human nature—often implanted in humanity by God for God's long-term interest in the preservation of the species. When properly mediated by reason and obligation, self-interest becomes integral to the construction of important liberal norms like freedom, equality, and independence as well as to the development of natural rights and duties. But this self-love, however natural and divinely created, must be mediated and constrained if it is to be allowed a place within a scheme of natural law and political society. Self-love operates as that component of human nature which is consistent with a rational and other-regarding political order, but which always threatens to devolve into unrestrained egoism. Indeed, the possibilities for domesticating and restraining this self-love are at the very heart of the natural law, and I suggest, liberal, projects.⁴

³ Tuck argues in Richard Tuck, *Philosophy and Government, 1572-1651, Ideas in Context* (Cambridge England ; New York, NY: Cambridge University Press, 1993). and elsewhere that this emphasis on self-love is one of the essential components of the 'modern' natural law tradition. He argues that Grotius's emphasis on self-love is chiefly an attempt to defend a universal ethic against the attack of the skeptical philosophers. I discuss this further in chapter 2.

⁴ Generally, throughout this project I will use 'self-love' as the morally and practically neutral notion of self-regard. 'Self-interest' is self-love mediated through sociability, institutional constraint or the like, and 'egoism' is that dimension of self-love that immediately prefers the self to social goods and stability and is hence politically destructive.

The tradition I sketch in this dissertation, from Grotius and Pufendorf to Locke and Smith, shows an increasing moral power accorded to self-love and the desire for self-preservation. Grotius boldly puts self-interest at the core of his natural law theory and declares it to be a principle in accordance with an ethical social and political life, capable of co-existing alongside a universal code of law, justice and right.⁵ In the political, legal and moral writings of Adam Smith, one hundred and thirty years later, self-love takes on an overtly moral dimension, facilitating political, economic and social life. But despite the increasing ethical validity of self-love within this discourse, self-love and self-interest do not stand alone. Within the natural law tradition, and, I will suggest, its liberal successors, the category of sociability plays an important role in making this self-love compatible with a social life, political obligation and obedience to natural law and natural right.

One of the ultimate goals of natural law as a moral and political discourse is to establish the conditions under which human social life can be possible and to lay out ethical and political norms by which human practice can be measured. This end is no less significant to the modern, rights-oriented natural law tradition than it was to its duty-oriented scholastic predecessor. The obligatory power of natural law depends on the universal recognition of mutuality and a certain kind of other-regardingness—a willingness for the individual to universalize from his own demands and expectations and to extend reciprocity and a recognition of equality to others. This reciprocity is a minimal requirement for the laws of nature to have any moral force and to operate as norms by which human activity can be measured. The psychological requirements for the kind of

⁵ At the same time, however, Grotius is adamant that utility and interest do not form the foundation of natural law and its obligations. As I argue in chapter 2, this role is performed in part by sociability.

other-regardingness and reciprocity required by natural law and natural rights are met in the natural law discourse by a human sociability that works together with self-love to make human political society necessary and desirable. As we shall see, sociability is a complex and contested category within the natural law tradition. It is intimately connected with rights, with obligation, and with political relationships. Within the writings of natural law thinkers, sociability is presented variously as a native impulse of human nature, a divinely given norm and an imperative of reason. It is, nonetheless, the category within natural law that compels individuals to be other-regarding and conceives of them as capable of participating in social and political life. When we take sociability seriously as a category within natural law and when we examine the ways in which the existence of rights and duty depends upon sociability together with self-love, we get a picture of the individual within liberal natural law theory that is neither as individualistic nor as egoistic as we usually suppose. Instead, the liberal individual, at least insofar as he is conceptualized by Locke and by Smith, possesses a capacity for social life that is at the very core of his status as an individual. This sociability and social-embeddedness informs the conception of the liberal individual and shapes his rationality, self-love and his capacity for moral and political life. The relationship between self-love and sociability, indeed, the very conceptions of self-love and sociability, are dynamic and subtle, shifting and evolving as the natural law tradition becomes the liberal social contract tradition. But what we see overall is the emergence of a human psychology in which self-love and self-interest depend very strongly on sociability, mutuality and reciprocity.

The category of sociability occupies an unusual place in the secondary literature of modern natural jurisprudence. The concept is central to much of what goes on in the formation of natural law systems and it is an essential component of its foundations and its moral content. However, scholars have been reluctant to take sociability seriously as a constitutive category of natural law or to allow it much substance as an operative idea. In part this is might be attributable to the lack of systematicity with which sociability is deployed by the natural lawyers themselves. At times it appears to be a component of human nature, a residual black box category inherited from the Stoics⁶ and at other times it appears to be a central command of the laws of nature itself.⁷ At the same time, however, sociability plays an important role in the construction of natural law accounts of human nature, and it is essential for understanding the role of utility in natural law and the connection between utilitarian laws and moral ends, particularly in the work of Pufendorf.

Another difficulty with working seriously with the category of sociability is its undeniably close relationship to the development of natural law as a theory of rights, and most especially as a theory of property rights.⁸ It is clear from the outset, in the work of Grotius where sociability is an explicit element of human nature and motivator of human activity, that sociability is closely tied to the establishment and security of property. The connection between sociability, rights and property will be explored in more detail, but not only was the attempt to legitimate private property at the heart of the political project in which the early modern natural lawyers were engaged, it is also central to

⁶ Chris Brooke, "Grotius, Stoicism and Oikeiosis," *Grotiana* 29 (2008).

⁷ This is explicitly the case in the jurisprudence of Pufendorf.

conceptualizing the relationship between men and the earth, men and God and in establishing the pre-conditions for human interaction. All the systems of natural law to be examined in this dissertation see the establishment of a right to property to be among the chief tasks of any natural law or natural right theory. Because of the importance of property to the modern natural law tradition, most scholars working with this tradition take sociability as constitutive only insofar as sociability plays an essential role in ensuring the reciprocity of rights. Stephen Buckle, for instance, who has written one of the more sustained engagements with the concept of sociability, sees sociability as an essential step in the justification of property rights.⁹ For Buckle, sociability tends to operate as foundational in the natural law discourse insofar as sociability is a function of self-preservation. Buckle sees sociability as connected to self-preservation and utility in the theories of Grotius, Pufendorf and Locke, and as a consequence, he understands the natural sociability of mankind as creating a social order that will ensure the security of private property and other natural rights. Self-love and utility remain primary for Buckle. I do not dispute the close connection between property and sociability, but I will argue that explorations of theories of property do not exhaust the significance of sociability as a category within this discourse.

The most focused readings of sociability grow directly from the more common view of sociability as tied to the defense of rights, and in particular, the development of natural law as the law of nations. The strongest analyses of sociability as a constitutive category within the natural law tradition have focused on the connection between

⁸ The connection between sociableness and property is at least as old as Cicero. See Marcus Tullius Cicero, Miriam T. Griffin, and E. M. Atkins, *On Duties* (Cambridge [England]; New York: Cambridge University Press, 1991).

sociability, natural rights and imperial expansion. Anthony Pagden argues that sociability loses its normative force in the modern incarnation of natural law. Rather than playing a foundational role in the establishment of political communities as it had done in the scholastic natural jurisprudence, in the modern tradition Pagden sees sociability as an element of human nature of secondary importance, unrelated to the real business of self-preservation and security. Pagden argues, further, that the natural law that emerges from this analysis of human motivation is used to great effect in the justification of European imperialism.¹⁰ Richard Waswo, who has little love for the natural law tradition, makes a similar argument and claims that the theory of natural rights and its corresponding sociability were employed politically primarily as a justification for the exploitation of ‘uncivilized’ lands.¹¹ If all men are sociable, runs the argument of both scholars, and if all men have a natural right to trade, commerce and communication, then the European imperial powers would be able to justify the colonization of the undeveloped world on the basis that they were merely restoring natural rights to the colonies as they engaged in ‘trade’ and ‘communication’. For Waswo, sociability is explicitly involved here in the naturalization of imperialist trade relations. Indeed, this is a fair assessment of part of the modern natural law project. Grotius’s first attempt to write a theory of natural law¹² was undertaken as an explicit project justifying Dutch imperialism on behalf of the Dutch

⁹ Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford; New York: Clarendon Press; Oxford University Press, 1991).

¹⁰ Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," *Political Theory* 31 (2003).

¹¹ Richard Waswo, "The Formation of Natural Law to Justify Colonialism, 1539-1689," *New Literary History* 27.4 (1996). Ernst Bloch makes a similar claim in his analysis of Grotius in Ernst Bloch, *Natural Law and Human Dignity, Studies in Contemporary German Social Thought* (Cambridge, Mass.: MIT Press, 1986). In Bloch’s book, as in Waswo’s article, sociability is seen as directly working for capitalist ends.

¹² This is Hugo Grotius, *De Jure Praedae Commentarius* (New York: Oceana Publications, 1964). Only one chapter of this text, *Mare Liberum*—claiming the freedom of the seas—was published in Grotius’s lifetime.

East India Company during the Dutch-Portuguese wars. As Pagden puts it, from the Dutch, Grotian perspective the Portuguese claim to an exclusive right to trade in the Indian ocean unjustly deprived the Indians to trade and communicate with all peoples, most especially the Dutch.¹³

While one does see the occasional sympathetic reading of sociability as a form of altruism,¹⁴ sociability tends to either be ignored or interpreted negatively in the work of most historians of seventeenth century jurisprudence. I wish to restore some balance to the perception of sociability and to highlight its role in the constitution of human nature and political society within the natural law and liberal traditions. It is my view that while sociability has its nefarious uses and while it is especially important for the justification of property rights, sociability also works together with self-love in the discourse of rights and obligations to suggest a dynamic working of the relationships between individuals and society in the natural law and liberal traditions. Sociability resists easy or universal definitions—different thinkers employ the category in different ways and to different ends—but I hope to show that as a socially-oriented element of human psychology, it ultimately works to mitigate the effects of self-love. In short, in my reading, sociability makes possible a moral dimension of self-love that is and can be productive in the construction of liberal rights-theories. I do not claim that sociability is reducible to altruism, nor that the recovery of sociability will overwhelm the importance of self-love and self-interest in liberal political thought, but I do hope to show that self-interest and

¹³ Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy." p. 186.

¹⁴ See for example Nussbaum's brief discussion of Grotius in Martha Craven Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass.: The Belknap Press : Harvard University Press, 2006)., pp. 36-38. Nussbaum equates Grotius's notion of sociability with mutual respect, human dignity and an altruistic desire for justice. This reading goes too far in my opinion. Even Grotian sociability cannot be understood as altruism. The relationship between sociability and self-interest is more subtle than this.

self-love work together with sociability to more fully express the potential of social and political obligations. In particular, throughout this dissertation, I hope to show that attention to the nuances of sociability in the natural law tradition and within natural law discussions of obligation can bring a new light to bear on our reading of the early liberals working within the legacy of the modern tradition of natural rights and natural law and offer new possibilities for thinking about the relationship between the liberal individual and liberal societies.

The Tradition of Natural Law and Early Liberalism

In the seventeenth century, natural jurisprudence underwent a transformation that brought it to the center of European philosophy to become the prevailing and dominant language of political theory and international relations. Natural law has a long history, originating with the early Stoics and receiving its decisive formulations by and in response to Aquinas throughout the 13th-16th centuries. In the seventeenth century, however, the categories of natural jurisprudence were increasingly put to use in new and different ways. In particular, natural law thinking in the seventeenth century emerged as a philosophical and ideological response to a Europe mired in imperial and religious conflicts which seemed to undermine the possibility of any natural and universal code of ethics. The attempt to reformulate the laws of nature in such a way as to address the challenges of both protestant humanism and nascent capitalism lead seventeenth century natural lawyers to develop a new approach to political and moral thinking. The outcome of this work was not only a new incarnation of natural law, but also the tentative creation of the rights-bearing individual, the grounding of a right to private property and the development of new approaches to the justification of political and legal authority. It is

with these developments, among others, that natural law discourse is traditionally thought to have ushered in a new, distinctively ‘modern’ era of natural jurisprudence, and with it, laid the foundations upon which liberalism and social contract theory would be built.

In recent years, the distinctiveness of this ‘modern’ tradition of natural law has been called into question. The traditional view, definitively expressed by D’Entreves¹⁵, sees a newly modern tradition of natural law beginning with Hugo Grotius. Grotius sought to articulate a theory of international law by reconciling traditional scholastic natural jurisprudence with protestant humanism and in the process brought about a ‘modern’ revolution in natural law which can be distinguished from its scholastic predecessor. In recent years, however, the extent to which Grotius’s project is innovative and breaks with Thomistic natural law has been the subject of widespread debate. In particular, medievalists have been anxious to show the roots of the ‘modern’ theories in medieval jurisprudence and to uncover the continuities between its scholastic and humanist variants.¹⁶ The indebtedness of Grotius’s jurisprudence to medieval philosophy and its language is beyond question, and as scholars like Brian Tierney and Francis Oakley have shown, our understanding of Grotian and modern natural law is improved with greater knowledge of its roots in scholasticism and Aristotelianism. Nonetheless at

¹⁵ Alexander Passerin d’Entreves, *Natural Law; an Introduction to Legal Philosophy* (New Brunswick: Transaction Publishers, 1999). More recently, Richard Tuck made a strong argument for the recovery of the ‘modern’ narrative from his historicist perspective in Richard Tuck, "The 'Modern' Theory of Natural Law," ed. Anthony Pagden. Knud Haakonssen, a very important natural law scholar also represents the ‘modern’ camp in Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (New York: Cambridge University Press, 1996).

¹⁶ See for instance, Francis Oakley, *Natural Law, Laws of Nature, Natural Rights: Continuity and Discontinuity in the History of Ideas* (New York: Continuum International Pub. Group, 2005). Oakley argues that the conventional view overstates the distinctiveness of Grotian and other ‘modern’ articulations of natural law and suggests instead that many of the ideas in modern natural law that appear to be distinctively modern in fact have their roots in earlier medieval natural jurisprudence. Other complications of the ‘modern’ thesis can be found in Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*, *Emory University Studies in Law and Religion* ; No. 5

the very least, as Knud Haakonssen argues, Grotius and the modern natural lawyers synthesized old ideas and put them to work on new, distinctively modern problems.¹⁷ It has generally been understood since Grotius's own time¹⁸—and certainly since Pufendorf's—that with his *De Jure Belli ac Pacis* Grotius brought about a radical change in the way that students of law and of politics considered their moral orientation in the world, the source of their obligations, and the nature of their rights and duties against and to one another. The modern, Grotian tradition of natural law was to have enormous impact on the development of political and philosophical thought in the seventeenth and eighteenth centuries and even into our own time. In particular, as this dissertation will emphasize, the modern natural law theories present new ways of thinking about the relationship between the individual and political society which will be integral to the development of liberal political thought.

The last couple of decades have seen a resurgence of interest in seventeenth century natural law. In addition to the work being done by medievalists mentioned above, there are new studies showing the indebtedness of modern natural law theories to the first and second century stoics, and showing the ways in which seventeenth century natural law discourse shaped the Scottish and the German enlightenments and contributed to modern liberal and social contract theory generally.¹⁹ The language of natural law, as it

(Atlanta, Ga.: Scholars Press, 1997). and Annabel S. Brett, *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (Cambridge; New York: Cambridge University Press, 1997).

¹⁷ Haakonssen, *Natural Law and Moral Philosophy*.

¹⁸ See for instance, J. B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge; New York, NY, USA: Cambridge University Press, 1998)., p. 66 and d'Entreves, *Natural Law*., p. 53; Haakonssen, *Natural Law and Moral Philosophy*. Oakley also acknowledges this, even as he calls it into question: *Natural Law, Laws of Nature*, p. 64. Tuck develops this point at length in Tuck, "The 'Modern' Theory of Natural Law."

¹⁹ For connections between Grotius and the Stoics see, Brooke, "Grotius, Stoicism and Oikeiosis.", Christopher Brooke, "Grotius...Check," *Grotiana* Forthcoming (2008). Knud Haakonssen's magisterial work Haakonssen, *Natural Law and Moral Philosophy*., and Buckle, *Natural Law and the Theory of Property*. both emphasize the indebtedness of the Scottish enlightenment to natural law thinking and

was formed during the seventeenth century, proves to be genealogically important for the development of almost all the modern political theory traditions.²⁰ This dissertation seeks to explore the links between modern natural law theory and the origins and language of liberal political thought. While natural law and liberal thinkers alike are motivated by political and theoretical concerns particular to their times, both groups drew from a shared discourse of natural law, natural right, natural duty and natural obligation in order to fulfill their political and theoretical aims. It is no exaggeration to suggest that liberal political thought is historically unthinkable without its origins in the natural law tradition. The discourse of natural law has been put to tremendously different ends. In the seventeenth century alone, it was used to develop just war theory, legitimate capitalism, justify authoritarian political power, limit the arbitrary power of government and to establish a system of individual rights and duties.²¹ But despite the different ends for which natural law has been used and despite some of its decidedly illiberal aspects, the discourse and problems of the natural law tradition became a way of framing thinking

categories. In T. J. Hochstrasser, *Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment* (Dordrecht; Boston: Kluwer Academic Publishers, 2003)., Hochstrasser provides a historicist account of the ways that the German enlightenment was informed by the natural jurisprudence of Pufendorf. For a more general approach to natural law in the seventeenth century see especially Tuck, *Philosophy and Government*.

²⁰ Even Kant, who definitively destroyed the natural law tradition nonetheless inherited a set of problems and a language that had been formed by the natural lawyers and their successors. This is evident, for instance, in Kant's *Doctrine of Right* in Immanuel Kant and Mary J. Gregor, *The Metaphysics of Morals* (New York: Cambridge University Press, 1996). For Kant's relationship to the natural law tradition more generally, see J. B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge; New York: Cambridge University Press, 1998).

²¹ Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge; New York: Cambridge University Press, 1979)., p. 2. Tuck objects to simplistic connections between the natural law and liberal traditions. He doesn't deny the (obvious) connections, but he argues that because of the frequently authoritarian cast of natural law political philosophy, it does not relate as directly to the liberal tradition as we might like to think. This strikes me as being a question mostly of emphasis: liberals use rights-discourse as a way of defending the individual from encroachment by the state, and rights-discourse originates not with liberals but with Grotius and the authoritarian natural law tradition. Tuck argues however, perhaps rightly, that just because Grotius's insights have been put to use in a liberal way does not mean that Grotius was a liberal. This is certainly true. Grotius was apparently as comfortable with

about legitimate political rule, the rights of individuals, the nature of obligation and the relationship between individuals and their communities.

In large measure it was the decisive and crucially modern moves made by Hugo Grotius that initiated the crucial pre-history of liberalism. One of the most significant elements of Grotius's jurisprudence is his role in transforming natural law into a theory of natural rights. This transformation involved shifting the meaning of the Latin *ius* from an objective law or duty into a subjective 'right' that could be possessed and wielded by pre-political individuals. Much has been written on the ambiguity of the Latin *ius* in the whole history of natural law and this ambiguity is central to debates about the modernity and originality of Grotius's theory, but it is nonetheless clear that in the natural jurisprudence of Grotius and Pufendorf, the *ius* which commands and regulates human behavior emerges as a subjective *ius* that can be possessed or owned by individuals and used against other individuals, and, indeed, states.²² The reconception of natural law as a doctrine of natural rights governing human behavior in a pre-political 'nature' was decisive for the development of liberal political thought and the social contract tradition.²³ Nature became both the standard by which to measure political institutions and the locus of our most authentic rights-bearing selves.

authoritarianism as republicanism. To my mind, this does not undermine the influence that the natural law tradition had on the development of liberal political theory.

²² I discuss this further in chapter 2. For an in-depth discussion of *suum* see Buckle, *Natural Law and the Theory of Property*. and John Salter, "Sympathy with the Poor: Theories of Punishment in Hugo Grotius and Adam Smith," *History of Political Thought* XX, no. 2. Summer (1999).

²³ I do not discuss Hobbes in this dissertation, but a large part of Hobbes's project was to undermine the distinctively Aristotelian cast of Grotius's undertaking and to radically reject any and all conceptions of natural morality in response to the rational and modern approach taken by Grotius. Tuck, for instance, argues that Hobbes fleshes out the radical implications of what he understands to be the basic Epicureanism of Grotius. See Tuck, *Philosophy and Government*. and Tuck's introduction to Thomas Hobbes and Richard Tuck, *Leviathan* (Cambridge; New York: Cambridge University Press, 1991). I disagree with much of Tuck's reductive reading of Grotius, but the development of the principle of self-preservation in Grotius surely re-appears in Hobbes in a morally-stripped form quite different from Grotius's. Hobbes

Grotius's contribution to the development of individual rights had radical impact not only on the trajectory which modern political thought would follow, but it also altered the way that natural lawyers conceived of social and political obligation. The idea of pre-political natural rights (and duties) necessitated new ways of conceiving of obligation both in political and natural jurisprudential philosophy. The modern conception of natural law, as it began with Grotius and developed in response to his insights, had to reconceive of the relationships between men and lawgivers and societies. The invention of natural rights does not eliminate the need to theorize about duty and obligation but it does complicate the relationship between human nature and the divine creator and between rights and obligations. As a result, investigations into the nature of God's command over humanity and investigations into human nature became necessary to establish the proper relationship between lawgiver and rights-bearing subjects and between rights and duties. As a consequence, in the natural jurisprudence of Grotius and Pufendorf, no less than the political theory of John Locke or Thomas Hobbes, the character of human 'nature' and man's capacity for obligation and obedience became a primary concern.²⁴

The attempt to grapple with rights, obligations and duty is at the very center of the natural law project; the investigation into human nature and the human capacity for a lawful social life establishes relations which are mirrored in international relations and political society. In other words, the attempts of the modern natural lawyers to work through questions of obligation and duty are determinative of the development of rights

develops the radical implications of Grotius's principle of self-preservation while rejecting Grotius's commitment to natural morality and jurisprudence.

²⁴ This is not quite the case for Adam Smith, despite his indebtedness to both the natural law and liberal political theory traditions, because Smith, unlike his predecessors, rejects the possibility of an essentialized and static human 'nature'. Instead, Smith sees human nature as the direct product of historical, social, political and economic forces—there is no authentic human nature outside of that produced by these

and ultimately, liberal social contract theory. The modern tradition of natural law, regardless of what else it does, seeks to ground political obligation and natural rights and laws in a transcendent framework that will have ‘universal’ appeal while at the same time contending with the difficult, often violent problems created by new politically significant forms of diversity. The outcome of such an effort involves an often tacit analysis of the relationship between rights and duties. The tradition of natural law historically turns on the obligations which man owes to god which structure and inform his relationships to other men. Without a conception of obligation at the core of natural law theory, the laws and rights produced by the natural law discourse lose their universal and obligatory force and become little more than moral guidelines or precepts of utility. The evolution of laws into rights occurs within the context of these more traditional discussions about obligation, the relationship of human nature to obligation, and the relationship between humanity and God. For this project, debates about obligation form the context in which discussions about human nature and the relative influence of self-interest and sociability take place and thus are essential to my analysis of the construction of the liberal individual.

Obligation and Promulgation in Modern Natural Law

Because the question of obligation is essential to my analysis of the liberal individual and because debates about obligation and promulgation are foundational questions for the natural law theories which are my subjects here, it will be helpful to sketch the outlines of the primary schools of thought in the natural law tradition and to indicate how I will approach these debates within my dissertation. I am chiefly concerned

influences. Nonetheless, as we see in chapter 5, Smith makes claims about human psychology that enable him to theorize about obligation and right in political society.

here with the constitution of human nature as it is constructed by the natural law theorists and their liberal successors. These discussions, which produce claims about self-interest and sociability and the possibilities available for human social life, occur primarily within the broader context of obligation to the laws of nature and man's relationship to God. Natural law thinking begins with the presupposition that there are objectively binding laws to which human beings are rightly subject and to which human laws should seek to correspond. However, the origins and authorship of these laws, the means by which they are communicated to humanity and the grounds on which we are obliged to obey them have been central questions since the very beginnings of natural law theory. The modern natural lawyers, no less than their medieval counterparts, agreed that God authored the laws of nature and understood some combination of divine will and human reason as the source of human obligation to obey these laws. The ways that natural lawyers sought to answer these questions not only had wide ranging theological and philosophical implications, but very directly informed the political theories which natural law was marshaled to develop, in part because of the role that human nature plays in these discussions. In particular questions concerning the moral and epistemological relationship between God and mankind directly bear upon the natural constitution of human nature. That is, the relative sociableness or selfishness of humanity is tied directly to an author's understanding of the ways in which God promulgates his natural laws and the ways in which humanity is able to apprehend those laws.

One of the central concerns of this dissertation is the way that human nature is conceived in the political theories of Grotius, Pufendorf, Locke and Smith and the impact these conceptions of human nature have on the possibilities for political community,

social life and political obligation. While obligation to natural law and natural right is not a perfect mirror for thinking about political obligation and right, the former was a chief area for debate for the natural lawyers and was foundational to their jurisprudence and philosophy. It is in their discussions of the sources of natural law, our ability to perceive it, and the nature by which we are bound by it, that the natural lawyers articulated their theories of human nature, their general epistemologies, their sense of the possibilities for political life and the relationships between self-interest, sociability, reason and utility which animate this dissertation. More particularly, I will suggest throughout that the way that a particular natural law thinker or natural rights theorist understands the way that natural laws are promulgated and made binding to humanity has an important impact on the way that thinker understands the relationships among individuals in nature and in political society.

The foundational question here is whether it is God's will or God's reason that is dominant in his authorship of the laws of nature. Did God create the laws of nature purely on the basis of his own will, or did God will these particular laws because of their justness, goodness and rationality? The corollary of this question is the accessibility of God's law to humanity: are humans able to apprehend the laws of nature because God has made them available to us (whether through reason, scriptural revelation, having been 'written on our hearts') or because our reason naturally accords with God's reason and the external standards in the universe? The answers to these questions establish the two primary perspectives of modern natural jurisprudence: voluntarism and rationalism.²⁵ In

²⁵ Although it should be said that, as will become clear over the course of this dissertation, there is a fair amount of overlap and ambiguity in the two positions that prevents thinkers from being neatly and consistently categorized. As will be seen in chapter four, a major subject of argument and investigation for scholars of John Locke revolves around whether Locke's theory of natural law is primarily rationalist or

turn, these two perspectives shape accounts of political obligation and human nature in a way that is crucial for our understanding of the development of rights and institutions.

Roughly, the voluntarist position is that God's will is the sole measure of right, justice, rationality and the good. Natural laws flow from God's will, take their moral content from this source, and are obligatory to humans because of their divine origins. If the laws of nature appear right and rational to us, this is because God created our nature and our reason to accord with his conception of the universe.²⁶ By contrast, rationalists hold that God wills natural laws in accordance with a standard of reason available jointly to both humans and to God. The logical consequence of the rationalist position was expressed by Grotius in his famous *etiamsi daremus* clause: the laws of nature would exist and be binding, he suggested, "though we should even grant, what without the greatest Wickedness cannot be granted, that there is no God or that he takes no Care of human Affairs."²⁷ In other words, the rationalist position potentially undermines the centrality of divine being in the moral order of the universe: if God wills the natural laws the way he does because they accord with some standard of reason or justice outside his own will, or if these laws are obligatory because they accord with human conceptions of

primarily voluntarist. At stake in these debates, among other things, is the extent to which the theory of natural law requires an altruistic, self-interested or community-oriented individual in order for the rights theory to hold together.

²⁶ Oakley calls this "hypothetical necessity" and traces the argument as far back as the 13th century. See for instance Francis Oakley, "Locke, Natural Law and God - Again," *History of Political Thought* Vol. XVIII, no. 4 (Winter 1997), p. 638. This notion of hypothetical necessity is central to the voluntarism of both Pufendorf and Locke.

²⁷ Hugo Grotius, *The Rights of War and Peace (De Jure Belli Ac Pacis)*, ed. Richard Tuck, 3 vols. (Indianapolis: Liberty Fund, 2005), *Prolegomena* p. 89. In recent years several scholars have acknowledged that Francis Suarez, an early 17th century Jesuit natural lawyer first propounded this argument. See for instance, Schneewind, *The Invention of Autonomy*, Haakonssen, *Natural Law and Moral Philosophy*, p. 29, and Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge [Eng.] ; New York: Cambridge University Press, 1979). Different scholars attribute more or less significance to this fact depending on their attitude towards the 'modern' thesis.

reason then God's position is greatly undermined.²⁸ The significant factor then becomes not God's will or even God's intellect, but rather the external standards of justice and reason to which God too is subject. Human nature and human reason, in other words, become the measure and foundation of the laws intended to bind and guide humanity.²⁹ The issue underlying the debate between voluntarist and rationalists, and the way it informs the political thought of each, is a crucial one: if human reason, and by extension, human interests become the sole measure of ethics and law, then the very possibility of an objective human morality and right is threatened and undermined.³⁰

Even more significant than the theological and philosophical aspects of the voluntarist/rationalist debates is the historical and theoretical impact of these discussions on natural law theories of human nature and the subsequent development of liberal political theory. From a historical perspective, one of the more important dimensions of the voluntarist and rationalist approaches to natural law turns on the roles of utility and sociability in the construction of natural law discourse. The basic rationalist and voluntarist categories allow us to see the way that natural law discourse is being worked around human nature and human reason. While rationalists like Grotius, or even Kant, tend to see human reason as an ultimate measure of morality, the voluntarists, like Pufendorf and Locke, locate the significant aspects of the natural law outside human

²⁸ Schneewind characterizes voluntarism and rationalism as competing responses to the problem of "keeping God essential to morality." *Schneewind, The Invention of Autonomy.*, p. 8. Both groups see God as a necessary component of natural law and both suggest that the other is making theistically dangerous arguments.

²⁹ As we will see throughout this dissertation, this problem leads to some interesting and important debates about the role of utility in the foundations of the laws of nature. One of the central problems of the voluntarist tradition, as we will see in chapter 3, is that God tends to appear to rule as a tyrant who commands obedience from humanity through sheer force.

³⁰ Hobbes, for instance, admirably draws out the implications of a radically positivist and subjective approach to natural jurisprudence. Indeed, Tuck argues that this danger was central among the motivations of Grotius's theory of natural law. Tuck sees Grotius's chief goal to be to rescue natural jurisprudence and

concerns, nature and utility. In other words, while both the early rationalists and the voluntarists see God as the author of the natural law, they see its relationship to human nature and human utility from rather different perspectives. Grotian rationalism depends upon a vision of human nature in which self-love is balanced by a sociability which, while not exactly other-regarding or altruistic, makes sacrifices to self-love and the adoption of public-spirited ends possible. By contrast, the voluntarist approach shaping the theories of Locke and Pufendorf enables them to put self-preservation and individualism at the center of their theories without consequently having to reduce all morality, obligation and other-regardingness to consequences of self-interest and self-preservation. It is this view of the relationship between self-love, other-regardingness and natural law that offers the possibility of seeing the individual who emerges from this analysis as less hedonistic or utilitarian than we might expect. The voluntarist perspective within natural law allows a socialized, rather than individualized conception of man's obligations to obey the law of nature and a communal perspective, rather than individual perspective, underlying the rights and duties men assert and assume towards one another. To be succinct, the rationalist view, espoused by Grotius, sees sociability operating at the level of human nature to temper and reign in self-love. The voluntarist view, by contrast, sees sociability as less intrinsic to human nature but implicit in natural laws and the relations of natural obligation and man's relationship with God.

Outline

If there can be said to be a distinctively modern tradition of natural law that influenced the development of liberalism and social contract theory, then this tradition

objective morality from the skeptical attacks of philosophers like Montaigne and Charron. See Tuck, *Philosophy and Government*.

begins above all with Hugo Grotius. Grotius's natural law theory begins a new political and legal discourse that facilitated the development of a natural rights theory and which established the framework within which social contract theory developed. Grotius's account of the laws of nature derives a natural jurisprudence from an analysis of human nature and an induction of God's intentions for humankind that essentially establishes the terms of political, moral and jurisprudential discourse for the remainder of the century. In Chapter Two I seek to recover the significance of sociability within Grotius's theory of natural law and argue that sociability is constitutively important for Grotius's development of natural rights theory. Grotius understands human nature as a combination of an egoistic self-love which is fully endorsed by the Creator and a natural sociability that inclines men towards society and the assumption of obligations towards others. The role of sociability in Grotius's work has come under attack in recent years, most notably by Richard Tuck, and even where sociability is understood to have a role to play within Grotius's theory, not much substantive significance is allotted to it. I seek to show that for Grotius, the tension between our egoism and our sociability is highly constitutive of our natural rights, our desire to enter into political society and our willingness to assume obligations towards others. At the same time, this tension is the source of the destructive, asocial elements of human political life that render natural and positive laws, as well as the social contract necessary. I argue that for Grotius, sociability is both an inherent feature of human nature, though mediated through reason, and a normative imperative, reflected in the laws of nature. Natural rights and obligations, and political rights and obligations, are a function of the tension between our self-interest and our sociability, and represent an attempt to bind ourselves to one another in a way that will ensure that our

sociability rather than our egoism dominates in social and political life. As a consequence, I suggest, for Grotius political institutions and laws represent the attempt to place primacy on sociability rather than egoism in political life. Because Grotius was so tremendously important in the seventeenth century, his role in shaping the discourse of natural law, natural rights, international law and the development of property were instrumental to the terms of the discourse throughout the seventeenth century. As a result, Grotius's deployment of sociability as a co-characteristic of human nature has ramifications for the development of rights theory and the social contract in general. In particular, sociability is fundamental to the conditions of equality, reciprocity and social life that make Grotius's rights bearing individual possible.

This is particularly true for Grotius's successor, Samuel Pufendorf, a German jurist and philosopher who was one of the most influential and widely known thinkers of the seventeenth and eighteenth centuries. Pufendorf was crucial to much of the developments in political theory and natural jurisprudence in the seventeenth century. In large measure, Pufendorf has faded into intellectual history because of the perceived derivativeness of much of his thinking. This unfortunate situation has resulted because Pufendorf's project was an overt attempt to rescue Grotius—and natural law—from the near-fatal blows delivered by Hobbes. Consequently, Pufendorf has been seen primarily as a corrupt Grotian or a soft Hobbesian. This view has been challenged in recent years as Pufendorf's contributions to political and jurisprudential thought have come to be taken more seriously.³¹ In Chapter Three, I too argue that Pufendorf's contributions to moral, legal and political thought in the seventeenth century are extremely important and worthy of more scholarly attention. In particular, I find that Pufendorf's jurisprudence plays a

pivotal role in establishing the framework and discourse within which both John Locke and Adam Smith develop their liberal theories.

As was true for Grotius, sociability plays an important role in Pufendorf's theory of natural law. Unlike Grotius, however, Pufendorf understands sociability, or sociality, as he calls it, normatively. Drawing on Hobbes's depiction of human psychology and a literal reading of *Genesis*, Pufendorf sees human nature as fundamentally corrupt, egoism as dominant, and aggressiveness as our trademark in relations to one another.

Nonetheless, for Pufendorf God's grace and the laws he has legislated for humanity operate as a kind of reprieve—humanity can and ought to act sociably. This becomes the first and foundational law of nature. Sociality represents both a goal towards which humanity should strive and the means by which we are able to moderate our own egoism. Because Pufendorf's psychology is more sophisticated than Grotius's (informed as it is by Hobbes's insights as well as Grotius's) and because he understands the relationship between native egoism and normatively commanded sociality to be more tenuous, Pufendorf's political and jurisprudential thought emphasizes the kinds of social and political arrangements conducive to the development of sociality and the suppression of destructive egoism. Egoism and self-interest have their place, but they must be re-contextualized within the broader command for the preservation of all and the command to sociality. As a result, I suggest, Pufendorf employs a sophisticated psycho-social analysis that helps him to understand human society as characterized by a series of social and institutional networks that promote other-regardingness and good will at the expense of self-interest. For Pufendorf, society's capacity to generate mutually reinforcing networks of benevolence and gratitude allows human interactions to be informed by the

³¹ Though the debates still rage on this question, as will be clear in chapter 3.

dynamics of man's relationship with and obligations to God, and creates the social, political and psychological conditions which make other-regarding, sociable behavior possible and reliable. The norm of sociality informs Pufendorf's conception of both the natural law and political society—it structures both the possibilities and the limits of human social life.

While Grotius's theory of natural law is predominantly rationalist, Pufendorf introduces voluntarism into the modern tradition. Pufendorf's approach to natural law is characterized by a divine command theory of natural jurisprudence. For Pufendorf, natural laws are binding upon individuals because we recognize the legitimacy of God's command and because we feel a certain degree of gratitude towards God for his creation. This voluntarist perspective toward natural law informs Locke's early natural law writings. Strongly influenced by the Pufendorffian emphasis on divine right and divine creation, Locke's own early approach to natural law reflects elements of both the Grotian and Pufendorffian natural law tradition. In Chapter Four I seek to uncover the ways in which Locke's political thought is indebted to Grotius, Pufendorf and the natural law discourse. In particular, I argue that reading Locke's early natural law text, *Questions Concerning the Laws of Nature* through the lens of Pufendorf's natural law theory reveals Locke to be working within the voluntarist tradition of natural law and points to a conception of the individual whose rights, duties, and obligations derive from his status as a social creature within the broader scheme of God's creation. Locke's understanding of the natural law—and his use of it in his political theory—turns on an acknowledgment that man is designed for social life and that his rights and duties are related to his status as a social creature. The social context of the natural law is reiterated in the universality of

God's perspective on humanity. In this reading, Locke's individuals are constituted first as members of the whole of creation—that is, socially—and only secondly as individuals in their relations to one another through the fulfillment and exercise of their natural law rights and duties.

In Locke the explicit language of sociability drops out entirely, both in the empirical, Grotian sense, and too in the Pufendorfian normative sense. Nonetheless, Locke's conception of natural law is very much indebted to the Pufendorfian tradition, and retains elements of the Pufendorfian theory that emerged, historically, as related to sociability and sociableness. In Locke's case, these natural law remnants lead not to a depiction of the individual as constituted by two primary instincts or torn by two competing norms, as we see in Grotius and Pufendorf but rather to a theory of natural rights that rests heavily on a prior natural duty that is informed by a social context and by social obligations. In Locke's political theory, this becomes a distinction between self-preservation and self-interest as the preoccupations of individuals which in turn structures the way that Locke conceives of the role of the state and the public good. Sociability disappears, but its effects are to be seen in the very way his natural rights theory appears to work.

By following the thread of natural law in Locke's *Two Treatises* we begin to see a substantive distinction between Locke's notion of self-preservation—which is informed by social and divine obligation—and his notion of self-interest—which bears no necessary relationship to social goods or natural law duties. The conflation of self-preservation and self-interest in Locke's political writing has led to an overemphasis on the egoistic character of Locke's state of nature and conception of political society. In

fact, the social obligations that follow from the natural law strain in Locke's writing suggest that pre-political society is made possible by the weak sociability suggested by the natural law. As a consequence, Locke's understanding of the state, too, can be reframed in terms of the fundamental law of nature—to preserve at once oneself and all of mankind.

A century after Pufendorf and Locke, liberal moral, jurisprudential and political thought received a reformulation at the hands of Adam Smith. Though Smith stands outside the immediate historical moment to which Grotius, Pufendorf and Locke belong, his writings express an essential liberalism and an essential indebtedness to the natural law tradition that reveal the enduring impact of the natural law discourse on both the development of liberal political thought and the construction of the liberal individual. In the nearly one hundred years that stand between Locke's *Two Treatises* and Smith's *Theory of Moral Sentiments*, Pufendorbian voluntarism evolved into Scottish sentimentalism, decisively articulated by Adam Smith's teacher Frances Hutcheson. Smith was influenced by the entire modern tradition of natural law, in its Grotian, Pufendorbian and sentimentalist formulations and was equally influenced by Hume's devastating critique of the entire natural law discourse. While Locke straightforwardly draws upon a dominant and often unreflective set of jurisprudential assumptions that make his political theory of rights and limited government possible, for Smith, natural law discourse and natural law philosophy operates more problematically. Smith is not a natural law thinker per se, and his use of the natural law tradition functions primarily as a set of problems rather than a positive philosophy of solutions. The problem animating Smith's theory of justice and theory of society is the possibilities for a universalizable

conception of justice, rights and ethics in a universe in which a promulgator of universal and natural laws is decidedly absent. I argue in Chapter Five that Smith's moral and political thought draws from these different jurisprudential influences to reconstruct self-interest as a function of sociability, rather than an antagonistic dimension of human nature.

Unlike Locke, Grotius or Pufendorf, Smith rejects the static, ahistorical account of human nature common to the natural law and liberal discourses. For Smith, rights, laws, culture and personality are the result of historical, social and economic processes rather than the result of an essentialist human nature or human relation to the divine. Smith retains the language of nature, however but redefines it as a social construction. Human 'nature' is the product of social, economic and legal forces. As a result, Smith's moral writings seek to construct a natural morality, natural ethics and natural justice without drawing upon a static nature or a divine promulgator. As a consequence, Smith's theory emphasizes the empirical aspects of human nature and human psychology: for Smith, self-love and sociability are empirical facts about human life—social products, to be sure, but nonetheless observable facts about human beings that must stand at the center of any moral, political or economic theory. Smith goes farther than his predecessors in conceiving of the ethical possibilities of self-love and self-interest. For Smith, self-love is not merely a negative aspect of human nature necessary for species preservation, but it becomes, in itself, a positive virtue essential to the possibilities for ethical social and political life. Going beyond even Locke, Smith suggests that self-love stands at the very core of an ethical and other-regarding society. But for Smith, I suggest, this self-love is very much a product of Smith's own kind of sociability. That is to say, in Smith's

writing, I argue, self-love and self-interest occupy a moral position unseen in his predecessors, but these characteristics are capable of taking on this moral cast only because his understanding of the social and socialized individual is so dominant. Self-love, like benevolence, and like all other rights and virtues for Smith, are the product of psychological and social processes that are a necessary outcome of the basically social attitude and context of human life. Ultimately in Chapter Five I seek to show that Smith's natural law inheritance—and particularly the Pufendorfian aspects of that inheritance—makes possible the relationship between self-interest and obligations to others within political and economic society. Smith's use of the natural law discourse enables him to posit self-interest as the product of a dynamic interplay between social, economic, political and legal processes. It is the social status of the individual that makes his self-love and self-interest possible. In this, Smith represents the apotheosis of all that was tacit in the natural law and liberal theories of Grotius, Pufendorf and Locke. From the outset, in Smith's analysis, it is the social location and its concurrent obligations that make possible the existence of a rational, self-interested and self-loving individual.

In this way, Smith's use of natural law categories and his sense of the role of the social location of individuals highlights the tacit relationship between individuals and society in the work of Grotius, Pufendorf and Locke, and, as a consequence, showcases some of the implications for examining closely the relationship between sociability and self-interest in the development of these natural law and liberal political theories. This dissertation seeks to trace the relationship between self-interest and sociability in the early modern natural law tradition and to explore the implications of this relationship in the liberal discourse of the 17th and 18th centuries. As a result, I focus on the accounts of

human nature and jurisprudential obligation as the locus within which self-interest and sociability reveal their uneasy interdependence. The domestication of self-interest by sociability and by social obligations stands at the very center of the possibilities for a liberal politics and for our conception of the liberal individual.

Chapter Two: Hugo Grotius and the Recovery of Sociability

Seventeenth century Dutch jurist Hugo Grotius is well known as the first distinctively modern natural lawyer (and consequently an important contributor to the development of natural rights theory) and as the founder of international relations. Grotius's development of international law theory laid the theoretical groundwork for the Westphalian system of nation-states¹ by constructing an analogy between the rights of individuals and the rights of nations—and analogy that created the theoretical groundwork for both the nation state and human rights. While not himself a liberal, Grotius's development of natural rights, the contractarian dimensions of his theory of natural law and political society, and his conception of the individual as rights-bearing and property-owning make him an important shaper of the foundations and pre-suppositions of liberal political thought.

In this chapter I focus on the relationship between the foundations of Grotius's natural law theory and his conception of the constitution of political society. It is therefore worth observing from the outset that because of Grotius's ultimate concern with international relations, he gives very little in the way of particulars about the social contract and the organization of political society. The specifics of these arrangements are of less significance to Grotius than his justification and exposition of the laws of nature, and the application of those laws to the states in the international arena. Nevertheless, in order to establish nations as rights-bearing entities capable of employing war as a means of executing the laws of nature, Grotius begins with the individual who must first possess

¹ The common view is that *De Jure Belli ac Pacis* was inordinately influential over the development of the Westphalian system, and that international relations have been understood in Grotian terms for the last 300 years. See, for example, Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002).

the rights that will later be extended to sovereign nations. As a result, Grotius's conception of the rights and duties of the individual and his conception of human nature are important to the development of his international relations theory, and important to the development of the liberal social contract tradition which will later, in the Westphalian world, turn to focus on the rights and duties of citizens rather than states.

As the first "modern"² natural law theorist,³ Grotius attempted to break away from the scholastic model of natural law by reconceiving of natural law in a manner consistent with Protestantism and humanism. The scholastic approach was both distinctively Aristotelian and distinctively catholic. By contrast, Grotius's natural jurisprudence emphasized the rational character of the individual and explained the natural law in terms of the rights possessed by individuals as well as laws commanding certain modes of behavior. Grotius's emphasis on reason's role in the construction of the law of nature was fundamental to the development of the social contract tradition. As d'Entreves argues, "the social contract was the only possible way left for deducing the existence of social and political institutions once the reason of man was made the ultimate standard of values."⁴ While this is an overstatement of the secularism of Grotius's position, there can be no doubt that the foundations of Grotius's theory of

² Almost all scholars believe that Grotius, in one way or another, ushered in a new, distinctively modern, tradition of natural law, but they disagree on the specifics of his originality and the degree of his indebtedness to the Thomistic tradition. Knud Haakonssen argues that Grotius was exceptionally innovative, particularly with regard to individual rights and the role of religion in natural law (see Haakonssen, *Natural Law and Moral Philosophy*), while Brian Tierney argues that these were elements of the scholastic natural law tradition that Grotius adapted to serve his own purposes (see Tierney, *The Idea of Natural Rights*. See also Schneewind, *The Invention of Autonomy*, pp. 67-72 and Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), p. 92, Tuck, *Philosophy and Government*, p. 178. For my purposes, Grotius's originality in terms of the old tradition is less important than his role in setting the terms for the new, modern, social contract and natural rights theory that was to follow from his example.

³ It was Pufendorf who first declared Grotius to be the father of both modern natural law and international relations and the claim has been repeated many times since. I see no reason to deviate from tradition.

⁴ d'Entreves, *Natural Law*, p. 58.

natural law mark the beginning of the construction of the liberal individual and development of a political and legal philosophy that will inform, both positively and negatively, the development of liberal political theory. While Grotius was not the first political thinker to discuss the social contract or the possibility of a natural law in the absence of God, Grotius's re-conception of natural law in terms of the natural rights of the individual was the fundamental first move in the development of modern political thought. As Knud Haakonssen explains, "this transformation of the concept of *ius* is one of the cornerstones of modern individualism in political theory, for when *ius* is no longer an objective condition appointed by law, but something individuals have, the idea of human life as the exercise of competing individual rights is close to hand."⁵

The transformation of natural law into natural rights turns upon Grotius's conception of human nature and the construction of the individual as capable of possessing rights as well as duties. In Grotius's depiction, human nature is shaped by the interplay of self-love, sociability, reason and obligation and essentially characterized by the instinctive drives to self-preservation and sociability. The interaction of these often conflicting forces informs the foundation of the natural law and the normative guidelines for political and social stability. The relationship between self-interest and sociability in Grotius's writing is fundamental to understanding the rest of his political and jurisprudential thinking, and in particular, his theory of political obligation. In this chapter, I will attempt to recover sociability as a substantive and constitutive category in Grotius's theory of natural law and natural right. I argue that sociability is an important element of Grotius's political thought in both his early and mature natural law theories

⁵ Knud Haakonssen, "Hugo Grotius and the History of Political Thought," *Political Theory* 13 (1985), p. 36.

and that it has an important, constitutive role to play in the development of his theory of natural law and the rights bearing individual. Further, I argue that sociability has a substantive dimension not exhausted by sociability's relationship to rights (and particularly to property rights). The drive towards political society for Grotius cannot be explained solely in relation to self-interest and security—rather, sociability draws humans into society with one another and moves them to take on obligations beyond reciprocal property rights. Because of the substantive dimension of sociability, Grotius's theory of political society is able to go beyond the defense of one's own property and rights and to tend towards a conception of mutual obligation and the common good.

In this chapter I will examine Grotius's two most famous texts, *De Jure Praedae* and *De Jure Belli ac Pacis* separately and at length. Despite their many differences, there are some foundational continuities between the two texts that I wish to draw out and relate to the development of Grotius's notion of sociability. Rather than marking a decisive break with his egoistic conception of human nature in the earlier *De Jure Praedae*, the sociability of *De Jure Belli* actually reflects a consistent evolution in Grotius's thinking about human nature and its relation to the natural law. This means, ultimately, that sociability does not play a merely rhetorical role in *De Jure Belli* but provides the mechanism behind the human willingness to assume obligations towards others in political society.

The early seventeenth century was a period marked by widespread violent conflict. The Catholic Church's official acknowledgement of Lutheranism in the sixteenth century and the growth of religious diversity among European political elites

challenged the political as well as the spiritual hegemony of the Holy Roman Empire. As a result, the early seventeenth century was an important and violent period of political and religious realignment which culminated in the various battles of the Thirty Years war. In particular, the long wars of the Dutch revolt against the Spanish king revealed the violently destabilizing forces of religious diversity and national aggrandizement and consequently informed Hugo Grotius's thinking about international relations and natural law. Accordingly, Grotius's primary project in his major work (*De Jure Belli ac Pacis*, 1625) is to outline a universal, internationalist theory of natural law that could simultaneously minimize the destabilizing propensities of the new religious diversity and limit the atrocities of war. Nevertheless, Grotius must not be confused with a pacifist: he sought to legitimize war through a reinvigoration of the "just war" doctrine. War, he argued, is the legitimate action of a state seeking to punish violators of *ius gentium*, the natural law of nations, and as such, Grotius argued that war is entirely consistent with natural justice and natural law.

At the same time, central to Grotius's project was his attempt to reconceive of natural law so that it would not be dependent upon any particular interpretation of the Christian bible. While Christianity is fundamental to Grotius's thinking about natural law, he understood that religious diversity presented new challenges to European politics. His response to the wars engendered by theological conflict was not a retreat into doctrinal fundamentalism,⁶ but was rather to recover the universal possibilities inherent in

⁶ Indeed, as Micheline Ishay points out, Grotius hoped that by "privileging the laws of nature, inspired by Roman laws, he might offer a unified theory of natural law based on human rationality and social character, removed from the dispute about the 'right' interpretation of the Bible" (see Micheline Ishay, *Internationalism and Its Betrayal* (Minneapolis: University of Minnesota Press, 1995), p.20. d'Entreves makes a similar point, although he argues that Grotius successfully makes God redundant to the theory of natural law. See d'Entreves, *Natural Law*, p.55. The question of the role of God in Grotius's work has been a controversial one, largely because of Grotius's famous *etiamsi daremus* clause which stipulates that his

the notion of a natural law. By grounding the natural law in as universal a conception of God and human nature as was possible, Grotius sought to formulate a theory of justice and international jurisprudence that would be able to transcend the religious differences that violently divided Catholics, Lutherans and Calvinists in the Europe of his day. This project begins, for Grotius as for later natural law scholars and social contract theorists, with a theory of the natural rights of the individual which are then analogically extended to states.⁷ In this task, Grotius's argument is heavily founded upon his conception of human nature and the individual's relationship to his society, and his project was to heavily influence the development of the modern natural law and liberal traditions.

Grotius's personal biography was marked by the same political and religious upheavals that characterized the Europe of his day. Grotius was raised in a humanist family and distinguished himself early for his intellectual precociousness. As a young man, he held important legal and administrative posts within the government of Holland. In 1604, at the request of the Dutch East India Company, Grotius began to write the book that would come to be known as *De Jure Praedae*,⁸ usually translated into English as the *Commentary on the Law of Prize and Booty*.⁹ In this book, Grotius defended the rights of Dutch commercial interests in the east Indies and maintained that the East India

natural law theory would hold true even if one were to (wickedly) grant that there is no God. Since God is clearly important to much of Grotius's thinking, there has been much debate about God's relative importance for Grotius's overall theory. See for instance Tierney, *The Idea of Natural Rights*, p. 319-20, Schneewind, *The Invention of Autonomy*, pp. 68-75, Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*, pp. 99-101. Despite scholarly argument around the details, it is clear that Grotius was a committed Protestant, unable to conceive a worldview in which God played no role.

⁷ For Richard Tuck, the development of individual rights to explain state's rights was Grotius's primary contribution to political thought.

⁸ With the exception of the chapter *Mare Liberum*, which asserts that the seas cannot be owned by any particular country or corporation, *De Jure Praedae* remained unpublished until 1868. The existence of the manuscript was unknown until it was accidentally discovered among De Groot family papers by some professors at the University of Leyden in the 1860s.

Company was justified in using force against its rivals, (in this case the Spanish and the Portuguese,) and in capturing ‘prize’ from its enemies.¹⁰ Despite the overtly commercial emphasis of Grotius’s argument in *De Jure Praedae*, he nevertheless lays out a theory of natural law and individual rights that would inform his later, more famous work, *De Jure Belli ac Pacis* (*The Law of War and Peace*), despite significant differences between the two texts. In 1617, because of his powerful position in Amsterdam, Grotius became embroiled in the religious squabbles that consumed the United Provinces. What began as a theological disagreement between protestant sects over predestination ended as a furious battle about the nature of federalism in the United Provinces.¹¹ Grotius, who along with his mentor Oldenbarnvelt had vigorously supported the Arminians, was convicted of treason after a Calvinist coup in 1618. Oldenbarnvelt was publicly hanged and Grotius was sentenced to life imprisonment in the Loevestein castle. While in prison, Grotius began work on the text that would become *De Jure Belli ac Pacis*. However, after serving only two years of his sentence Grotius escaped from Loevestein¹² and fled to France. Once in exile, Grotius began a lifelong effort to win back the favor of the Dutch government and worked for the Swedish and French governments as an ambassador. In 1625 Grotius published his *De Jure Belli ac Pacis*, which was to make him internationally famous as a jurist. In this book and at great length, Grotius argues that

⁹ The one notable exception to the convention of referring to this book as *De Jure Praedae* is Richard Tuck, who calls the book *De Indis* on the basis of what he claims was Grotius’s own preference.

¹⁰ The need for such a justification came about after the East India company captured a Portuguese ship and appropriated its cargo during a squabble over trading rights. Mennonite shareholders of the company scrupled at the practice of taking prize and booty on the grounds that such activity was unseemly and dishonorable. For more on this, see Edward Dumbauld, *The Life and Legal Writings of Hugo Grotius* (Norman: Univ. of Oklahoma Press, 1969), pp. 24-26.

¹¹ See *Ibid.*, pp. 11-15 and Tuck, *Philosophy and Government.*, pp 179-190.

¹² Cleverly, his wife managed to sneak him out of the castle in a chest of books.

contrary to the opinions of many Christians of his day, just war is possible, and further, that there are natural, international laws of war as well as peace.

De Jure Praedae, written in 1605, is generally considered by scholars to have an overwhelming constitutive emphasis on self-interest. Human nature, in this reading, is defined by Grotius almost solely in terms of self-interest and it is utility, rather than sociability, that forms the foundation of the natural law. While utility and self-interest are indeed integral to the theory Grotius develops in *De Jure Praedae*, I will argue that Grotius nevertheless understands human nature to be distinctively characterized by a rational capacity for other-love and a concern for the well-being of others. It is this other-regarding love—a complement to the laws of nature—which makes the preservation of the human species possible. In *De Jure Praedae*, not only do the laws of nature presuppose some kind of human social existence, but their fulfillment depends upon social arrangements which will induce men to meet and exceed those obligations required by the natural law.

Written twenty years later, *De Jure Belli* is in many ways a markedly different text than *De Jure Praedae*. Most importantly for my purposes, *De Jure Belli*, and particularly its *Prolegomena*, is much more explicit about the sociability that defines human nature and its ability to moderate individual egoism. While some scholars have argued that the principle of sociability is not essential to Grotius's natural law theory, I suggest that sociability is crucial to understanding Grotius's conception of the laws of nature and his theory of political obligation. I stress that Grotius attempts to refute skeptical attacks on natural law not by emphasizing self-preservation or universal egoism, as some scholars have argued, but rather by severing the link between self-interest and

natural justice. To this end, Grotius establishes sociability as the foundational principle of natural law and employs it as a counter-weight to instinctive self-interest. I then discuss the substantive meaning of sociability in *De Jure Belli* and argue that sociability plays both a normative and a descriptive role in Grotius's account of human nature. On the one hand, sociability functions normatively by demanding that rights be exercised and protected reciprocally. In this sense, reciprocal sociability is a command inherent in the laws of nature and a prescriptive command for social living. Further, however, I argue that Grotius's concept of sociability must also be understood as a descriptive, psychological feature of human nature. This descriptive aspect of sociability means that we are able to understand the decision of the individual to enter social and political relationships not merely as a function of necessity and self-interest, but also as a fundamental impetus and desire of human nature. Sociability thus complicates the role that force and necessity play in social and political contracts and obligations. This means, I will ultimately argue, that within Grotius's theory of natural law and political obligation, the concept of sociability directly challenges and undermines the role of self-interest in political and social relations.

While the principle of sociability is not strong enough to withstand the imperatives of self-interest on its own, it does explain why it is that self-interested individuals seek to formally commit themselves to obey the laws of nature.¹³ For Grotius, the natural laws regulate the interactions between individuals in the state of nature and the adoption of positive laws in a political society should be understood as an attempt to enforce the laws of nature—not to supersede them or make them redundant. As a result, the act of making natural laws into positive, enforceable laws reveals a commitment on

the part of natural individuals to obligate themselves to one another in the manner suggested by the natural law. This will mean both respecting the rights and property of others, and assuming an obligation for the welfare of the society as a whole and the individuals who comprise that society. It is the sociable desire to repudiate self-interest as the governing principle of individual lives that compels people to enter into a social contract and to fulfill the demands of sociability inherent in the state of nature. In other words, both self-interest and sociability, reason and feeling motivate individuals to assume political and social obligations towards one another.

De Jure Praedae

Self-Preservation and the Natural Law

In contrast to Grotius's later, more mature work, *De Jure Belli, De Jure Praedae* is understood by most scholars to be distinctive in terms of its theological voluntarism¹⁴ and its emphasis on utility. Grotius's connection between utility and justice in this text has led to the popular view among Grotius scholars that self-preservation and self-interest form the foundation of the natural law and drive towards political society in *De Jure Praedae* and that sociability emerges only later in *De Jure Belli* as an important component of Grotius's thinking.¹⁵ While utility and self-interest certainly play a dominant role in *De Jure Praedae*, there are nevertheless hints in this text at what will become the principle of sociability in *De Jure Belli*. There are no explicit references to 'sociability' in *De Jure Praedae* but Grotius's reliance on sociable characteristics like other-regardingness, the capacity for love, the inevitability of political society and a

¹³ As we will see, Grotius is emphatic that utility alone is not sufficient to drive men into political society.

¹⁴ Tierney represents an exception to this trend. He argues that the difference between *De Jure Praedae* and *De Jure Belli* on the question of voluntarism is primarily a shift of emphasis for Grotius, rather than a substantive revision. See Tierney, *The Idea of Natural Rights*. p. 327.

natural universal society point to foundational elements of this theory of natural law which are quite distinct from the pursuit of self-preservation. As a result, Grotius's account of the social contract in *De Jure Praedae* depends on his recognition of what human share with the rest of creation—egoism and the drive towards self-preservation—and what makes us distinctively human—our willingness and ability to assume obligations towards others and to formalize those obligations into positive political laws.

Grotius begins *De Jure Praedae* with the voluntarist claim that God's will is the law, and that this law is just because God wills it. This means that to the extent that we recognize God's work in the creation of the human world, we must be able to reconcile what we see with an understanding of divine will and with natural justice. For this reason, the self-love that tends to confound idealized conceptions of political society must be understood to contribute in some way towards the natural law. He explains,

since God fashioned creation and willed its existence, every individual part thereof has received from Him certain natural properties whereby that existence may be preserved and each part may be guided for its own good, in conformity, one might say, with the fundamental law inherent in its origin. From this fact, the old poets and philosophers have rightly deduced that love, whose primary force and action are directed to self-interest, is the first principle of the whole natural order...This phenomenon can be observed not only in the human race, but among the beasts also and even in connexion with inanimate objects, being a manifestation of that true and divinely inspired self-love which is laudable in every phase of creation.¹⁶

In other words, the very ubiquity of self-love and self-interest indicate that they must be fundamental to the character of the natural world. This is as true of animals and of vegetables as it is of humans—self-love is the vehicle by which God ensures the continuation of his creation. Grotius acknowledges that immoderate self-love is a vice

¹⁵ Although, as we will see, the role of sociability in *De Jure Belli* is also contentious.

¹⁶ Grotius, *De Jure Praedae*, p.9.

(and this will, indeed, be the catalyst for the creation of civil society), but on the whole, self-love acts as a preservative for all forms of life. Moreover, since this impulse does come from God, we should not view it as fundamentally at odds with the social order, nor indeed with a rational system of natural law and natural justice. For Grotius, self-love is an essential part of God's creation and integral to who we are as humans, and, as such, it must inform the ways that we think about law and politics. Citing Horace approvingly, Grotius suggests that "expediency might perhaps be called the mother of justice and equity,"¹⁷ so essential is it to our normative political thinking. It is important to note, however, that self-love and self-interest are depicted here as essential but not distinctive features of human nature. About this Grotius is explicit—self-love is a characteristic not only of humans but also of animals and "inanimate objects." It is, quite literally, the foundation of the whole natural order.

As a consequence, Grotius deduces the first two laws of nature from the principle of self-love and the moral right each possesses to pursue his own self-preservation. Grotius writes, "two precepts of the law of nature emerge: first, that *It shall be permissible to defend [one's own] life and to shun that which threatens to prove injurious*; secondly, that *It shall be permissible to acquire for oneself, and to retain, those things which are useful for life*."¹⁸ These two laws emerge directly from the instinct towards self-preservation and the divine endorsement that Grotius sees in this instinct. These subjective laws are accompanied by two objective laws: "Let no one inflict injury upon his fellow" and "Let no one seize possession of that which has been taken into the

¹⁷ Ibid.p. 9. Grotius will explicitly disavow this position in *De Jure Belli*.

¹⁸ Ibid.p. 10. Unless otherwise noted, all quotations in italics are italicized in the original.

possession of another.”¹⁹ Together, these are known as the laws of inoffensiveness and abstinence and they make up the minimal picture of law and ethics in Grotius’s state of nature.

These are the first four natural laws that Grotius presents in *De Jure Praedae*, but it should be clear that the first two are much closer to being rights than they are to being laws. Grotius has made an important shift here, from conceiving of natural laws as objective prohibitions against certain modes of behavior to presenting natural laws as subjective rights possessed by natural individuals. The shift from an objective to subjective conception of *ius* is usually seen as characteristic of the modern natural law tradition in comparison to its classical and scholastic predecessors.²⁰ For Richard Tuck, it is the very egoism of the self-preservation doctrine that makes this shift from law to rights possible. If, as Grotius claims, individuals can be understood to have been given laws permitting them to pursue their own self-preservation, they must also be understood to have a moral *right* to that self-preservation, and from this, Tuck elaborates, we can see the foundation for Grotius’s entire system of rights and justice. Rather than viewing the impulse for self-preservation as an instinct destructive of the social order, Grotius converts that impulse into a series of rights and natural laws which are consistent with the fact of humanity’s social existence. As Tuck argues, the conversion of self-preservation from natural instinct to moral right not only results in moral rights for the individual agent, but also a duty incumbent upon each individual to secure his own self-

¹⁹ Ibid.p. 13. Grotius is not positing natural property rights here. He argues that God gave the means to preservation to men in common, but that since this became impracticable, individuals seized possession of their own means for survival. The natural law recognizes these possessions, essential as they are for life and the pursuit of life, but it does not create actual property rights. He argues, “each individual may, without violating the precepts of nature, prefer to see acquired for himself rather than for another, that which is important for the conduct of life.” (Grotius, *De Jure Praedae*.p. 10). I discuss Grotius’s theory of property at greater length below, pp 21-23.

preservation.²¹ For Grotius then, the state of nature is not a state of war—the universality of the instinct for self-preservation points to a natural moral order which underlies natural rights and natural justice, and which rational, natural individuals will be able to apprehend. The principle of self-preservation that informs the first four natural laws allows for a relatively peaceful state of nature, at least for a time.

Unlike his successors, Grotius does not dwell extensively on his vision of the state of nature. We learn very little about it except that, for a brief period in human history, individuals are understood to have lived outside civil society. The problem that Grotius identifies with the state of nature is almost identical to that posed by Locke later in the century. While the laws of nature have been “established” and are accessible to humans through their reason, enforcement and punishment create a difficult problem for natural man. Grotius claims that inevitably “the corrupt nature” of certain individuals creates a situation in which some men “either failed to meet their obligations or even assailed the fortunes and the very lives of others, for the most part without suffering punishment.”²² The problem here, as Grotius sees it, is not that men are becoming crowded and jostling against one another without any effective means for resolving conflicts, but rather that humanity is *too* spread out to ensure the proper execution of the laws of nature. He writes, “the increasing number of human beings, swollen to such a multitude that men were scattered about with vast distances separating them [...] were being deprived of opportunities for mutual benefaction,”²³ and this most especially with regard to their security and their ability to punish violators of the natural law. The insufficient contact

²⁰ See, for example, d'Entreves, *Natural Law.*, pp. 52-62.

²¹ This point is central to Tuck's argument about Grotius in *Philosophy and Government* and *The Rights of War and Peace*.

²² Grotius, *De Jure Praedae.*, p. 19.

between individuals and groups becomes part of the problem of enforcement and punishment for Grotius. The laws of nature can only hold force when humans live together in society because only when individuals are constantly exposed to one another can they be reliably depended upon (or compelled) to recognize natural laws as mutual and obligatory and to limit their self-love.

This is essentially all that Grotius says about the state of nature in *De Jure Praedae*, and Tuck argues that because the laws of abstinence and inoffensiveness are so basic, Grotius “gave an extremely minimal picture of the natural moral life, compared with earlier accounts.”²⁴ Certainly Grotius sees natural individuals as obligated to one another only to the extent that they should not interfere with one another’s bodily integrity or possessions. Each individual must allow every other individual their right to pursue their own self-preservation. But even in the state of nature, and even in *De Jure Praedae*, Grotius sees more to human nature than this fundamental egoism. As we saw above, the pursuit of self-interest is not a defining characteristic of humankind—it is a characteristic of all life, animal and vegetable as well as human. To understand Grotius’s view of what makes humans peculiarly human (and hence capable of rights, obligations and political society), we must look beyond our impulse and right to self-preservation and discover our more distinctively human characteristics.

Human Nature: Egoism and the Love of Others

While self-interest is certainly essential to Grotius’s conception of human nature and the development of political society, he is nevertheless not describing a natural man motivated solely by a desire for self-preservation and his own advantage. The very

²³ Ibid. p.19.

²⁴ Tuck, *Philosophy and Government.*, p. 174.

existence of a natural law suggests to Grotius that humans are connected by their universal subjection to the laws of nature. There is, he claims, a “universal society established by nature”²⁵ and the purpose of civil government is to reinforce this natural society. He notes that political communities come into being,

not with the intention of abolishing the society which links all men as a whole, but rather in order to fortify that universal society by a more dependable means of protection, and at the same time, with the purpose of bringing together under a more convenient arrangement the numerous different products of many persons’ labor which are required for the uses of human life.²⁶

It should be clear from this passage that although utility and expedience form a powerful motivation for entering the state of nature, in an important sense, the society of all mankind precedes any particular civil society because it is implicit in the natural law.

²⁷This universal society is not especially meaningful in any political or social sense: members of the universal society of nature owe one another nothing more than what the laws of abstinence and inoffensiveness require. However, fulfilling even minimal obligations in the state of nature requires that each individual see himself as belonging to a natural universal society of man; in other words, natural man must employ his reason to understand himself as a member of a universal group subject to universal and mutually binding laws. This is the normative obligation underlying the laws of nature. Respecting the rights of others—even the basic right not to be harmed or to have ones’ possessions pillaged—means first recognizing others as human and equal, and then extending to others those rights that each demands for himself. When some natural individuals come

²⁵ Grotius, *De Jure Praedae.*, p. 20.

²⁶ Ibid.p. 19.

²⁷ This position is, of course, reminiscent of the Stoic worldview. This perspective on Grotius is developed in the work of Chris Brooke in Christopher Brooke, "Grotius, Stoicism and Oikeiosis (Manuscript)," *Grotiana* Forthcoming (2009).

to be corrupted by their own self-love and forget their relationship to the universal society legislated by the natural law, civil society becomes necessary. The establishment of political society should be seen as an attempt to fulfill the demands of the natural law and to enforce the rational mutuality of an essential, universal human nature, as well as an opportunity to reap the material benefits and conveniences of living in organized human society.

Grotius's implication that the existence of a natural law brings with it the demand for mutual recognition as an element of a fundamental human community indicates that while security and a need for more uniform enforcement of the natural law are primary motivators for the social contract, these things can only partially explain the move out of the state of nature. Utility and the satisfaction of self-interest are important, but the principle of self-love is limited as a description of human nature and the advent of political society. Consequently, Grotius claims,

God judged that there would be insufficient provision for the preservation of His work, if He commended to each individual's care only the safety of that particular individual, without also willing that one created being should have regard for the welfare of his fellow beings, in such a way that all might be linked in mutual harmony as if by an everlasting covenant.²⁸

Since the preservation of God's creation is one of Grotius's fundamental assumptions about God and the natural law, it follows, for him, that God wills humans to concern themselves with the preservation of others as well as pursuing their own self-preservation. The implication here is, I think, that God is less concerned with the preservation of any particular individual than he is with the preservation of the human species as a whole. To this end, humans are capable of two kinds of love: we love

²⁸ Grotius, *De Jure Praedae*.p. 11.

ourselves, as we have seen, but we also love others.²⁹ Without this other-regarding love, the fulfillment of God's wishes for humanity would be impossible. Grotius does not offer the two kinds of love in strictly altruistic terms. Belonging, as we do, to the human community created by natural law, concern for the welfare of others is a part of concern for our own individual welfare; other-love is a natural consequence of self-love.³⁰ Indeed, while the pursuit of self-interest is the first principle of all of nature, concern for others is the first peculiarly human principle. While all other animals and vegetables are capable of self-love, humans stand out as unique because our reason and our emotions compel us to look beyond ourselves to the preservation of others. This is the distinguishing characteristic of man. Grotius argues that while "a certain form of friendliness is discernible" among other animals, "this manifestation of love burns most brightly in man as in one who is peculiarly endowed not only with the affections shared in common with other creatures, but also with the sovereign attribute of reason."³¹ It is our reason which enables us to truly have love and affection for other human beings, even in the abstract. Our emotions and our reason work together to ensure that we *feel* and *know* that we belong to a "universal society of mankind" and it is this knowledge that compels us to obey the laws of nature. This combination of reason and feeling points us towards the kinds of obligations that only humans are capable of assuming towards one another, and these obligations will, in the end, push us into civil society.

²⁹ Ibid. p. 11.

³⁰ Brett makes a similar point, although she emphasizes utility in this relationship slightly more than I do. (See Annabel Brett, "Natural Right and Civil Community: The Civil Philosophy of Hugo Grotius," *The Historical Journal* 45, no. 1 (2002), p. 40. She writes, "the rational animal loves its fellows because it can see beyond the immediate good of sense, what appears immediately useful to it. The universal will of all mankind as such rational animals is that 'the conveniences of others should be respected.'" This, she notes, is where Grotius sees the origins of justice.

³¹ Grotius, *De Jure Praedae*, p. 11.

All of this suggests that the breakdown in the observation of the laws of nature in pre-political society indicates that the corruption that comes to characterize some men should be understood as the excessive privileging of self-interest over the concern for the welfare of others. Corruption, in this context, comes to mean a loss of what makes us distinctively human, and in order to recover our basic humanity, the adoption of a social compact becomes necessary. We must formalize our natural law obligations to one another, and in the process, deepen those obligations. With the entrance into civil society, our obligations to one another become much more robust as they are formalized, and too, we become more fully human.³² I am not suggesting here that Grotius is presenting a wholesale Aristotelian conception of human nature or of political society. Grotius is neither quite so teleological, nor so definitive about the political nature of man. Nevertheless, by casting man as a self-loving creature with a unique capacity for other-love, Grotius is able to reconcile the fundamental right to self-preservation with the fact of human social existence. It is through the assumption of obligations towards other people that we come to express our humanity, and this is done most efficiently and meaningfully by individuals living in organized societies with a formalized commitment to the laws of nature. Self-interest is an important component of human nature, but so is our capacity for recognizing humanity in others. This capacity for apprehending what is universal about human beings leads humans to choose a political life with enforceable positive laws and obligations.

³² Schneewind disagrees with my interpretation here. He writes, “We can be completely human even outside society. Social life is something we all just want; and we would want it even if we did not need one another’s help in getting material necessities of life.” Schneewind, *The Invention of Autonomy*, p. 71. I think the distinctively human concern for the well-being of others belies this claim.

There is a certain inevitability in Grotius's account of the origins of civil society. The human power of speech alone indicates for Grotius that we are creatures intended to live social and political lives. Speech is a power given to us by God to express our wills; that is, to create compacts. This power, together with human concern for the welfare of others and the capacity for other-love, enables rational, uncorrupted man to feel himself a member of a universal human community. This is why when Tuck argues that Grotius's extension of self-love to other-love is a "gloss," and stresses the minimal morality of the state of nature, he is misstating Grotius's position. Tuck's reading is not entirely incorrect, but it is incomplete. The goal of social peace can only be met, for Grotius, by the contractual creation of political societies in order to properly enforce the laws of nature. The natural law and the social contract are the means by which our individual self-interests can be reconciled with our natural, human desire to live with other people. So normalized does political society become, outside of the state of nature heuristic, that Grotius is able to proclaim that people who do not belong to political communities "seem hardly worthy to be called human beings."³³ Because of the centrality of other-love to human nature, it becomes a condition of our very humanity to formalize the imperatives of natural law into political laws and obligations. Our primary duty will always be to ourselves, but our humanity is expressed through our love for and obligations towards others. This means that the creation of civil society is not incidental to human history—it is the positive codification of the mutual obligations demanded by the natural law.

³³ Grotius, *De Jure Praedae*, p. 20. It does occur to me that this proclamation should probably be understood as a racist one. Only non-European savages live outside of political society. On the other hand, this claim is construed broadly enough ("persons who hold themselves aloof from this established practice") that it can also include the *idion* and stoics who consciously eschew political society.

Civil Society and Political Obligation in *De Jure Praedae*

In Grotius's account of civil society, the obligations that individuals owed to one another in the state of nature are expanded from negative prohibitions into positive duties that will be enforced by the power of a sovereign. The creation of a commonwealth results, of course, in a greater sense of security for all its members and it brings with it the advantages that come about through the division of labor. It also fundamentally reshapes the relations of individuals to one another. Grotius takes seriously the notion of a common good that essentially alters the nature of individual and social lives. Grotius explains: "When universal goods are separately distributed, each man's ills pertain to him individually, whereas, when those goods are brought together and intermingled, individual ills cease to be the concern of any one person and the goods of all pertain to all."³⁴ The creation of a collective political entity formalizes the divine mandate that humans concern themselves with the well-being of others and markedly expands both interdependence and material obligation among citizens. Given that Grotius attributes the corruption of natural men to excessive space for over-indulgence in self-love, it makes sense that his solution is a very strong binding together of material interests and common concerns in political society. Individuals still retain their individual wills in political society, but with regard to common things, citizens are obliged to redirect their wills towards the common good.

As a consequence, the laws of nature regarding civil society³⁵ reflect the greater degree of obligation in political society:

³⁴ Ibid. p. 19.

³⁵ For anyone keeping count, these are natural laws 7 and 8. Laws 5 and 6 deal with punishment and reward for evil and good deeds in the state of nature.

*Individual citizens should not only refrain from injuring other citizens, but should furthermore protect them, both as a whole and as individuals” and, “Citizens should not only refrain from seizing one another’s possessions, whether these be held privately or in common, but should furthermore contribute individually both that which is necessary to other individuals and that which is necessary to the whole.*³⁶

The law that each must contribute to the good of other individuals and to the good of the whole is quite an expansion of the original prohibition to refrain from harming or stealing from others, and it is dependent upon a fairly explicit and demanding conception of the common good. Citizens are not only required to observe the rights of others, they are also required, by the natural law, to assume a material responsibility for the welfare of other individuals as a part of the social and reciprocal underpinning of individual rights.

The shift from the state of nature to political society results in a change in the kinds of obligations that individuals have to one another and the natural laws that govern their mutual relations. The negative and basic nature of concern for the welfare of others in the state of nature is replaced with a positive command to contribute to the common good and to take responsibility for the welfare of other individuals. This is a much stronger, more solidaristic conception of political society than one might get if egoism were the only important characteristic of human nature in Grotius’s *De Jure Praedae*. While the security and other benefits that come from a social compact are consistent with a well-developed perception of self-interest, the strong sense of the common good that Grotius sees as fundamental to political society (regardless of its constitutional arrangements) cannot be explained purely through reference to self-preservation. Because, as we saw above, reason is essential to Grotius’s understanding of human nature, it is integral both to long-term utility calculations of the type that would be

³⁶ Grotius, *De Jure Praedae*., p. 21. Italics in original.

required to understand such a strong conception of the common good as consistent with individual self-interest, and for understanding the mutuality fundamental to social human existence. To invoke reason to make long term utility calculations means also invoking the same reason that makes other-love possible. Certainly, self-love is essential to Grotius's explanation of the state of nature and civil society in *De Jure Praedae*, but so too is the natural capacity that humans have to feel a concern for the welfare of others. It is other-regardingness, as well as self-interest, that makes the positive obligations entailed by the seventh and eighth natural laws possible, and it is both of these elements together that can ensure the preservation of God's creation.

It is only because of the natural concern and love for others, in partnership with ordinary self-interest, that Grotius sees the pursuit of the common good as a meaningful enterprise. The centrality of the common good and Grotius's claim that the common good must trump individual goods indicate that Grotius's conception of human nature as other-regarding as well as self-interested indeed has a strong bearing on the kinds of political communities that are available to us. In other words, while Grotius is justly infamous for his justification of an absolute sovereign, he nevertheless understands humans as capable of living in republics with strong reciprocal rights and obligations.³⁷ We see, consequently, that entering into a social compact means more than preserving one's life and interests—it means shouldering obligations that will sometimes conflict with one's own interests and it requires a formal recognition of mutual humanity and mutual rights. What this means, ultimately, is that while Grotius makes no explicit references to sociability in *De Jure Praedae*, his conception of human nature as self-loving and other-

loving means we nevertheless see the germ of the principle of sociability that will be fleshed out and made more central in *De Jure Belli*.

De Jure Belli ac Pacis

Human Nature and the Foundations of the Natural Law

In the twenty years that passed between the writing of *De Jure Praedae* and *De Jure Belli ac Pacis*, Grotius's life was characterized by political and personal turbulence. He began writing *De Jure Belli* whilst still in prison and the differences between this book and *De Jure Praedae* indicate that Grotius's thinking matured and his objectives changed throughout this period. While egoism plays its part in the natural law of *De Jure Belli*, Grotius de-emphasizes the role of self-interest in human nature and presents a much more robust account of man's natural sociability. We will see that Grotius makes explicit in *De Jure Belli* what was implicit in *De Jure Praedae*. Whereas sociability is usually understood as playing no role in *De Jure Praedae*, its presence in *De Jure Belli* cannot be denied. The question here is not whether sociability plays a role, but what significance should be attributed to the principle of sociability in Grotius's overall conception of natural law. In this text it is human sociability, rather than self-interest, that serves as the foundation of the natural law. Grotius's goal here is to ground natural law in "the very nature of man" and to reconcile individual self-interest with the basic fact of human social existence. The reason for this is simple and instrumental—Grotius needs to impute those rights to natural man that he wants to give to states for engaging in war. As a result, he must show natural man as possessing rights that he is entitled to enforce. A violation of the laws of nature should be met with swift punishment, and this principle will govern

³⁷ In this vein, Annabel Brett persuasively argues that Grotius is describing a classical style republic model in *De Jure Praedae*, in which unity and utility are central categories. See Brett, "Natural Right and Civil

relations among states under the laws of war and the *ius gentium*. This hinges upon sociability rather than self-interest because sociability here is the universalizing force. If sociability is understood to be universal, then all men of all nations can be prescriptively required to obey the natural law and the *ius gentium*. As a result, a nuanced understanding of sociability, in both its psychologically descriptive and rights-related prescriptive forms is essential to understanding Grotius's theory of natural law and political obligation in *De Jure Belli*.

In the *Prolegomena* to *De Jure Belli*, Grotius explicitly addresses the challenges to natural law made by the skeptics³⁸ by refuting the arguments made by the classical Carneades. The question of Grotius's relationship to the skeptics has been a matter of much scholarly debate. Richard Tuck, in particular, has made the argument that Grotius's primary aim in *De Jure Belli* is to respond to skeptical attacks on the natural law tradition and to reconceive of natural law in such a way that it could satisfy skeptical objections.³⁹ According to Tuck, Grotius seizes upon self-preservation as the one

Community."

³⁸ The skeptics in question here are Charron, Montaigne and their cohort. They attacked the natural law tradition not epistemologically, as Hume would later do, but empirically. They claimed that there are no universally acknowledged natural laws and instead, laws and human behavior can only be understood in local contexts. The skeptics were closely connected to the proponents of Realpolitik. See Tuck, *Philosophy and Government*. pp. 31-65.

³⁹ Tuck has advanced this argument in Richard Tuck, "Grotius, Carneades and Hobbes," *Grotiana* NS4 (1983), *Philosophy and Government*, and *The Rights of War and Peace*. Tuck's position is supported by writers such as Knud Haakonssen, *Natural Law and Moral Philosophy*. and Haakonssen, "Hugo Grotius and the History of Political Thought." With nuances, Tuck and Haakonssen are followed by Schneewind, *The Invention of Autonomy*. and Ross Harrison, *Hobbes, Locke, and Confusion's Masterpiece: An Examination of Seventeenth-Century Political Philosophy* (Cambridge, U.K; New York: Cambridge University Press, 2003).. Arguing that Tuck overstates the importance of the skeptical argument for Grotius are Thomas Mautner, "Not a Likely Story," *British Journal for the History of Philosophy* 11(2) (1993)., and Perez Zagorin, "Hobbes without Grotius," *History of Political Thought* XXI, no. 1 Spring (2000)., and most significantly, Tierney, *The Idea of Natural Rights*. At stake in these discussions is the novelty of Grotius's argument, and more importantly, the question of the foundation of Grotius's system of natural law. For Tuck and his followers, the foundation of natural law must be understood as a consequence of his isolation of self-interest as the one universal principle of human nature. For Tierney and others, Grotius's conception of natural law is meaningless apart from his principle of sociability and his grounding in the scholastic natural law tradition.

universal characteristic of humankind that even the skeptics would be inclined to agree with. From this single principle of self-preservation, Tuck continues, Grotius is able to build a tradition of natural law with a minimalist conception of human nature and the state of nature. Tuck's view has dominated recent scholarship on Grotius and for this reason, many scholars have sought show that self-interest is the founding principle of Grotius's theory of natural law in *De Jure Belli ac Pacis* as well as *De Jure Praedae*. However, Grotius's attack on the skeptical Carneades is not so clear cut as Tuck suggests. As Robert Shaver⁴⁰ has argued, the substance of Grotius's attack on Carneades has less to do with Carneades's relativism, and much more to do with Carneades's claim that justice is merely a pretense disguising self-interest and expedience. In order to save the natural law tradition from such an attack, Grotius must first refute the notion that human nature is primarily defined by the pursuit of self-interest with no regard for an abstract conception of justice. Relativism is a secondary issue that can only be addressed once the possibility for natural law has been established. Grotius's argument with Carneades in the *Prolegomena* is central to the entire *De Jure Belli* because it seeks to debunk the claim that human nature and human justice are nothing but a function of self-interest and to justify a humanist reinvigoration of natural law. In the process, Grotius seeks to show that human sociability is central to natural law and the creation of political society.

Grotius characterizes Carneades' argument as follows: nature "prompts all Men, and in general all Animals, to seek their own particular Advantage: So that either there is not Justice at all, or if there is any, it is extreme Folly."⁴¹ This is an old and familiar

⁴⁰ Robert Shaver, "Grotius on Scepticism and Self Interest," *Archiv fur Geschichte der Philosophie* 78 (1996). In this article Shaver mounts textual evidence against Tuck's claim that self-interest, not sociability, is the primary element of Grotius's theory of human nature.

⁴¹ Grotius, *De Jure Belli*, p. 79.

argument that undermines the possibilities for a universal law of nature. In this oft-cited passage, Grotius argues:

Man is indeed an Animal, but one of a very high Order, and that excells all the other Species of Animals much more than they differ from one another; as the many Actions proper only to Mankind sufficiently demonstrate. Now amongst the Things peculiar to Man, is his Desire of Society, that is, a certain Inclination to live with those of his own Kind, not in any Manner whatever, but peaceably, and in a Community regulated according to the best of his understanding; which Disposition the Stoicks termed ϕιλανθρωπικὴ κοινωνία [sociableness]. Therefore the Saying, that every Creature is led by Nature to seek its own private advantage, expressed thus universally, must not be granted.⁴²

As animals of a higher order humans cannot be said to be motivated by self-interest alone. This desire for society, for peaceful society, is the distinguishing characteristic of mankind, and to understand humans as distinct from other kinds of animals (and certainly superior to them), we must understand that human nature transcends the base pursuit of self-preservation. In *De Jure Praedae*, Grotius discusses the love of others as a function of self-love and here, in *De Jure Belli*, he is more explicit: Self-interest is tempered by a natural sociability among rational creatures. This is both a prescriptive and a descriptive position. If peaceable human society is to be possible, then individuals must be both capable and desirous of limiting the pursuit of their own advantage in favor of social life.

As the above quotation makes clear, human rationality is central to human sociability. Although Grotius understands sociability to be fundamental to human nature, it is not instinctive in the same way that self-preservation is instinctive—it is a function of the higher human capacity for reason. Barbeyrac, an early and prominent commentator on Grotius, notes that “hence it appears that our Author does not mean that bare natural Instinct in the Rule of the Law of Nature; but that he adds Reason for the Direction of such Instinct, without which it might misguide us, and induce us to consult only our

private Interest.”⁴³ Reason, like sociability, is a distinctively human trait,⁴⁴ and transcending the immediate pursuit of self-interest is part of what it means to exercise humanity. Sociability can be understood as distinctively human precisely because it is connected to speech and reason. For Grotius, both speech and reason reinforce the social instinct and distinguish humans from other, lower kinds of animals, including those which seem decidedly social. This is not so different from Grotius’s claim in *De Jure Praedae* that our reason enables us to be other-regarding. Humanity stems from the ability and inclination to go above the level of instinct, to employ reason and to make judgments on the basis of rational sociability. Grotius writes, “For by reason that man above all other Creatures is endued not only with this *Social* Faculty of which we have spoken, but likewise with Judgment to discern things pleasant and hurtful, and those not only present but future,”⁴⁵ we are able to apprehend and act according to the laws of nature. Because humans are able to judge the consequences of their actions, and because they possess reason, they are able to transcend the passions and make judgments on the basis of the natural law. As Haakonssen notes, “the natural sociability that is the law of nature is by no means a simple emotional force in men; although it has an emotional side, the emphasis is on its rational character and it is of course this which makes it possible to see the law of nature as prescriptive in modern terms.”⁴⁶ While I think that sociability is descriptive as well as prescriptive, sociability and rationality are understood as mutually reinforcing elements of human nature, and properly employed, both tend to the establishment and preservation of peaceful human society.

⁴² Ibid. p. 79.

⁴³ Ibid. p. 85 fn. (Tuck’s new edition of *De Jure Belli ac Pacis* is based on Barbeyrac’s translation and retains his footnotes.)

⁴⁴ Ibid. p. 84.

As we saw in *De Jure Praedae*, self-interest is a common trait of all existence, and as such, it need not necessarily be viewed as destructive of the social order—self-interest is, after all, a part of creation compatible with the laws of nature. Grotius makes it clear throughout *De Jure Belli* that self-interest is always going to be important to humans. Indeed, citing Cicero, Grotius claims, “‘tis the first Duty of every one to preserve himself in his natural State, to seek after those Things which are agreeable to Nature, and to avert those which are repugnant.”⁴⁷ Nevertheless, for society to be successful, and for nature’s plan to be fulfilled, “Right Reason should still be dearer to us than that natural Instinct [for self-preservation]”⁴⁸ In other words, while the first law and duty of nature is self-preservation, our capacity for reason enables us to do more than follow mere self-interested instinct. When evaluating our actions we must employ our reason and ensure that our actions conform not only with our instincts but also with Right Reason and the Laws of Nature, and this means acting in a manner consistent with human sociability.

Grotius goes to great lengths to demonstrate that sociability rather than self-interest should be understood as the foundation of natural law. The natural law is meaningless in a social vacuum—we only need laws to regulate our behavior when individuals come into contact with one another. That is, the very existence (or posited existence) of natural law presupposes some degree of social human interaction. It makes sense then to understand the natural law as coming from and being directed towards human society. Grotius makes it plain that society is the object of natural law and it is

⁴⁵ Ibid. p. 87.

⁴⁶ Haakonssen, "Hugo Grotius and the History of Political Thought." p. 252.

⁴⁷ Grotius, *De Jure Belli*, p. 180.

⁴⁸ Ibid. p. 181.

also God's will. Where Grotius agreed with Horace in *De Jure Praedae*, here he argues against him. Grotius writes,

for the Mother of Natural Law is human Nature itself, which though even the Necessity of our Circumstances should not require it, would of itself create in us a mutual Desire of Society: And the Mother of Civil Law is that very Obligation which arises from Consent, which deriving its Force from the Law of Nature, Nature may be called as it were, the Great Grandmother of this Law also. But to the Law of Nature profit is annexed: For the Author of Nature was pleased, that every Man in particular should be weak of himself, and in Want of many Things necessary for living commodiously, to the End we might more eagerly affect Society.⁴⁹

From this statement we begin to see that the principle of sociability is not marginal to Grotius's overall theory of natural law and the social contract at all. Sociability is at the very core of Grotius's conception of society, law and political and social obligation. Human nature makes society desirable, and as such, human nature and the society that it brings into being are at the core of our natural laws and rights. Nature clearly intends us to exist together in society and has taken every precaution to ensure that we will lead social lives. We see here not only that the natural law can be deduced from the sociability inherent in human nature, but also the explicit claim that expedience is not sufficient to drive us into society. We *choose* to live in society, because we are social by nature, and the laws of nature apply to us because this is a natural choice that must be governed by natural laws. The role of utility in political society—the attainment of goods, commodious living, security, more definite punishment for violations of the law—these are additional inducements created by God and nature to ensure that we will *always* choose society; that is, we will choose sociability over self-interest. Our relative weakness is part of nature's contingency plan.

⁴⁹ Ibid. p. 93.

This has been a point of contention for Grotius scholars. Tuck argues that for Grotius utility is at the core of not only natural law, but also society and justice, but here Grotius specifically disavows this position. There are certainly advantages to living in society, and these operate as additional motivating factors. The primary force that drives humans into society, however, is the sociability at the core of human nature which is manifest as a “mutual Desire of Society.” Grotius is quite clear about this: humans would choose society over solitude even without insecurity or material necessity because we want to live social lives. Our weakness and inability to remain secure whilst living alone is merely a secondary impetus to push us towards society. Security plays its role in the creation of political and civil society—for certainly our rights and possessions can be better protected by a state with legal right and enforcement powers, but, it is clear, we will seek society regardless of how necessary it is to our self-preservation. Both human nature (with its inherent sociability) and expediency (the inadequacy of individuals) have combined, by the will of God, to assure that we live a social existence.

Human Sociability: Rights and Obligations, Prescriptions and Descriptions

As we have seen, sociability clearly plays an important role in *De Jure Belli* but we are left with the question of what sociability actually means for Grotius and its significance for his overall theory of natural law and political society. Sociability is foundational for Grotius’s jurisprudential and political thought. I understand the principle of sociability as operating in two different ways in *De Jure Belli*—as a descriptive, psychological feature of human nature, and as a normative command to obey the laws of nature. Normatively, sociability amounts primarily to the command that each individual must recognize and respect the rights of others, but psychologically, as a descriptive

account of human nature, sociability involves mutuality and even love. Because sociability is an instinct in constant competition with the more immediate instinct of self-interest, artificial measures are required to ensure that rational, other-regarding sociability will dominate over utility in society. As a result, the human social instinct compels individuals to assume political and social obligations which are enforced through positive laws. In its descriptive capacity, the principle of sociability explains why it is that self-interested individuals choose to live together in societies even when necessity and utility do not compel them to do so, and why it is that individuals obsessed with their own self-interest are willing to recognize and respect the rights of others.

In the remainder of this chapter, I will discuss the normative implications of sociability, as it pertains to rights in general and property rights in particular, as property rights are fundamental to Grotius's understanding of social living. This normative conception of sociability focuses primarily on regulating the interactions among people in the state of nature and then in political society. We are reminded here of the laws of abstinence and inoffensiveness from *De Jure Praedae*. While several prominent Grotius scholars have reduced the entire principle of sociability to the command to respect the rights of others, it will become clear that this rights-based conception of sociability is inadequate for understanding Grotius's thinking about the individual and political society. As a result it is necessary to take seriously Grotius's descriptive understanding of sociability as an important psychological feature of human nature. In this sense, sociability means the natural desire for society that drives humans into communities and which informs the human capacity for other-regardingness and willingness to respect the equal rights of others. The mutuality which underscores the descriptive conception of

sociability is closely related to the possibilities for political society envisaged within Grotius's understanding of the laws of nature.

Sociability and Property Rights

Sociability has primarily been understood in terms of its relationship to rights⁵⁰ and to a large extent this is correct. The fundamental demand of sociability is that individuals obey the laws of abstinence and inoffensiveness so as to make peaceable society possible in and out of the state of nature. In Grotius's conception, peaceful political society turns on the right not to be harmed and the right not to have one's possessions stolen. Without positive legal enforcement of the most fundamental laws of nature, political society is impossible given the corruption we saw in *De Jure Praedae*. In the state of nature, too, sociability primarily means that individuals are compelled to think beyond their own immediate self-interest and to become other-regarding with respect to rights.

Because of the natural law's emphasis on rights and its constitutive relationship with sociability, Tuck is able to argue that Grotius's state of nature is morally stark and minimal—we owe nothing to others except a respect for their right to self-preservation. Tuck claims, "Grotius was now able to argue that the law of nature was in effect the obligation men are under to preserve social peace, and that the principal condition for a peaceful community is respect for one another's rights."⁵¹ For Tuck, Grotius's "social life

⁵⁰ In the debates that rage over the meaning and significance of sociability in Grotius's thought, Tuck takes perhaps the most rigorously anti-sociability stance among Grotius scholars, followed closely by Knud Haakonssen. Among those arguing that sociability plays an important role in Grotius's natural law theory are Harrison, *Hobbes, Locke and Confusion's Masterpiece.*, Shaver, "Grotius on Scepticism and Self Interest." Mautner, "Not a Likely Story.," Tierney, *The Idea of Natural Rights.*, Ernst Cassirer, *The Philosophy of the Enlightenment, Humanitas: Toward the Study of Man* (Boston: Beacon Press, 1955)., and Gary B. Herbert, *A Philosophical History of Rights* (New Brunswick, N.J; London: Transaction Publishers, 2002)..

⁵¹ Tuck, *Natural Rights Theories.*, p. 73.

is the peaceable exercise of each member of his *rights*, and in particular, his fundamental right of self-preservation”⁵² and little more. In other words, without this minimal rights- and property-related notion of sociability, Grotius would look a lot more like Hobbes.⁵³ For Tuck, sociability is an incidental element of human nature that speaks more to Grotius’s perception of his audience than it does his theory of ethics and natural law.⁵⁴ Grotius’s natural men are social only to the point that they will respect one another’s rights and the demands of sociability are satisfied when those minimal criteria have been met.

The particular right of property has been contentious for scholars. For Tuck and Haakonssen, the property question has been just another indication that the sociability concept is ultimately a shallow one. For others, Grotius’s stance on possessive rights indicates that he is trapped within a capitalist paradigm incapable of conceiving a common good that is not dependent upon private property.⁵⁵ Neither of these conceptions is quite right. Property is integral to Grotius, as a means of self-preservation and as a central component of normative human sociability. Nevertheless, property is not a right

⁵² Tuck, *Philosophy and Government*., p. 197.

⁵³ And indeed, this is part of Tuck’s broader goal—to recast Grotius as an almost identical predecessor to Hobbes. As such it is important for Tuck to minimize the importance of sociability to Grotius’s theory. Rousseau shares this position with Tuck. See *Jean-Jacques Rousseau, Emile (New York: Basic Books, 1979)*, p. 458.

⁵⁴ Indeed, Tuck argues that Grotius only added the substantial sections on sociability to *De Jure Belli* so as to make himself agreeable to his enemies in the United Provinces. See *Rights of War and Peace*, p.99.

⁵⁵ Some scholars writing in the Marxist tradition have understood sociability as little more than a gloss for the establishment of property rights. Both Ernst Bloch and Richard Waswo argue that sociability is the handmaiden of capitalism. Waswo argues that the property-relations integral to Grotius’s conception of sociability operate primarily as a justification for colonialist expansion. If all people everywhere are understood to be social, and social means ‘innately respecting property rights’, then European states are within their rights to impose ‘sociability’ (i.e., uneven property relations) onto non-European peoples. There is certainly some merit in this argument, particularly to the extent that sociability is dependent upon property rights, but while the association between these two concepts is clear in Grotius’s writing, but it is reductive to suggest that sociability only invokes property rights. See Ernst Bloch, *Natural Law and Human Dignity, Studies in Contemporary German Social Thought*. (Cambridge, MA: MIT Press, 1996)., p. 49, and Waswo, "The Formation of Natural Law to Justify Colonialism, 1539-1689.", pp. 743-759.

that transcends other goods in Grotius's pantheon and it is limited by normative concerns about natural equality, self-preservation and the demands of sociable mutuality.

The right of property is foundational to Grotius's theory of natural rights and it is equally important to his conception of sociability. He explains,

This sociability, which we have now described in general, or this Care of maintaining Society in a Manner conformable to the Light of human Understanding, is the Fountain of Right, properly so called; to which belongs the Abstaining from that which is another's and the Restitution of what we have of another's, or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default and the Merit of Punishment among Men.⁵⁶

In this way, property rights are an essential component of sociability. Without them, the natural law would take on an operational meaninglessness for Grotius. Property rights in particular, play an important role in creating stable human societies and are an important component of sociability itself.

Grotius's account of the development of property begins with the premise that the earth is available to all men in common to pursue their self-preservation. In the natural state, there is no property, but the right of the possessor is respected. These squatter's rights become inadequate when men become dissatisfied with natural simplicity and communality. At this point, using things in common becomes impracticable, and so, "as soon as living in common was no longer approved of, all Men were supposed, and ought to be supposed to have consented, that each should appropriate to himself, by Right of first Possession, what could not have been divided."⁵⁷ The property contract effectively ends communal ownership and the right of property, henceforth, becomes vital to the success of human life. Behind the impatience to leave behind the communal use of the

⁵⁶ Grotius, *De Jure Belli*, p. 85.

⁵⁷ Ibid. p. 427.

earth, Grotius explains, is the condition of humanity after the great Flood. The potential for communal property was destroyed because of the “Defect of Equity and Love, whereby a just Equality would not have been observed, either in their Labour, or in the Consumption of their Fruits and Revenues.”⁵⁸ The implicit assumption here is that private property will tend towards preserving ‘just Equality’ and will make up for a lack of love and charity among corrupted natural men.

The role of equality in the establishment of property rights can best be seen in Grotius’s revealing limit to the fundamental right each has to his possessions. Despite the centrality of property relations to civil society and interactions among individuals, even a property rights contract cannot eliminate the foundational principle of self-preservation underlying this right. He argues, “Property seems to have extinguished all the Right that arose from the State of Community. But it is not so; for we are to consider the Intention of those who first introduced the Property of Goods. There is all the Reason in the World to suppose that they designed to deviate as little as possible from the Rules of natural Equity.”⁵⁹ Since Grotius attributes the creation of private property to a deficit of equality, among other things, the fundamental natural equal right to self-preservation cannot be overridden by the establishment of property. It follows then, for Grotius, that “in a Case of absolute Necessity, that antient Right of using Things, as if they still remained common, must revive, and be in full Force.”⁶⁰ In other words, in the context of the direst need, one is entitled to appropriate the property of another for his own use.⁶¹ Grotius further explains: “Even amongst Divines it is a received Opinion, that whoever shall take

⁵⁸ Ibid. p. 426.

⁵⁹ Ibid. p. 433-4.

⁶⁰ Ibid. p. 433.

from another what is absolutely necessary for the Preservation of his own Life, is not from thence to be accounted guilty of Theft.”⁶² In other words, if basic survival is at stake, a man is entitled, by the right to self-preservation, to appropriate someone else’s property for his own use.⁶³

It is worth noting that Grotius does not provide a mechanism by which the property-owner is to submit to the theft of his property. While Grotius urges leniency on the part of magistrates in the case of such necessity-induced theft, Grotius is emphatic that this suspension of property rights does not proceed from feelings of love or charity towards other men. In formal terms, Grotius seeks to find justification for this extraordinary suspension of property rights through his inferences of the intentions of those who originally instituted the property contract.⁶⁴ He writes, “the Property of Goods is supposed to have been established with this favourable Exception, that in such Cases one might enter again upon the Rights of the primitive Community.”⁶⁵ At the core of this exception to the law of property is a conception of equality which Grotius sees as informing the original property contract and which is integral to the notion of sociability.

⁶¹ Martha Nussbaum suggests that the necessity exception points to the possibility that a poor nation has the right to appropriate a rich nation’s surplus, thus contributing to a substantive theory of global justice. See Nussbaum, *Frontiers of Justice*., pp. 19-20.

⁶² Grotius, *De Jure Belli*., p. 433. It does seem apparent that Grotius does consider the appropriation of another’s property in such circumstances to be theft, but it is theft for excusable reasons and he argues that leniency on the part of magistrates is the best response to such a crime. For more on property, punishment and its relation to the development of Adam Smith’s doctrine, see Salter, "Sympathy with the Poor." Salter argues that Grotius “showed how it was possible to acknowledge poverty within the law in a way which did not threaten, or which posed less of a threat to, the sanctity of private property” p. 213.

⁶³ Grotius does posit limits to this leniency: Firstly, it is only acceptable to steal if the needy person will not be leaving someone else in straits as dire as his own. Secondly, the needy person must explore other options before resorting to theft. Thirdly, reparations are in order when and if the needy person is able to make them.

⁶⁴ Tuck calls Grotius’s move here the theory of “interpretive charity”, i.e., interpreting the intentions of the property contract authors in the best possible light. See *Natural Rights Theories*, p.80.

⁶⁵ Grotius, *De Jure Belli*.p. 435.

It is not possible, for Grotius, that this contract could preclude the right of each to pursue his own most basic self-preservation.⁶⁶

For Grotius then, the actual contractual arrangements that led to enforceable property rights are a function of the universal right to self-preservation, and the appropriation of particular resources to secure this preservation are primarily a matter of convenience. Property is essential but Grotius does not see it as a value more important than the equal right each person has to pursue his own welfare. The individual right to self-preservation, and the right of the community to secure its existence and stability are ultimately more important than the right to property. All people have a right to self-preservation, and one man's right to wealth and riches does not deprive another of his right to survive, even if that right to property is backed up by both natural and positive laws. Both the recognition of and the limit on property rights are a function of the broader conception of sociability that I argue informs Grotius's overall project.

For Tuck, Haakonssen and others, the thin notion of sociability is connected to the broader argument about Grotius's relationship to the skeptics. To answer relativism, they argue, Grotius must depict his natural men in as morally stripped down terms as possible. In this view, self-interest and only self-interest will answer the demand for universality. To this end, sociability must be read as a disguise for the demands of rational self-interest. The problem with this argument is that Grotius directly imputes more to human nature and the requirements of the natural law than self-interest, and his conception of

⁶⁶ The question of why a property-owner would submit to this violation of his rights is left open. Grotius addresses this question purely from the point of view of the poor man and the magistrates who will hear his case. In *Ibid.* p. 1478, Grotius observes that "the Rules of Charity reach father than those of Right. He that abounds in Wealth is guilty of gross Inhumanity, if he strip his poor Debtor of all that ever he is worth, by the Rigour of the Law, to satisfy his Debt." Charity might not be the origin of or the justification for the necessity principle, but some exercise of it is clearly required on the part of the property-owner.

sociability, whilst certainly not as strong as Aristotle's,⁶⁷ nevertheless invokes more than an insistence upon rights. Grotius claims, for instance, that Vasquez is wrong when he argues that men only care about their commonwealth from the perspective of self-interest. Grotius argues, "'Tis true every Man for his own Sake wishes well to the *Commonwealth*, but not for his sake only, it is also for the Sake of others'"⁶⁸ In other words, the bond between the individual and his polity is dependent upon more than self-interest, or a rights-dominant view of the significance of sociability. The republicanism⁶⁹ at the core of Grotius's political theory stresses that the common good must take precedence over individual wills within political society, and this, in turn, requires a more meaningful conception of sociability than an emphasis on rights.⁷⁰

The thin sociability argument expressed by Tuck and Haakonssen, among others, leaves open two important questions: Firstly, we are left wondering why Grotius goes to such lengths to show that expedience is not enough to push us into political society if self-interest is really his primary category for understanding human nature and deriving the natural law, and secondly, this view fails to show why, without an innate and relatively meaningful conception of sociability, individuals will assume such extraordinary obligations to one another in political society. These issues can only be

⁶⁷ See Haakonssen, "Hugo Grotius and the History of Political Thought." p. 242: "Man is sociable because he is created to live in accordance with the law of nature to that effect. But this is explained and applied in a most un-Aristotelian manner, for the *socialitas* to which we are bound by nature is for Grotius simply the respecting of one another's rights, subjectively conceived, so that the minimal order mentioned above (i.e., a minimum of social life) is possible."

⁶⁸ Grotius, *De Jure Belli*, p. 405.

⁶⁹ The same is true for the less republican and more authoritarian elements of Grotius's theory. His notion that sovereigns have absolute rights and ought not to be restrained by their own laws is another example of the subordination of the rights of individuals in favor of the common good.

⁷⁰ For Tuck, Grotius's entire project is predicated on the need to justify the right to punish people for violating the natural law in order to justify the right to war. This is certainly part of Grotius's project, but these rights are conceivable without the concurrent stipulation of a substantive degree of individual self-sacrifice for the common good.

addressed by taking sociability seriously as a descriptive psychological feature of human nature.

Sociability, Obligation and the Law of Charity

Reading Grotius's principle of sociability in terms of its centrality to rights will take the reader a long way in understanding the foundations of his theory of natural law and his conception of political society. Nonetheless, seeing sociability in this way leaves open a number of residual questions about the role of sociability in Grotius's thought. In particular, it fails to account for the inherent drive towards society in light of Grotius's insistence that utility and expedience are insufficient to explain social and political obligation. I wish to stress the psychological dimension to sociability—a dimension that informs, makes possible and even transcends the normative, rights-related conception. Rights-oriented sociability is dependent upon a human psychology which desires the assumption of obligations towards other people, and which has a capacity for other-regardingness that will compel individuals to concern themselves with the welfare of others, both in and out of the state of nature.

The normative conception of sociability turns integrally on the mutual recognition of the equal right each individual has to be free to enjoy his own rights. Natural equality is essential to the universality of the natural law, but the recognition of this equality is dependent upon the psychology of sociability. The principle of sociability and the laws of nature would be quite meaningless, in or out of political society, without respect for the mutuality of rights. As we saw above, self-preservation is the foundational principle of the natural order. It is sociability, with its suggestion of mutuality and other-regardingness, that makes humans capable and desirous of peaceful social living. In the

case of rights in general, and property rights in particular, self-interest and sociability work together to ensure that balance between individual self-interest and the rights and needs of the community can be satisfied. Without the assumption of a psychology that makes both self-interestedness and other-regardingness possible, Grotius would not be able to create a conception of political society that tends towards stability, peace and the pursuit of the common good. In this sense, sociability cannot be reduced to a function of self-interest. There is an essential dependence on the capacity for other-regardingness and mutuality in the principle of sociability, and this dependence belies the attempts of scholars to define sociability reductively.

We must take Grotius seriously on the principle of sociability and understand that there is more to sociability than rights and property. Sociability means that we have the capacity to be motivated by love as well as self-interest and we can see this in both *De Jure Praedae* and *De Jure Belli*. While the rights conception of sociability regulates the interactions between people in the state of nature, the dependence of sociability on mutuality and other-regardingness brings about a more meaningful conception of society and makes political and social obligations possible. Sociability must be understood as something deeper and more substantial than a basic respect for the rights of others if we are to understand what natural law and political society ask of us. Grotius tells us, “since the fulfilling of Covenants belongs to the Law of Nature, (for it was necessary there should be some Means of obliging Men among themselves, and we cannot conceive of any other more conformable to Nature) from this very Foundation Civil Laws were derived.”⁷¹ This passage begs the question of *why* men needed to obligate themselves to one another. As we have seen, utility and even mutual utility provide only part of the

answer. For Grotius, individuals wish to obligate themselves to other people—to obey positive laws, fulfill contracts and obey the dictates of majoritarianism—because humans are social creatures who wish to live together in peace, even if this causes frustration to individual egoism. At the root of sociability is the natural desire we feel to obligate ourselves to other people.⁷² As Harrison suggests, “it is being able to understand the idea of obligation that distinguishes people from animals” precisely because obligations implicate our sociability and our reason—in other words, our will and our capacity for social living. The adoption of positive laws and the construction of a social contract should be understood as a conscious decision to privilege sociability over self-interest in accordance with the dictates of the natural law. This will mean respecting the rights and property of others, and it will mean assuming a personal obligation for the welfare of the society as a whole and the individuals who comprise it. In this way, sociability is foundational for Grotius. The desirous, descriptive conception of sociability informs both the natural law and the construction of political society, and the normative rights-related notion of sociability establishes the minimum requirements for social life.

Conclusion

Sociability is not incidental to *De Jure Belli ac Pacis* and completely absent from *De Jure Praedae*. As I have shown, Grotius employs a psychology in both *De Jure Praedae* and *De Jure Belli* that turns on a robust conception of a distinctively human capacity for other-regardingness and the love of others. The presence of these themes in both texts indicates that for Grotius, sociability and the social instinct are important

⁷¹ Grotius, *De Jure Belli*, p. 93.

⁷² Ross Harrison makes a similar argument in his *Confusion's Masterpiece* and reveals that Grotius's reasoning here tends towards the axiomatic and tautological. Because we are rational and social, we will wish to obligate ourselves to one another through contracts. We are obligated to obey these contracts

foundational elements of human nature and the natural law. Sociability makes possible a strong theory of mutual political obligation and a concern for the common good that takes priority over individual wills and sometimes even individual rights even as it makes rights and property rights possible.

I have favored sociability in my analysis in this chapter because the significance of Grotius's conception of sociability has been under attack by prominent Grotius scholars. As Tierney claims, I think correctly, Grotius's "doctrine of natural law and natural rights was built around these two principles—self-love and sociability—not only or primarily on the first one."⁷³ Ultimately, what we find in Grotius is a conception of human nature and human psychology that is marked by rival instincts—the instinct for self-love and the desire for the society of others. The very competitive instability of these traits, (as Kant will later put it, our 'unsocial sociability') makes political laws both necessary and desirable. The principle of sociability cannot stand alone to ensure justice—sociability is in constant tension with self-interest in Grotius's depiction of both individual psychology and the state of nature. The limits of innate rational sociability and its competition with self-interest, after all, are what make the social contract necessary. Nevertheless, sociability is a strong enough instinct in humans that it will incline individuals to seek to make concrete the obligations they owe to one another according to the laws of nature. Sociability means, in other words, that individuals will compel themselves to be social through the adoption of a social contract.

Sociability is an integral element of Grotius's political and legal theory, in both *De Jure Praedae* and *De Jure Belli*. To ignore or dismiss sociability as unimportant is to

because we are rational and social. Tautology aside, rationality and sociability are clearly closely connected for Grotius and both are essential to human nature.

miss the psychology at the core of Grotius's project. No matter how uneasily the two concepts exist side by side, Grotius begins with the assumption that humans are self-interested and that they are nonetheless drawn towards social living, no matter how this frustrates their egoism. Without the moderating effect of sociability on Grotius's political theory, he would essentially be a proto-Hobbesian for whom only overwhelming sovereign power could restrain passionately self-interested individuals. Grotius's political theory asserts that both republicanism and authoritarianism are viable political arrangements, and in both cases, the success of the political community depends upon the willingness of egoistic individuals to sacrifice their self-interest for the sake of the common good—not just from a particularly long-term rational conception of self-interest, but from love, from a respect for the equality of others and the mutuality of natural rights; from sociability.

The conception of the human being as preoccupied with his own self-interest while nevertheless living in a society that will often frustrate this egoism stands at the very center of the social contract theory tradition. Grotius's commitment to understanding social living as the outcome of a desire for the company of other humans, rather than as the product of long-term utility calculations, emphasizes the potential for a conception of political society, domestically and internationally, that has a rich understanding of interdependence and the common good. Implicit in my argument in this paper is my conviction that the liberal tradition which follows from Grotius's theory of natural rights carries with it some of Grotius's own assumptions about human nature and the normative social demands of the natural law. The notion that humans are intimately connected by their rational ability to obey the laws of nature, even when those laws frustrate their

⁷³ Tierney, *The Idea of Natural Rights*, p. 323.

individual egoism, is essential to natural law theory, and classical liberal thinkers who employ natural law thinking import with it a series of psychological assumptions about the social inclinations of otherwise self-sufficient and autonomous individuals.

Consequently, this tension between sociability and self-interest, crucial to Grotius's account of our obligations, duties and rights, stands at the center of the human nature around which liberalism and natural rights are constructed.

Chapter 3. Pufendorf: Sociality at the Intersection of Natural Law and Political Society

As was true for Grotius, Pufendorf's worldview was shaped by his experiences with the 30 years war and the subsequent peace established by the Treaty of Westphalia. Born in 1632, the same year as Locke and Spinoza, Pufendorf's childhood was marked by the religious and political devastation of the 30 years war. By the time he reached adulthood, however, the war had ended and the Treaty of Westphalia had established the modern system of equal and sovereign nation states. As a result, the political problems faced by Pufendorf, while still shaped by the experience of the 30 years war, were different from those confronted by Grotius and by Hobbes. The creation of the Westphalian system shifted legal and political discourse away from the problems of war and security in an uncertain world and enabled Pufendorf and others to turn their attention to the internal workings of the nation-state. Pufendorf's writings reflect a concern with defining the duties of a good citizen in a nation-state and creating the institutional and political conditions for the preservation and perpetuation of peace.¹ In particular, Pufendorf sought to foster the peace and stability of the Westphalian system by providing a conception of natural law that established firm boundaries between the realm of politics and the realm of religion. This program of deconfessionalization was essential to Pufendorf's project: he needed a political theory that could transcend the different religious commitments of individual European states while at the same time establishing a natural law that was universal enough to appeal to Europeans belonging to different Christian sects. As a result, Pufendorf's theory of natural law and political

¹ See James Tully, "Editor's Introduction," in *On the Duty of Man and Citizen According to Natural Law* (Cambridge: Cambridge University Press, 1991). p. xx-xxi.

society rests on a foundational acknowledgement of God's power and right to rule while at the same time drawing firm distinctions between spheres of religious influence and the political realm.

Until Kant changed the terrain of metaphysical political philosophy, Pufendorf was one of the most prominent and widely-read natural law thinkers—more widely read than Grotius and even Locke. Since the 18th century, however, he has been neglected by political theorists and students of natural law. If Grotius has been conflated with Hobbes, then Pufendorf has suffered an even more ignominious fate: he has been dismissed as a Grotian or a Hobbesian² and is rarely credited with distinctive contributions of his own. Pufendorf is, indeed, trying to navigate a third path between Grotius and Hobbes. Hobbes's method was extremely important to Pufendorf's thinking and Pufendorf sought to revise Grotius's methodologically looser theory in the light of Hobbes's methodological and anthropological contributions.³ As a result, in many ways Pufendorf reads like a gentler Hobbesian—more insistent about pre-political and natural morality but nevertheless committed to an anthropology that is consistent with Hobbes's insights and with the Lutheran conception of a sinful humanity.⁴ This theory of law and politics

² See for instance Harrison, *Hobbes, Locke and Confusion's Masterpiece*. and Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass.: The Belknap Press : Harvard University Press, 2006). Both authors conflate Pufendorf with Grotius and fail to explicate Pufendorf's uniqueness as a political and legal thinker. On the other hand, there is a large and growing body of work contesting Pufendorf's relation to Hobbes. Fiammetta Palladini, in particular, has argued that Pufendorf should be understood chiefly as a German Hobbesian, concerned primarily with concealing his debt to Hobbes. See Fiammetta Palladini, "Pufendorf Disciple of Hobbes: The Nature of Man and the State of Nature: The Doctrine of *Socialitas*," *History of European Ideas* 34 (2008).

³ Hochstrasser in, T. J. Hochstrasser, *Natural Law Theories in the Early Enlightenment*. (Cambridge: Cambridge University Press, 2000). sees Pufendorf's attempt to save Grotian morality from Hobbes' critique as an essential component of his project. See p. 42. See also Istvan Hont, "The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the 'Four-Stages' Theory," in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987).

⁴ Kari Saastamoinen, *The Morality of the Fallen Man: Samuel Pufendorf on Natural Law* (Helsinki: SHS, 1995)., in particular, emphasizes the distinctively Lutheran elements of Pufendorf's theory of natural law.

seeks ultimately to justify an absolute sovereign whose rule is consistent with the natural law issuing from God, but whose decisions cannot be questioned by religious authority.

For my purposes, however, Pufendorf is importantly distinct from both Grotius and Hobbes and can be understood to make a distinctive contribution to the problem of sociability and self-interest in political life. Concerned primarily with the maintenance of a stable society, Pufendorf seeks to uncover the political and social conditions that will create a strong relationship between individual citizens and the state. Like Grotius, Pufendorf deploys the category of sociability, but emphasizes its normative, rather than descriptive character. For Pufendorf, *socialitas* is the first and fundamental law of nature, commanded by God and essential to the preservation of individuals, society and the species. Pufendorf's notion of sociality relies on institutions and habituation as well as the force of divine command to render humans fit for society and to make stable, secure and peaceful political societies possible and sustainable. The sacrifices to self-interest and to utility which are essential to the fulfillment of the command to sociality are necessary for the preservation of humanity and for the mutual good will without which any political philosophy of duty would be incomplete. As a consequence, while Pufendorf is deeply indebted to both Hobbes and Grotius, he made some distinctive contributions that differentiate him markedly from his more famous predecessors and which make his political thought worthy of deeper study. Pufendorf's positivistic conception of law and morality, his attempt to firmly demarcate religious from political thinking and his normative conception of sociability lead to a new way of thinking about the relationship between utility and social obligation. In particular, with Pufendorf we see the normative

potential of sociability to become strongly other-regarding when grounded in institutions and social norms.

Despite his comparative lack of popularity with contemporary students of historical thought, Pufendorf's natural law theory stands at the very center of seventeenth century political theory and jurisprudence and was extremely influential in the development of the natural law tradition in the German, English and Scottish enlightenments.⁵ As we will see throughout this dissertation, Pufendorf's natural law theory directly influences and prefigures John Locke and Adam Smith: Locke understood Pufendorf to be the most important jurisprudential thinker of their age and developed his own theory of natural right and its relationship to God largely from the framework created by Pufendorf. Similarly, Adam Smith inherited elements of Pufendorf's natural law theory in a more circuitous way but, as we shall see, Smith's own account of social psychology and civil society has much in common with Pufendorf's account of benevolence and gratitude as essential to sociability and the preservation of social and political peace.⁶

In this chapter I will focus on those elements of Pufendorf's theory that are essential to his own contribution to the natural law tradition and which also set the stage for the liberal revolution which, somewhat ironically, builds directly on his unabashedly authoritarian premises. In particular, this chapter will explore the role of obligation in Pufendorf's system and the relationship between his voluntaristic theory of obligation

⁵ See for instance Buckle, *Natural Law and the Theory of Property*, Haakonssen, *Natural Law and Moral Philosophy*, Hochstrasser, *Natural Law Theories in the Early Enlightenment*, Istvan Hont and Michael Ignatieff, *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge [Cambridgeshire] ; New York: Cambridge University Press, 1983).

⁶ Indeed, Stephen Buckle argues that Adam Smith's account of sympathy is directly attributable to Pufendorf's account of sociality. Buckle, *Natural Law and the Theory of Property*. p. 76. I shall take a similar position in chapter 5.

and his understanding of the concept and role of sociality. Pufendorf's voluntarism not only links him closely to Locke, but also helps Pufendorf to navigate the tensions between a divinely commanded duty to be sociable and a native and universal drive to self-preservation. I draw out Pufendorf's theory of obligation, his conception of voluntarism at the core of natural law, and his depiction of human nature. These foundations lead Pufendorf to a conception of sociality which is the primary law of nature and the orienting norm of a functioning and stable political society. I then explore Pufendorf's understanding of the role that social norms and political institutions can play in encouraging a sociable morality that strengthens and reinforces political stability and enriches his conception of duty. Finally, I argue that Pufendorf's voluntaristic account of the natural law and his placement of sociality at the center of all political, moral and social interactions represents an attempt to use God as a link between sociality and utility, such that the utilitarian basis of Pufendorf's theory of natural law is comprehensible only from the perspective of a divine law-giver and not, as some have argued, from the perspective of a self-interested individual. In the end, I argue that Pufendorf's conception of sociality is born of his voluntaristic understanding of the relationship between God and humanity, given its moral content because of God's role in relieving utility of its immediate and individual character, and perpetuated in society by a network of benevolence and good will. These dimensions of Pufendorf's natural law theory serve as a buffer between the call of individual self-interest and the normative claims of sociality and the natural law.

God, Law and Obligation: Pufendorf's Foundations

As a religious man who came of age in a world torn apart by religious strife, a large part of Pufendorf's project was to make a distinct break between the world of religious authority and the world of political authority. In particular, Pufendorf sought to remove political power from the reach of religious authority through the 'deconfessionalization' of the state. Pufendorf's demarcation argument—an argument that in many ways prefigures Kant's *Critiques* and the enlightenment revolution separating church from state—was essential to this project. Pufendorf argues that there are three distinct kinds of knowledge, each with its own method and realm of authority. These translate into three categories of law: divine law, natural law and civil law. While each of these laws ultimately finds its authority in God's will, methodologically, they are determined entirely differently and have distinct spheres of influence. We come to know divine law through revelation, natural law through reason, and civil law through the acts of legislators.⁷ Because natural law comes from God, like moral theology, but is accessible to humans through reason rather than revelation and scripture, Pufendorf sees no conflict between these spheres of knowledge, and he argues that each can safely be left to its own autonomous sphere. The externalization of politics, and the internalization of religion and revelation drew heavy criticism from leading religious authorities and scholars in Pufendorf's day: the Lutheran establishment reacted to the demarcation argument with great hostility. Nevertheless, for Pufendorf, the desacralization of politics was the first step towards creating an enduring peace in the post-Westphalian political world, and the externalization of political rule and political action was essential to delineating the sphere of the duties of man and citizen. As Tully explains, "the

⁷ Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law* (Cambridge: Cambridge University Press, 1991). p.7

demarcation argument transform[s] natural law morality into a *social* theory, concerned exclusively with ordering the external actions of self-loving men by social duties which render them useful members of society.”⁸

Pufendorf develops his demarcation argument in *De Jure Naturae et Gentium*, his seminal work on natural law. At the heart of this argument lies a distinction between physical and moral entities. This distinction differentiates Pufendorf sharply from Grotius and establishes the epistemological grounding of his theory of natural law. For Pufendorf, physical entities are value-neutral and operate according to physical laws. By contrast, moral entities are imposed statuses that proceed only from the will of a superior—that is, from the will of God. In drawing this distinction, Pufendorf explicitly rejects a natural or essential conception of morality and firmly separates descriptive and normative metaphysical values. Where Grotius sees a natural morality that exists, as his famous *etiamsi daremus* clause declares, independently of God, for Pufendorf, morality is inconceivable without God. Our sense that there is a natural moral value inherent in actions like adultery or murder is the result of confusion between our deductive reasoning and our habituation since childhood to think of such actions as being immoral. For Pufendorf, moral commands and natural law only exist through the will of God and it literally makes no sense to speak of moral entities as distinct from God’s imposition of them. He explains,

How then, can an action of man be accorded any quality, if it takes its rise from an extrinsic and absolute necessity, without the imposition and pleasure of God? On this argument, in very truth, all the movements and actions of man, if every law both divine and human be removed, are indifferent; while some of them are termed naturally reputable or base, because the condition of nature, which the Creator freely bestowed upon man, most rigorously requires either their execution

⁸ Tully, "Editor's Introduction." p. xxiii

or avoidance; it does not follow, however, that any morality can exist of itself, without any law, in its own motion and the application of physical power.⁹

The total positivism of Pufendorf's theory of law is a further effort to separate conscience from political life. The natural law is accessible to humans through the deployment of reason, but this natural law is purely a consequence of God's will.

On the question of natural morality, Pufendorf stands directly between Grotius and Hobbes: he rejects Hobbes's amoral conception of the state of nature as completely as he rejects Grotius's natural morality. There are laws that exist prior to the establishment of the state, and these are obligatory to natural individuals as well as citizens in states, but they are only natural in the sense that they are imposed by God and are designed to suit human nature as created by God. This is not quite as tautological as it might appear. Pufendorf defines law simply: "Law is a decree by which a superior obliges one who is subject to him to conform his actions to the superior's prescript."¹⁰ In other words, morality and law exist only to the extent that these have been imposed on humanity by the will of a superior, i.e., by God. As a result, reason itself is incapable of determining morality in the absence of an imposition by God or another superior. We could not simply deduce laws of nature had not God imposed those laws upon us.

Pufendorf declares: "that reason should be able to discover any morality in the actions of a man without reference to a law, is as impossible as for a man born blind to judge between colors"¹¹ Reason is convenient for making judgments on the basis of utility or expeditiousness, but it could not independently create obligatory moral laws. Humans are just rational enough to know that our nature requires us to live by laws, but our reason

⁹ Samuel Pufendorf, *De Jure Naturae Et Gentium Libri Octo* (Oxford,: The Clarendon Press, 1934). I.ii.6

¹⁰ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p. 27.

can determine laws only insofar as it can deduce the content of the laws that God's will has imposed on us. While for Grotius, natural law can be determined rationally, and it exists in nature in the same way that physical laws do, for Pufendorf, law is literally unthinkable without reference to a God who possesses both the right and the power to issue binding, obligatory laws. Pufendorf thus defines law as the command of a superior, and it is only through such a command that obligation to obey moral laws can exist, or that human actions can be judged according to moral criteria. Without God as the author of natural law, any attempts to determine laws would produce little more than non-binding precepts of utility.

Pufendorf's voluntarism and his corresponding theory of obligation have long been the subject of heavy criticism and remain a matter of scholarly contestation. In Pufendorf's own time, Leibniz was an influential critic who found Pufendorf's theory of obligation tautological and unconvincing.¹² Pufendorf's conception of obligation is relatively straightforward. He explains, "An obligation is properly laid on the mind of man by a superior, that is, by one who has both the strength to threaten some evil against those who resist him, and just reasons why he can demand that the liberty of our will be limited at his pleasure."¹³ The two conditions for the creation of obligations (force and just reasons) create two separate problems for Pufendorf. Pufendorf observes that the force to back a command is the essential basis for the constitution of an obligation. He explains, "Although a law itself should not lack sound reasons for its promulgation, still

¹¹ Pufendorf, *De Jure Naturae*. I.ii.6

¹² It should be noted, however, that Leibniz had not read *De Jure Naturae* but only *On the Duties of Man and Citizen*, Pufendorf's brief summary of the main points of *De Jure Naturae*, intended for students. An excellent discussion of Leibniz's critique of Pufendorf can be found in Ian Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge: Cambridge University Press, 2001).

¹³ Pufendorf, *De Jure Naturae*. I.vi.9

these do not constitute the real ground for obedience to it, but it is rather the power of the enactor, who, on publishing a decision of his will, lays an obligation upon his subject to carry out the very letter of his command, even though it may happen that the reasons for such a requirement be not entirely clear.”¹⁴ The threat of force is central to Pufendorf’s conception of obligation, but, in contrast to Hobbes, Pufendorf is equally adamant that force alone is insufficient to make a proclamation binding. He explains that, “one must surely agree that mere strength is not enough to lay an obligation on me at the desire of another, but that he should in addition have done me some special service, or that I should of my own accord consent to his direction.”¹⁵ Whether it be just reasons, gratitude or consent, force has to be matched by a second motivator to make an obligation binding. The key here is a distinction between obligation and coercion that turns upon Pufendorf’s conception of the free human will. One might be compelled into an action by the threat of force, but if a command does not also move the will, as well as the body, it is coercion, not obligation. He explains,

an obligation differs in a special way from coercion, in that, while both ultimately point out some object of terror, the latter only shakes the will with an external force, and impels it to choose some undesired object only by the sense of an impending evil; while an obligation in addition forces man to acknowledge of himself that the evil, which has been pointed out to the person who deviates from an announced rule, falls upon him justly, since he might of himself have avoided it, had he followed that rule.¹⁶

An obligation must move the will and be reinforced internally, as well as through an external show of compliance. A legitimate obligation is distinct from coercion because is

¹⁴ Ibid. I.vi.1

¹⁵ Ibid. I.vi.12

¹⁶ Ibid. I.vi.5

understood by the subject as a justifiable command from a legitimate superior.¹⁷ Force alone cannot create an obligation—obligation has to turn on consent.

Pufendorf's position that force must be complemented by a secondary motivation, like just reasons, gratitude or consent, has been the object of much criticism because it seems to conflict with Pufendorf's insistent voluntarism and positivism. If there is no morality independent of God's will, and God's will alone is sufficient to create a binding obligation, it seems inconsistent to maintain that God's commands must be evaluated according to just reasons or consent because this implies that there are, in fact, moral standards beyond God's will. For Leibniz, the addition of "just reasons" to God's power still fails to justify God's right to rule: in Leibniz's estimation, Pufendorf depicts God as a tyrant who rules chiefly on the basis of fear and threat of sanction. There is no *moral* reason for his rule to be binding, merely the threat of force as the justification for human obligation to divine law.¹⁸ Despite the apparent tautology in Pufendorf's thinking here, as Saastamoinen,¹⁹ Hunter²⁰ and Korkman²¹, among others, argue, the idea of God's right to rule over humans is essential to any conception of God for Pufendorf. Saastamoinen explains, "it is not possible for humans to have such an idea of God and not think they ought to obey God's will. This is, in his eyes, the ultimate origin of all human ideas concerning right and wrong, just and unjust. Consequently, it is pointless to ask whether there is some justification for God's authority. For we are able to formulate such a

¹⁷ The habit of obeying a legitimate superior will eventually become the kind of habituation that leads us to the sense that laws and morality are natural.

¹⁸ See Schneewind, *The Invention of Autonomy*. pp. 250-254 and Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany*.

¹⁹ Saastamoinen, *The Morality of the Fallen Man: Samuel Pufendorf on Natural Law*.

²⁰ Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany*.

²¹ Peter Korkman, "Voluntarism and Moral Obligations: Barbeyrac's Defence of Pufendorf Revisited," in *Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment*, ed. T.J. Hochstrasser (Dordrecht; Boston: Kluwer Academic Publishers, 2003).

question only because we have already adopted the idea of justice from God's commands."²² In other words, the idea of God itself contains the idea that God has the right to rule over humans and to issue binding obligations. Our recognition of God's superiority—a recognition that is intrinsic to our acknowledging the existence of God—will evoke the feelings of legitimacy, gratitude and consent that Pufendorf requires as secondary factors in the creation of obligations. Pufendorf himself explains, "For a rational creature, that is, one whom God has endowed with the faculty of recognizing the real nature of things, can conceive of God in no other way than as one possessed not only of a certain infinite superiority, but also of the highest authority over him; otherwise he would conceive only an idol, or anything rather than a God."²³

For Pufendorf, we must receive God's existence and his creation of humanity with the deepest gratitude, and this will constitute the just reasons we require to make a command obligatory. As we shall see later in this chapter, for Pufendorf, gratitude is an enormously important social force, and essential to the perpetuation of social peace. Tully explains, "Obligation turns on fear of punishment, as with Hobbes, and on respect for the benevolence of the superior, as with the stoics, thereby making benevolence-gratitude constitutive of every social duty."²⁴ Nevertheless, the corrupt nature of mankind, as we shall see, means that our recognition of the rightness of God's command, and our gratitude towards him, will be insufficient to subdue our passions and ensure our compliance with God's laws. Force is always necessary to ensure that obligations are met, and this, indeed, will ultimately necessitate the creation of a state.

Human Nature and the Natural Condition

²² Saastamoinen, *The Morality of the Fallen Man: Samuel Pufendorf on Natural Law*. p. 109.

²³ Pufendorf, *De Jure Naturae*. II.iii.4

Pufendorf's theory of obligation retains its coherence only if one understands the limitations that his conception of human nature places on a politics of perfectibility. For Pufendorf, the nature of man is characterized first and foremost by a profound corruption and this corruption informs both the laws given to us by our creator and our ability to know those same natural laws. Since Pufendorf argues that God imposed a natural law on humans that is consistent with human nature, any deductions of the content of natural law and its bindingness upon humanity must take into account human nature as we find it. The task then, for Pufendorf, is to determine the laws of nature by reasoning from human nature to God's expectations for humanity and reframing those expectations as natural and obligatory laws. Therefore he argues that the natural law must be determined according to

the nature, condition and desires of man himself, although in such a consideration other things should necessarily be observed which lie outside man himself, and especially such things as work for his advantage or disadvantage. For whether this law was laid upon man in order to increase his happiness or to restrain his evil disposition, which may be his own destruction, it will be learned in no easier way than by observing when man needs assistance and when he needs restraint.²⁵

I will discuss the role of utility in Pufendorf's thinking about natural law later in this chapter, but for now it is important to see that empirical observations about human nature in the derivation of the natural law indicates that Pufendorf's anthropology is essential for understanding the entire foundation of his theory of natural law and political society.

This creates a methodological problem for Pufendorf, because while he argues that observations about human nature and the human condition are the key to understanding the natural law, the corrupt state of mankind means that we cannot necessarily conflate empirical observations with God's normative commands in the

²⁴ Tully, "Editor's Introduction.", p. xxv

natural law. The difficulty is in distinguishing which elements of human nature and human behavior are consistent with God's will, and which represent a corruption which the natural law must seek to overcome. Because reason itself has been corrupted, and is inclined towards the pursuit of passional interests rather than to the internalization of obligations, any products of reasoning are inherently suspect. Pufendorf narrowly avoids tautology here with his emphatic voluntarism: God was free to create human nature as he chose, but having established humans as rational creatures equipped with a free will and natural liberty, God created natural laws consistent with these elements of human nature. As a result, the best method for deducing the laws of nature must be a deduction from an understanding of men as they are, that is, corrupt, petty and inclined to destructive passions and aggressions. In other words, the natural law must be derived from empirical observations of a human nature that is consistent with Hobbes's epicurean anthropology and with the scriptural account of man's fall from grace but nonetheless mediated by God's expectations for this humanity. Pufendorf declares, "it is also obvious that man must now be regarded by the discipline of natural law as one whose nature has been corrupted and thus as an animal seething with evil desires."²⁶

Without explaining his mechanism for distinguishing between those human characteristics which are and are not consistent with God's will, Pufendorf argues that there are three elements of human nature which are essential for deducing the natural law. The first of these is self-love. Self-love, as for Grotius and Hobbes, is the first fact about human nature. Pufendorf explains, "In common with all living things which have a sense of themselves, man holds nothing more dear than himself, he studies in every way to

²⁵ Pufendorf, *De Jure Naturae*. II.iii.14

²⁶ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p.10

preserve himself, he strives to acquire what seems good to him and to repel what seems bad to him. This passion is usually so strong that all other passions give way before it.”²⁷

As for Grotius, for Pufendorf self-love is a centrally important element of human nature. Despite the ever-present possibility that self-love can turn into a socially destructive egoism, Pufendorf is careful to show that self-love is not necessarily destructive of the social order or social relationships. For Pufendorf, self-love is a God-given characteristic designed to ensure that each individual will see to his own preservation. Consequently, Pufendorf understands self-love as indicative of a duty of each person to tend to the preservation of themselves in order to work towards the preservation of the species. He explains, “For although we hold before ourselves as our goal the common good, still, since I am also a part of society for the preservation of which some care is due, surely there is no one on whom the clear and special care of myself can more fittingly fall than upon my own self.”²⁸ This claim (which will be echoed by Locke) is significant: for Pufendorf, self-love points towards man’s duty to preserve the whole. Each individual has a duty to God to assume responsibility for his own place in the collective human species. Consequently for Pufendorf, self-love is both a source of our corruption, and the primary means by which the natural law can be obeyed by corrupt, self-interested individuals; it is the source of the connection between the individual and the totality of humanity.²⁹

²⁷ Ibid. 33

²⁸ Pufendorf, *De Jure Naturae*. II.iii.14

²⁹ Buckle gives an excellent account of the primacy of self-love in Pufendorf’s theory and the connection between individual self-love and social obligation. He writes, “far from being in conflict with sociability, the primacy of self-love shows sociability to be necessary. It does so in this way: self-love is vital because of the very fragility of human existence, and this fragility itself makes social life necessary.” Buckle, *Natural Law and the Theory of Property*. p. 71

Along with self-love, human weakness is essential to Pufendorf's conception of the natural law. One of Pufendorf's central claims about the condition of humanity is our weakness and helplessness when isolated from other people, and as a result, the prospects for humanity in a pre-social world are terribly bleak. Considering the life of a solitary man, Pufendorf writes,

there is observable in the character of man the greatest weakness and native helplessness, so that if one could conceive of man as deprived of every assistance that comes to him in this world from other men he would think that life had been given him as a punishment. It is also evident that no greater help and comfort, after that granted man by God, comes to him than that from his fellow-creatures.³⁰

In other words, the inherent weakness of man, when deprived of the opportunity to work together with others, would make life so miserable that the obvious conclusion for Pufendorf is that man is intended to live in society. Despite our native weakness, however, the human proclivity towards aggressiveness complicates our basic need for co-operation with others. Here, Pufendorf is at his most Hobbesian. He imputes no natural social instincts to humans, but rather the opposite. He writes, "There is moreover in many men a kind of extraordinary petulance, a passion for insulting others, at which others cannot fail to be offended and to gird themselves to resist, however restrained their natural temper, in order to preserve and protect their persons and their liberty."³¹ The diversity of passions and the natural aggressiveness that informs human nature means that humans are creatures who need laws and who will be miserable and thwarted outside of political society.

The natural state of humanity is then informed by these three essentially human characteristics: self-love, helplessness and aggressiveness, and life outside of civil society

³⁰ Pufendorf, *De Jure Naturae*. II.iii.14

³¹ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p. 34

reflects the chaos of these potentially competitive instincts. For Pufendorf, there is nothing particularly natural about the state of nature, and the natural state, he argues, should not be confused with a perfect or original condition of humanity.³² Pufendorf reads the Genesis story literally, and following the Christian account of the origins of men, he argues that sometime after the fall from grace, men left human society and struck out on their own, scattering over the planet and gradually losing the acquisitions of civilization. The state that follows is the consequence of human nature deprived of the benefits of society, and it is natural in that sense only. For Pufendorf, the state of nature is a heuristic device that can only be understood as contingent and no more essential to human history than the shift to political society will be. Nevertheless, human self-love, weakness and aggressiveness mean that life pre-social is miserable, and Pufendorf describes this state in Hobbesian language:

Imagine such a man left in the open, away from any assistance or company of his fellow. What a miserable animal you will behold! A dumb and ignoble creature, with no power other than to dig up plants and roots, to slake his thirst at any spring, river, or pool he may happen upon, to crawl into caves so as to avoid the inclemency of the weather, to cover his body with moss or grass, to pass his time in an intolerable inactivity, to tremble at every sound or at the passing of other animals, and finally to perish of human and cold or to be torn to pieces by some wild beast.³³

Such is the state of individuals without the advantages of human community. Despite the liberties and freedoms that the pre-social state affords individuals, in the state of nature, “there is war, fear, poverty, nastiness, solitude, barbarity, ignorance, savagery.”³⁴ Despite the overt echoing of Hobbes’s language here, because for Pufendorf the state of nature is contingent, rather than truly natural, the conception of the state of nature turns on a

³² See Samuel Pufendorf and Michael Seidler, *Samuel Pufendorf's on the Natural State of Men* (Lewiston, NY: The Edwin Mellen Press, 1990). p. 110

³³ Pufendorf, *De Jure Naturae*. I.ii.8

comparison with the potentialities of the human nature granted to humanity by God and the benefits for humanity which accrue with civilization and social life. Pufendorf's frequent references to "dumb and ignoble creatures" indicate that for Pufendorf, men in the state of nature can hardly be considered men. Repeatedly he claims that in the solitary state, men are more miserable even than animals, precisely because God has devised human nature to be incapable of solitude and true independence. Without cooperation from other men, humans are virtually unable to fulfill the potential of their nature. Human nature is such that man's reason, the development of his abilities and even the real satisfaction of his most basic needs can only be achieved with the co-operation of others. Only working co-operatively can men have any kind of life that is superior to the life of the most miserable beast, and living co-operatively requires submission to law.

The natural liberty and natural equality that characterize the state of nature (and for Pufendorf, natural equality means simply the absence of any human superior) do not, despite the strong influence of Hobbes's anthropology, result in a state of nature that is essentially a state of war. Pufendorf explains,

For since a natural state presupposes the use of reason, any obligation which reason points out cannot, and must not, be separated from it; and since every man is able of himself to appreciate that it is for his advantage to conduct himself in such a way as to profit from the friendly attitude of men rather than incur their anger, he can easily judge, from the similarity of nature, that other men feel the same way. And so it is quite wrong for a person in his description of this state to suppose that the majority of men, at least, neglect the guidance of reason, which nature has set up as the final director of men's actions; and equally wrong is it to designate as natural a state which is in the main produced by the neglect and misuse of a natural principle.³⁵

This direct critique of Hobbes hinges on Pufendorf's insistence that natural men are fundamentally and irrevocably bound to obey the natural law. Life in the state of nature is

³⁴ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p. 117

unpleasant and insecure, but, as men are nevertheless rational creatures to whom the law of nature must be apparent, the state of nature should not be assumed to be a state of war. But the peace which prevails in the state of nature is a precarious peace, and the co-operation which is necessary for dignified human living is constantly threatened by the aggressiveness and acquisitiveness of others. The potential tension between self-love and the basic facts and limitations of human nature mean that the state of nature is inadequate to preserving humankind.

The Law of Nature and the Command to Sociality

Missing from Pufendorf's description of human nature, is, of course, a Grotian conception of man's natural sociability. For Pufendorf, there is nothing inherently sociable about human nature—our sociability must be tied to our utility as a species and to the natural law. Pufendorf is very clear that political and social life is a contingent condition of human history. We ought not, for Pufendorf, confuse the potential for political life with any essential inclination toward it. He argues,

It is sufficiently clear from all this in what sense then man can be called by nature a political animal: Not because there resides in each and every one a natural aptitude to act the part of a good citizen, but because at least a part of mankind can by nature be fitted to that end, and because the safety and preservation of mankind, now become so multiplied, can be secured only by civil societies.³⁶

Only the potential for social life can be said to contribute to any 'natural' understanding of man's sociability. The Aristotelian and Stoic assumption that man is inherently sociable or political has come to seem inadequate, after Hobbes and the Thirty Years War, to the challenge of sustaining civil society given a demonstrably corrupt human nature. He seeks to draw a fundamental distinction between fact and value here: Men do

³⁵ Pufendorf, *De Jure Naturae*. II.ii.9

³⁶ Ibid. VII.i.4

best when they work co-operatively and abide by the laws of nature, but co-operation is an expedient norm, not an empirical facet of human nature. The political and social potential in man's nature is less about raw inclination and more about utility and the fulfillment of the natural law. Fiametta Palladini describes Pufendorffian sociability succinctly. She argues,

In Pufendorf's doctrine of *socialitas*, one should not see the venerated conception of man, as an animal who loves his fellow men's company and is naturally inclined towards entering society, but rather a conception of man as a weak and potentially wicked animal, compelled by *amor sui* to defend his own life and by the superior gifts which he has been given to make his life *culta*, and who, being unable to obtain these ends without the help of his peers, enters society with them, and behaves in such a way as to maintain society.³⁷

But Pufendorf ties this empirical condition closely to divine command. Whereas Grotius sees sociability as a natural drive in human nature, Pufendorf draws on both human weakness and God's rule to produce the normative claim that humans must enter into society with one another. He argues,

Man then, is an animal with an intense concern for his own preservation, needy by himself, incapable of protection without the help of his fellows, and very well fitted for the mutual provision of benefits. Equally, however, he is at the same time malicious, aggressive, easily provoked and as willing as he is able to inflict harm on others. The conclusion is: in order to be safe, it is necessary for him to be sociable; that is to join forces with men like himself and so conduct himself towards them that they are not given even a plausible excuse for harming him, but rather become willing to preserve and promote his advantages.³⁸

Rather than operating as a descriptive feature of human nature, sociality here becomes God's central demand of human beings, the basis of all other natural laws and essential to the preservation of the species. The end of natural law is, for Pufendorf, the restraint of natural human wickedness and excessive self-interest in order to render humans fit for

³⁷ Palladini, "Pufendorf Disciple of Hobbes: The Nature of Man and the State of Nature: The Doctrine of *Socialitas*." p. 31

³⁸ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p. 35.

society. This requires sociality—a normative, natural law standard for human behavior. This fundamental law of nature is essential to Pufendorf’s legal, political and moral project. Only with sociality as the first and primary norm for human behavior can humans—corrupt, self-loving, aggressive and dependent—compel themselves to live peaceably and successfully with one another.

Despite, or perhaps because of Pufendorf’s epicurean anthropology, his expectations of the duties that men owe to one another and God in nature and in civil society go beyond negative injunctions and point towards a positive theory of duty for the socialization of mankind. He explains,

And so it will be a fundamental law of nature, that ‘Every man, so far as in him lies, should cultivate and preserve toward others a sociable attitude, which is peaceful and agreeable at all times to the nature and end of the human race....But by a sociable attitude we mean an attitude of each an towards every other man, by which each is understood to be bound to the other by kindness, peace and love, and therefore by mutual obligation.’³⁹

Sociality here appears as an attitude as much as a code of behavior. It is not just a negative injunction against anti-social behavior such as harming or stealing from others (although these, are, of course, important laws of nature), but also a positive duty to recognize the equality and humanity of one’s fellow man and to act accordingly. It is this reciprocity, as well as normativity, that distinguishes Pufendorf’s theory of sociability from Grotius’s and it is reflective of Pufendorf’s broader concern with the preservation of civil society rather than its just establishment. Because of the normative character of sociality in Pufendorf’s conception, and its centrality to the natural law, Pufendorf is able to make much stronger claims on individuals in the pursuit of sociality than Grotius was able to do. If Hobbes’s influence means that a social drive can no longer be considered a

³⁹ Pufendorf, *De Jure Naturae*. II.iii.15

central feature of human nature, the command to behave in a sociable manner must become the foundation of the human capacity for social and political life.

Pufendorf is more explicit than Grotius about what sociality means in practice. The duty of sociality commands that, “everyone should be useful to others, so far as he conveniently can. For nature has established a kind of kinship among men. It is not enough not to have harmed, or not to have slighted, others. We must also give, or at least share, such things as will encourage mutual goodwill.”⁴⁰ This description of the normative demands of the sociality principle goes well beyond a respect for the rights of others: the command to sociality creates a positive obligation—to God and to ourselves as a species—to help one another in the interests of establishing a peaceful and stable society that will contribute to the interests and preservation of each. Assuming responsibility for the well-being of other men is essential to fulfilling the demands of the laws of nature. The three laws of nature which follow from its fundamental precept make clear the significance of the concept of sociality in Pufendorf’s conception of the natural law. First, one has a duty to refrain from harming other men (and this includes taking their property),⁴¹ secondly, we must recognize the equality and dignity essential to all human beings,⁴² and thirdly, we must make ourselves useful to others.⁴³ I will discuss the second duty in the next section, but here it is worth noting what exactly Pufendorf understands by being useful to others. Generally, this includes being a productive member of society and giving those things which we can easily afford to give: Pufendorf cites the examples of letting another have a light from one’s fire, guiding someone who is

⁴⁰ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p. 64.

⁴¹ Ibid. p. 56

⁴² Ibid. p. 61-63

⁴³ Ibid. p. 64

lost, and giving honest advice to others. He concludes, “our kindness should not exceed our capacity...we should take into account each man’s dignity and should give above all to those who are deserving; and...we should give where our help is needed and with due regard for the degree of personal relationship.”⁴⁴ While “extraordinary benevolence” reveals a “higher degree of humanity,”⁴⁵ the important thing here is not an overwhelming degree of self-sacrifice or altruism, but simply put, to behave towards others in such a way as will contribute to the happiness and security of all. As a result, it is important that beneficiaries of kindnesses be grateful. Benevolence and gratitude are essential components of sociality. In sum, “A man has not paid his debt to the sociable attitude if he has not thrust me from him by some deed of malevolence or ingratitude, but some benefit should be done me, so that I may be glad that there are also others of my nature to dwell on this earth. The mutual dependence and relationship which nature has constituted between men, demand the exercise of mutual duties.”⁴⁶ As Buckle shows, the interdependence of mankind “neatly captures Pufendorf’s insistence that this general duty is more than simply leaving each other alone, but requires that we contribute to the common good so that each of us ‘may be glad that there are also others of [our] nature to dwell on this earth.’”⁴⁷ Our obligations to others need not be particularly onerous—indeed, they need not even conflict with individual self-interest, but Pufendorf sees mutual duties and mutual benevolence as absolutely essential to the success of human society.

⁴⁴ Ibid. p. 65

⁴⁵ Ibid. p. 65

⁴⁶ Pufendorf, *De Jure Naturae*. III.iii.1

⁴⁷ Buckle, *Natural Law and the Theory of Property*. p. 75

The Psychology of Esteem, Benevolence and Gratitude

One of Pufendorf's major contributions to political thought is his insight that man's egotism is manifest in more than the single-minded pursuit of self-interest. For Pufendorf, our essential self-love is tied together with our distinctively human sense of our own value, dignity and desire for esteem. While for Hobbes, the motivation of Reputation is an important cause of war in the state of nature, for Pufendorf, this desire for esteem provides humans with an important tool for governing human nature and making political society stable and peaceful. The acknowledgement of the psychology of self-esteem and its connection to self-love is apparent in the state of nature too. Pufendorf notes,

In addition to that love which every man cherishes for his life, his person, and his possessions, by which he cannot avoid repelling or fleeing before everything that tends to their destruction, there is to be observed, deep-seated in his soul, a most sensitive self-esteem; and if any one undertakes to impair this, he is rarely less and often more disturbed than if an injury were being offered his person and his property. Although a number of factors unite to intensify this esteem, its prime source is, apparently, human nature. For indeed the word 'man' is felt to have a certain dignity.⁴⁸

The role of esteem in the state of nature and in political society turns on an acknowledgement of the equality of all men. Pufendorf disagreed with Hobbes's conception of equality and rather perceived it to be closely related to natural liberty: humans are equal as humans because they are naturally subordinate to no one but God and because all are equally obligated by the laws of nature.⁴⁹ The freedom from temporal subjection that marks the natural condition of humanity points to an equality and autonomy from which come a strong and natural desire for respect and dignity. The essential dignity that humans perceive in themselves, and their jealous guard of this

⁴⁸ Pufendorf, *De Jure Naturae*. III.ii.1

esteem is so important that Pufendorf understands the extension of respect for others as equals to be the second duty of the law of nature and a natural corollary of sociality.⁵⁰ He explains that it is “wrong to give signs of contempt for others by deeds, words, looks, laughter or slighting gesture. This sin is to be regarded as worse, in that it vigorously excites the hearts of others to violent anger and desire for revenge. In fact there are many men who would prefer to expose their lives to instant danger, to say nothing of disturbing the public peace, rather than let an insult go unavenged. The reason is that fame and reputation are sullied by insult; and to keep their reputation intact is very dear to men’s hearts.”⁵¹

As a result, the protection of esteem has a central role to play in the persistence of social peace and the stability of social relations. Pufendorf’s central claim here is that there is a psycho-social dynamic that turns on the self-regard of each person and the desire for the esteem of others. If each individual treats all other individuals according to the laws of sociality—that is, he treats each with respect and dignity, and seeks to further the interests of others, eventually society will be pervaded by a mutual and far-extending network of goodwill which spreads benevolence, gratitude and sociality throughout human communities. This mutual network of respect and esteem can lead to essential social goods, and it is central to the fulfillment of the fundamental law of nature. While laws and punishments will always be necessary to restrain the wickedness of men, mutual sociality is a self-perpetuating value that decreases the willingness of men to harm one another. If we are obligated to other citizens through gratitude, benevolence and a respect for the equality of others—and simultaneously restrained by positive laws—then we will

⁴⁹ Pufendorf and Seidler, *On the Natural State of Men*. p. 124

⁵⁰ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p. 61

be less likely to undermine social peace and more likely to obey the laws of sociality ourselves. The duty of a good citizen, and the duty of the fundamental law of nature, is to behave in such a way as will encourage others to reciprocate that sociable behavior.

Seidler argues in his Introduction to Pufendorf's *Natural State of Man*, that in this sense, sociality is a product of civil society, as well as the norm that makes it possible:

sociality is, like speech, a historical product of collective human development...Without entirely superseding or eliminating that self-interest, it may eventually acquire a distinctive force of its own, transcending its initial character as a mere 'unsocial sociability' (to use a later term) and become also a non-instrumental virtue valued for its own sake...The cultural and social development from which men benefit depends initially on their recognition of a shared humanity and a common obligation to obey the moral law commanding them to be social. Therefore, sociality is in Pufendorf at once a desire, a need, and an obligation; both a precondition and a product of human development.⁵²

Sociality becomes a learned behavior to which citizens become habituated over time and which is fundamental to both the creation and the maintenance of civil society.⁵³ While Grotius's sense of sociability was static, for Pufendorf, sociality is a norm that develops and changes with the cultivation of human society. This is why, too, negative injunctions against harming or stealing from others are insufficient to ensure the social peace.⁵⁴

Pufendorf sees the matrix of benevolence and gratitude as being essential to the perpetuation of political society and along with habituation, it offers the best guarantee of stability. Like the obligation to obey God's laws, the reciprocity of benevolence and gratitude will move the wills of individuals to behave sociably.

⁵¹ Ibid. p. 63

⁵² Pufendorf and Seidler, *On the Natural State of Men*.; Editor's Introduction, p. 50

⁵³ Pufendorf, *De Jure Naturae*. I.ii.6, 27

⁵⁴ Tully, "Editor's Introduction." p. xxv

This becomes much clearer in the case of private property in particular. For Pufendorf, property becomes ultimately justified not through contract but through its utility in terms of the benevolence-gratitude matrix. In contrast to Grotius, Pufendorf denies that the poor have the right to appropriate the property of the rich in times of dire necessity. Dissatisfied with the precariousness of property rights in Grotius's account, Pufendorf sought to construct an argument that could provide for the poor whilst still retaining absolute property rights in civil society. Pufendorf relates the origins of property in familiar terms: at first, men shared the earth in common⁵⁵ and each appropriated what he needed for his own survival, with these appropriations being protected by the basic natural law to leave to each his own.⁵⁶ The need for cultivation and labor complicated these simple possessive relations, because, as Locke would later argue, Pufendorf believes that labor creates stronger rights of possession than does mere appropriation.⁵⁷ As a result, dominion was introduced by convention or tacit pact and each man agreed to observe the dominion of others.⁵⁸ Pufendorf sees the evolution of private property as consistent with the demands of sociality and the natural law, as "the nature of man's mind shows clearly enough that among a great number of men, who are undertaking to advance life by various arts, a quiet and decorous society cannot exist without distinct dominions of things, such were introduced in accordance with the proper

⁵⁵ Pufendorf emphasizes that this creates a *negative* community of common resources. The earth does not belong to men in common as a group or community, but rather, as individuals. There is no sense of common ownership over the earth prior to the establishment of property.

⁵⁶ Pufendorf, *De Jure Naturae*. IV.iv.5

⁵⁷ Ibid. IV.iv.6. "it was improper that a man who had contributed no labour should have right to things equal to his by whose industry a thing had been raised or rendered fit for service."

⁵⁸ Ibid. IV.iv.6

requirements of human affairs, and with the aim of natural law.”⁵⁹ Rules about property or dominion are essential to human social life.

Nevertheless, for Pufendorf, the ancient common right to all things in the state of nature cannot be the basis of the rights of the poor against the rich. Rather, the plight of the poor offers the rich the opportunity to extend their benevolence and the poor the opportunity for gratitude: “For a rich man ought to help someone in that kind of necessity as a duty of humanity.”⁶⁰ As Hont and Ignatieff argue, “The shift between Grotius and Pufendorf is decisive. In one, the focus was upon the rights of the poor, while in the other, it was upon the voluntary obligations of the rich. The implied nexus of relations between rich and poor shifted from the grounds of law to that of moral sentiment, benevolence on one side, gratitude on the other. This rhetoric obliterated the linguistic possibility of expressing the poor’s right of desert in the property of the rich.”⁶¹ The shift away from the rights of the poor to the humanitarian obligations of the rich points again to the importance of sociality as a tool for perpetuating peaceful society. As I noted in the previous chapter, Grotius declined to base the rights of the poor on charity or humanitarian duty and failed, ultimately, to explain the obligation of the rich man to allow a poor one to steal from him. For Pufendorf, the advantages of sociality which come from the relations of benevolence and gratitude provide a secondary utilitarian basis for the existence of private property, and extend, rather than destabilize, good citizenship and networks of obligation. Salter argues, “We can see from this why, in discussing the right of necessity, Pufendorf placed so much emphasis on the humanitarian duties of the rich and the corresponding gratitude of the poor. The reciprocal relationship

⁵⁹ Ibid. Iv.iv.14

⁶⁰ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. P. 55

between kindness and gratitude, which the introduction of private ownership made possible, was a valuable social bond that would help to overcome the instability arising from the wickedness and selfishness of human beings.”⁶²

Because of its centrality to the benevolence-gratitude matrix, property functions as an important manifestation of sociality. Disputing the position taken by Plato and Thomas More, Pufendorf argues that rather than increasing social hostilities, private property is essential to the perpetuation of social peace: “‘mine and thine’ were introduced to avoid wars.”⁶³ As a result, Pufendorf follows Aristotle’s critique of Plato’s communist society and argues that “If all men should labour in common and should lay up their earnings in common, and should they be maintained from a common store, quarrels could not help arising by reason of the inequality of their toil and its product...But the introduction of property does away with such quarrels and every man takes greater interest in his own portion, while an opportunity is given him to show liberality to others out of his own store.”⁶⁴ In this way, private property serves a dual role within Pufendorf’s conception of sociality and society. Clear rules and conditions for ownership will eliminate the tensions he believes would naturally arise from a positive community of ownership, and property will further the sociality that is a direct by-product of the benevolence-gratitude matrix through the opportunities it offers for ‘liberality’.

⁶¹ Hont and Ignatieff, *Wealth and Virtue*. p. 31

⁶² John Salter, "Grotius and Pufendorf on the Right of Necessity," *History of Political Thought* Vol. XXVI, no. 2 (Summer 2005).p. 297. Salter argues, however, that Pufendorf’s argument ultimately grants stronger rights to the poor than did Grotius’s, because Pufendorf seems to be claiming that if a rich man fails to exercise his humanitarian obligation of benevolence towards the poor, he forfeits his rights to his property (p. 301). This makes sense because the opportunities for benevolence and social peace that are offered through private property serve as the ultimate justification for private property—property rights here are secondary to the demands of sociality.

⁶³ Pufendorf, *De Jure Naturae*. VI.vi.7

Hont argues that Pufendorf's theory of sociality ultimately operates as a theory of "commercial sociability" and that sociality is primarily understandable in terms of its relationship to private property.⁶⁵ Clearly there are strong links between sociality and property in Pufendorf's thinking, but it would be a mistake to reduce all sociality to the instrumentation of private property. The inverse is a more accurate understanding of Pufendorf's notion of private property here: Private property exists because it satisfies a series of human needs beyond mere self-preservation and contributes to sociality. As Tuck suggests, "Pufendorf neatly avoided the implications of Grotius's theory, that all property must bear some relationship to the fundamental and natural human needs to consume the fruits of the earth. Instead, property could always be legitimated by a much wider set of human wants, comparable to the wants which would be taken seriously in a civil society."⁶⁶ Specific property arrangements are not determined by the laws of nature—primitive communal societies and modern societies founded on private property are both in accordance with the laws of nature and neither arrangement should be viewed in teleological terms. The primary concern of the laws of nature is stable social life, and whichever arrangements are best suited to this end are acceptable to God and God's law. For well-populated, complex societies, however, social peace will best be guaranteed by laws governing private property and an understanding among property owners that their wealth creates an obligation for benevolence. Private property is a guarantee of sociality, rather than the reverse.

⁶⁴ Ibid. VI.vi.7

⁶⁵ Robert Wokler, "Rousseau's Pufendorf: Natural Law and the Foundations of Commercial Society," *History of Political Thought* Vol. XV, no. 3 (Autumn 1994). argues that part of Rousseau's project in *The Second Discourse* is to undermine the commercial sociability argument he sees in *De Jure Naturae*.

Sociality and the State

Pufendorf very carefully avoids understanding the modern state in teleological or deterministic terms. While the laws of nature suggest that co-operation is essential for the preservation of both individual humans and the species as a whole, the natural law does not mandate that this co-operation be formalized into civil society. The state itself is a contingent development in human history, a result of utility rather than divine command. Pufendorf explains,

It is not enough to say here that man is drawn to civil society by nature herself, so that he cannot and will not live without it. For man is obviously an animal that loves himself and his own advantage to the highest degree. It is undoubtedly therefore necessary that in freely aspiring to civil society he has his eye on some advantage coming to himself from it. Again, man was likely to be the most miserable of animals without association with his fellows; yet his natural desires and needs could have been abundantly met by the earliest societies and by duties based on humanity or agreements. We cannot therefore infer directly from man's sociality that his nature tends precisely to civil society.⁶⁷

Pufendorf imagines that prior to living in political societies, humans were arranged into primitive kinship communities, with fathers ruling over their families and organizing cooperation among and between family groups. This condition of natural liberty (at least for the patriarchs) was a successful form of social association for a time, and might have remained adequate for fulfilling human needs had not the aggressive elements of human nature made this limited form of society precarious and insecure. As it is, however, the fallen condition of human nature, and the insecurity which characterizes pre-political life means that the state becomes highly desirable, even if it is not in any sense necessary or obligatory.

⁶⁶ Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*. p. 155

⁶⁷ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p. 132.

Pufendorf is unambiguous about the origins and the purpose of the state: security and security alone explain the decision to leave the state of natural liberty afforded by kinship communities and to create a formal social contract establishing the state—the other benefits that come with civil association are secondary to the need and desire for security.⁶⁸ He explains,

the real and principal reason why the fathers of families left their natural liberty and undertook to establish states, was in order that they could surround themselves with defences against the evils which threaten man from his fellow man...But against those ills with which man in his baseness delights to threaten his own kind, the most efficient cure had to be sought from man himself, by men joining into states and establishing sovereignty.⁶⁹

The origins of the state are clearly grounded in utility rather than a sociable nature or an inherent political quality in human nature, and the state, of course, becomes the only means by which security can be guaranteed and the laws of nature temporally enforced. With the creation of the state, the sovereign steps in as God's representative on earth, armed with both the power and the just reasons to create obligations in the citizenry. The demarcation argument described above ensures that the sovereign is not entitled to answer metaphysical questions, as these are the purview of moral theology, but he is able to create civil laws and to relieve individuals of the duty of determining for themselves the content of the laws of nature. As with Hobbes, Pufendorf sees the right to determine the natural law as essential to sovereignty and to political rule, and, as should be evident, like Hobbes, Pufendorf imagines a very strong and virtually unaccountable⁷⁰ sovereign with wide-ranging powers over his subjects. The implied God-like character of the

⁶⁸ Pufendorf, *De Jure Naturae*. VII.i.7, Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p.133

⁶⁹ Pufendorf, *De Jure Naturae*. VII.i.7 Pufendorf assumes without comment that women gave up their liberty to their husbands long before the establishment of a civil state.

sovereign comes directly from Pufendorf's theory of obligation, and while he is not infallible or omniscient like God, Pufendorf's "two pacts and one decree"⁷¹ create a rightful superior who is entitled to impose laws with force and legitimacy onto his subjects. Consent, as much as gratitude for the provision of security, combines with the coercive power of the state to create binding obligations among the citizenry.

The state, then, is the surest means of ensuring the fulfillment of the laws of nature, because Pufendorf's anthropology is such that the distant threat of punishment from God will never be enough to restrain wickedness in those who are inclined to be wicked. He says, "Divine vengeance tends to proceed at a slow pace...truly, the effective remedy for suppressing evil desires, the remedy perfectly fitted to the nature of man, is found in states."⁷² Ultimately, the coercive power of the state is the only real guarantor of social peace—the state must mete out temporal punishments for the failure to fulfill the demands of the laws of nature; in other words, the state will compel sociality in aid of security.

In addition to its coercive powers, the state also has the opportunity to ensure that citizens behave sociably through habituation as well as through positive laws that make explicit demands of its citizens. The state provides an institutional component of sociality—it has the resources and the power to ensure that esteem, benevolence,

⁷⁰ Pufendorf stresses that there can be nothing superior to what is supreme, and therefore, there is nothing to which a sovereign can be held accountable. See Ibid. VII.vi.

⁷¹ Seeking to get around Hobbes's problem of the potential for citizens to hold their rulers accountable, Pufendorf sees the establishment of the state as coming from two pacts and one decree. The first pact is created by consensus, and involves each individual renouncing his natural liberty and equality and agreeing with every other individual to create a "single and perpetual group". The decree next establishes the form of government and is decided by majority rules. Finally, the second pact is between the new rulers and the citizens. The rulers oblige themselves to providing for the security of the group, and the subjects oblige themselves to obey. See Ibid. VII.ii.7 and 8. Hunter argues that Pufendorf is avoiding Hobbes's problem by recognizing that sovereignty is not something that individuals possess in the state of nature—sovereignty exists only with the creation of the social contract. See Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany*. p. 187.

gratitude and sociable behavior are the norms throughout society. Without the state's power to extract sociable behaviors and to punish violations, human society will always be uncertain. He explains, "It was therefore necessary for men to make agreements with each other so that the duties which they perform for each other (and this is the advantage of sociality) might be performed more frequently and in accordance with what one might call fixed rules. This is particularly true of the mutual provision of the sort of things which a man could not surely count on getting from others on the basis of the law of humanity alone."⁷³ The state can, in short, ensure that rich property owners exercise their benevolence to the poor, and it can ensure to some extent that the poor will receive this benevolence with gratitude, it can create public schools which will appropriately indoctrinate children, it can tax, make war, exact punishments, enact sumptuary laws, prohibit idleness and the like,⁷⁴ in aid of sociality as a means to security. The demands of the law of nature are both broad and indeterminate—the state has the power and the ability to enforce these demands and to give them specific content.

For Pufendorf, the requirement to behave altruistically or benevolently or sociably is essential to the stability of society. Without networks of good will, and coercive institutions that will demand good will, human societies will always be precarious. As a result, the state finds itself in the position of exacting sociality and even altruism from individuals who cannot be trusted to behave this way on their own. The state, in the pursuit of security, compels individual citizens to preference sociality and the natural law to their own, narrowly defined self-interest. This means that, in essence, part of the function of sovereign is the forceful imposition of a very broad and long-term conception

⁷² Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p. 134

⁷³ Ibid. p. 68.

of utility onto individuals who are much more inclined to be ruled by their short term passional interests. The institution of the sovereign and his coercive apparatus become necessary to fulfill the first and fundamental demand of the laws of nature, sociality.

Conclusion: Sociality and Utility

Pufendorf's discussion of the state and its clear foundation in utility enables us to see more clearly the relationship between utility and sociality in Pufendorf's political theory. Sociality is, from the perspective of the individual and from the state, an important ingredient of a stable political society. It is essential to the preservation of individuals and to the state itself. Nevertheless, perspective is important here because some scholars have concluded from this that utility is the ultimate foundation of sociality, and that, as a result, it is a norm derived from man's desire for self-preservation. Istvan Hont writes, "[Pufendorf's] own concept of *socialitas* was built firmly on the notion of self-preservation...He strongly resisted any trivialization of the concept of the concept of sociability as the antithesis of self-regarding behavior...In *socialitas* self-regarding and other-regarding motives were not in opposition, rather they formed a distinctive combination."⁷⁵ While Hont is correct to note that in many ways, for Pufendorf self-interested behavior is not necessarily anti-social, it is reductive to suggest that sociality and self-interest are always in accord because the fulfillment of the demands of sociality will often conflict with the impulses of self-interest. Carr and Seidler go even further than Hont, arguing that, "By insisting that the requirements of natural law have a natural utility for humankind, Pufendorf not only gives humans a

⁷⁴ Pufendorf discusses the specific duties and powers of sovereigns at Pufendorf, *De Jure Naturae*. VII.ix

⁷⁵ Hont, "The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the 'Four-Stages' Theory." P. 267. Hont links this definition of sociality with the development of capitalism.

motive to obey it but also identifies the condition that will allow human beings, through the exercise of reason, to recognize it. Since the natural law, as God's law, must be conceived as conducive to the happiness and well-being of humankind, that which reason shows to be conducive to human happiness and well-being must, conversely, be regarded as natural law."⁷⁶ However, Pufendorf's anthropology positively forbids such an easy account of the role of natural law in human life, and certainly it is an oversimplification of the relationship between sociality and self-interest in Pufendorf's thinking. A corrupt humanity cannot be trusted to obey the natural law through the pursuit of its own happiness, and nor, indeed, can an individual's sense of what will make him happy be assumed to be consistent with the natural law.

As a norm, sociality clearly has utilitarian ends because without it, the preservation of the human species would be impossible, or at least, precarious. Nevertheless, Pufendorf was emphatic that utility calculations can never be the measure of morality or of obligation. These are inadequate as moral guides because self-interest can and will conflict with the broader demands of a long-term, species focused understanding of utility, preservation and sociality. While natural law is often consistent with human advantage, the corruption of our reason and the strength of our passions means that instrumental judgments must always be suspect. Pufendorf himself says, "Though these precepts have a clear utility, they get the force of law only upon the presuppositions that God exists and rules all things by His providence, and that He has enjoined the human race to observe as laws those dictates of reason which He Himself

⁷⁶ Craig and Seidler Carr, Michael, "Pufendorf, Sociality and the Modern State," *History of Political Thought* Vol. XVII, no. 3 (Autumn 1996). Reprinted in Knud Haakonssen, ed., *Grotius, Pufendorf and Modern Natural Law* (Dartmouth: Ashgate, 1999). p. 361

promulgated by the force of the innate light”⁷⁷ Only with the knowledge of natural law can we make moral judgments of any kind, and these, by their very nature, will be fundamentally different from utility calculations. The utility question can reach resolution only with a shift of perspective away from the individual and towards the species as a whole. Whatever else he is, Pufendorf is not a particularly strong advocate of individual rights or individualism, and his conception of an activist God meting out wise laws that will compel humans to act in a manner consistent with social living indicates that the role of utility in Pufendorf’s sociality is best examined from God’s perspective, rather than from an individual human perspective. As Saastamoinen argues, “the end of natural law—the purpose of its existence—is not the survival or well-being of the individual but the preservation of humankind in general.”⁷⁸ God’s priority is not the preservation of individual human beings, but the preservation of the entire species and the realization of its potentialities. As we saw above, the significance of self-love in human nature points not to a duty to preserve the self for the self’s own sake, but to preserve the self because each individual is a member of a collective humanity. It is for this reason that Pufendorf understands the duty of self-preservation to be derived from a duty to God, rather than a natural and selfish human instinct (although it is that too). From the perspective of the individual, the natural law in general and the duty to sociality in particular may often conflict with self-interest and immediate individual gain. From the perspective of humanity as a whole (and this must be God’s perspective), sociality is the behavioral condition for the preservation of the species. The self-interested individual must then take a very long view of his self-interest in order to see the command to sociality as springing

⁷⁷ Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. p. 36

⁷⁸ Saastamoinen, *The Morality of the Fallen Man: Samuel Pufendorf on Natural Law*. p. 69

from self-preservation because the natural law will make demands of him that will conflict with his own self-interested impulses. As Schneewind explains, the natural laws should be viewed as “instrumental from God’s point of view and deontically absolute from ours.”⁷⁹ Only from the perspective of the entire species, throughout history, can the natural law be said to have its foundations in self-preservation and utility, and certainly, utility calculations cannot be the measure of man’s obligation to God’s law. Stephen Buckle argues, “Pufendorf has not hesitated to stress the utility of natural law...This does not mean, however, that the law of nature is founded in utility...It is more accurate to say, instead, that, as it is for Grotius, the law of nature is expedient even though not founded in expediency. This is because it is founded in the social nature of human beings, in their need for an organized social existence; and at bottom in the exigencies of their self-preservation.”⁸⁰

With God providing the perspective from which to view the relationship between the pursuit of self-preservation and authoring the command to behave sociably, Pufendorf is more easily able to reconcile the tensions between self-love and sociality than Grotius was able to do. Self-love may be a natural human impulse, but Pufendorf has understood its normative aspects in relation to the human duty to God. The law of nature demands that humans behave in such a way as to preserve the entire species, but the obvious place to begin such a task is with the individual’s preservation of herself/himself. The overarching norm here is not utility or the self-preservation of the individual, but the duty

⁷⁹ J.B. Schneewind, "Pufendorf's Place in the History of Ethics," in *Grotius, Pufendorf and Modern Natural Law*, ed. Knud Haakonsson (Dartmouth: Ashgate Press, 1999). Reprinted in Haakonsson, ed., *Grotius, Pufendorf and Modern Natural Law*. p. 136

⁸⁰ Buckle, *Natural Law and the Theory of Property*, p. 67

each individual has to God's law and to God's intentions for the preservation and stability of the species—even though this is, in absolute terms, unknowable.

Pufendorf sees a much closer relationship between self-interest and sociality than does Grotius. The two are not identical from an individual's perspective, but from the voluntarist perspective of an activist, law-giving God, utility and sociality at least offer the potential for reconciliation—provided, of course, that there are coercive measures to compel compliance with the duties of the natural law. Pufendorf's reliance on God to link self-interest and sociality will seem inadequate to modern, secular readers, and this, perhaps, is one of the reasons that Pufendorf has been so under-utilized by contemporary political theorists. Nevertheless, his attempt to reconceive of self-love as a moral duty rather than a purely disruptive passion while linking that self-love to the duty towards others is a unique and intriguing way of providing a link between the individual and the whole, and of conceiving of one's obligations to others.

Pufendorf's connection of self-love to the duty to God and to the preservation of the species creates a special dynamic between self-interest and sociality that finds its ultimate expression in the power of the sovereign and the state. The state comes into existence to provide security through its powers of enforcement, but the state also brings with it norms and institutions that will encourage widespread sociable behavior. The state, with security and the utility of all as its end, provides the coercive and habituating mechanisms to reconcile the potential tension between individual self-love and sociality.

Chapter 4: Lockean Natural Law: Self-Preservation, Self-Interest and the Public Good

Locke's *Two Treatises* are a testament to the degree to which natural law thinking and discourse had permeated late seventeenth century thought. Natural law and natural rights are clearly crucial to Locke's political tasks in those essays, but he does not develop any systematic theory of natural law to support his deployment of natural law claims and arguments. As a result, his particular understanding of the laws of nature appears vague at best in the *Two Treatises*, particularly in comparison with his earlier natural law text, *Questions Concerning the Law of Nature*. In that text, Locke builds his natural law theory onto a voluntaristic foundation and establishes the basis for obligation to God and the natural law in terms of God's workmanship rights over humanity. Despite the differences between the two texts,¹ both the *Questions Concerning the Laws of Nature* and the *Two Treatises* make clear that the fundamental law of self-preservation is a duty to God that is informed by a social context, and which is encompassed by the broader command to preserve society and all mankind. Because his approach to natural law rests on voluntarist (and perhaps even Pufendorfian) foundations, I argue that understanding the preservation duty turns on an understanding of God's will for the preservation of the human species. It is the perspective of God's will, what I am calling, the "God's eye view," that enables us to situate Locke's conception of the public good and self-preservation within a natural law framework and to open up the possibility of meaningful discussion about Locke's deployment of these concepts in his political writings.

¹ I will discuss the difficulties—and possibilities—for reading the *Two Treatises* through the lens of the *Questions Concerning Human Nature* in the next section.

While Locke's writing does not draw upon the language of sociability directly, his conception of the relations between individuals, individuals and God and individuals and society reflect the tempering of egoistic self-love which has been the achievement of sociability in the work of Grotius and Pufendorf. That is, while Locke does not discuss "sociability," his writing about rights, obligations and self-preservation nonetheless echoes the natural law perspective that presumes and reinforces human society and mutual obligation as a precondition for individual rights and freedom. In part, this perspective can be attributed to the Pufendorfian and voluntarist strain in Locke's writing. His voluntarist perspective creates an important link between individual rights and the public good—individual rights and duties are derived from a moral standpoint that seeks to reconcile human nature with God's ends for humanity. This means that the law of nature can be understood as utilitarian from God's perspective only (because his laws aim at the preservation of his creation), and morally absolute from the perspective of individual humans. As a result, Locke's many references to the "publick good" in the *Two Treatises* can best be understood as a normative demand that government and subjects attempt to understand the collective good in terms of God's universal perspective, at the level of the nation-state. This is, essentially, another attempt to use a sociable obligation to strike a balance between individual self-love and our duties and obligations to others.

In this chapter, I will first lay out the essentials of Locke's theory of natural law as it appears in his *Questions Concerning the Law of Nature*, and I will argue that Locke maintains a consistently voluntarist position in that text and the *Two Treatises*. I will then discuss Locke's theory of obligation in *Questions Concerning the Laws of Nature* and the

political and jurisprudential significance of his conception of God's creator's rights over humanity. In the second half of the chapter, I turn to the *Two Treatises* and suggest that Locke's use of natural law here turns on an important, but overlooked distinction between self-preservation and self-interest. I argue that in contrast to self-interest, self-preservation, a duty that each man owes to God and to other men, is inherently other-regarding and constitutive of Locke's broadest political goals and foundational for his conception of political society.

Locke refers to the "publick good" dozens of times in the *Two Treatises* without ever fully explaining how the public good is conceived, or how it relates to the private interests of citizens. Because he contrasts it repeatedly with the private interests of rulers, the public good seems primarily to operate as a limit on governmental power and to remain purely formal with regard to the lives and interests of citizens. In this chapter, I suggest that by reconceiving of Locke's public good in the light of his natural law theory and the natural law command to preserve oneself and the rest of mankind, we are able to see some possibilities for understanding the relationship of the public good to private goods and interests and for understanding more substantively the expression of the public good in the state. I suggest that properly situating Locke as a natural law voluntarist will reveal the extent to which his liberal individual is, in fact, a social creature, embedded in social relationships and whose obligations to the natural law are defined in terms of this context.

Divine Willing and Human Reasoning: *Questions Concerning the Laws of Nature*

Natural law plays an important supporting role in the *Two Treatises*—without it, Locke would be unable to justify natural rights, property rights, the right to revolution

and many other core Lockean concepts. Tully has argued that Locke's response to Filmer in the *Two Treatises* represents an attempt to rescue the natural law tradition from the withering (although not always entirely accurate) critique of Grotius in Filmer's *Patriarcha*.² Interpreters have tended to focus, not without reason, on property as the locus of Locke's natural law-based rebuttal of Filmer, but Locke's entire political theory depends crucially on his conception of natural law and its obligations. At the same time, however, the *Two Treatises* contain almost no substantive or systematic discussion of Locke's natural law theory, its source, its assumptions or the nature of its obligation. As a result, natural law appears, at first glance, to be a residual category upon which Locke is able to draw at will and without apparent concern for rigorousness.

Nevertheless, because natural law is constitutive of Locke's political theory, particularly, as I argue here, for his conceptions of self-preservation and the public good, it is worth examining Locke's account of natural law closely. Locke's refusal to publish a work on the natural law has long been a source of frustration for his interpreters (beginning with his friend Tyrell, who repeatedly implored him to write a treatise on natural law³). Locke's *Questions Concerning the Law of Nature*, which remained unpublished until the 1950s, is his only systematic work on the subject, and it is in many ways incomplete.⁴ Locke's work here is limited only to the central question of the

² Tully discusses Filmer's critique of Grotius, and the challenges this critique poses for Locke in James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge [Eng.]; New York: Cambridge University Press, 1980), pp. 54-55.

³ See Horwitz's introductory essay to John Locke et al., *Questions Concerning the Law of Nature* (Ithaca: Cornell University Press, 1990), pp 28-29. I will refer to this text throughout as *Questions*.

⁴ For details regarding the discovery and publication of these *Questions* or *Essays*, see Von Leyden's introduction to John Locke, von Leyden, *Essays on the Law of Nature* (Oxford: Clarendon Press, 1958).. Horwitz is (I think rightly) critical of the treatment the *Questions* received in Von Leyden's hands, and reproduced a new edition, with different Essay numbering, together with Diskin Clay and Jenny Strauss Clay in 1990. The *Questions* is thought to have been written for a lecture series while Locke was a Censor of Moral Philosophy at Christ Church. Locke never sought to publish these essays, although he did have the manuscript prepared for publication.

knowability of the natural law, and the nature of its obligatory power; Locke does not begin the task of deducing the natural laws which would usually follow this epistemological beginning. Despite Locke's apparent qualms about publishing his *Questions Concerning the Law of Nature*,⁵ there is little in the text to excite the wrath of his contemporaries—in most ways, Locke's writing on the natural law is highly consistent with the voluntarist discourse of his day and very evocative of the writings of Pufendorf. Locke's *Questions Concerning the Law of Nature* is, aside from a small handful of significant innovations and its failure to formally develop and deduce the natural laws and their implications, or discuss the nature of man, a very conventional work on natural law.

Because of its conventionality, however, the *Questions Concerning the Law of Nature*, more readily throws light on Locke's use of natural law in the *Two Treatises*. Locke's earlier works are notoriously difficult to reconcile with his later works (this is most particularly true of the *Two Tracts*, which justify absolutism, and of the relation of his natural law writings to his philosophical writings⁶)—Locke's concerns and approaches seem to have altered dramatically in the twenty year period between the writing of *Questions Concerning the Law of Nature* and the *Two Treatises*. And yet, if we understand Locke's use of natural law as a contribution to an ongoing and hotly contested tradition which I have sketched in this dissertation, then the points of agreement between

⁵ Laslett discusses Locke's paranoia at length in his introduction to the *Two Treatises*. Von Leyden attributes Locke's reluctance to publish the *Questions* to his purported turn towards hedonism in the *Essay Concerning Human Understanding*. Ibid. pp 70-78.

⁶ Many scholars have written on the subject of the apparent incompatibility of Locke's voluntarism with the rationalist epistemology laid out in the *Essay on Human Understanding*. See for instance Laslett's Introduction to John Locke, *Two Treatises of Government*, 1988 Student Edition ed. (Cambridge [Eng.]: University Press, 1960).; Von Leyden's Introduction to Locke, *Essays on the Law of Nature*.e; John Colman, *John Locke's Moral Philosophy* (Edinburgh: Edinburgh University Press, 1983).; John M. Dunn,

the *Questions Concerning the Law of Nature* and the *Two Treatises* appear more sharply than they otherwise might do. In particular, aside from an agreement about the content of the fundamental law of nature, there are three points of connection between the natural law theory of the *Questions*, and the deployment of natural law in the *Two Treatises*. The first of these points is Locke's voluntarism, which is overt in the *Questions* and tacit in the *Two Treatises*; the second is the role that reason plays in deducing the natural law from voluntarist premises—that is, Locke understands human reason as forming the connective bridge between humanity and divine natural law. Finally, in both texts, Locke derives human obligation to God's laws from God's peculiar creator's rights over humanity. This “workmanship” argument forms the basis for man's obligation to natural law in both the *Questions* and the *Two Treatises*. These three concepts stand as the foundation of the natural law theory expounded in the *Questions*, and while they are far less central to the main tasks of the *Two Treatises*, they point to the possibility of reading the natural law in the *Two Treatises* in terms of its more systematic development in the *Questions*.

The essence of Locke's theory of natural law, as articulated in *Questions Concerning the Laws of Nature*, proceeds as follows: the natural law is the will of God, and without it, humans would be subject to no laws but those of their own self-interest and subjective desires.⁷ This law is accessible to humanity through the deployment of reason on our sense-experience. Locke calls this “the light of reason” and contrasts it sharply with rational deductions made in an empirical vacuum. We are obliged to obey the natural law because of God's wisdom and his creator's rights over us. As a result, we

The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treatises of Government' (London,: Cambridge U.P., 1969)..

can understand the fundamentals of Locke's natural law in voluntarist terms that are compatible with human reason, and with the human condition as he understands it. Like the natural law theories of Hobbes and Pufendorf (and in opposition to Grotius's), Locke's account of natural law rejects the rationalist notion that a natural, moral order exists in the universe independently of the will of God. Like Pufendorf, Locke responds to Grotius's potentially atheistic rationalism⁸ with a theistic and voluntaristic conception of the natural law. Locke explains succinctly: "This law of nature can, therefore, be so described [as a law] because it is the command of the divine will, knowable by the light of nature, indicating what is and what is not consonant with a rational nature, and by that very fact commanding or prohibiting."⁹ This passage has been the source of some disagreement, since the Latin is unclear as to whether the "by that very fact commanding or prohibiting" refers to the divine command or its consonance with rational nature. Nevertheless, Locke goes on to explain, "Less accurately, it seems to me, some say it is a dictate of reason; for reason does not so much lay down and decree this law of nature as it discovers and investigates a law which is ordained by a higher power and has been implanted in our hearts. Nor is reason the maker of this law, but its Interpreter....For, it is the declaration of a superior will, in which the formal definition of law seems to consist."¹⁰ As this quote indicates, for Locke the content of the divine will is closely related to the human capacity for reason, and it is human reason that will allow humans to

⁷ Locke et al., *Questions Concerning the Law of Nature*, p. 117.

⁸ Grotius himself was no atheist, but the logic of the rationalist position (the notion that moral laws can exist in a rational universe independently of the will of God or any other legislator, or that God's will accords with these external standards) leads inevitably to the view that God is altogether unnecessary. Grotius addresses this 'danger' in his famous *etiamsi daremus* clause in his *Prolegomena*. See Grotius, *De Jure Belli*, p.89.

⁹ Locke et al., *Questions Concerning the Law of Nature*, p. 101. See also Colman, *John Locke's Moral Philosophy*, p. 41.

¹⁰ Locke et al., *Questions Concerning the Law of Nature*.

deduce the specific content of the natural law. Nevertheless, the decisive source of the law itself is God's will. This means, ultimately, that as with Pufendorf, in order to apprehend the laws of nature, humans must rationally infer God's will from their own nature and condition.

This much of Locke's voluntarism is straightforward, but the very close relationship between the will of God and the role of human reason in Locke's account of natural law has led many interpreters to understand his theory as a sort of compromise between voluntarism and rationalism.¹¹ I suggest, however, that the qualification of Locke's voluntarism has been overdrawn. The human ability to apprehend the natural laws rationally, and to square them with experience does not indicate a backing away from voluntarism, nor does it hint at a strong rationalist influence in Locke's natural law theory; rather, it is a voluntarist explanation for how an arbitrary divine will can be accessible to human reason. Francis Oakley argues that the inconsistency of Locke's voluntarism has been overstated because his interpreters have failed to see that Locke was working within a very old scholastic tradition that makes a distinction between the freedom of God's will on the one hand and the stability and constancy of the order he created on the other.¹² The basis of this distinction is an acknowledgment that God was free to create the earth and humanity as he chose, but having created this world, its order is eternal and immutable. Oakley calls this a "covenantal context", and in fact we see a

¹¹ See for instance, Von Leyden's introduction to Locke, *Essays on the Law of Nature*.p. 43, and Tully, *A Discourse on Property*.p. 42. Colman disagrees with the Von Leyden/Tully assessment. See Colman, *John Locke's Moral Philosophy*.p. 32-40.

¹² Oakley, "Locke, Natural Law and God - Again." W. Randall Ward similarly argues that the confusion here stems from misunderstanding the fact that God's creation of the natural law and his creation of human nature are part of the same moment of divine willing and cannot be discussed independently of one another. See W. Randall Ward, "Divine Will, Natural Law and the Voluntarism/Intellectualism Debate in Locke," *History of Political Thought* Vol. XVI, no. 2 (Summer 1995).

hint of the contractual nature of this arrangement in Locke's *Second Treatise*.¹³ This distinction is central to much voluntarist thought—Pufendorf, Locke's immediate natural law predecessor and a great influence on Locke himself, also attempted to explain his voluntarism in terms of a divine will operating within a scheme of its own consistency, in other words, under a condition of “hypothetical necessity.”¹⁴ The role of reason in Locke's theory of natural law should be understood in these terms, and Locke is quite explicit on this point:

some states of things seem to be immutable, and some duties, which cannot be otherwise, seem to have arisen out of necessity; not that nature (or to speak more correctly) God could not have created man other than he is, but, since he has been created as he is, provided with reason and his other faculties, there follow from the constitution of man at birth some definite duties he must perform, which cannot be other than what they are.¹⁵

Reason, therefore, must be understood not as the author of natural laws, but rather the faculty given to humanity by God for the purposes of divining the laws of nature, that is, for the possibility of moral human existence. It is the qualification that best enables us to see the extent to which Locke is working within the Pufendorbian natural law tradition.

Locke's conception of our obligation to God's natural law suffers from the usual problems that beset voluntarism:¹⁶ if we grant that God wills particular laws for humanity, and we acknowledge that humans have access to these laws, we still must ask what it is that makes God's law binding on humanity. Obligation is problematic for voluntarists because it risks being definitionally axiomatic—God's will is obligatory because it is the will of God—and because voluntarism always confronts the danger of

¹³ See Locke, *Two Treatises*., II s195.

¹⁴ Pufendorf, *De Jure Naturae*., II.iii.4, p. 184.

¹⁵ Locke et al., *Questions Concerning the Law of Nature*.p. 229.

¹⁶ See for instance Hunter, *Rival Enlightenments*, and Schneewind, *The Invention of Autonomy*., pp. 134-138..

implying that there are moral standards (most notably, reason and justice) beyond the content of God's will. Locke's theory of obligation, like Pufendorf's, turns on the fact of God's creation of humanity. For Pufendorf, the source of our obligation to God's will is fear of sanction and our gratitude towards God for having created humanity.¹⁷ Locke refers also to God's sanctions, but this, for Locke, is an inadequate explanation for the binding power of the laws of nature—the threat of sanctions is an inducement, it does not constitute a legitimate binding obligation, in Gods or in tyrants.¹⁸ The obligations of men to God's law are distinct from all other forms of obligation because, “the will of god is binding on all men, before any other law, both of itself, and by its own force.”¹⁹ This axiomatic definition does not really answer the question, however, and so Locke seeks to locate the peculiar obligatory power of God's will in his unique creative power over humanity. Locke argues,

Since god is superior to all things, [and] he holds as much right and authority over us as we cannot hold over ourselves, since we owe to him and to him alone our body, soul, life, whatever we are, whatever we possess, and also whatever we can be, it is right that we live [obedient] to the prescription of his will. God has created us out of nothing and, if it is his pleasure, he will return us to nothing again. We are, therefore, subject to him by supreme right and absolute necessity.²⁰

And similarly, he explains that obligation to the natural law,

seems to derive at times from the divine wisdom of the legislator, and at times from that right which the creator has over his creation. For every [kind of] obligation can ultimately be referred back to god, to the command of whose will we must show ourselves obedient. We are obligated because we have received both our being and proper function from him, on whose will we depend, and we ought to observe the limit he has prescribed.²¹

¹⁷ Pufendorf, *De Jure Naturae*. I.ii.6, I.vi.1, I.vi.5, I.vi.9 and elsewhere. I discuss this in Chapter 3, pp 77-80

¹⁸ Locke here is already beginning to launch his assault on unrestrained political power. See Locke et al., *Questions Concerning the Law of Nature*. p. 213.

¹⁹ Ibid.p. 211.

²⁰ Ibid.p. 213.

In other words, we are subject to God's will because he is a legitimate superior who possesses absolute creator's rights over us. The source of his legitimacy is both his wisdom and his creative power, as well as his continued interest in our preservation.²² We are, in a word, God's property, and as such, God has special property rights over humanity that are absolute and peculiar to God. Tully explains this relationship as follows: "On Locke's model God is not dependent on the world, yet man is continuously dependent on God. God makes the world...in a manner analogous to the way in which man makes intentional actions...Man is thus dependent on his maker for being brought into being and for his continued existence. Locke's political philosophy hinges on this one-way dependency relation between God and man, and from which man's natural obligations follow."²³ Tully sees this conception of obligation as essential for Locke's theory of property—humans are analogous to God in that both are rational creatures with property in their creations.²⁴

Regardless of the precise nature of the property analogy in God and men, the important point for natural law is that God has a property in man which is the basis of man's obligations to God. In contrast to Pufendorf, who emphasizes fear of sanction and

²¹ Ibid.p. 205.

²² Colman, *John Locke's Moral Philosophy*., pp. 44-46.

²³ Tully, *A Discourse on Property*., p. 36.

²⁴ Tully's 'workmanship model' has frequently been criticized as an account of human property rights, most notably by Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* (Cambridge, U.K.; New York: Cambridge University Press, 2002)., pp. 162-164; and A. John Simmons, *The Lockean Theory of Rights, Studies in Moral, Political, and Legal Philosophy*. (Princeton, N.J.: Princeton University Press, 1992)., pp. 244-262. The analogy between God and Mankind is not a perfect one—God has absolute rights over his creations, whereas humans do not, and God makes things from nothing, where humans mix their labour with things already existing in nature. Despite these difficulties, the workmanship model is the best model for understanding human obligation to God's laws and it is also an excellent, albeit imperfect, model for understanding why it is that human labour is capable of giving the labourer possessive rights over the products of his labour. For further exploration of the Workmanship model, see Buckle, *Natural Law and the Theory of Property*.; Gopal Sreenivasan, *The Limits of Lockean Rights in Property* (New York: Oxford University Press, 1995)., pp. 59-80; Laslett's Introduction to Locke, *Two Treatises*.p. 92. and James Tully, *An Approach to Political Philosophy: Locke*

gratitude for God's creation of man, Locke's theory of obligation turns on the rational recognition of man's dependence on God's will for his creation and for the means to his preservation. God therefore has a legitimate power over humanity and can rightfully demand obedience from his creation: "It is obvious, therefore, that men can infer from sensible things that there exists some powerful and wise being who has jurisdiction and power over men themselves. Who, indeed, will say, that clay is not subject to the potter's will and that the pot cannot be destroyed by the same hand that shaped it."²⁵ The act of creation itself legitimates God's absolute power and our binding obligations.

Locke's workmanship account of human obligation to God is significant for his later political theory. Traditionally the relation between man and God serves as a model of man's relation to political authority. With his workmanship account of natural obligation, Locke breaks the nexus between obedience to God and obedience to political authority that has characterized the natural law tradition. Where Pufendorf's gratitude and sanction theory of obligation led directly to a justification of earthly tyrants, Locke's workmanship theory of obligation enables Locke to make a fundamental and politically revolutionary distinction between God's power and the much more limited power of temporal rulers. Earthly kings do not 'create' their subjects in the manner that God created humanity—the king's subjects were already constituted as a society prior to the appointment of a king and they are not dependent on him in any constitutive or creative sense.²⁶ This move enables Locke to present a strong theory of man's obligation to God while at the same time precluding the justification of absolutism that characterizes the

in Contexts, Ideas in Context (Cambridge [England] ; New York, NY, USA: Cambridge University Press, 1993)..

²⁵ Locke et al., *Questions Concerning the Law of Nature*.p. 167; See also Sreenivasan, *The Limits of Lockean Rights in Property*., pp. 59-81.

theories of both Grotius and Pufendorf (and is endemic to much natural law theory generally). Man's dependence on and obligations to God are of an entirely different order than those on and to a king. As a result, Locke's shift away from Pufendorf's benevolence-gratitude model²⁷ to his own workmanship model allows Locke to make God's will obligatory whilst at the same time creating the possibility for legitimate resistance to tyrannous monarchs.

Additionally, because the workmanship model implies an analogy between men and God as rational and creative creatures,²⁸ it allows Locke to approach a solution to the problem of man's access to the laws of nature. If the divine will is arbitrary and subject to no laws beyond itself, then humanity faces a problem in coming to know the content of this will. If, however, we understand that God's wisdom and benevolence unite in a consistent and hypothetically necessary natural order designed to accord with human reason, the laws of nature can be worked out by considering God's intentions toward humanity and by considering human nature itself. In both cases, reason, as the universal and uniquely human characteristic, provides the key to the natural law.²⁹ Locke explains, "Inasmuch, therefore, as all men are rational by nature and there exists a harmony between this law and rational nature—a harmony knowable by the light of nature—it is necessary that all men endowed with a rational nature—that is, all men everywhere—are

²⁶ This is analogous to Locke's claim in the *Two Treatises* that parents do not 'create' their children—the important element of creation comes from God alone.

²⁷ Locke seems to view benevolence-gratitude as a dynamic more closely related to the duties of parents and children than to political or divine authority. See Locke, *Two Treatises*. II s68 and my discussion of this dynamic in Pufendorf on pp. 89-95.

²⁸ Locke does not explicitly address the reason analogy in *Questions Concerning the Law of Nature*, but it appears in *Essays Concerning Human Understanding*, and the *First Treatise*. See Tully, *A Discourse on Property*., p. 9, and Sreenivasan, *The Limits of Lockean Rights in Property*., p. 65. Waldron argues against understanding reason as the faculty that humans share with God. See Waldron, *God, Locke and Equality*., pp. 71-72.

²⁹ Locke et al., *Questions Concerning the Law of Nature*. p. 167.

bound by this law.”³⁰ Reason, then, obligates us to obey the laws of nature at the same time as it allows us to determine them: reason can be brought to bear on our experience of human nature and the human condition to enable humanity to deduce God’s ends. For Locke, as for other natural law theorists, God’s benevolence and wisdom indicate that God wills the preservation of his creation, and that this preservation is therefore a divine command of the first order. This means then, that man’s reason tells him that he is,

impelled to form and preserve a union of his life with other men, not only by the needs and necessities of life, but [he perceives also that] he is driven by a certain natural propensity to enter society and is fitted to preserve it by the gift of speech and the commerce of language. And, indeed, there is no need for me to stress here to what degree he is obliged to preserve himself, since he is impelled to this part of his duty, and more than impelled, by an inner instinct.³¹

This statement is as close to a declaration of the fundamental law of nature as can be found in the *Questions* and it turns on the command to preserve oneself and to preserve society; these two primary duties make up the bulk of man’s obligations to God and to one another.³² The natural instincts for society and for self-preservation are reinforced through the rational contemplation of a wise and benevolent God’s ends for humanity.

Utility and the Law of Nature: A ‘God’s Eye View’

Despite the importance of preservation as a duty to God and its accord with God’s will,

Locke, like his natural law predecessors, is emphatic that the instinct for self-preservation cannot be the foundation of the natural law, and that the natural law does not consist in pursuing one’s self-interest. For Locke, as for Grotius and Pufendorf, utility cannot be the

³⁰ Ibid. p. 227.

³¹ Ibid. p. 169.

³² If Locke does not refer directly to a ‘fundamental law of nature’ in *Questions*, he does make reference to various particular laws, such as protection of property (225, 239) and charity, faith (225), not speaking unjustly of another man (223), and perhaps most importantly, keeping promises (247 and elsewhere).

measure of right. Locke claims, “some have been found who refer the entire law of nature to the self-preservation of each individual and seek no deeper foundations for it than self-love and that instinct by which each man cherishes himself, and look out, so far as he is able, for his own safety and preservation.” This view is inadequate, he explains, because “if the care and preservation of one’s self should be the foundation and beginning of this entire law, virtue would appear to be not so much man’s duty as his interest, and nothing would be right for a man were it not useful.”³³ Locke then proceeds, almost verbatim, to repeat Grotius’s summary of the expeditious argument put forward by the villainous Carneades³⁴ in order to refute the claim that laws are merely the explication of private interests of powerful individuals. In contrast to Carneades and his ilk, Locke maintains that “the saner part of mankind, which possessed some sense of humanity and some concern for society, has always opposed this opinion and its great iniquity.”³⁵ Sane, rational men, then, are able to view the law of nature as distinct from their private self-interest and in accord with the situation of men in society, obedient to God’s will for the preservation of mankind.

Following one’s self-interest is inadequate to the task of discharging one’s obligations to God because sometimes the law of nature will command actions at odds with private interest,³⁶ and because different individuals will desire different things. The

³³ Locke et al., *Questions Concerning the Law of Nature*.p. 203

³⁴ Carneades was an important second century b.c. sceptic. Grotius attacked him in his *Prolegomena* as the representative of the relativist view often associated with Thrasymachus, that is, that there is no independent criteria of justice beyond interest, and that all talk of law or justice is simply a disguise for the real play of interests. Responding to sceptical attacks on the natural law tradition was an important component of Grotius’s project of reinvigorating natural law in the new modern world. See, Grotius, *De Jure Belli.*, p. 79, and Tuck, *Philosophy and Government.*. See my discussion in Chapter 2, pp. 51-54.

³⁵ Buckle notes that in this passage, the sane or rational part of mankind (the von Leyden translation, which Buckle is using, translates ‘*sensus*’ as ‘rational’ rather than ‘sane’) is equivalent to those who have a strong concern for human society and human fellowship. In other words, rational and sociable are depicted as inseparable terms. See Buckle, *Natural Law and the Theory of Property*. p. 139.

³⁶ Locke et al., *Questions Concerning the Law of Nature*.p. 239-45.

diversity of interests—as well as the freedom each man has to determine his own private good³⁷—necessarily stands at odds with the fundamental universality of the laws of nature. Nevertheless, Locke hastens to add that although the foundations of natural law do not lie in the “private interest of each individual...we do not want to be understood to claim that the common right [*jus*] of men and the private interests of each individual are things opposed to one another, for the law of nature is the greatest defense of the private property of the individual.”³⁸ Locke clearly understands a strong relationship between individual self-interest and the natural law in the *Questions*, but this neither means that natural law is determined according to self-interest, nor that natural law is reducible to self-interest.³⁹ Rather, any advantages that accrue from obedience to the natural law are a secondary benefit of doing one’s duty. Locke writes, “interest is not a foundation of law or a basis of obligation, but the consequence of obedience...So the rightness of an action does not depend on interest, but interest follows from rectitude.”⁴⁰ In other words, while for the most part the laws of nature will be consistent with the general happiness of the individual, because natural law will sometimes demand, for example, heroic, self-sacrificing actions, utility cannot be the measure of right.

Nevertheless, there is clearly a utilitarian component to Locke’s theory of natural law, insisting as it does on the preservation of society and of individual men. This does not mean, however, that any individual agent can act instrumentally with regard to his own ends and interests without reference to the broader norm of the preservation of all mankind. If we understand, as Locke did, the laws of nature to flow directly from God’s

³⁷ Ibid.p. 245.

³⁸ Ibid.p. 237.

³⁹ I will argue below that this partial conflation between private interest and natural law is dismantled in the *Two Treatises*.

will, then we must attempt to derive the laws of nature from what we understand to be God's ends. This means that if the law of nature has an essential utility, then this is a utility from God's perspective only, not from the perspective of the individual human. From the perspective of the individual, any happiness that might follow from obedience to the natural law is attributable to a God who rules benevolently and who has created laws consistent with the happiness of humanity as he created it. The natural law serves a definite purpose for humanity, but this end is only accessible to us insofar as we can deploy our reason and determine God's own ends. Even from this perspective, however, we can draw little in the way of individual utilitarian foundations because from God's perspective, the individual is primarily important as a member of the whole of humanity. God's ends for humanity are universal—he wills the preservation of humanity as a whole, and does not distinguish between particular individuals as being more worthy of preservation than others.⁴¹

This means, ultimately, that the laws of nature, as well as individual rights and duties, can only be understood instrumentally from what Laslett calls a "God's eye view."⁴² That is, if we want to use a utilitarian calculus for considering the imperatives of the law of nature, it must be from the perspective of God's ends for his creation. In practical terms, this will mean understanding the law of nature in the context of the preservation of the entire society, and individual rights and duties must be contextualized within God's aims for humanity as a whole.⁴³ While Locke's account of natural law differs from his predecessors in that he uses virtually no language of sociability, Locke's

⁴⁰ Locke et al., *Questions Concerning the Law of Nature*.p. 251.

⁴¹ The exception to this rule is Locke's stipulation that when punishing crimes in the state of nature, men are entitled to kill criminals if the self-preservation claims of two individuals come into conflict. See Locke, *Two Treatises*, II s11 and s12.

conception of natural law is nonetheless directed towards men in a social situation; the natural law both presumes and reinforces human society. Still arguing against understanding utility as the foundation of right, he asks rhetorically, “What reason [would there be] for keeping promises, what force for the preservation of society, what life and association among men, when all justice and equity is [only] what is useful?”⁴⁴ The implication here is that natural right and justice are integrally linked to the preservation of societies and of mankind. The assumption behind Locke’s conception of the natural law is that man’s observation of himself reveals that he is particularly suited to live in society with other men, and that his natural duties are related to his status as a social creature.⁴⁵ The social context presumed by the natural law is reiterated in the universality of the God’s eye view, and taken together, they reveal a socially constituted individual at the core of Locke’s political and natural law theories. Taking natural law seriously means that we must understand Locke’s individuals as constituted first as members of the whole of God’s creation, and secondarily as individuals through their relations to one another and through their fulfillment of their duties and obligations of the natural law.⁴⁶ The perspective of the collectivity not only becomes the precondition for all individual rights and duties, but also, as I will argue, informs Locke’s conception of the “publick good.”

⁴² Peter Laslett, editor’s introduction to Locke, *Two Treatises.*, p. 93.

⁴³ Although Locke does seem to limit God’s perspective to the nation-state.

⁴⁴ Locke et al., *Questions Concerning the Law of Nature*.p. 248.

⁴⁵ Ibid.p. 169.

⁴⁶ Natural rights and duties, after all, are rights and duties that belong to actual individuals insofar as they are members of humanity as a whole. I do not intend to suggest here that Locke is more communitarian than he is liberal, as some interpreters have (see for instance Matthew H. Kramer, *John Locke and the Origins of Private Property: Philosophical Explorations of Individualism, Community, and Equality* (Cambridge, U.K. ; New York, NY, USA: Cambridge University Press, 1997).. Rather, I suggest that the socially constituted individual is essential to liberalism itself, and it is through this social context that the liberal individual himself becomes possible.

Natural Law in the *Two Treatises*: Natural Equality and the Community of All Mankind

As I suggested above, while natural law is crucial to Locke's enterprise in the *Two Treatises*, this is clearly not a work of natural jurisprudence, and Locke does not attempt, or pretend to attempt, a systematic discussion of the laws of nature. Instead, Locke employs an established natural law discourse, with very few significant innovations, to pursue his political ends. In the *Two Treatises*, natural law can be seen to operate in three distinct ways. Firstly, natural law serves as the foundation for the natural equality and natural freedom that is essential to Locke's theory of consensual government. Secondly, the fundamental law of nature itself—the preservation of self and the rest of mankind—sets a limit on individual liberties which is necessary to all forms of society, political and pre-political, and which enables us to make a fruitful distinction between self-preservation and self-interest that I will develop later in this chapter. Finally, the content of the natural law, here more explicitly than in the *Questions*, establishes the framework for the ends of civil government, that is, the preservation of mankind and society. I will argue that government must, in this reading, assume the collective, social perspective—the God's eye view—and that this perspective is, in Locke's language, that of the public good. The natural law contains within it the legitimate ends and scope of government and the means by which an illegitimate government might be resisted. The remainder of this chapter will explore these three roles of natural law in turn.

Locke's discussion of natural law in the *Two Treatises* is less clearly voluntaristic than it is in the *Questions*. Locke frequently refers to the natural law as the law of reason

and at first glance he seems to be collapsing the distinction between the source of the natural law and our ability to apprehend it. Locke emphasizes that the natural law is available to all humans who take the trouble to use their reason to determine it,⁴⁷ and the universality and rationality of the natural law is central to his political claims about the rights of men. Nevertheless, Locke's emphasis on the role of reason in the *Two Treatises* does not suggest that he abandoned his core voluntarism between the early 1660s (when *Questions* was written) and the 1680s. Natural law is available to us through the use of our reason, and this fact is quite distinct from the origins of the law in God's will and the nature of our obligations to it. There are indications in the *Two Treatises* that Locke is working within a voluntarist framework. Locke notes, for example, that positive laws must be "conformable to the Law of Nature, i.e., to the Will of God,"⁴⁸ and he argues that men are obliged to obey the laws of nature because of their status as God's property, that is, because he understands humans as products of God's workmanship⁴⁹ This is not the strong, overt voluntarism of the *Questions*, but it is an implicit voluntarism in which God is the author of the natural law, God has given us the reason necessary to determine the laws of nature and establish relationships among ourselves, and in which we are obliged to obey the natural law because of our peculiar dependent relationship with God.

We saw in the *Questions* that universal human reason (or more precisely, reason's status as the defining characteristic of human nature) is integral to apprehending and obliging men to the natural law; reason serves as the primary connection between individual men and the will and ends of God. Reason has a similar function in the *Two*

⁴⁷ For instance, Locke, *Two Treatises*.II s6, s57, s63, s124, s136.

⁴⁸ Ibid.II s135.

⁴⁹ Ibid.IIs6. I will discuss this passage in detail later in this chapter.

Treatises. Reason enables men to discover their natural law obligations, and with these, the moral basis of their relations to one another. Locke explains,

The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law,⁵⁰ 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 another's Pleasure.⁵¹

This passage is central to the work of natural law in the *Two Treatises*. Despite the apparent conflation of natural law and reason, the crucial relationship here is that between man and God—the Workmanship relationship which gives God absolute rights over his creation. Because all persons are God's creation, and because all persons are imbued with the faculty of reason, we are universally bound to God's law in our relations with one another. This creates relations of moral equality among individual men—God's power over humanity suggests not only our obligations to him, but also our duties to one another.⁵² As a result, in the pre-political world, natural men find themselves to be in a “*State of perfect Freedom* to order their Actions, and dispose of their Possession and Person as they think fit, within the bounds of the Law of Nature, without asking leave, or depending on the Will of any other Man.”⁵³ In this construction, the universality of reason, and the subjection of reason to the laws of nature, implicitly suggest the equality and the independence of all men.

⁵⁰ Here we see the most overt conflation of the foundation and knowability of the natural law. The rest of the passage, with its emphasis on God's will points to Locke's foundational voluntarism.

⁵¹ Locke, *Two Treatises*.II s6.

⁵² Locke draws on Hooker to explain the moral consequences of natural equality at II s5. Simmons argues that this points to a ‘Kantian’ ethic within Locke's conception of right. See Simmons, *The Lockean Theory of Rights*.. Simmons' view is probably an overstatement, but Locke is clearly drawing upon Hooker to express the implications of duty and love in the concept of equality.

⁵³ Locke, *Two Treatises*.II s4.

It is the ability to know the laws of nature that establishes the conditions for man's most basic existential status—his freedom. Freedom from human authority and simultaneous subjection to the laws of nature become reciprocal relations constitutive of man's status as man. Locke argues, “The *Freedom* then of Man and Liberty of acting according to his own Will, is *grounded on* his having *Reason*, which is able to instruct him in that Law he is to govern himself by, and make him know how far he is left to the freedom of his own will.”⁵⁴ Reason becomes the precondition for moral knowledge, and it is the capacity for moral knowledge that makes man the possessor of individual sovereignty and freedom. What this really means is that reason operates as a go-between for the free will and the rightful limits of man's freedom. Without the capacity for understanding the boundaries of individual freedom, men would not be capable of freedom at all. The workmanship model is instructive here in that it inherently places definitive limits on human freedom: men are not entitled to kill themselves (or others), nor may they infringe upon the rights of others, because all men are equally the property of God.⁵⁵ Freedom and the limits on freedom are the product of the relationship between reason and the will of God, and the rational apprehension of freedom means also the apprehension of the limits on that freedom.⁵⁶

The reciprocity of each individual's freedom and equality—and therefore his rights and duties—reiterates the social context implicit in Locke's view of natural law in

⁵⁴ Ibid.II s63.

⁵⁵ According to Tully's workmanship model, men are the literal and absolute property of God. This means that the property that each man has in his person and his labour is more of a trusteeship or tenancy. From the perspective of other humans, this property is absolute, but from God's perspective it is highly contingent on the benevolence of his will. See footnote 24 above.

⁵⁶ This reciprocity also, of course, establishes the most basic condition for legitimate politics in Locke's conception: No rational individual can be subject to laws to which he has not consented. Only God is in a natural position to rule over humanity—among themselves, individuals can be subject to no authority that they do not endorse, tacitly or expressly.

the *Questions*. Further, our equal subjection to God and the laws of nature means, for Locke, that there is an implicit natural community of mankind, in which God is sovereign and all individuals relate to one another as equals. Locke declares that as each of us is subject to the natural law, “he and all the rest of *Mankind are one Community*, make up one Society distinct from other Creatures.”⁵⁷ The law of nature, establishing equality, freedom and the limits of individual rights creates a kind of conceptual human community that will make possible the pre-political society that is so integral to Locke’s theory of political resistance. The “great and natural Community”⁵⁸ is a community based on a shared nature, shared faculties and shared subjection to God, and these universals draw on an implicit (if weak) sociability which makes society both desirable and necessary. This much is apparent from human nature and the natural condition of man: “God having made Man such a Creature, that, in his own Judgment, it was not good for him to be alone, put him under strong Obligations of Necessity, Convenience, and Inclination to drive him into *Society*, as well as fitted him with Understanding and Language to continue to enjoy it.”⁵⁹ The desire and the need to enter into society with other men are important empirical elements of human nature designed by God to ensure the fulfillment of his ends for humanity, and these are once again reflected in the natural law itself.

As a result, the fundamental law of nature, laid out far more explicitly in the *Two Treatises* than it is in the *Questions*, invokes this interdependency and natural equality: The fundamental law of nature is “*the Preservation of Mankind*.”⁶⁰ This is consonant

⁵⁷ Locke, *Two Treatises*.II s128.

⁵⁸ *Ibid.*II s128.

⁵⁹ *Ibid.*II s77.

⁶⁰ *Ibid.*II s135.

with God's wish for humanity as a whole and it forms the basis of man's individual duty to God—nature and God will the preservation and perfection of Mankind.⁶¹ The fundamental law of nature, as it applies to individuals takes a different form, however. The most complete statement is this: "Everyone as he is *bound to preserve himself*, and not quit his Station wilfully; so that by the like reason when his own Preservation comes not in competition, ought he, as much as he can, *to preserve the rest of Mankind*."⁶² The individual, therefore, has a natural law duty to preserve himself first, and the remainder of humanity second. Despite its importance, however, Locke does not explain the fundamental relation between the individual and the rest of mankind in his formulation of the natural law. The God's eye view helps to clarify this question. If God created the natural law, and with it, human nature, in order to serve his own goal of the preservation of his creation, then the command to self-preservation and the command to preserve the remainder of humanity appear less like potentially incompatible laws, and more like two elements of the same essential goal.⁶³ In other words, for the individual, the best place to begin the preservation of the whole of humanity is to see to his own self-preservation as a member of that whole. The individual thus becomes the means to a collective good and to the fulfillment of God's will for the preservation of mankind. Because of the inherent relation between the preservation of the individual and the preservation of the whole and the relation of both to God's will, self-preservation primarily takes the form of a duty, rather than a right. More precisely, rights to self-preservation follow secondarily from the duty to preserve God's creation in oneself. Because we are, after all, God's property, self-preservation becomes a duty of trusteeship, and by obeying the command to preserve

⁶¹ Ibid.I s59.

⁶² Ibid.II s6.

himself, the individual simultaneously takes the first step towards preserving all of mankind.

The individual duty to self-preservation is the source of all other rights and duties in Locke's conception of the law of nature. The duty to self-preservation carves out a space for the individual to pursue his own ends without irrational or harmful interference from (or to) others. The enforcement of the laws of nature, either through natural individuals armed with executive powers, or through the legitimate institutions of the state, thereby works to "preserve and enlarge freedom" by guaranteeing it universally and reciprocally. For Locke, as for natural law thinkers generally, law is a precondition for freedom. This means, in effect, that because natural law is accessible to individuals through their reason, rational behavior consistent with the preservation of the self and the rest of mankind works as the foundation for the freedom of each person to fulfill his obligations to God.

What preserving all of mankind and oneself actually entails is a more difficult question. Locke supplies the usual negative injunctions against harming other people in their lives, liberties and possessions, but the positive content of the law of nature is left somewhat indeterminate. One of the few positive expressions of the law of nature in the *Two Treatises* is the right to punish offenders of the law of nature. Locke explains, "And that all Men may be restrained from invading others Rights, and from doing hurt to one another, and the Law of Nature be observed, which willeth the Peace and *Preservation of all Mankind*, the *Execution* of the Law of Nature is in that State, put into every Mans hands."⁶⁴ This power of punishment, of course, becomes the basis of the powers of

⁶³ This is, of course, very similar to the argument I advanced about Pufendorf in the previous chapter.

⁶⁴ Locke, *Two Treatises*.II s7.

government, and in nature, it is the chief means of preserving stability and order in pre-political society. Because of the negative cast of Locke's natural law, the implication is that freedom to determine one's own ends and to act according to one's own will is essential to the preservation of the individual and the whole.

The law of nature also commands individuals to make productive use of the earth and its resources through their labor. Locke's theory of property is derived from the duty to self-preservation and related to this duty is the duty to work. Whether Locke's normative theory of labor is directed at the idle aristocracy⁶⁵ or at the idle poor,⁶⁶ it is quite clear that laboring and making productive use of the natural resources given to man is among the laws of nature. Locke says, "God, when he gave the World in common to all Mankind, commanded Man also to labor, and the penury of his Condition required it of him. God and his Reason commanded him to subdue the Earth, i.e., to improve it for the benefit of Life, and therein lay out something upon it that was his own, his labor."⁶⁷ The implication of this passage is that labor is closely related to God's will for mankind. The command to labor is related not only to the right and duty of self-preservation, but is also connected to the preservation of all mankind. Locke clearly assumes that the benefits of cultivation and economic development are virtually universal—hence his claim that "a King of a large and fruitful Territory there [America] feeds, lodges and is clad worse than a day Labourer in *England*."⁶⁸ The business of working, of increasing material wealth, serves not only the interests of the individual and his family, but also increases the stock of wealth for the nation as a whole. This mercantilist perspective on labor closely relates

⁶⁵ This is one of Ashcraft's claims in Richard Ashcraft, *Revolutionary Politics & Locke's Two Treatises of Government* (Princeton, N.J.: Princeton University Press, 1986)..

⁶⁶ See C. B. Macpherson, *The Political Theory of Possessive Individualism, Hobbes to Locke* (Oxford, Oxford University Press, 1964)..

the good of the individual to the good of the state and mankind in general, and, as a result, it limits the influence of plain self-interest in the accumulation of property. By relating property creation to one's obligations to God and to benefiting mankind generally, Locke's natural law duty to create property thus points to a distinction between an other-regarding conception of self-preservation closely related to the God's eye view of humanity and the self-interest we usually understand to form the core of Locke's political theory.

Self-Preservation and Self-Interest

If self-preservation is, as I have suggested, intimately connected to the individual duty to preserve the whole in accordance with the God's eye view, then it is possible to see a distinction in the *Two Treatises* between self-preservation and self-interest. Self-preservation and self-interest are, of course, usually conflated as the fundamental individual right in Locke's political theory, but in contradistinction to the *Questions*, where Locke constructs a close relationship between individual private interest and self-preservation, in the *Two Treatises*, he makes a significant distinction between the duty to self-preservation and individual self-interest⁶⁷ that is instructive for his theory of natural law generally and his theory of the public good in particular. Because the God's eye perspective on self-preservation reveals it to be the first individual step towards preserving the whole, self-preservation becomes an inherently other-regarding concern because it must be fundamentally reciprocal and related intrinsically to the preservation of the whole. This essentially other-regarding dimension of self-preservation has less to

⁶⁷ Locke, *Two Treatises*.II s32.

⁶⁸ Ibid.II s41.

do with sociable or altruistic instincts than the natural reason and equality which inform men of their obligations to other men via the natural law.

As I suggested above, for Locke, the pursuit of self-preservation is a rational instinct correlative with man's duty to God.⁷⁰ It is not a right to pursue one's own ends without reference to others or the preservation of mankind as a whole. Self-interest and self-preservation are easily collapsible concepts because in practice the two will often be identical—pursuing one's self-preservation will frequently mean pursuing one's self-interest. However, for Locke, self-preservation means following a natural instinct that is in accord with God's will for the preservation of mankind, not just pursuing one's one desires, passions or interests. From God's perspective, self-preservation is the individual means to a collective end, and, as such, self-preservation, unlike self-interest, is an inherently limiting concept. In this conception, individual self-preservation is the best vehicle for the preservation of all mankind, and, by conceiving of self-preservation in this way, Locke is implicitly showing that self-preservation takes into account the social situation of man, and the fundamental moral equality that inheres among rational creatures.⁷¹

Like self-love, self-preservation is a natural inclination for Locke,⁷² given to man by God for the fulfillment of God's purposes. Locke says,

⁶⁹ I do not argue, however, that this is a particularly rigorous, or even conscious distinction. Locke does occasionally distinguish between rightful interests and unlawful ones—I call the former self-preservation and the latter self-interest.

⁷⁰ This is made particularly clear in the *Questions*, see p. 169, cited on p. 12 above.

⁷¹ Additionally, conceiving of self-preservation in terms of the preservation of all has another moral dimension—taking care of oneself liberates others from the burden of securing the means to one's self-preservation.

⁷² According to Laslett, Locke undermines his claim that there are no innate principles here. See Locke, *Two Treatises*.p. 205 fn. It seems to me that here Locke is distinguishing between an instinct and a norm. Self-preservation and self-love are natural instincts, but they are transformed into norms only through God's will.

God having made Man, and planted in him, as in all other Animals, a strong desire of Self-preservation, and furnished the World with things fit of Food and Rayment and other Necessaries of Life, Subservient to his design, that Man should live and abide for some time upon the Face of the Earth, and not that so curious and wonderful a piece of Workmanship, by its own Negligence, or want of Necessaries, should perish again...God, I say, having made Man and the World thus, spoke to him, (that is) directed him by his Senses and Reason...to the use of those things, which were serviceable for his Subsistence, and given him as a means of his *Preservation*.

Self-preservation is a natural desire, but it is a desire that accords with our rational apprehension of God's will for us, combining as it does the directions that God gives to man by reason as well as inclination. To this end, God gave men dominion over the animals, and "For the desire, strong desire of Preserving his Life and Being having been Planted in him, as a Principle of Action by God himself, Reason, *which was the Voice of God in him* could not but teach him and assure him, that pursuing that natural Inclination he had to preserve his Being, he followed the Will of his Maker."⁷³ In other words, reason is a tool that enables us to distinguish between those instincts consonant with God's will for mankind and those which are not. Our rational perception of a divine law at the root of our self-preservation enables us to understand self-preservation as both an instinct and a norm in accord with our sense of our faculties and condition and our conception of God's will for humanity.

By contrast, self-interest has no necessary relation to God's ends for humankind, and it is perfectly capable of standing in antagonistic relation to the law of nature. Self-preservation incorporates the individual in terms of the whole of mankind, and hinges on the universal equality of rational creatures. While self-interest might be a derivation of the duty to self-preservation, self-interested actions are not necessarily rational or in accord with the principle of natural equality. While many thinkers have attempted to

distinguish between long and short term utility as a way of marking the distinction between irrational self-interest and rational self-interest, I think in the case of Locke, the more meaningful distinction is the basic opposition of a rational and lawful pursuit of self-preservation in accordance with God's will, and the potentially irrational, egoistic, self-interest that privileges the interests of the individual over collective goods.

In his chapter on Paternal Power, Locke argues that "*Law*, in its true Notion, is not so much the Limitation 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."⁷⁴ The limits inherent in such a law serve to "preserve and enlarge freedom" by universally and reciprocally limiting each man's actions and power over others. The appellation "proper interest" as the direction provided by the law implies that there is, of course, an improper interest. In my analysis "proper interest" means pursuing self-preservation in accordance with the laws of nature, while an improper interest is construed, by contrast, as private interests that do not reference the good of the whole. Self-interest is not necessarily irrational and it is not necessarily destructive of the social order, but while self-preservation is inherently consistent with a rational social order, self-interest has no necessary relation to the broader ethic contained within the natural law.

Locke is often quite explicit about the potentially antagonistic relationship between self-interest and the law of nature and he almost always refers to "interest" pejoratively.⁷⁵ For instance, in the context of the need for objective judges, Locke writes, "For though the Law of Nature be plain and intelligible to all rational Creatures; yet Men

⁷³ Ibid.I s86.

⁷⁴ Ibid.II s57.

⁷⁵ On those few occasions when he does not, the reference to 'interest' appears in the context of familial relations. Locke refers to the superior rights of husbands over their wives with regard to the 'things of their

being biassed by their Interest...are not apt to allow of it as a Law binding to them in the application of it too their particular cases.”⁷⁶ In this construction, self-interest and natural law become opposing forces, notable because the potential irrationality of self-love and self-interest is contrasted to the ready rationality of the laws of nature. Similarly, Locke notes that, “For the Law of Nature being unwritten, and so no where to be found but in the minds of Men, they who through Passion or Interest shall mis-cite, or misapply it, cannot be so easily convinced if their mistake where there is no establish’d Judge.”⁷⁷ Indeed, the propensity of individuals to pursue their self-interest, and to be dominated by the passions arising from self-love is one of the primary sources of instability in the state of nature that makes civil government necessary.

Locke also uses “interest” pejoratively to refer to the motivation of corrupted rulers who privilege their private interests over the public good they are supposed to secure.⁷⁸ I will discuss the public good at length in the next section, but the tendency for rulers to become corrupted by power is central to Locke’s theory of political resistance and limited government. The very definition of a tyrant, he argues, is a ruler who uses his power, “not for the good of those, who are under it, but for his own private separate Advantage.”⁷⁹ Further, prerogative—that power given to rulers to secure the public good when the written law is insufficient do so—is legitimate until “a weak and ill Prince, who would claim that Power [prerogative]...to make or promote an Interest distinct from that

common Interest and Property’ (II s82), and by the same token, marriage itself has its roots in the full unification of interests of mothers and fathers (II s80).

⁷⁶ Locke, *Two Treatises*.II s124.

⁷⁷ Ibid.II s136.

⁷⁸ This discussion naturally draws on the *Second Treatise* rather than the first. References in the *First Treatise* are limited to Locke’s criticism of Filmer’s interests corrupting his reasoning—a usage that is quite apropos of the current discussion.

⁷⁹ Locke, *Two Treatises*.II s200.

of the publick, gives the People an occasion, to claim their Right, and limit that Power.”⁸⁰

Locke repeatedly contrasts the private interests of rulers to the public good, and while his distinction between interest and rightful goods might not be especially rigorous,⁸¹ it does give us the opportunity to think more clearly about what the natural law demands and what the natural law actually is.

Corrupt self-interest then, is the privileging of one’s own desires above the good of the society and without reference to the laws of nature. Legitimate self-interest is rightfully pursued in the sphere left unregulated by law. Self-preservation, however, is the rightful fulfillment of one’s duties to God and mankind as God’s workmanship. This distinction helps us to clarify the priorities at the core of Locke’s theory of property. Locke’s political use of natural law has most often been interpreted through his chapter on property⁸² because property itself is Locke’s clearest expression of how individuals should go about the business of preserving themselves.⁸³ Locke’s natural history of property is well-known enough not to require elaborate retelling and for my purposes, the crucial moment in Locke’s theory of property is his justification of the original individuation of the common without a contract.⁸⁴ Locke avoids the problem of the contractual origins of private property by stipulating a natural right to appropriation as

⁸⁰ Ibid.II s164.

⁸¹ Locke does refer to the ‘common Interest of the People’ in Ibid.II s216.

⁸² See for instance Buckle, *Natural Law and the Theory of Property*.and Tully, *A Discourse on Property*..

⁸³ Additionally, as Tully and numerous subsequent scholars have argued, Locke’s natural law workmanship argument provides an analogical explanation for man’s property in the product of his labour. The mixing argument does not fully explain how that with which labour is mixed becomes the property of the one doing the mixing (as Nozick pointed out with his ‘tomato-juice in the ocean’ example. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974)., p. 175) without first developing a theory of creator’s rights. Tully’s argument is very convincing, but there are some important problems with it. See footnote 24 above.

⁸⁴ As Tully argues, this is critical to Locke’s answer to Filmer and to the task of rescuing natural law from its own inconsistencies. Filmer had attacked Grotius for suggesting that property was the result of a moment of universal consent to individuation, and if Locke was to preserve the natural law tradition, it was

the means of fulfilling the individual duty to self-preservation. In Locke's terms, self-preservation would be impossible without private appropriation, and, as a result, men have a natural right to property that is inextricably linked to the right and duty of self-preservation.⁸⁵ This does not mean, however, that Locke's theory of natural law is reducible to property rights—prior to property in Locke's scheme, are equality, rationality, freedom and duty. These become the pre-condition for both property rights and for political society. Nevertheless, the natural limits on the accumulation of property in the *Second Treatise* begin to make sense if we see self-preservation as a function of universal preservation. It is unjust and a violation of the law of nature to take more than one's share, or to appropriate more than one can use. The moral basis of the law of nature, and hence of property rights, is not the right to accumulate for the sake of accumulation, but rather to preserve oneself as part of the preservation of mankind in a manner that is essentially sociable. To deprive another of the means of self-preservation violates the law of nature, because the insight that we gain by taking God's perspective on natural right and duty is that natural equality means that one man's preservation cannot be more important than another's.⁸⁶

important that he present property as emerging in nature *without* a contract or general agreement to individuate. See Tully, *A Discourse on Property*. p. 54.

⁸⁵ Locke, *Two Treatises*. II s25 and s26.

⁸⁶ The limits on property accumulation before and after the introduction of money, are, of course, the subject of much inquiry and debate, and I cannot resolve these issues here; it does seem, however, that the God's eye perspective of self-preservation has some potential for resolving some of the difficulties (in particular, the scarcity proviso) in Locke's theory of property. Various explications of the problem and possible solutions can be found in the following: Macpherson, *Possessive Individualism*. pp. 211-214; Gordon J. Schochet, "'Guards and Fences': Property and Obligation in Locke's Political Thought," *History of Political Thought* Vol. XXI, no. 3 (Autumn 2000).; Kristin Shrader-Frechette, "Locke and Limits on Land Ownership," *Journal of the History of Ideas* Vol. 54, no. 2 (Apr., 1993).; Sreenivasan, *The Limits of Lockean Rights in Property*. pp. 34-40; James Tully, "Property, Self-Government and Consent," *Canadian Journal of Political Science* Vol. 28, no. 1. (March 1995)., pp. 125-6; Waldron, *God, Locke and Equality*. pp. 172-4; Jeremy Waldron, "Enough and as Good Left for Others," *The Philosophical Quarterly* Vol. 29, no. 117 (October 1979).; Neal Wood, *John Locke and Agrarian Capitalism* (Berkeley: University of California Press, 1984)., pp. 55-6.

The Publick Good

The significance of Locke's conception of self-preservation, and its relation to the natural law duty to preserve the rest of mankind, helps to inform Locke's rather vague conception of the 'publick good.' The publick good, in my reading, is not merely private individuals going about their business without arbitrary intervention from the state (although it is this too⁸⁷), but it incorporates within it the normative claim that not only must civil laws be consonant with the natural laws, but that government must take the "God's eye view" of its society—that is, its laws must be rational and tend towards the long-term preservation of the society, and, as much as possible, each individual within the society.

The role of the public good in the *Two Treatises* largely consists of limits on governmental power. Locke refers to the public good in the context of limited government at least a dozen times, and seems to understand the public good as a regulative norm preventing rulers from overstepping their bounds and infringing upon the rights of subjects. All undertakings of the government must have the public good as their end, and the scope of governmental power can go no farther than what is necessary for this end. One can infer from this calculus is that Locke is less aware of or concerned with conflicts of interest among subjects than he is of the potential conflict between the government and the people. This does not mean, however, that Locke is automatically assuming that the "people" will be united by a single class interest, for example, but it does mean that Locke understands the publick good to partially consist in a realm of

⁸⁷ According my analysis above, this part of the definition of the public good is the sphere of freedom in which self-preservation and self-interest are aligned.

freedom within which individual subjects can pursue their own rational interests and see to their self-preservation and their duties.

As a result, government power must always be limited in reference to the public good, and political rulers must always ensure that their private interests, which as we have seen, have no necessary relationship to the laws of nature, do not take precedence over “the public Good and Safety.”⁸⁸ Entering into civil society means giving up natural equality, liberty and executive power in exchange for a civil version of those rights with the intent of preserving liberty and property (broadly construed). This means that “the power of the Society, or *Legislative* constituted by them, *can never be suppos’d to extend farther than the common good*; but is obliged to secure every ones Property by providing against those three defects...that made the State of Nature so unsafe and uneasy.”⁸⁹ As a result, legislators must govern by established laws, controversies must be decided by impartial judges and the force of the community will be employed for the execution of the law. But the power of the government is inherently limited: “All this to be directed to no other *end*, but the *Peace, Safety* and *publick good* of the People.”⁹⁰ Here, the public good clearly places a limit on government power and implicitly stands in contradistinction to the private interests of rulers.

In addition to limiting the legislative branch of government, the public good also regulates prerogative, and the most abundant references the public good in the *Two Treatises* are to be found in the sections concerning prerogative. Locke is insistent (he repeats this point no fewer than eight times) that the power of prerogative “*is nothing but*

⁸⁸ Locke, *Two Treatises*.II s110.

⁸⁹ Ibid.II. S131.

⁹⁰ Ibid.II s131.

the Power of doing publick good without a Rule.”⁹¹ This means, ultimately, that the use of the prerogative, like the creation of positive laws, must be consistent with the laws of nature. Locke explains,

Political Power is that Power which every Man, having in the state of Nature, has given up into the hands of the Society, and therein to the Governours, whom the Society hath set over itself, with this express or tacit Trust, That it shall be employed for their good, and the preservation of their Property...So that the *end and measure of this Power*, when in every Man’s hands in the state of Nature, being the preservation of all of his Society, that is, all mankind in general, it can have no other *end or measure*, when in the hands of the Magistrate, but to preserve the Members of that Society in their Lives, Liberties, and Possessions...a *Power to make Laws*, and annex such *Penalties* to them, as may tend to the preservation of the whole.⁹²

In this passage, Locke makes a direct connection between the public good and the preservation of the society as a whole, and of course, natural law is the basis of the connection. The public good, in other words, is presented in terms of the law of nature; it must be understood from the God’s eye view perspective of the good of the entire community.⁹³ The close relationship between the law of nature and civil laws, as well as the role of rationality in both, strongly suggests that the ends of government must be identical with God’s ends for humanity—the preservation of each individual insofar as this is consistent with the preservation of society. In this way, the state takes on the role of chief rational agent, supervising individual agents as they go about the business of fulfilling their duties to God and one another. This means that the state must leave a significant realm of freedom within which individuals can fulfill their duty, but the perspective of the state should be the universal perspective of the entire collectivity. For Grotius, Pufendorf and even Hobbes, the creation of government means that individual

⁹¹ Ibid.II s166.

⁹² Ibid.II s171.

judgments about the law of nature are delegated to the government, limiting the political actions of individuals to basic obedience, but because Locke's political theory emphasizes consent and accountability, even after the creation of the social contract and the establishment of government, Locke's citizens retain the right to determine the laws of nature for themselves, and they always have recourse to the natural law against the power of the government. As the government is constituted by the consent of the governed, and because the natural law marks the outer limits of government power, in essence, the creation of government and the empowerment of government officials to make decisions based on the public good means that the creation of government is the formalization of a God-like (i.e., universal) perspective in political institutions.

Because individual citizens always retain their right to determine the laws of nature for themselves, government power is not absolute, but the ideal construction of sovereign power, with its perspective of the whole society, is an attempt to concretize and institutionalize the perspective of the whole, the God's eye view, required by the natural law. Consequently, the "public good" is a regulative concept structuring the discourse between subjects and government about the proper actions of government based on the God-given end of the preservation and good of the whole. Locke does not privilege the state over individual rights, but because the public good limits the power of the state, it becomes the very basis by which subjects and rulers contest the relationship between the rights and duties of the individual, and the rights and duties of the state as a whole.

What this means, ultimately, is that the public good works as the framework for God's ends for humanity within political society. As such, the public good is a marker for

⁹³ Locke is, of course, working only at the level of the nation-state. Unlike Grotius and Pufendorf, Locke makes no forays into international relations or the rights of all peoples everywhere.

the rights and duties of individuals as defined by natural law within the context of civil government. It is, nevertheless, a collective good as much as it is an individual good, because the natural law so fundamentally conceives of the individual in relation to the collectivity of humanity. The natural rights, freedoms and duties of individuals are bounded by the normative direction of God's will—that is, these are the property of individuals insofar as the individual is a social creature, committed to social and communal norms. The essential quality of other-regardingness that determines the scope of self-preservation also limits other individual rights in favor of the good of the whole. As far as the public good is concerned, it represents the normative and civic conditions for humanity's fulfillment of God's divine command. Consequently, the legislative must be governed by the fundamental natural law, that is, "*the preservation of the Society*, and (as far as will consist with the publick good) of every person in it."⁹⁴ In this passage, Locke clearly envisions circumstances under which the goods of individual persons will be limited by the good of the whole. If I am right, and the ends of government must be identified with God's will for humanity, and the perspective of government must be the perspective of the society as a whole, this suggests that the individual, despite the rights to which he is entitled by the law of nature, must be secondary to the preservation and security of the society as a whole. This can never mean, for Locke, that an individual's rights can be trampled by referencing the public good (because the rights of individuals are an essential ingredient of the public good), but it does indicate that the community as a whole must be understood as morally prior to the individual, both from God's perspective and from the perspective of the community itself, as manifest in the state.

⁹⁴ Locke, *Two Treatises*.II s134.

Despite his failure to use the language of sociability, this is clearly the sociable moment in Locke's political theory.

The private sphere left to individuals outside the scope of legitimate government is the sphere in which self-preservation, with its other-regardingness, rather than self-interest, can play out. There is, of course, room for self-interest within this sphere, but it can only find a space to the extent that the pursuit of self-interest is rational and co-terminus with the inherently limited self-preservation. If the pursuit of my private interests affects no one but myself, and is consistent with the laws and rights of nature, then I am entitled to pursue them. At the same time, however, my private interests can never trump essential collective goods or even my own good as it stands in relation to my self-preservation. So while the public good is a means of limiting government, this does not mean that the public good is always consistent with our vision of bourgeois individuals going about pursuing their own self-interest with no reference to others. The public good, relating as it does to the laws of nature, limits individual freedom in the same way that the natural law does, by understanding the individual only within the context of constituted societies and the natural community of mankind under God.

Conclusion

Locke's conception of the public good, contextualized within a strong distinction between self-interest and self-preservation, opens up the conceptual possibility for a stronger theory of other-regardingness than is usually allowed in Locke's political theory. This is closely connected to Locke's voluntaristic theory of natural law, because if God's will is the source of all law, then we come to understand that God's perspective (however unknowable it will ultimately prove to be) is the perspective from which the individual

should be understood in relation to the whole. God's concern must be with the preservation of the entire species first, and the individual second. Because individuals possess duties to God, they also have a right to fulfill their duty—and therefore they have a right to self-preservation, a right to property and a right to be secure in their property and persons. These individual rights must, however, be understood in the context of the broader concern with the preservation of all mankind and the preservation of the state. In this way, Locke's understanding of the interdependence of the individual and the obligations that individuals owe to one another serves as a means of tempering self-love in favor of ends privileged by God's laws of nature and his expectations of sociability.

Ultimately, understanding Locke's conception of the public good in collective, as well as in individual, terms, enables us to see that Locke's notion of political society is neither as individualist nor as rights-oriented as we usually suppose. Certainly, for Locke rights are tremendously important for limiting government power, but rights must be understood as secondary corollaries to the duties one owes to God and the natural law. From the duty of self-preservation (and it is a duty because God is the rightful owner of each individual human) flow all of the rights we normally associate with Lockean political theory. But the duty is primary, and rights are the positive means of ensuring that each individual has the freedom to fulfill his duty. For Locke, his voluntarist foundations, the inherent other-regardingness of the law of self-preservation and his collectivized conception of the public good point towards an understanding of political society that has less to do with the freedom of individuals to pursue their self-interest in a private sphere sharply demarcated from the public realm, than it does with allowing

individuals the space to fulfill their duty to preserve themselves and their societies in conjunction with other, similarly situated individuals.

Chapter 5. Sympathy and Self-Love in Adam Smith

While Locke was a contemporary of Pufendorf's and was working directly within the tradition of seventeenth century natural jurisprudence, Smith stands temporally and philosophically distant from that tradition. In the one hundred years between Locke and Smith liberalism and empiricism rather than natural law theory had become dominant trends in political thought. Smith is not a natural law thinker—indeed, he eschews much of what is central to natural law philosophy—but he is nonetheless a predominantly liberal thinker whose ideas about the individual and political society draw directly from the natural law traditions of the seventeenth and eighteenth centuries. The political and moral theory of Adam Smith builds on and contributes to the discourse that constitutes the modern natural law and liberal traditions, and in particular, it does so by Smith's conception of the interdependent and self-regulating relationship between self-love and sociability. Smith's two great published works, *The Theory of Moral Sentiments* and *The Wealth of Nations* combine to form a carefully constructed system which seeks, at its core, to balance an ethic of sociable morality with a prudential self-interest natural to self-loving individuals.

In many ways, Smith represents the apotheosis of all that was tacit in the relationships between self-interest and sociability, property and the state in the natural law liberal tradition. With Smith we see a sentimentalist¹ rather than rationalist approach to sociability combined with a commitment to empiricism and a structural understanding of individuals and state institutions. Smith's commitment to sociability and self-interest

¹ Schneewind observes that Smith is the most sophisticated sentimentalist, and that sentimentalism loses its influence and heirs after Smith. Schneewind's contention is that Smith's reformulation of sentimentalism effectively did away with the role of philosophy in human morality and judgment, and, as a result, moral philosophers turned away from sentimentalism in favor of something else. See Schneewind, *The Invention of Autonomy*. 388 and 395.

as descriptive and perhaps normative components of human nature reflects the natural law and liberal concerns with these categories over the previous 150 years. At the same time, because of Smith's role in the development of liberal political thought and his adaptation of rights theory for a skeptical audience, he is a useful figure through which to see the logical outcomes of the self-interest/sociability dynamic at play in this tradition.

In this chapter I will outline Smith's account of the moral development of individuals and suggest that his category of sympathy can be understood as a sociable impulse in human psychology that enables Smith to attribute a high moral value to self-love and the pursuit of self-interest. I begin by sketching Smith's relationship to the natural law tradition and then develop a reading of Smith's theory of sympathy as a development of natural law sociability. Smith's *Theory of Moral Sentiments* describes a sociable ethics in which institutions and interactions shape human behavior in accordance with the virtues appropriate for social life. In this account, sociability and the standards for human behavior need not be coerced by the state alone, but rather are the product of social and psychological forces that encourage sociable, other-regarding behavior. In Smith's account, a sociable attitude towards others is a product and precondition of becoming a fully developed (and thus rights-bearing and independent) individual. This prior sociability enables Smith to conceptualize self-interest as a product of the same social and moral processes that simultaneously limit and shape that self-love. The self-loving individual can come into being, in Smith's account, only by engaging with the social world, and by employing psychological mechanisms which begin with the acknowledgment of the equal moral standing and powers of judgment of others.

In recent years, scholars have begun to explore the roots of Smith's moral, economic and jurisprudential philosophy in the pre-modern Aristotelian and Stoic traditions,² traditions which importantly influence Smith's conceptions of virtue and individual morality. At the same time, however, as Knud Haakonssen, in particular, has shown, Smith's relationship to the natural law tradition is equally important for contextualizing his work and situating his arguments within an existing discourse. Because Smith rejects the state of nature, natural rights (or at least, he redefines 'natural' to take on a positive and socially constructed cast) and because he eliminates a significant role for God in his explanations of political obligation, Smith does not, at first glance, appear to be a serious natural law thinker. As a committed empiricist, Smith had no patience for the heuristics and speculative history that usually characterize the modern natural law theories. Nevertheless, Smith was deeply influenced by the natural law tradition and his work reflects Grotian and Pufendorfian influences as well as a preoccupation with traditional natural law problems.

Smith's most immediate influences were his teacher Frances Hutcheson, an important sentimentalist natural law thinker working within the Pufendorfian tradition, and David Hume, who rejected the natural law tradition in favor of empiricism. It is clear from Smith's references to Grotius and Pufendorf in his *Lectures on Jurisprudence*³ that Smith sees himself as participating in the Grotian natural law tradition introduced to him

² The depiction of Smith as an Aristotelian has been most elegantly undertaken by Samuel Fleischacker, *A Third Concept of Liberty: Judgment and Freedom in Kant and Adam Smith* (Princeton, NJ: Princeton University Press, 1999). Haakonssen argues that Smith's real achievement is the "bold undermining of an ancient dispute between Stoics and Epicureans." Knud Haakonssen, "Introduction: The Coherence of Smith's Thought," in *The Cambridge Companion to Adam Smith*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 2006).. P. 1 See also Istvan Hont and Michael Ignatieff, *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge [Cambridgeshire]; New York: Cambridge University Press, 1983).

³ Adam Smith et al., *Lectures on Jurisprudence* (Indianapolis: Liberty Fund, 1982).

by Hutcheson, even as he seeks to correct some of its claims and assumptions. As a consequence of Smith's complicated legacy and his competing influences, Smith's intellectual problem-set is established by the natural law tradition, while his solutions, his methodology and his own originalities owe much to Hume, empiricism and the rejection of transcendental standards for law or morality. Indeed, many of Smith's most important insights come when Smith actively rejects or seeks to overcome the natural law paradigm. As a result, his relationship to the natural law tradition is at once complex and instructive, and we are able to see the ways that the natural law approach to questions of other-regardingness and the status of the individual shape the possibilities for obligation, duty and rights within a liberal framework.

As we have seen throughout this dissertation, one of the distinctive features of modern natural law theories is the prominent—and legitimate—place accorded to self-love and self-preservation. This emphasis on self-love and self-preservation is, of course, one of the important elements of human nature adopted by liberal thinkers—and perhaps Locke and Smith above all—to make natural rights theoretically possible. It was the modern natural law tradition that brought the role of self-interest and self-love to the center of moral and political thought, and that sought to reconcile this self-loving individual with a moral and political order that turns on universal and substantive notions of right and justice.⁴ Self-interest and self-preservation are presented in the natural law and liberal traditions as natural and even positive components of human nature—often implanted in humanity by God for God's long-term interest in the preservation of the

⁴ Tuck argues in Tuck, *Philosophy and Government*, and elsewhere that this emphasis on self-love is one of the essential components of the 'modern' natural law tradition. He argues that Grotius's emphasis on self-love is chiefly an attempt to defend a universal ethic against the attack of the skeptical philosophers. I discuss this further in chapter 2.

species. When properly mediated by reason and obligation, self-interest becomes integral to the construction of important liberal norms like freedom, equality, and independence as well as to the development of natural rights and duties. But this self-love, however natural and divinely created, must be mediated and constrained if it is to be allowed a place within a scheme of natural law and political society. Indeed, the possibilities for domesticating and restraining this self-love are at the very heart of the liberal and natural law project.

To an even greater degree than his liberal and natural law predecessors, Smith accords self-love an overtly moral dimension. In Smith's political, legal and ethical writings, self-love is crucial to the proper operations of political, economic and social life. But as in the natural law tradition that precedes him, self-love and self-interest do not attain this moral status automatically or alone. The category of sociability, integral to the foundations of the modern natural law and natural rights traditions, plays an important role in making this self-love compatible with social life, political obligations and natural rights. Consequently, in this chapter I focus on the constitutive role of sociability in the development of Smith's moral and political theory and seek to emphasize the ways that sociability works to domesticate self-love to allow it to attain a genuine moral status within Smith's philosophy.

It is in this way that Smith ties together his advancement of capitalism with the moral claims of the liberal and natural rights tradition. An important part of the ideological appeal of capitalism comes from Smith's linkage of self-interested activity and sociable ethics together with the claim that the business of engaging in social, political and economic life leads to the moral development of the individual and the

society. The moral development that is assured through the careful balancing of self-interest and other-regardingness points Smith to a conception of human dignity which is consonant with the ethical language which inhered in liberal and natural law thinking more generally. In Smith's work this ethic is brought to bear on the justification of capitalism, but it is important to note that Smith's use of the liberal and natural law traditions explicitly enable him to make capitalism compatible with a broader social and political goods. One of the goals of this chapter is to show the ways in which the social and political ethics on which Smith draws are linked to the natural law tradition and the natural law conception of the relationship between individual self-interest and sociability.

The secondary literature on Adam Smith for at least the last twenty years reflects a preoccupation with resolving what is known as the "Adam Smith Problem." The Adam Smith problem refers to a long interpretative history which understood the sympathy integral to Smith's *Theory of Moral Sentiments* to be incompatible with the significance of self-interest in the *Wealth of Nations*.⁵ Largely as a result of this 'problem,' Smith's *Theory of Moral Sentiments* was ignored, until recently, in favor of the *Wealth of Nations*. This one-sided reading resulted in the popular perception of Smith as an advocate of unrestrained egoism and radical libertarianism, as striking a death blow to

⁵ The 'Adam Smith problem' dates from at least 1897 when a German economist complained about the inconsistency of Smith's two great works. Much intellectual energy has been expended in the last few decades in overcoming the apparent problem, and, as Stephen Darwall argues, overcoming the problem has lead to the discovery new and interesting connections between *Theory of Moral Sentiments* and *Wealth of Nations*. Stephen Darwall, "Sympathetic Liberalism: Recent Work on Adam Smith," *Philosophy and Public Affairs* Vol. 28, no. 2 (Spring, 1999). Both Griswold and Mehta explain, convincingly, that the problem is largely semantic: so long as 'sympathy' is read as 'benevolence' and 'self-interest' as 'selfishness' there appears to be a contradiction. When, however, both sympathy and self-interest are read in the context of Smith's own language, the problem at once loses its traction. See Charles L. Griswold, *Adam Smith and the Virtues of Enlightenment, Modern European Philosophy* (Cambridge, U.K.; New York: Cambridge University Press, 1999), 260. and Pratap Bhanu Mehta, "Self-Interest and Other

ethics with a triumphant market economics.⁶ This unfortunate caricature, has, thankfully, been discredited, at least among Smith scholars, and in large measure, the restoration of balance to Smith scholarship has been a by-product of attempts to resolve the “Adam Smith problem.” The problem is not a difficult one to untangle, as much recent scholarship shows. In essence, the apparent contradiction rests on a misunderstanding of Smith’s use of the term ‘sympathy’ as well as the true role of self-interest in *Wealth of Nations*. Once the meaning of ‘sympathy’ is made clear, and the role of self-interest in the *Wealth of Nations* put into proper perspective, the problem easily dissolves.

‘Sympathy’ is not, for Smith, a term interchangeable with ‘benevolence’ and ‘altruism’, nor does it mean simple compassion. It is, rather, a complex social process of observation, experience, reflection and judgment during which the individual, I suggest, is ultimately constituted. Similarly, while self-interest is an important category in Smith’s social, political and economic thought, not even the *Wealth of Nations* establishes self-interest as a sole, unmediated, unregulated motivator of human behavior.

In fact, not only are Smith’s conceptions of self-interest and sympathy not in conflict with one another, they are inextricably related within the dynamic of Smith’s overall system. The pre-occupation with the apparent contradiction between self-interest and other-regardingness reflects the degree to which we political theorists have overlooked the role of sociability in the liberal tradition. That is, if we ignore the constitutive role of sociability and other-regardingness in the liberal tradition then we run the risk of making important (and enduring) mistakes such as ignoring one half of

Interests," in *The Cambridge Companion to Adam Smith*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 2006), 246.

Smith's system in favor of an asymmetrical reading of the other. There are certainly tensions between the sociability and self-interest (although Smith probably comes closer than others to resolving that tension), but these tensions are not resolved by prizing self-interest over other-regardingness and sociability—rather, Smith and his natural law predecessors use sociability and human social life as the backdrop against which the drama of self-interest and private passions plays out.

If self-love is able to attain a legitimate moral status in liberal and natural law thought, it is because the obligatory power of natural law depends on the universal recognition of mutuality and a certain kind of other-regardingness—a willingness for the individual to universalize from his own demands and expectations and to extend reciprocity and a recognition of equality to others. This reciprocity is a minimal requirement for the laws of nature to have any moral force and to operate as norms by which human activity can be measured. In the tradition of natural law and natural rights theories, this reciprocity or obligation to the position of others falls into the category of 'sociability.' Within the writings of natural law thinkers, sociability is presented variously as a native impulse of human nature, a divinely given norm and an imperative of reason. It is, nonetheless, the category within natural law that compels individuals to be other-regarding and conceives of them as capable of participating in social and political life. When we take sociability seriously as a category within natural law and when we examine the ways in which the existence of rights and duty depends upon sociability together with self-love, we get a picture of the individual within liberal natural law theory that is neither as individualistic nor as egoistic as we usually suppose. Instead,

⁶ An excellent discussion of the transformation of Smith into a social, political and economic conservative by his interpreters in the 18th and 19th centuries can be found in Emma Rothschild, *Economic Sentiments*:

the liberal individual, at least insofar as he is conceptualized by Locke and by Smith, possesses a capacity for social life that is at the very core of his status as an individual. This sociability and social-embeddedness informs the conception of the liberal individual and shapes his rationality, self-love and his capacity for moral and political life. The natural law and liberal tradition that culminates with the work of Adam Smith reflects the emergence of a human psychology in which self-love and self-interest depend very strongly on sociability, mutuality and reciprocity.

In light of the tradition of natural that includes Grotius, Pufendorf and Locke, Smith's accomplishment is in describing self-love and self-interest as elements of human nature with a distinctive and positive moral content. The development of the relationship of sociability to self-interest from Grotius to Pufendorf to Locke and to Smith represents an attempt to solidify the role of self-love in a political and moral scheme that allots individuals rights as well as duties. Smith accords a greater moral place to self-love in his theory than do his predecessors, but he also accords a greater place to sociability. More even than his predecessors, Smith's self-interested, prudential individual is a product of a complex process of socialization and a high degree of social embeddedness. In Smith's account, the individual is dependent on society not just for his material existence, but also for his very existence as a rational, moral, rights-bearing creature. As I will argue in this chapter, Smith's sympathetic ethics, understood in terms of sociability, make possible the very existence of the self-interested individual. Framing this analysis of Smith in terms of his relationship to the natural law tradition is helpful both for what it reveals about natural law and liberalism generally, and for the ways it helps to amplify some aspects of Smith's thought. In particular, Smith's innovativeness and the degree of his success in

redefining self-love as a virtue stands out more markedly in light of previous attempts to legitimate self-love and, according to my analysis, Smith in many ways represents the explicit development of dynamics that I have suggested were implicit in liberalism and natural law from the outset.

Smith and Natural Law

Despite life-long plans to do so, Smith never wrote the great work on jurisprudence which he thought would complete his overall philosophical system. For Smith's jurisprudential thinking we have only inferences in his two published books, *Theory of Moral Sentiments* and *Wealth of Nations* and the notes taken from his lectures by some of his students between 1762 and 1766, now published as *Lectures on Jurisprudence*. Despite the inadequacy of these notes for exegetical purposes, the *Lectures on Jurisprudence* clearly reflect Smith's concern with the major problems of the natural law tradition. More particularly, the division of Smith's system into three parts (law, morals, economics) reflects his adoption of an important natural law idea: the distinction between perfect and imperfect rights. This distinction is essential to the natural law theories of Grotius and Pufendorf insofar as it demarcates the appropriate realm for coercion by the state. Perfect rights are those which can be demanded by force and which are absolutely essential to human society; imperfect rights are those virtues which, while socially desirable, cannot be backed by force. For Grotius and for those who followed from him, imperfect rights and duties (like charity, or gratitude, for instance) cannot be coerced because it is motivation and intention which gives these virtues their moral character. In the Grotian and Pufendorfian natural law theories, the natural law and human sociability demanded only that individuals obey the perfect laws of justice.

Smith picks up this distinction and uses it to shape his approach to politics, law and morals.⁷ Morality, he claimed, is the province of the imperfect virtues; law is the province of the perfect. In recasting this distinction in terms of virtue rather than right, Smith essentially established the boundaries of legitimate government power and carved out a definitive sphere for individual morality; by necessity, in Smith's view, ethics is the business of individuals, not societies or states. This is significant because, as we will see, it moves the norm of sociability *outside* the purview of political authority and establishes it in the non-coercive social realm where it must be reproduced by social and psychological dynamics. In Smith's account justice is the injury of the person, property or reputation and it is the ultimate perfect right: justice is the proper domain of government and coercive political power. Without justice—without property rights and without security in one's own person and reputation—no human society is possible. To this end, Smith explains, "The first and chief design of every system of government is to maintain justice; to prevent the members of a society from incroaching on one anothers property, or seizing what is not their own...The end proposed by justice is the maintaining men in what are called their perfect rights."⁸ The imperfect virtues are not universalizable and, because they belong to the domain of individual motivation, they cannot be coerced by the state or by other humans. Smith argues,

The general rule of almost all the virtues, the general rules which determine what are the offices of prudence, of charity, of generosity, of gratitude, of friendship, are in many respects loose and inaccurate, admit of many exceptions, and require so many modifications, that it is scarce possible to regulate our conduct entirely by a regard to them. The common proverbial maxims of prudence, being founded in universal experience, are perhaps the best general rules which can be given

⁷ Smith actually attributes the distinction to Pufendorf, who developed and refined Grotius's original distinction. Smith et al., *Lectures on Jurisprudence*.. P.9 The distinction thus informs the emphasis on morality—imperfect rights—in *Theory of Moral Sentiments* and the emphasis on law in the *Lectures*.

⁸ Ibid. p. 5.

about it. To affect, however, a very strict and literal adherence to them would evidently be the most absurd and ridiculous pedantry.⁹

In other words, morality is the domain of contingency, judgment and experience, beyond the scope of government, both theoretically and in terms of practicability. By contrast, “The rules of justice are accurate in the highest degree and admit of no exceptions or modifications, but such may be ascertained as accurately as the rules themselves, and which generally, indeed, flow from the very same principles with them.”¹⁰

Because it is concerned with jurisprudence and law, Smith’s *Lectures on Jurisprudence* is his text on perfect rights, justice and property. In the *Theory of Moral Sentiments*, however, Smith addresses foundations and creation of the imperfect virtues. By drawing on this traditional natural law distinction between perfect and imperfect right in the organization of his system, Smith is able to conceive of a society of middling virtue in which individuals retain their independence and freedom while the state limits its power to the domain of justice. Despite not being enforceable in the political sphere, the imperfect rights and virtues play an important role in making human society possible. The sociable morality described in Smith’s *Theory of Moral Sentiments* requires that institutions shape human behavior in accordance with the virtues appropriate for a particular society. Governments cannot coerce or compel, but social and especially economic institutions can encourage the development of individual morality in socially productive ways. The ethics laid out in *Theory of Moral Sentiments* is a voluntary one and it depends on a conception of sociability which Smith takes for granted in both his text of ethics and his text on economics. In other words, for Smith, the state has no direct

⁹ Adam Smith, *The Theory of Moral Sentiments* (Cambridge, U.K.; New York: Cambridge University Press, 2002). III.vi.9

¹⁰ Ibid. III.vi.10

or coercive role in morality, sociability and the development of imperfect virtues, but there are other social institutions can that shape the expression of human passions, desires and virtues into necessary social goods. What we see here is the removal of sociability from the domain of government and God into the social sphere where it is read into human psychology and produced through social and institutional interactions.

Sociability, Sympathy, and the Impartial Spectator: Smith's Moral Theory

While the modern natural law tradition exemplified by Grotius and Pufendorf linked sociability to reason, innate human instinct and divine command, by the late eighteenth century, sentiment had come to play an important role in justifying and expounding natural morality. For Smith's teacher Frances Hutcheson, the key to ethical life was the separation of instrumental egoism from moral thinking. In other words, for an action to be moral, it had to be the product of 'benevolence.' For Hutcheson, unlike his predecessors in the natural law discourse, benevolence was conceived as a sentimental attachment to the greatest good of the greatest number, *not* the rational recognition of interconnectedness, equality or God's role in the moral hierarchy of nature.¹¹ Smith, like his teacher, saw an important role for sentiment in social and political morality but was unwilling to maintain Hutcheson's rigid moral distinction between the self-interested and the altruistic. For Smith, *both* of these two important elements of human nature—a natural sympathy for the plight of others and a natural self-love—had to be the basis of any tenable moral theory. As a consequence, Smith's thinking about other-regardingness can be distinguished from that of his predecessors by its attachment to sentiment and instinct and the relative minimization of the role of reason in sympathy. Smith draws

upon a sociable view of the human personality in order to present a socially-constructed, relativistic theory of morals that is consistent with his acute sense of the role that society plays in the development of individual personalities.

Sociability is tremendously important to Smith's political, moral and economic theory but its status as a category is less self-conscious than it is in the works of Grotius, Pufendorf or Hutcheson. Rather than standing as an element of human nature in need of teasing out or of normative and positive law, for Smith, human sociability is an empirical fact that underlies the entire enterprise of social science. This is particularly evident in his rejection of the contractarian, state of nature heuristic which is a commonplace in the natural law tradition. Instead of the ahistorical, static, essentialized state of nature, Smith posits a new conjectural history. This is known as his "Four Stages Theory" of human development and it takes as a given the social situation of humankind. Smith's Four Stages theory, outlined in the *Lectures on Jurisprudence*, essentially conceives of human civilization as progressing through four distinct developmental phases: the Age of Hunters, the Age of Shepherds, the Age of Agriculture, and finally, the Age of Commerce. Each stage is characterized by its own method of property acquisition, economic development and political institutions, with each becoming more complex—and the society and its social relations itself becoming more complex—with each age.¹² Smith sees the Four Stages theory as empirical, rather than speculative, and because his analysis is so materially grounded, the theory points directly to the social development of norms, laws and even rights. For Smith, questions such as the nature of justice or the

¹¹ Knud Haakonssen, "Natural Jurisprudence and the Theory of Justice," in *The Cambridge Companion to the Scottish Enlightenment*, ed. Alexander Broadie (Cambridge, UK, New York: Cambridge University Press, 2003).; Fleischacker, *A Third Concept of Liberty*. Pp. 121-3.

possession of property rights can only be answered by first looking at the empirical qualities of the society in which the justice or the rights are under examination.

In rejecting the state of nature heuristic in favor of the Four Stages theory, Smith takes the social orientation of human beings as an empirical fact, not a speculative argument. In understanding sociality as a fact about human nature, Smith develops a conception of the individual's relation to society that is more reciprocal and fundamental than we have seen thus far. For Smith, individuals are, in almost all significant ways, the products of their society. Nothing about individuals—their moral sense, their rights, their obligations—is possible outside the context of social interaction. This is an essential paradox of Smith's thought: the very fact of our sociability, that we live social lives, means that our social selves make our individual selves possible. Social selves precede, analytically and psychologically, our individual selves. Smith's departure from traditional thinking about sociability enables him to generate a new and compelling solution to the problem of the tension between self-interest and other-regardingness. Starting with the fact of human society and human sociability means that in Smith's construction, sociability and self-interest are not naturally opposing forces that must be constrained by force or even reason. Rather, sociability is an underlying assumption about human psychology and the importance of human institutions that informs both our desire to sympathize with others and act benevolently towards them and which shapes our self-love and our self-interest. It is this reconceptualization of sociability and sympathy that enables Smith to assign a moral value to the otherwise difficult category of self-love and to construct an ethical argument in favor of liberal capitalism.

¹² The Four Stages theory is the foundation of Smith's analysis throughout the entire *Lectures on Jurisprudence*.

Like Locke, Smith does not use the language of sociability directly. Nonetheless, I see sociability manifest in several primary ways in Smith's moral and jurisprudential thought. Firstly, Smith's assumptions about the socially contextualized nature of human life, as indicated, for example, by his theory of history, clearly share common ideas with the way that sociability has been conceived in the natural law tradition. The assumption of a social context is often integral to defining human nature, human obligations and human rights. More significantly, Smith's analysis of human psychology and moral development closely parallels the role accorded to sociability in the natural law accounts of human nature. In particular, sociability is reflected in Smith's depiction of human nature as characterized by an instinct towards sympathy or fellow-feeling that stands in explicit contradistinction to self-interest and self-love. Additionally, sociability is reflected in the desire to attain the approbation of others and to be worthy of that approbation. These two manifestations of sociability turn on a sophisticated psycho-social dynamic which comes to inform not only Smith's thinking about benevolence and altruism, but also his assessment of the shape and role of self-interest in modern commercial society.

The tension between self-interest and other-regardingness is a central theme of Smith's *Theory of Moral Sentiments*. In the first paragraph of that text, Smith argues, "How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing."¹³ This is part of the essential sociability of man, and for Smith this is an empirical observation rather than

a normative claim. The sentiment of sympathy is common to both the virtuous and humane man and his “ruffian” counterpart. Smith characterizes this sentiment as “fellow-feeling” and it represents an instinctive human desire that is as important to understanding human behavior as is self-interest. Sympathy means, for Smith, a natural, spontaneous interest in the well-being of others, a willingness to identify with the passions of others and the capacity for making judgments about the passions and actions of other people. For Smith, we gain a natural pleasure from sympathizing with the joys and troubles of others and from gaining their sympathy for ourselves.¹⁴

For Smith, the crucial element of sympathy is imagination. The technical sense in which Smith uses sympathy means not just compassion—although it can mean that too—but rather the process of imagining oneself to be in the situation of another. This does not mean that I imagine what *I* would do or feel if I were in your situation, but rather what I imagine I would feel in your situation if I were *you*. Smith stresses this point so as to carefully remove the possibility of grounding sympathy and the moral sense in utility or self-interest. Smith explains, “By the imagination we place ourselves in his situation, we conceive ourselves enduring all the same torments, we enter as it were into his body, and become in some measure the same person with him, and then form some idea of his sensations, and even feel something which, though weaker in degree, is not altogether unlike them.”¹⁵ Imagination, when combined with knowledge of the particular circumstances informing the agent’s situation enables us to sympathize with the passions

¹³ Smith, *The Theory of Moral Sentiments*. I.i.i.1

¹⁴ Griswold argues that the pleasure of sympathy is an aesthetic pleasure—the pleasure of sympathy reflects the love of balance and harmony. Griswold, *Adam Smith*, 121.

¹⁵ Smith, *The Theory of Moral Sentiments*. I.i.i.2

of other people.¹⁶ But because the knowledge of circumstances is so important to Smith's conception of sympathy (he explains, "Sympathy, therefore, does not arise so much from the view of the passions, as from that of the situation which excites it."¹⁷) it quickly becomes apparent that sympathy is less about compassion for others than it is about forming and making moral judgments. The process of sympathizing with another is necessarily a process of judgment. The spectator observes the actions and passions of another person, uses his imagination to sympathize with their circumstances and share in their passion and makes judgments about the propriety of those actions and passions in response to the circumstances. The observer's sense of the propriety or impropriety of an agent's emotions and reactions in response to particular circumstances determines whether or not he responds sympathetically to the agent. Smith explains,

When the original passions of the person principally concerned are in perfect concord with the sympathetic emotions of the spectator, they necessarily appear to this last just and proper, and suitable to their objects; and, on the contrary, when, upon bringing the case home to himself, he finds that they do not coincide with what he feels, they necessarily appear to him unjust and improper, and unsuitable to the causes which excite them. To approve of the passions of another, therefore, as suitable to their objects, is the same thing as to observe that we entirely sympathize with them; and not to approve of them as such, is the same thing as to observe that we do not entirely sympathize with them.¹⁸

This, essentially, is Smith's moral theory in a nutshell. We make judgments about the emotions and passions and actions of others by placing ourselves in their situation and judging whether or not those passions and emotions and actions seem proper and appropriate. If we judge that the agent is overly emotional or has acted rashly, we withhold our approval and our sympathy; if we judge that the agent has a proper degree

¹⁶ Griswold emphasizes that sympathy and imagination do not overcome the essential separateness of different people, but rather, we employ our sympathy and our empathy in such a way that we are able to evaluate them, their actions and their passions from an objective standpoint. Griswold, *Adam Smith*. P. 88

¹⁷ Smith, *The Theory of Moral Sentiments*. I.i.i.10

of emotion in response to his particular circumstances, we are able to sympathize with the agent and grant him our approbation.¹⁹ This moment of sympathizing, for Smith, constitutes the whole of human morality and justice. There are no objective moral truths or natural law standards beyond the judgments of spectators or with which spectator judgments must align.

For Smith, the moment of judgment brought on by sympathy is the moment crucial to the creation and development of morality, and it turns on the second element of sociability—the desire for the approbation of others. Smith argues that the desire to receive sympathy from others, to have other people share our joys and our grief is an essential and natural human desire. The natural desire for the approbation of others is crucial not only to Smith’s conception of sociability, but more importantly, to his entire moral, political and economic enterprise. With regard to sympathy, this desire for approval takes the form of a desire for others to share sympathetically in our passions and emotions with us. Smith observes, “nothing pleases us more than to observe in other men a fellow-feeling with all the emotions of our own breast; nor are we ever so much shocked as by the appearance of the contrary.”²⁰ As a consequence, for Smith, we strive to attain the sympathy of others by working to ensure that our passions and actions are such that an observer or spectator would approve.

Smith sees this desire for approbation to preclude hypocrisy in most people because we desire the approbation of others, certainly, but we also desire to be *worthy* of that approbation. This is very important to Smith’s understanding of the moral

¹⁸ Ibid. I.i.iii.1

¹⁹ The commercial implications of this moral theory are self-evident: the rational man will not wish to do business with the inappropriate agent.

²⁰ Smith, *The Theory of Moral Sentiments*.I.i.ii.1

personality. He explains, “Man naturally desires, not only to be loved, but to be lovely; or to be that thing which is the natural and proper object of love. He naturally dreads, not only to be hated, but to be hateful; or to be that thing which is the natural proper object of hatred. He desires, not only praise, but praise-worthiness...” A person who desires merely the approval of others need only to act in such a way as will *appear* to be worthy of approbation. But for Smith, the existence of approbation is less important than deserving it.²¹

The desire for the approbation and approval of others is instrumental to the second stage of moral development; we become aware that others are watching us and making judgments as we are watching and making judgments about others. Because of our natural desire for approbation from and sympathy with others, the consciousness of spectatorship begins to shape and form our own sense of the propriety of our conduct. For Smith, the presence of spectators ultimates in a construct he calls the “impartial spectator”—a hypothetical spectator with full knowledge and full impartiality who is capable of sympathy and judgment, and indeed, whose objective and impartial judgments are “ethically definitive”.²² For the individual moral agent, the impartial spectator becomes the measure by which he judges the propriety of his own passions and actions. Because we naturally desire the approbation and sympathy of others, we ultimately come to internalize the impartial spectator as a part of our psychological and moral make-up. We create an almost conscious dualism within ourselves between our subjective self and our objective, impartial spectator self who makes judgments about the propriety or

²¹ Ibid.III.i.i.1

²² Griswold, *Adam Smith*. P. 104.

impropriety of our actions and emotions.²³ We become, in essence, morally self-policing, in accordance with our sociality and our nature. While some interpreters have gone so far as to say that the Impartial Spectator is the ‘voice of god’ in man²⁴ it is nevertheless true that the impartial spectator who judges us from without and within is one of Smith’s major contributions to a relativistic theory of natural rights. Smith’s theory enables us to be self-policing moral creatures whose status as moral individuals turns heavily upon our acknowledgement that others judge us as we judge them and then internalizing those judgments to regulate our emotions and our behavior.

The consequence of this, for Smith, is that the moderation and command of the passions becomes a goal and a by-product of moral maturation. Such moderation and self-command is necessary because the spectator’s sympathetic feelings will always be weaker than our own, or, to put it another way, we feel much more strongly for ourselves than we ever can for another. Smith writes, “The person principally concerned is sensible of this, and at the same time passionately desires a more complete sympathy....But he can only hope to obtain this by lowering his passion to that pitch, in which the spectators are capable of going along with him. He must flatten, if I may be allowed to say so, the sharpness of its natural tone, in order to reduce it to harmony and concord with the emotions of those who are about him.”²⁵ The task of the moral agent, then, is to moderate his passions so that they will meet with the approval of the impartial spectator; in this way, the individual develops a moral identity of his own and approaches virtue and an ethical life.

²³Smith, *The Theory of Moral Sentiments*. III.i.i.2

²⁴ See Haakonssen, *Natural Law and Moral Philosophy*. Haakonssen writes, “Indeed, conscience, in both Smith and Kant, is not only a judge, an internal court, a legislator; it appears as the voice of God, the vice-

As the impartial spectator gains authority within the self, and once one has had sufficient experience²⁶ spectating, sympathizing and making judgments about others, the actual approbation of others becomes less important. Instead, the primary thing for the moral individual is to act in such a way as will meet with the approval of one's own private impartial spectator; to feel oneself to be worthy of approbation regardless of whether or not that approbation is forthcoming from other people. This makes it possible for Smith, on the one hand, to understand morality and virtue as entirely the product of social forces and interactions, and on the other, to understand there to be a significant space for individuals to attain moral autonomy and independence from the judgments of others. So long as the impartial spectator within oneself is satisfied that one's conduct meets with the standards of propriety and can gain the sympathy of the spectator, it becomes far less important whether or not *others* acknowledge the propriety of one's passions and conduct.²⁷

It is the process of sympathizing with others and moderating one's own passions to acquire the sympathy of others that replaces transcendental natural moral standards for Smith. In contrast to the natural law tradition in which promulgation from God provides the form of moral precepts, Smith's account of sympathy and the impartial spectator means that the individual and his moral judgments are products of a sociability that

regent of the universe internalized." P.151 And also, D. D. Raphael, *The Impartial Spectator* (London: Oxford University Press, 1973). P. 12.

²⁵ Smith, *The Theory of Moral Sentiments*. I.i.iv.7

²⁶ The role of experience is important to Smith's argument about sympathy. Reaching moral maturity, and in particular, making judgments about one's own conduct and passions requires long experience of making judgments about others. For Smith, we cannot be trusted to control our self-love with sympathy and the impartial spectator if we have not already made similar judgments about others. The role of experience reemphasizes the point that status as a moral agent is literally impossible without other people. See for example Ibid. III.i.iv.

²⁷ Of course, the ability to make critical judgments that are independent of social norms remains a complicated and perhaps unpersuasive element of Smith's theory. Fleischacker discusses the problem in

stands independent of utility, self-interest or positive promulgation. In other words, both the individual and the ethics are produced through the social and socializing processes of sympathy and sociability. The social context and the psychological predisposition to sociability lead to the creation of the individual *and* his moral framework and through the sympathetic process we gain both self-command and self-government and benevolence and humanity.²⁸ Smith argues,

And hence it is, that to feel much for others and little for ourselves, that to restrain our selfish and to indulge our benevolent affections, constitutes the perfection of human nature; and can alone produce among mankind that harmony of sentiments and passions in which consists their whole grace and propriety. As to love our neighbour as we love ourselves is the great law of Christianity, so is it the great precept of nature to love ourselves only as we love our neighbour, as what comes to the same thing, as our neighbour is capable of loving us.²⁹

The moderation of egoism in response to the internalization of the impartial spectator results not only in the moral maturation of individual members of society, but we also produce for ourselves and our societies, a code of moral conduct and expectations about appropriate and proper behavior. Societies are, for Smith, at all times engaged in a process of developing standards of morality. This leads to a reciprocal and mutual process—ethics and morality are the domain of individuals, but morality is socially produced and it is crucially dependent on sympathizing with others and desiring others to sympathize with us.

The extent to which this mutual and reciprocal process informs Smith's thinking, even beyond the moral interactions of individuals can be seen in his justification of property. Smith strives to ground a 'right' to property in the sympathy dynamic rather

Samuel Fleischacker, *On Adam Smith's Wealth of Nations: A Philosophical Companion* (Princeton: Princeton University Press, 2004). Pp. 52-54.

²⁸ Smith, *The Theory of Moral Sentiments*. I.i.v.1

²⁹ Ibid. I.i.v.5

than in any claims about the natural order or divine intention.³⁰ For Smith, property rights cannot exist in an asocial vacuum—a certain complexity of ownership and inequality of possession must first exist to give rise to what we know as property rights. Property, like all other rights for Smith, comes about on the basis of sympathy: any person, according to Smith, who saw a man holding an apple, would feel a natural outrage should another man come along and try to take it from him.³¹ As a result, Smith concludes, we have a ‘natural’ right to property by occupation.³² Smith’s sympathy-based theory of property, together with his Four Stage Theory neatly dodges the enduring natural law problem of the individuation of the commons, because for Smith there is no relevant moment in speculative history when the earth was granted to all men in common. Property is not a pre-social right that precedes all other social institutions—rather, property, like all other rights, is essentially and fundamentally socially constructed. Without other people who could sympathize with our appropriation of property³³, there could be no property whatsoever and, in fact, no rights of any kind. Insofar as the individual is able to come into being with ‘rights’ and obligations, he must first be constituted through the social and socializing sympathy process.

Self & Other: Self-Interest, Self-Love, Self-Command

³⁰ This is not to say, however, that Smith isn’t making essentialist judgments about the kinds of property relationships appear ‘natural’ to the right-thinking spectator.

³¹ Adam Smith, *Lectures on Jurisprudence* (Indianapolis: Liberty Fund, 1982), p. 17-19.

³² The editors of the *Lectures on Jurisprudence* observe that despite the echoing of Locke’s principle of acquisition through labor and occupation, Smith intends to give a new and novel justification for acquisition through occupation. And indeed, while Smith’s impartial spectator feels sympathy with the apple-picker here because of his occupation of the fruit, for Smith, the man’s right to the fruit comes not from his occupation or his labor, but from the sympathy of the spectator.

If sociability is both a context and a process by which we can understand the moral development of Smith's individual and the creation of shared social standards for ethical behavior and judgment, then self-love and self-interest are produced by this very same process. I am suggesting here that the psychological preconditions for sociability *precede* the development of individual self-interest as a morally meaningful category. In large part because of the need to solve the 'Adam Smith problem,' many recent scholars have tried to draw a more subtle and complex picture of the role of self-love and self-interest in Smith's writing. The consensus is clear: Smith does not advocate the untrammelled pursuit of self-interest, nor does he claim that self-interest is the only, or even primary, motivator of human behavior. Further, scholars agree, the *Wealth of Nations* does not seek to free the economic realm from the constraints of morality.³⁴ There is little in the text of the *Wealth of Nations* to suggest that self-interest takes on a normative significance that transcends other virtues that engage Smith in *Theory of Moral Sentiments*.³⁵ Much of the perception of the significance of self-interest in the *Wealth of Nations* comes from Smith's famous passage about the nature of commercial exchange. He writes,

It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity, but to their self-love, and never talk to them of our own necessities but of their advantages. Nobody but a beggar chuses to depend chiefly on the benevolence of his fellow-citizens. Even a beggar does not depend upon it entirely.³⁶

³³ Or, alternatively, an imagination developed within society that could *suppose* the existence of spectators, even if there were none.

³⁴ See for instance, Mehta, "Self-Interest and Other Interests.", Fleischacker, *A Third Concept of Liberty.*, Hont and Ignatieff, *Wealth & Virtue.*, Smith et al., *Lectures on Jurisprudence*.

³⁵ Additionally, Smith allows for other motivations, like resentment, courage, etc. On the role of self-interest, broadly speaking, in *Wealth of Nations*, see Fleischacker, *On Smith's Wealth of Nations*. Pp. 84-104.

³⁶ Adam Smith, *Wealth of Nations* (New York, NY: Prometheus Books, 1991)., p. 20.

This passage has been the subject of much interpretation, not least because recent scholars have sought to undermine the view that this passage is Smith's attempt to reduce all of human nature to self-love;³⁷ and indeed, this is not what this passage does. Smith is not suggesting here that self-love and self-interest are more important than benevolence, or that there is no place for benevolence in commercial society. Rather, in this passage Smith puts forth a sophisticated moral calculus that begins with the frank acknowledgement of self-love in commercial life and nonetheless shows the ways in which we habitually transcend our own interests to speak to the interests of others. The passage reflects not an obsessive concern with our own selves, but rather an ability to acknowledge the equality of others, to take seriously their interests and concerns, and a willingness to moderate one's own egoism to make room for the needs of other people.³⁸ The ability to be other-regarding and to use our sympathetic imaginations to speak to the needs and interests of others is part of what makes us human—not our self-interest, but our ability to move beyond self-interest and to express our independence and equality by concerning ourselves with the interests of others. Self-interest and self-love are not depicted here as normative goals, but as expressions of higher-order, socially-produced values which result, ultimately, in the butcher getting his pay, and me getting my dinner.

Nonetheless, self-love and self-interest do have an important role to play in Smith's philosophical system and his account of human psychology. There are two striking features of Smith's account of self-interest that distinguish him from other

³⁷ See for instance Griswold, *Adam Smith*. P. 297; Fleischacker, *A Third Concept of Liberty*. 154-55; Mehta, "Self-Interest and Other Interests." P. 250; Jerry Z. Muller, *Adam Smith in His Time and Ours: Designing the Decent Society* (New York; Toronto: Free Press; Maxwell Macmillan International, 1993)., p. 71-72. And well they might—the conception of Smith as an advocate of unrestrained self-interest is enduring. Just last month (December 2008) I heard an author on NPR quote this passage as evidence of the unrelenting privilege accorded to self-interest in the liberal-capitalist system.

³⁸ Fleischacker, *A Third Concept of Liberty*. , p. 154.

attempts in the natural law and liberal traditions to legitimate and domesticate self-interest. The first is Smith's famous invisible hand argument, which, while beyond the scope of this chapter, seeks to show that self-interested people pursuing their own interests can unintentionally create social goods.³⁹ Secondly, Smith goes further than his predecessors in giving self-interest a moral value in its own right.

Until fairly recently, Smith's understanding of self-interest and self-love was misunderstood and caricatured. There is some truth to the egoist view of Smith's picture of human nature—certainly Smith sought to take “men as they are” and this meant taking self-love as an important unit of analysis. However, in an intellectual environment in which self-love was taken for granted as an important motivator of human activity, Smith's attempts to moderate self-love and to find an appropriate place for it in civilized society are overwhelmingly moderate. He stands in stark contrast to a figure like Bernard Mandeville, for whom all human behavior (including and especially ‘virtuous’ behavior) is ultimately reducible to self-interest. In fact, much of Smith's thinking about self-interest can be seen as an attempt to find a middle ground between Mandeville and Hutcheson on the issue of virtue and self-interest.⁴⁰ Smith's thinking about self-love is significant not because he reduces all virtue to self-love or separates economic self-interest from moral concerns, but because of the extent to which he presents self-interest as a product of social processes and dynamics.

³⁹ Rothschild argues that Smith's reference to the ‘invisible hand’ is best read as a “mildly ironic joke.” Rothschild, *Economic Sentiments*. (116ff).

⁴⁰ Mehta makes this point in Mehta, “Self-Interest and Other Interests.” He observes that Smith's account of the justifiability of self-love responds to the unrestrained egoism of Mandeville's account and Hutcheson's claim that benevolence is the source of all virtue. pp. 258-9. Samuel Fleischacker observes that “Everything Smith says about the importance of self-interest in humdrum, for his time. He keeps far away from Mandeville's cynical reduction of human nature to self-interest, is a greater believer in the possibility of concern for others than Hume, allows more room for sincere religious faith than Voltaire, and differs barely

Smith's conception of self-interest takes its shape from the sympathetic ethics of the *Theory of Moral Sentiments*. For Smith, self-interest can be conceptualized as a virtue because the social processes of sympathy and the desire for the approbation of others that create all virtues in human society also shape self-love. Through its interactions with the impartial spectator, egoism is transformed into a measured, moderate conception of self-love that can meet with the approval of the impartial spectator and can contribute to social goods. The self-interest that creates social goods with the help of the invisible hand in *Wealth of Nations* is not self-love without limits, it is, rather, self-love that has been tempered by self-command, an acknowledgement of the equality of others and the sympathetic imagination's ability to speak to the needs and interests of others. What this suggests, ultimately, is that even Smithian self-interest is largely the product of social forces and institutions. As with the moral self, the self-interested self who is able to prudently judge among desires, to take proper care of the self, is a social construction, dependent upon the existence of other people, upon social, political and economic institutions and the sociable ability and desire to reflect upon and moderate our behavior in light of the imagined judgments of others.

Smith is quite explicit that the development of the moral personality that proceeds from the internalization of the impartial spectator results in the tempering of self-love. Self-love is natural, for Smith, and unlike Hutcheson, he does not see self-love as destructive of virtue. Indeed, the impartial spectator will approve of self-love when it is restrained and moderate—as he will of other passions and emotions.⁴¹ At the same time, however, the moral process initiated by sympathy necessarily means that self-love and

at all from the gentle Hutcheson on the role of interest in economics.” Fleischacker, *A Third Concept of Liberty*. p. 138

selfish passions must be restrained and tempered—must be subject to self-command—in favor of more socially acceptable expressions of self-love. Echoing Pufendorf, Smith argues, “Every man is, no doubt, by nature, first and principally recommended to his own care; and as he is fitter to take care of himself than of any other person, it is fit and right that it should be so.”⁴² The proper care of one’s own business will necessarily meet with the approval of an impartial spectator—perhaps not the admiration that benevolence will elicit, but certainly approval. Smith argues,

Regard to our own private happiness and interest, too, appear upon many occasions very laudable principles of action. The habits of oeconomy, industry, discretion, attention, and application of thought, are generally supposed to be cultivated from self-interested motives, and at the same time are apprehended to be very praise-worthy qualities, which deserve the esteem and approbation of every body...Carelessness and want of oeconomy are universally disapproved, not, however, as proceeding from a want of benevolence, but from a want of the proper attention to the objects of self-interest.⁴³

The idea here is quite simple: Self-love and self-interest can be sentiments motivating virtuous action insofar as they produce actions that will be approved of by the impartial spectator. The main issue here is the limiting of self-love and the proper direction of the care of the self. Being self-interested to the point of harming others will meet with resentment and disapproval of spectators; but proper care of the self and the finances and household economy are the kinds of self-interested behaviors that will meet with the full approval of the spectator (although not his admiration⁴⁴). This means that self-love, like benevolence and other virtues, must be processed through the filter of the impartial spectator—and all that that implies about socialization—in order to become moderate, limited with respect to other people, and generally subject to self-government.

⁴¹ Smith, *The Theory of Moral Sentiments*. II.ii.ii.1

⁴² Ibid. II.ii.ii.1

⁴³ Ibid. VII.ii.III.16

Smith understands this moderated self-love as prudence. Prudence is the virtue associated with the proper care of the self; self-interest rightly understood, as it were, and it encompasses those actions which tend towards the preservation of the self, one's business interests and, indirectly, to economic growth.⁴⁵ Because Smith understands men to be naturally self-loving, prudence is the one virtue that is within the grasp of almost all men. It is the middling virtue that will make commercial society, in particular, possible and stable. It will not, of course, lead to a society of wise and virtuous men, but self-interest reconceived as prudence is minimally necessary for the fruition of the invisible hand theory. Boundless egoism will not lead to social and economic goods Smith anticipates in *Wealth of Nations*, but a moderated self-love, a self-interest that distinguishes immediate passions and desires from more prudential needs and wants might.

Prudence, therefore, is born of self-command, which means that prudence is a virtue born of the same process of sympathy and imagination as the other virtues; that is, it is socially constructed and given its status as a virtue through the judgments of the impartial spectator. Prudence is what self-interest becomes when it is filtered through the judgments of the impartial spectator. This implies that Smith's conception of self-interest as a socially beneficial and virtuous motivation is already dependent upon the sociability and sympathetic ethics that animates the *Theory of Moral Sentiments*. If self-interest takes on a normative cast in Smith's writings, this is less as an injunction for each to eschew benevolence and pursue self-interest (or vice versa) than it is to reconceptualize

⁴⁴ Ibid. VI.i.14

⁴⁵ Ibid. VI.i.i.1-3, 5. Mehta, "Self-Interest and Other Interests.", Smith, *The Theory of Moral Sentiments*. p. 261 Mehta argues, further, that prudence is the virtue that connects the *Theory of Moral Sentiments* to the

self-interest through the sympathetic, social process established by the impartial spectator.

To the extent that self-love is expressed as prudence, self-love is a sentiment that can meet with the approval of the impartial spectator. But it must be limited in relation to others and to social norms if it is to remain an acceptable sentiment. Smith argues,

Though it may be true, therefore, that every individual, in his own breast, naturally prefers himself to all mankind, yet he dares not look mankind in the fact, and avow that he acts according to this principle. He feels that in preference they can never go along with him, and that how natural soever it may be to him, it must always appear excessive and extravagant to them. When he views himself in the light in which he is conscious that others will view him, he sees that to them he is but one of the multitude in no respect better than any other in it. If he would act so as that the impartial spectator may enter into the principles of his conduct, which is what of all things he has the greatest desire to do, he must, upon this, as upon all other occasions, humble the arrogance of his self-love, and bring it down to something which other men can go along with. They will indulge it so far as to allow him to be more anxious about, and to pursue with more earnest assiduity, his own happiness than that of any other person....But if he should justle, or throw down any of them, the indulgence of the spectators is entirely at an end.”⁴⁶

This important passage gets directly at the relationship between self-interest and sociability in Smith’s writing. The desire for the approbation and, if possible, admiration, of others means that we will temper our self-interest and self-love to meet with their approval. To the extent that we have internalized the judgments of the impartial spectator, our own sentiments will push us to moderate our self-interested behavior. This does not mean, of course, that Smith sees sociability and sympathy as demanding the abnegation of the self if self-love is to be consistent with virtue. It does mean, however, that the standpoint offered by the impartial spectator allows us to use our self-command to temper the expressions of our self-love and to seek a balance between our passion for our own

Wealth of Nations. I would suggest, instead, that self-command, of which prudence is a function, might more properly be said to form the connection.

⁴⁶ Smith, *The Theory of Moral Sentiments*. II.ii.ii.1

interests and our sociable desire for the approval of others. The internalization of the impartial spectator results, ultimately, in the socialization of our more egoistic passions. Sociability (that is, sympathy and the desire for approval) operates as a check on the socially destructive tendencies of our self-love *without* any need for direct coercion by the state.

For Smith, self-interest still has its destructive tendencies, but by turning it into a virtue, he understands individuals as much more capable of moderating their self-interest on their own. Part of reaching moral maturation is the possession and development of self-command—that is, acting on the basis of self-interest to the extent that this can be approved by an impartial spectator. Properly practiced, with moderation, prudence and self-command, self-interest becomes a virtue—an individual virtue that has positive social effects in the same way that any individual virtue can have positive social effects. Consequently, Smith is able reconcile the self-interested and potentially egoistic individual with a liberal political order and capitalist economic order: the prudently self-interested and properly sympathetic man has the virtues that will enable him to create wealth.

Conclusions

The dependence of the individual on society—not merely in material terms, but also morally (and this would include not only prudence, virtue, and benevolence, but also self-command and independence)—is absolutely central to Smith’s moral, political, economic and jurisprudential system. There is literally no individual, with his independence, rights and ethics, without the society in which he is located. And yet the individual is not compromised or limited by this essential dependence (for his moral as

well as physical existence) on society. He can only achieve true individual expression, independence and growth—freedom, moral or otherwise—within society and under social institutions. For Smith, the independence and freedom of the individual is crucially linked to the dependence of that individual on his society. This dynamic is most plain in Smith's account of morality: there can be no moral independence without first experiencing the dependence and mutuality of spectating, by internalizing that spectator and come to view oneself as an agent rather than a subject. And moral independence is what makes possible the self-interested rationality that informs Smith's social, political and economic vision.

The connection of self-interest to sympathy and sociability has implications for the way that we conceive of relations between individual and society in Smith's political theory. Rather than embodying a libertarian perspective in which the state and society are constantly threatening to impinge on individual freedom and integrity, Smith's political and moral vision turns on the central insight that society and the state don't threaten individual freedom: they actually make it possible. The dependence of the individual on society—not merely in material terms, but also morally and existentially—is absolutely central to Smith's moral, political, economic and jurisprudential system. There is literally no individual, with his independence, rights and ethics, without the society in which he is located. And yet the individual is not compromised or limited by this essential dependence (for his moral as well as physical existence) on society. He can, actually, only achieve true individual expression, independence and growth—freedom, moral or otherwise—within society and under social institutions. For Smith, the independence and freedom of the individual is crucially linked to the dependence of that individual on his

society. This dynamic is most plain in Smith's account of morality: There can be no moral independence without first experiencing the dependence and mutuality of spectating and by internalizing that spectator. The Smithian paradox is not that he seems to have created a system with two opposing centers—sympathy and self-interest—but rather that social and economic interdependence is the precondition for individual freedom and independence.

Chapter 6. Conclusion—Sociability: the Past and Future of an Old-Fashioned Idea

The natural law tradition initiated in the seventeenth century had wide-ranging and enduring influence, both as a philosophical tradition and as the foundations for what would ultimately become the natural rights and then human rights discourse. The contributions of thinkers like Grotius and Pufendorf to our contemporary worldview can scarcely be overstated even if, until recently, they have not been the subjects of much academic interest. The natural law theories of Grotius and Pufendorf represent two different approaches to natural law and present two different understandings of the source and knowability of the laws of nature. Each draws upon the old language of sociability to make possible the transformation of *ius* from its meaning as a law, obligation and duty, into its new meaning as a subjective right possessed by individuals as a part of their very existence as individuals. This dissertation seeks to contribute to ongoing scholarly recovery of and engagement with the work of Grotius and Pufendorf and to highlight some elements of their political theories. In their own terms, as well in their influence of Locke and Hobbes and the liberal tradition more generally, Grotius and Pufendorf are worthy of study because of the ways in which the natural law and liberal discourses have shaped the political and theoretical possibilities in our own world.

This dissertation has explored ways in which the natural law discourse of Grotius and Pufendorf reverberated throughout the liberal tradition through the concept of sociability and the mediation of self-interest. The natural law discourse of the seventeenth century directly and indirectly shaped the development of early liberalism with its language of natural law and rights, its approach to the justification of property, and in the depiction of self-interested, sociable, sovereign and equal individual. I have argued throughout that the relationships between self-interest and sociability in the natural law

and liberal traditions play an important role in the relationship of the individual to society and the kinds of obligations and duties individuals might be required to assume towards one another. More importantly, the natural law perspective reveals the ways in which the liberal individual is an essentially social and socially constructed concept. The reading of human nature as 'sociable' makes possible the moderation of self-love and self-interest so as to render it compatible with social and political life. It is this moderated self-love, shaped by social interactions and obligations, that is at the core of the liberal individual with his rights and independence.

Grotius's rationalist and decisively modern theory of natural law anticipates social contract theory and begins to develop the idea of the individual as a creature who possesses rights as well as duties and obligations. In order to depict a human nature capable of possessing rights as well as duties, Grotius needed to be able to present self-love, self-interest and the pursuit of utility as tempered by natural inclinations that govern behavior and provide clues for political and international institutions. For Grotius then, reaching back to stoic philosophy and resurrecting the notion of sociability enabled him to conceive of human nature as equally shaped by both an instinctive preference for the self and an instinct for the company of other men, a concern for their well-being and a radical recognition of their fundamental equality. It is this desire for the company of others, supplemented by reason, that underlies the descriptive, empirical conception of sociability that informs Grotius's theory of natural law (and therefore his theory of international law and the sovereignty of states). Grotius's notion of sociability is essentially psychological and intellectual, manifest as an acknowledgement of the

equality of others, a willingness to respect their rights and obligations and the observable desire to live peaceably and sociably.

Because sociability is presented as a feature of human nature in Grotius's anthropology, it takes on a normative significance through the development of the laws of nature. The laws and rights of nature reflect the sociable impulses and the tension between those impulses and individual egoism. Grotius sought to create a balance between sociability and self-interest through the delineation of natural laws and the eventual creation of the state. In the work of Grotius, therefore, sociability makes the state and society both necessary and possible. The adoption of obligations towards other people in political society reflects the attempt to preserve human sociability from the threat of human egoism. In a very real sense, in Grotius's theory natural rights and natural obligations, as well as their political and positive counterparts, are a product of the natural inclination towards sociability and the rational ability of individuals to draw on their sociability to moderate their egoism and the pursuit of self-interest. Grotius's theory of the laws of nature—the laws of abstinence and inoffensiveness—suggest that we obligate ourselves to one another and commit to the mutual respect of the lives and properties of our fellows. And yet Grotius is insistent that the laws of nature and political obligation cannot have their foundations in utility, force and interest. Grotius's view of equal individuals living peacefully together in political society turns on the moderation of egoism by a sociable desire to concern oneself with the well-being of others and to pursue shared and common goods.

Pufendorf's approach to natural law and natural rights reflects his attempt to preserve the strong international law and sovereignty in Grotius's theory while

acknowledging, following Hobbes, that the more sociable elements of human nature cannot be depended upon. Pufendorf attempts to resolve the difficult problem with a strong sovereign—divine or temporal—who issues binding commands that move the wills of its subjects. In this way, Pufendorf demands that a sociable attitude govern interactions among citizens in political society. For Pufendorf, the preservation of a stable political order depends upon the adoption and internalization of the natural law of sociableness. Consequently, his notion of sociality depends on coercive institutions and habituation by individuals. Crucially important to Pufendorf's theory of natural law is the voluntarist foundation on which his jurisprudence rests. God's will and God's command comprise the moral substance of Pufendorf's laws of nature. It is God's promulgation and creation that lends the laws of nature both their moral value and their bindingness on humanity. Because God's perspective is the source of both human nature and our sense of moral obligation, we come to evaluate our own political, social and individual actions from the perspective of the divine lawgiver. This enables Pufendorf to frame social and political relationships as normatively governed by the perspective of the divine lawgiver. God issues the command to sociality, individuals recognize the legitimacy of that command and its resonance with their own nature, and consequently humans shape institutions and social relationships in accord with divine command and human nature.

This divine perspective enables Pufendorf to strike a balance between the sociable elements of human nature and the self-interested and self-loving egoism which tends towards social disruption. Not only does the command to sociality make possible the preservation of humanity and justify sacrifices to individual self-interest, but it also gives Pufendorf a mechanism by which sociableness becomes socially reproductive and takes

on the cast of a 'natural' form of human behavior. This means that as individuals behave sociably, treat one another with equality and respect, show one another benevolence and gratitude, sociability extends ever more deeply throughout society and takes up residence deep in individuals consciousnesses. The reciprocity, the mutual good will and the peaceful life that comes of behaving sociably act to moderate and restrain the natural egoism, aggressiveness and insecurity of human nature. Pufendorf's conception of self-love takes its shape from the natural duty to preserve the whole of mankind. Self-love, rather than being wholly destructive, has a role to play in achieving God's end of the preservation of humanity and peaceful social life. Self-love is a source of corruption but it also underlies the connection between individuals and the rest of mankind. Self-love and sociableness become inextricably connected, by command and by habituation.

Locke's political thought is deeply indebted to the natural law discourse that predominated in the intellectual world of his day. Locke's theory of property, of political resistance and of rights and toleration are all dependent upon his adoption of key elements of natural law theory and its problems. Nonetheless, he is not properly a natural lawyer and he does not use the language of sociability directly in his story of human nature, individual rights and obligations. Nonetheless, Locke's conception of the rights-bearing individual is unthinkable without the language and philosophy he draws from the work of Grotius and Pufendorf.

My reading of Locke turns on his voluntarist conception of natural law and natural rights. Not fully developed in his writing, Locke's discussions about nature and right turn on a voluntarist rather than rationalist approach to the laws of nature. This means that, as for Pufendorf, Locke's account of natural law and natural rights

(including, of course, his theory of property and political resistance) can best be understood in terms of the moral content they acquire from God's perspective on humanity. Following Laslett, I call this the "God's eye view" and argue that this perspective enables us to make sense of Locke's understanding of the relationship between the individual and society. Unlike Grotius and Pufendorf Locke does not use the language of sociability directly, and indeed, his account of the social nature of man is weaker than his predecessors'. Nonetheless, his description of the relations among individuals in nature and in political society reflect the moderation of egoistic self-love through the socializing filter of the God's eye view. Locke's writing about rights, obligations and self-preservation reflect the natural law view of human nature and self-interest that were the product of negotiation and socialization in the writings of the natural lawyers. In this way, Locke's account of the individual turns on a natural law perspective that presupposes society and mutual obligation as a precondition for the very rights and autonomy that characterize this individual.

More specifically, in Locke's work, in the distinction he makes between self-preservation and self-interest and in his creation of the Individual, we see the lingering impact of the norms of sociability as a pre-condition for all the important features of the liberal individual: his rights, his equality and his autonomy all are informed by a pre-existing awareness of his duties and obligations to others. This has political ramifications as I tried to show through my analysis of Locke's notion of the 'public good'. The inherent other-regardingness in the duty of self-preservation, together with the universalist perspective of the public good point towards a Lockean political society in which individual must be allowed freedom not so that he can pursue his self-interest

without reference to others, but rather so that he can fulfill his own duty to preserve himself and his political society. The Lockean liberal individual is entitled to his rights and his autonomy because of his status as a social and socially obligated creature.

Similarly, Adam Smith inherits much from the natural law tradition and develops a theory of society and social obligation which can be fruitfully read through the lens of the tension and mutuality of self-interest and sociability. In terms of the preceding tradition of natural law and liberal political thought, Smith's accomplishment is in reconceiving of self-love and self-interest as elements of human nature with a distinctive and unambiguous moral content. The development of the relationship of sociability to self-interest from Grotius to Pufendorf to Locke and to Smith represents an attempt to solidify the role of self-love in a political and moral scheme that allots individuals rights as well as duties. Smith accords a greater moral place to self-love in his theory than do his predecessors, but he also accords a greater place to sociability. More even than his predecessors, Smith's self-interested, prudential individual is a product of a complex process of socialization and a high degree of social embeddedness. In Smith's account, the individual is dependent on society not just for his material existence, but also for his very existence as a rational, moral, rights-bearing creature.

Smith weaves together the self-love and the role of society not by reference to God or to essential laws of nature, but through the process of moral maturation of sympathy and the impartial spectator. The individual becomes an individual capable of responsible and prudential behavior through the complex process of observation, judgment and the internalization of social norms and expectations. Developing a sympathetic and sociable attitude towards others is necessary for the realization of the

individual as a rights-bearing and properly self-interested creature. The sympathetic process produces moral behavior, other-regardingness and a conception of self-interest that is responsible and limited by reference to others. Sociability, as a norm and an empirical fact, shapes the individual and his self-love in absolutely fundamental ways. Sociability and self-love, in Smith's account, are mutually constitutive aspects of the liberal individual, and neither aspect is conceivable without the other.

Liberalism and Sociability

My analysis of the relationship between self-interest and sociability in the natural law and liberal traditions helps to reveal a more nuanced view of liberalism than we usually acknowledge. The natural law perspective gives us a language and a viewpoint through which to see the interdependence of the individual and society in the liberal tradition, and points, I argue to a possibility for an ethic of solidarity within a liberal rights-framework. The development of liberal political theory and natural rights theory from its inception in 17th century natural law discourse turns crucially on the liberal and proto-liberal conception of human nature and the implications of that nature: self-love and self-interest are natural, acceptable elements of human nature that have the power to be socially productive. Further, this self-love and self-interest constantly tend towards an egoism which is socially and politically destructive and finally, this egoism must be contained and restrained by political and social institutions. The possibilities for the mediation of the self-love-self-interest-egoism instinct are tied up together with the notion of sociability and the natural and pre-political power of sociability to moderate and mediate self-love.

One of the themes revealed by my exploration of the relationship between sociability and self-interest is the construction of self-love and self-interest as morally valuable motivations in human nature. We often tend to think of self-love and self-interest as of little moral value—perhaps useful in an invisible-hand sort of way, but not especially important as a moral enterprise. The basic and familiar attitude of the liberal individual is contained within the picture of the self-interested, prudential man whose life is chiefly concerned with his own (and his family's) material security and private interests. Self-love and self-interest are casually and popularly discussed as factual limits on possibilities for politics and justice (as any undergraduate will assert). However the natural law and liberal tradition contains within it a quiet discourse of the evolution of self-love as a moral category. I do not mean here to echo the crude reading of Smith's statement about butchers and bakers and the absence of altruism. Rather, my analysis seems to suggest that self-love and self-interest are themselves concepts which are normatively determined and shaped by the natural law. All of my thinkers suggest that self-love is natural and all but Smith attribute this natural characteristic to some divine plan for humanity. Beyond this, however, there emerges a view in which self-love can take a legitimate place in an ethical and sociable political order so long as it is regulated by our reason and our sociability. It is not, that is, a right that can be claimed by individuals without reference to the needs and rights of others. Like so many other tenets of liberal and rights theory, the right to pursue self-interest takes its meaning from a social and socially limited context.

In ontological terms, of course, as I have argued, this social context is marked through the category of sociability. Social and political obligations, concern for the well-

being of others and a willingness to set aside self-interested concerns are, I argue, at the heart of liberal political thought alongside self-interest and individual rights. Sociability, despite its slipperiness, allows us to see the ways in which liberal political thought, and specifically the relationship between the individual and the social whole, is shaped by the tempering of self-love in favor of social goods and other-regarding obligations. No thinker deploys the conception of sociability in the same way as any other, yet in each case, the thinker seeks to validate self-love as an aspect of the human personality compatible with a peaceful social life by drawing on sociability as a mediating concept. Sociability is variously an integral component of human nature, as it was for Grotius, or a divine command that structures the very existence of rights and duties as it was for Pufendorf. The social location and socialization of the individual makes possible the existence of individual rights and individual freedom by the prior recognition of obligations to other people, to the community and to the author of the laws of nature. As a result, the liberal individual is as much indebted to his social status and social obligations for his rights and freedoms as he is to ‘nature.’

My attempt to complicate the picture of the liberal self-interested, rights-bearing individual, results, I hope, in an enriched understanding of the relationship between this individual and his fellow men. In the work of both Locke and Smith—two thinkers whose liberal credentials appear impeccable—the rights-bearing individual with his autonomy and his self-interest can only make sense within the context of his obligations and duties to others. The liberal individual is indeed rights-bearing and self-interested, but he is only able to assume this status through the prior socialization of his self-interest and the social evolution of his rights. What this dissertation reveals is the ways in which

liberal self-interest, liberal rights and the liberal individual as a whole are always and already dependent upon a sociable attitude towards others. The psychological and intellectual acknowledgment of this dependence and the creation of institutions that will ensure that the sociable elements of human nature will prevail over self-love and egoism. This nuance will, I hope, enable us to conceive of the historical evolution of liberal political thought in more complicated terms.¹

An Ethic of Sociability in Human Rights

It is the complexity and ambiguity of the notion of sociability that provides much of its appeal and possibility. While it is undoubtedly true, as Waswo and Pagden have argued,² that one of the functions of sociability was its role in imperial conquest and the justification of grossly asymmetrical trading relationships. There is surely a sense in which sociability can be understood as an ideological ploy which seeks to justify some of the most nefarious dimensions of the relationship between liberalism and capitalism. And yet, within the internal logic of the natural law and liberal discourses surveyed in this dissertation, sociability plays an ethical and a restraining role. So many of the most essential elements of liberal theory—the claim of individual equality and autonomy, arguments about pre-political individual rights, the delimitation of state power—depend crucially on some conception of sociability—a norm, a command, a feature of human

¹ The liberal-communitarian debate on the 1990s, now largely over, is directly implicated in this recovery of a more socialized and sociable liberalism. Of course, one of the chief critiques leveled at liberals by communitarians was a purported liberal failure to take into account the social and socially constructed nature of the individual. While many of the communitarian critiques were directed at contemporary liberals and their acolytes, I hope that my analysis of the role of sociability and sociable obligation in the development of the rights-bearing individual will add another nail to the coffin of the debate. Generally see C.F. Delany, ed., *The Liberalism-Communitarianism Debate* (London: Rowman and Littlefield, 1994), Michael Sandel, ed., *Liberalism and Its Critics* (New York: New York University Press, 1984) and especially Alisa Carse, "The Liberal Individual: A Metaphysical or Moral Embarrassment?," *Nous* 28:2 (1994).

nature—that compels individuals to turn outwards, to engage in reciprocity and to assume obligations towards others. Moreover, sociability is used as a means of disassociating these other-regarding social norms from utilitarian calculations of self-interest.

Sociability demands the acknowledgement of interconnectedness and obligation to others *without* granting that the ethical aspects of these norms are products of rational self-interest. The sociability is prior to and constitutive of self-interest, not the reverse. My analysis of the role of sociability in navigating the rights and obligations of the individual points, I believe, to the inadequacy of interest to answer questions of justice both within and beyond the nation-state.

This historical analysis and argument points towards the possibility of a new liberal solidarity—the recovery of an ethic that depends on the willingness to set aside individual or national self-interest in favor of the needs and interests of others. The goal of such an ethic would be to reveal the place for substantive goods within a liberal framework. If the justification of liberal-capitalism was made possible by the closer relationship and interdependence of man as self-interested and sociably other regarding, then the substantive mediation of capitalism by liberal sociability should be understood as an ongoing project entirely consistent with the internal logic of liberal political thought.

For example, in his book, *Rethinking Liberalism*, Richard Bellamy explores the possibilities for combining liberal politics and rights with a socialist conception of justice.³ He argues, ultimately, that the prospects for a socialist ethic emerging from a liberal framework are bleak because liberals understand rights as proceeding chiefly from

² See my discussion in the Introduction p. 12-13 and Anthony Pagden, "Human Rights, Natural Rights and Europe's Imperial Legacy," *Political Theory* 31 (2003), Richard Waswo, "The Formation of Natural Law to Justify Colonialism, 1539-1689," *New Literary History* 27.4 (1996)

³ Richard Bellamy, *Rethinking Liberalism* (London; New York: Pinter, 2000).

liberty and because they accord priority to this liberty.⁴ However, if we understand liberalism as containing within it a prior and ongoing attempt to balance individual rights with sociable and other-regarding duties, then the possibility of bringing together liberal rights and socialist justice seems, from a historical perspective at least, far less unlikely.

In fact, as I have shown, the entire notion of rights emerged only as a consequence of the intellectual conception of individuals as sociable as well as self-interested. This makes the substantive welfare and economic rights contained within a document such as the *United Nations Universal Declaration of Human Rights*⁵ appear to be less of an idealistic and largely irrelevant afterthought to the real business of political rights, and more as an integral function of the basic logic that created and developed a discourse and politics of liberalism and human rights in the first place.⁶ From the perspective of my analysis of the history of modern natural law and early liberalism, these substantive welfare rights are not incidental or contingent, but rather an essential and logical corollary of the procedural requires for human freedom and autonomy contained within both liberal and human rights discourse. The historical enmeshment of sociability with human rights provides a way of understanding these obligations as necessary to the championing of liberal political and civil rights.

⁴ Ibid. 144ff.

⁵ These rights include, among a long list of political and civil rights, a right to leisure, holidays with pay, free education and “a standard of living adequate to for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services.” (UN Declaration of Human rights, Articles 24, 25 and 26.)

⁶ This has been an important global political issue in the last two decades. Attempts to universalize the rights contained within the UN Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) have been met with charges of hypocrisy by non-western political actors, who have accused the West of placing too much emphasis on political and civil rights at the expense of social, cultural and economic rights. For a fascinating discussion of this issue, see the essays in Joanne R. Bauer and Daniel Bell, *The East Asian Challenge for Human Rights* (Cambridge, U.K.; New York: Cambridge University Press, 1999).

Sociability and Globalization

While it is beyond the scope of this dissertation, I believe that my analysis of the origins of liberalism and its earliest iterations provides us with some new possibilities for thinking about an ethical globalization and the moderation of international relationships governed by national and individual self-interest. My reading of liberalism implies that, from the outset, the autonomous, liberal actor was only able to assert his rights and assess his duties and obligations by taking into account his interdependence and the prior dependence of his rights on the equality and mutuality of others. In the social contract tradition, beginning with Grotius and continuing into the eighteenth century, this other-regarding sentiment, sociable obligations and sociable behavior must be connected to institutions as a way of balancing different aspects of political and social life.

Cosmopolitan theorists tend on the one hand to over-emphasize the role of sentiment and the intellectual acknowledgment of universal equality in the foundations of their cosmopolitanism at the expense of the institutional and coercive structures necessary to realize the cosmopolitan ethic in a meaningful way.⁷ On the other hand, some theorists emphasize the institutions necessary for a cosmopolitan, global democracy without taking into account the role that sentiment and will must play in any democratically significant cosmopolitan movement.⁸ A less Kantian and more liberal-rights approach to cosmopolitanism would suggest a frank acknowledgment an assessment of interdependence and an account of the extent to which the rights and freedoms on the west imply obligations to the rights and freedoms of others. The liberal-

⁷ Martha Nussbaum, for instance, tends to describe cosmopolitanism in these terms. See for instance Martha Nussbaum, "Compassion: The Basic Social Emotion," *Social Philosophy and Policy* Vol. 13, no. 1 (1996), Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass.: The Belknap Press : Harvard University Press, 2006).

rights perspective outlined in this dissertation points towards the need for sentiment and an ethic of justice to be tied to both coercive institutions and social habituation. The recovery of sociability, with its connections to human reason, obligation and the mediation of individual and national self-interest, offers a new way of framing liberalism as a theory of obligation and other-regardingness as well as a theory of political rights and individualism. The liberal individual is, and can become, a sociable creature whose concerns for his own interests are moderated and informed by his concerns for the well-being and interests of others.

⁸ See for example David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford, Calif.: Stanford University Press, 1995).

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