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Between Locke's *Two Tracts* and the *Essay on Toleration*: Religious Toleration and the Power
of the Magistrate

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Introduction

John Locke's writings on religious toleration and politics have established him as the father of modern liberal thought. Perhaps because of this position, two unpublished essays that Locke wrote in 1660 and 1661, the *Two Tracts*, which argue for the absolute authority of the magistrate in 'matters indifferent,' are seldom discussed in textbook histories of Locke. The *Two Tracts*, which ostensibly argue for absolutism, seem diametrically opposed to Locke's later writings such as the *Essay on Toleration*, which argues that subjects should be able to worship as they wish in speculative matters.

Historians who specialize in Locke's early writings have spilt a lot of ink trying to make sense of the *Two Tracts* in relation to Locke's overall oeuvre. The *Two Tracts* were not fully translated and published in English until 1967 when Phillip Abrams did so. Prior to that, only snippets from the *Preface to the Reader* existed in Peter King's biography of Locke published in 1830.¹ This seriously confused Locke's overall aim in the *Two Tracts*, and Abrams notes that as a result of this Locke's authoritarianism was seriously inflated.²

There is no denying, however, that the *Two Tracts* were authoritarian. Locke asserted in the *Two Tracts* that the magistrate did have the authority to impose 'indifferent matters' in religious worship. 'Indifferent matters' were rites and ceremonies imposed by the church that were not necessary for salvation. The wearing of surplices and setting the time and place of worship were two matters considered 'indifferent' by the Anglican Church. Locke believed that the magistrate had the authority to impose 'indifferent matters,' because he thought doing so was necessary to maintain peace and stability.

¹ Phillip Abrams, introduction to *Two Tracts* by John Locke (Cambridge: Cambridge University press, 1967), 7.

² Abrams, introduction, 9.

The question of how Locke gets from the *Two Tracts* to the *Essay on Toleration* is an interesting one. What is interesting about the relationship between *Two Tracts* and the *Essay on Toleration* is how different they are from each other. Further, any attempt to answer how Locke got from the former to the latter forces one to figure out why Locke wrote the *Two Tracts* in the first place. In attempting to answer how the switch from the *Two Tracts* to the *Essay on Toleration* came about this essay will attempt to say something about Locke's views on religious toleration in general. Specifically, it will suggest that Locke's writings only make sense when taken in light of the political and religious context that Locke was a part of in the 1650's and 1660's. Further, this essay will deemphasize the importance of absolutism in the *Two Tracts*, that is, it will attempt to show that Locke was not solely concerned with absolutism—it was merely a means to an end. Instead, it will show that the importance of the *Two Tracts* lies in what it was supposed to do, namely, achieve peace. Likewise, this essay will attempt to reduce the differences between the *Two Tracts* and the *Essay on Toleration* by suggesting that the *Essay on Toleration*, although it differed in its prescriptive remedy (toleration for dissenters), it did not completely depart from Locke's concern in the *Two Tracts*: maintaining the authority of the magistrate. It will be argued that, just like the *Two Tracts*, the *Essay on Toleration* was a political statement meant to address a specific situation that Locke found himself confronting.³

³ I am grateful for conversations between David R. Hiley, Professor of Philosophy at the University of New Hampshire, and myself concerning the relationship between political actors and political theory. Specifically, it was Hiley's assertion that political theory is politics as much as epistemology i.e. that it is not something that occurs only at the university in the minds of the great thinkers. In an unpublished manuscript Hiley looks at the historical context that Locke was faced with during the writing of *The Two Treatises on Government* to demonstrate the general point. The assertions of this essay concerning the writings of the *Two Tracts* and the *Essay Concerning Toleration* are, in a way, similar. Of course, this essay is not a work of philosophy, and does not seek to make any philosophical claims. Further, although this essay does seek to establish the material conditions that went into Locke's writings of the *Two Tracts* and the *Essay Concerning Toleration*, it does not seek anything beyond that i.e. it does not make any claims about Locke's later writings, or the way in which political theory is constructed in general—only in Locke's case. Nevertheless, had these conversations not occurred, it is likely this topic never would have been undertaken. see David Hiley, "Human Rights and History" (unpublished manuscript), Portable Document Format.

Neither of these works by Locke can effectively be explained without expounding the religious and political atmosphere both before and during the Restoration. Because of this, Chapter 1 focuses on the Restoration period at Oxford where Locke was an undergraduate and masters student. This chapter will show how moderate Presbyterians in Parliament, growing dissatisfaction with the interregnum, and the support of Parliament by the army, helped to secure the Restoration of Charles II and eventually the Anglican Church. However, it will also suggest that because moderates were largely responsible for the Restoration of the King, the debate over the Restoration of the Anglican Church was much more problematic. It was one thing for Presbyterians to vote for the Restoration of Charles II, who promised liberty of conscience to dissenters; it was another thing to restore the Church that had spent decades violently persecuting dissenters. For these reasons, the Restoration of the Anglican Church, its power and its relation to dissenters was of great importance.

The contemporary historian John Marshall argued that Locke's political, moral, and social thought was, at least in part, the result of external influences from political, religious, moral, and social causes which Locke experienced in the late 1660's through the 1690's.⁴ This essay argues similarly with Marshall in the sense that it focuses on concrete historical events rather than the abstract ideas that arose from them. However, this essay is shorter in its breadth and it also seeks to deemphasize the difference between the *Two Tracts* and the *Essay on Toleration*.

Robert Kraynak's article, "John Locke: from Absolutism to Toleration" asserts that Locke believed that absolutism was no different than toleration in theory even though they differed in practice.⁵ Kraynak asserts that Locke switched from absolutism to toleration because

⁴ John Marshall, *John Locke Resistance, Religion and Responsibility* (Cambridge: Cambridge University Press, 1994), vxi.

⁵ Robert P. Kraynak "John Locke: from Absolutism to Toleration" *The American Political Science Review* 74 (1980): 54, accessed March 20, 2013, url: <http://www.jstor.org/stable/1955646>

Locke realized that people were not capable of believing that something could be ‘indifferent,’ that is, even when things actually were ‘indifferent,’ custom and habit caused people to believe that they were not indifferent. In this sense Kraynak focuses on what Locke was attempting to do i.e. quell religious warfare.⁶ This essay will have a similar focus, however, it will look at Locke’s encounters with friends and his time abroad, rather than the differing psychological accounts of humans that Locke gives in the *Two Tracts* and the *Essay on Toleration*.

⁶ Kraynak, “From Absolutism to Toleration,” 60.

Chapter 1

The Restoration at Oxford

The Restoration of Charles II and the Anglican Church was a significant moment in the history of seventeenth-century Oxford. For Oxford, the Restoration meant the possibility of the restoration of many heads of colleges as well as administrators who had been ejected at the end of the English Civil War. For Anglicans, both inside and outside the University, the Restoration signaled the possibility of a return to Anglicanism as the chief religion at the University. Most significantly, Locke believed that the Restoration would usher in an era of peace and stability.

The way in which the Restoration played out at Oxford is significant. The very possibility of the Restoration occurred because of a specific set of circumstances in England. The ultimate failing of the Interregnum to bring peace and stability to the country signaled that change was needed, and the solution might be the restoration of the King. Moderate Presbyterians played an important role in the Restoration. The fact that many moderate Presbyterians became receptive to the idea of the Restoration of Charles II helped secure its success. This was strengthened by support from the army, most notably, general George Monck.

At Oxford as well as the whole of England the role of moderate Presbyterians helped a small group of Anglicans secure a return to the statutes of the University before the commonwealth, and the Restoration of the King and Church. However, the fact that the Restoration of the King was not ushered in because of a large majority of Anglicans meant that the Restoration of the Anglican Church would be more contentious. Moderate dissenters could support the restoration of Charles II if it meant peace and stability in the country, but the restoration of the

Anglican Church carried with it the possibility of a return to the persecutions of dissension that occurred before the English Civil War. It was the ecclesiastical aspect of the Restoration, and the fact that so much was bound up in it, that set the stage for Locke and Bagshaw's debate over ecclesiastical matters, and ultimately, the nature and scope of power of the civil magistrate.

The Restoration of Charles II was a significant moment for the University of Oxford. Those who served to gain the most from the Restoration were the Anglicans who had been expelled or forced to practice in secret during the Interregnum. The Parliamentary victory over Charles I and his Cavalier army had tremendous consequences for the predominantly Anglican university, which supported the Charles I during the English Civil War. Some of these consequences included the ejection of all heads of colleges and administrators. In order to understand the gravity of the Restoration for Oxford one must go back before the Restoration and look at the historical context at the end of the Civil War.

Before the break with the Catholic Church and the secure binding of the King as supreme governor of the Anglican Church the Oxford had oscillated between Royalist and Ecclesiastical leanings for much of its history. Although Henry VIII was largely responsible for the establishment of Christ Church, one of Oxford's most prestigious schools, and the home of John Locke, the University was not fond of the break with Rome.⁷ In fact, Oxford supported Mary when she restored Catholicism in England. Upon Mary's death and Elizabeth's ascension to the throne, the University was incorporated by an act by Parliament to bind it closer to the crown.⁸ This act occurred at the same time that the Queen was named the supreme governor of the Anglican Church by the Act of Supremacy. From the Elizabethan period until the end of the

⁷ H.N. Hawegreaves-Mawdsley *Oxford in the Age of John Locke*. (Norman: University of Oklahoma Press, 1973), 14.

⁸ Hawegreaves-Mawdsley, *Oxford*, 12-13.

English Civil War the University remained a Royalist University.⁹ During the English Civil War Oxford's loyalty to the monarchy was tested, and the results of the test brought significant changes to the University.

In 1642 when Charles I began gathering men and resources for the coming conflict he looked to Oxford for monetary support, as well as a place to house himself and his court.¹⁰ In October of 1642 Charles I made the University his headquarters. Fortifications were built and arms were raised in support of the King.¹¹ In January of 1643 the Courts of Law were set up at Oxford. The Court of Chancery was set up in the New Convocation house, and the Court of Requests was set up in the Natural Philosophy School. A mint was also set up at the University in the same month, and all the colleges and halls were required to bring their plate to the mint so it could be used for coinage.¹²

The University first took up arms in support of the King in August of 1642.¹³ Members of the University appeared enthusiastic in their training and preparation for conflict. The antiquarian, Anthony Wood (1632-1695), who was born at Oxford and came of age during the Civil War had his early education disrupted by the Civil War, a fact reflected in his histories of Oxford as well as his diary. Wood was matriculated by Merton College in May of 1647.¹⁴ Recalling the general attitude and enthusiasm of many of Oxford's students during the war,

⁹ Hawegreaves-Mawdsley, Oxford, 14.

¹⁰ Ian Roy and Dietrich Reinhart, "Oxford and the Civil Wars." in *The History of the University of Oxford* vol. 4. ed. Nicholas Tyacke (Oxford: Clarendon Press), 713.

¹¹ Anthony Wood. *The Life and Times of Anthony Wood, Antiquary of Oxford, 1632-1695, Described by Himself*, comp. Andrew Clark (Oxford: Clarendon Press, 1895), 72, accessed May 7, 2013 http://books.google.com/books/about/The_life_and_times_of_Anthony_Wood_descr.html?id=HiYVAAAQAAJ

¹² Proposals for monetary support were approved on the July 11, and on that same day payments were made from the University to the king. Although it is unclear precisely how the loan from Oxford was made up (not all of the individual contributors can be identified solely from the college accounts) the king was able to acquire L10, 677 14s 3d for his war chest. See Ian Roy and Dietrich Reinhart, "Oxford and the Civil Wars." in *The History of the University of Oxford* vol. 4, ed. by Nicholas Tyacke (Oxford: Clarendon Press, 1997), 80.

¹³ Wood, *Life and Times*, 51.

¹⁴ Graham Parry, "Wood, Anthony (1632–1695)," in *Oxford Dictionary of National Biography* (Oxford: Oxford University press, 2004), accessed 29 April 2013, <http://www.oxforddnb.com/view/article/29864>.

Wood wrote that “some of them were so besotted with the training and activitie and gayitie therein of some yong scholars, as being in a longing condition to be one of the traine, that they could never be brought to their books againe.”¹⁵ The University and her students were more than just passive observers in the affair. Oxford was, in a very real way, actively involved in the English Civil War.

Despite the efforts made by the Cavaliers at Oxford, the Parliamentarians eventually triumphed. On June 24, 1646, the garrison at Oxford, the King’s main stronghold at Oxford and the place where he had spent most of his time during his stay at the University, was surrendered.¹⁶ The king himself, however, was able to flee Oxford before the surrender and thereby evaded capture, at least for a time.¹⁷

Just after the surrender of Oxford, Anthony Wood noted that six Presbyterian preachers were sent from Parliament to, “settle their doctrine there.”¹⁸ The doctrine was an oath of submission to Parliament. There was some initial resistance to the preachers at the Royalist University, but it was not enough to deter the ‘visitors.’ Wood wrote that in 1648 members of the colleges were summoned on certain days. They were forced to either give a positive answer—to submit to the new doctrine—or be ejected from the University.¹⁹ Students who did not submit suffered a similar fate. Wood cited several of his contemporaries who were expelled for not submitting.²⁰

The Parliamentarians’s victory drastically altered the make-up of the University. With the expulsion of those that refused to submit to the Parliamentary visitors and the matriculation of

¹⁵ Wood, *Life and Times*, 53.

¹⁶ Wood, *Life and Times*, 128.

¹⁷ Hawegreaves-Mawdesley, *Oxford*, 19.

¹⁸ Wood, *Life and Times*, 128.

¹⁹ Wood, *Life and Times*, 141.

²⁰ Wood, *Life and Times*, 134.

new non-Anglican students, Oxford changed quickly. Wood wrote that by 1648 the University was divided into Presbyterians and Independents. Their differences seemed to be a matter of degree rather than serious differences over theology. Wood described the former as severe in their course of life and preaching nothing but damnation, while the latter were less severe and spoke for liberty. Although Wood is vague in what he meant by liberty, it is probable that he was referring to liberty of conscience in religious worship, which the dean of Christ Church, John Owen (1616-1683) was a proponent of.²¹ Despite their differences, the two groups were similar in their distaste for Royalists. According to Wood, “when occasion served they would both joyne against the Royallists, whom they stiled ' the common enemy.'”²² The Royalists had gone from being a powerful majority to the minority. Although not all Royalists were Anglican, many Anglicans were themselves Royalists because of the fact that the Anglican Church was so tightly bound to the crown.

The religious conflict at Oxford was similar to the religious conflict occurring throughout the country. A full discussion of the complex religious environment in England is not possible here, but a few things are worth noting. The sheer number of diverse religious groups meant never-ending disagreements, which manifested itself even within well-defined religious groups. This creates difficulties for historians trying to categorize these different groups in order to make sense of what was happening.

There were many issues when attempting to distinguish between different religious sects. Michel Winship notes that Restoration Historians have often treated words like puritan as static terms when in fact they are fluid ones.²³ Further, those actors in the past often made distinctions

²¹ Maurice Cranston, *John Locke* (New York: Macmillan, 1957), 39.

²² Wood, *Life and Times*, 148.

²³ Michael Winship, “Defining Puritanism in Restoration England: Richard Baxter and Others Respond to “A Friendly Debate” *The Historical Journal* 54(2011): 690. JSTOR (<http://www.jstor.org/stable/23017268>)

between themselves and other groups in a fluid way. Often times Quaker and Anabaptist would be used as more of a pejorative word than to denote any specific religious sect.

There are at least three major distinctions to be made that are, more or less, unproblematic. Anglicans are the first major group and consisted of anyone who conformed to the Anglican Church. The second group would be those who dissented from the Anglican Church. Presbyterians and Calvinists would fall under this category. The third group, which is arguably a subset of the second group, would be the more radical dissenters such as Quakers and Anabaptists.²⁴ Although Quakers and Anabaptists played an important role in the Restoration period, the relationship between Anglicans and Presbyterians is of greater concern.

The Anglican Church was similar to the Catholic Church it severed itself from during Henry VIII's reign in the early sixteenth century. The Anglican Church was characterized by its uniformity and hierarchical nature.²⁵ The Book of Common Prayer was required throughout the

²³ Historians might find the idea of limiting the survey to three broad groups insufficient. For instance, this seems to leave out discussion of Anabaptists.

²⁴ The decision to make this distinction was largely influenced by C. John Sommerville's "Anglican, Puritan, and Sectarian in Empirical Perspective" *Social Science History* 13 (1989): 110. JSTOR (<http://www.jstor.org/stable/1171258>) He notes that that the most popular Anglican works were concerned with subjects of the sacraments, the duty of obedience to god, love for others, the character of God, continuing repentance, the control of one's thoughts, the duty of worship, and the duty of reliance on god. Sommerville notes further that Anglicans were concerned with the 'mundane' duties and social imperatives related to religion rather than the terror and wonder expressed by the other two groups (especially the dissenters). Dissenters tended to focus on conversion, the happiness of the converted, control of one's thoughts, the character of God, the unhappiness of the ungodly, and death, explains Sommerville. He notes that there is a much larger emphasis on spiritual transformation on the part of the dissenters rather than duties as was the case with the Anglicans.

The Quakers differed largely from the dissenters as well as the Anglicans in individual categories, according to Sommerville. He notes that the Quakers were primarily concerned with the subjects of conversion, god's judgments on England, the Holy Spirit, religious ministry, and the authority of individual inspirations.

²⁵ Queen Elizabeth I "Elizabeth's Act of Uniformity (1559)" in *Documents Illustrative Of English Church History* edited by Hardy, Gee, Hardy, Henry, and Hardy John William (New York: Macmillan, 1896) Hanover Historical Texts Project (<http://history.hanover.edu/texts/engref/er80.html>) see also Queen Elizabeth I "Elizabeth's Act of supremacy (1559)" in *Documents Illustrative Of English Church History* edited by Hardy, Gee, Hardy, Henry, and Hardy John William (New York: Macmillan, 1896) Hanover Historical Texts Project (<http://history.hanover.edu/texts/engref/er79.html>)

church, and the structure and governance of the church was laid out in the thirty-nine articles of the Church of England.²⁶

Dissenting groups/churches are much harder to define. The most important distinction, however, is the influence that the Reformation on the continent of Europe had on dissenting groups in England. This is not to say that the Anglican Church was unaltered by the Reformation, but those who dissented from the Anglican Church were more strongly influenced by it. The most significant difference between the two, brought about, at least in part by the Reformation, stemmed from the nature of Anglican Church governance itself. Although Anglicans did believe that it was solely through faith that one was saved, they also believed that the Church could decree rites and ceremonies in matters of religious worship that were not necessary for salvation.²⁷ The belief amongst many dissenters that Christians were entitled to liberty of conscience clashed with the notion of clerical hierarchy and church authority that was central to the Anglican Church in the mid-seventeenth century. Further, the emphasis on clerical hierarchy in the Anglican Church was a trait it shared with Rome. Dissenters often criticized the Anglican Church for its ‘Romish Character.’

The stress the Anglican Church put on clerical hierarchy and uniformity within the Anglican Church is one explanation for why Anglican Church often crushed dissent in violent ways. William Laud (1573-1645), Archbishop of Canterbury, exemplified the emphasis on uniformity and hierarchy (he was responsible for the placement of churchmen in high positions of power in the state),²⁸ as well as the severity with which the Church dealt with Dissenters. Alexander Leighton, a doctor of divinity, was one of those Dissenters who felt the full wrath of

²⁶ “Thirty nine articles of the Church of England” Anglicans Online, accessed May 7, 2013, http://anglicansonline.org/basics/thirty-nine_articles.html. See also Edward Welchman, ed., “The Thirty-nine Articles of the Church of England” (London: Gilbert and Rivington, 1842). Google eBook.

²⁷ This was stated in Article Twenty of the “Thirty-nine Articles of the Church of England.”

²⁸ Stephen Neil, *Anglicanism* (New York: Oxford, 1978), 102.

Laud. Leighton was sentenced to pay a large sum of money, whipped, and have his ears cut off, amongst other things, after he wrote and published a controversial book that was considered seditious.²⁹

The animosity between Anglicans and Dissenters, Parliamentarians and those loyal to the King, meant that those who were loyal to the King would be ejected from the Oxford. However, it also meant that those who were loyal to Parliament, who were very often Presbyterians or Independents, would replace them. At Christ Church, John Owen, the chaplain of none other than Oliver Cromwell, became dean.³⁰ Wood described Owen as an Independent rather than a Presbyterian. Maurice Cranston writes that Owen was not concerned with persecuting Anglican worshippers who practiced in private.³¹ Despite Owen's somewhat liberal leanings one can imagine the impact that the replacement of the Royalist heads of the University with those loyal to Parliament had on the political leanings of the University. The impact became especially strong when it was coupled with the number of students who resigned or were expelled from the University after the Civil War (Christ Church alone lost seventy students).³²

For Royalist Anglicans, the changes that occurred at Oxford were nothing short of radical. The once Royalist Anglican-dominated school was now forcibly brought over to the Parliamentary side. For those Royalists who had refused to take the oath of submission to Parliament, the future must have looked bleak. Likewise, those who now had to hide their faith or risk their own ejection must have looked at the state of things with a somber view.

²⁹ John Rushworth, "Historical Collections: 1630," *Historical Collections of Private Passages of State: Volume 2: 1629-38*. British History Online (<http://www.british-history.ac.uk/report.aspx?compid=74895&strquery=alexander%20leighton>).

²⁹ Neill, *Anglicanism*, 150. See also William Laud "The Arch-bishop of Canterburie his speech, or, His funeral sermon preached by himself" 1645. EEBO (http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:110234:2)

³⁰ Cranston. *John Locke*, 30.

³¹ Cranston, *Locke*, 32. See also Wood, *Life and Times*, 148.

³² Cranston, *Locke*, 30.

All was not lost for the Anglican cause at Oxford during the Commonwealth, though. R.A. Beddard notes that Anglicans formed a discreet group that maintained the principles of the Civil War University. The group was made up largely of students and members of the colleges who had been ejected after the English Civil War. The most notable member was John Fell, son of Samuel Fell, the ejected dean of Christ Church. Beddard notes that the group was integral in keeping the liturgy of the church alive, recruiting Anglican Ministers in the University, spreading Cavalier Anglican Propaganda, and providing a steady stream of Royalist funding.³³

The importance of certain influential figures in bringing Oxford back to its pre-civil war years cannot be overstated. Beddard writes that a crucial event at the University was the election of Edward Hyde (1609-1674) in 1660 as Lord Chancellor of England, as chancellor of the University of Oxford. Hyde's importance lay in his connections outside of the University. Beddard notes that Hyde was one of the outstanding English statesmen in the seventeenth century, and in accepting his position, he stated his commitment to increasing the friends of the University.³⁴ Although Hyde was sympathetic to Presbyterians, attempting to gain concessions for them when the Act of Uniformity was passed, he was, nevertheless, crucial in the Restoration of the King and Anglican Church in its early stages.

Edward Hyde is illustrative of how the Anglicans came to power at the University. It was not through numerical strength that the Anglicans succeeded in getting back so much of what they had lost. It was the Anglican's ability to remain a tight knit group, establish important connections outside of the University, and the growing dissatisfaction the populace felt towards the Commonwealth, that allowed them to secure power.

³³ R.A. Beddard, "Restoration Oxford," in *The History of the University of Oxford vol. 4*. Ed. Nicholas Tyacke. (Oxford: Clarendon Press, 1997), 806.

³⁴ Beddard, "Restoration Oxford," 818.

Moderate Presbyterians at Oxford helped the Anglican agenda. Beddard writes that fanatical attacks on universities in 1659 helped push Presbyterians into closer alliance with those who supported the Church of England.³⁵ Wood notes several authors who argued that universities should be annulled and have their lands taken away.³⁶ These attacks on academia only further pushed Presbyterians, who attended or were employed by universities, away. Along with this (or perhaps because of this) many moderate Presbyterians were simply weary of the Interregnum and wanted political and ecclesiastical stability. If stability was only possible through the acceptance of bishops and liturgy, many Presbyterians were willing to go ahead with it, according to Beddard.³⁷ Presbyterians did expect, and were promised, liberty of conscience in religious worship by Charles II, and this undoubtedly made them more inclined to accept the Restoration of the King and, later, the Anglican church.

The role of moderates in the Restoration as a whole was important as well. General George Monck's (1608-1690) expulsion of those in the New Model Army whom he thought were not loyal to parliament is an important example. The ejection of more fanatical leaders in the army decreased the threat of the army forcibly dissolving Parliament if they did not agree with the decisions that the legislative body made.

General George Monck, who expressed his support for Parliament, was almost single handedly responsible for the possibility of the Restoration of the King and Church of England. Monck was not necessarily for or against the Restoration of the King or the Anglican Church. However, his support of Parliament as a legislative body was a crucial factor in the Restoration of the King and Church. Monck's ability to prevent the expulsion of the Rump Parliament

³⁵ Beddard, "Restoration Oxford," 811.

³⁶ Wood, *Life and Times*, 294.

³⁷ Beddard, "Restoration Oxford," 811.

allowed for the Rump Parliament to dissolve itself and call for new elections. The “New Parliament” was much more receptive to the idea of the Restoration of the King and the Church.

Monck and the “New Parliament” signaled a paradigm shift. The significance of the two did not lie in the fact that either were radical Anglicans bent on restoring the Charles II; rather their significance was that they were not radical. Royalist Anglicans did not make up the majority of the “New Parliament” (though they did represent a portion of it); however, neither did Radical Presbyterians who would have scoffed at the possibility of the Restoration of the King and Church. Although no one knows for certain, Davies conjectures that perhaps 90 percent of the “New Parliament” was in favor of restoring the monarch. Even stronger, Francesco Giavarina, a Venetian resident living in London and reporting on the affairs of Parliament and England during the Restoration wrote, “the numbers of those who in the last parliament were so stiff against the king is insignificant, and although there are many Presbyterians, they are not among the most austere, so hopes are high for the return of his Majesty”³⁸ The election of Moderate Presbyterians greatly increased the possibility of reconciliation, and the Restoration of the King and Church.

In 1660 Charles II gave his declaration at Breda promising a pardon to anyone who asserted their loyalty within forty days, as well as religious toleration in matters of worship. Charles declared, “The times have produced several opinions in religion, by which men are engaged in parties and animosities against each other...we do declare a liberty to tender consciences.”³⁹ The declaration was accepted by the “New Parliament.” Monck supported the decisions by Parliament, and Giavarina recalled that, “he [Monck] at once communicated it to

³⁸ Allen Hinds, ed., “Venice: May 1660,” *Calendar of State Papers Relating to English Affairs in the Archives of Venice, Volume 32: 1659-1661*. British History Online, (<http://www.british-history.ac.uk/report.aspx?compid=90056>).

³⁹ Charles II, “Declaration at Breda 1660,” EEBO (http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:179346)

the officers and whole army, issuing a declaration of the army recognizing the king and promising him obedience.”⁴⁰ The fact that Monck supported Parliament and believed that the army should be subordinate to Parliament was crucial in the acceptance of the Declaration of Charles II.

Charles II’s promise of liberty of conscience in the Declaration at Breda made his Restoration less problematic than the Restoration of the Anglican Church. A series of questions concerning the relationship between a restored Anglican Church and those who dissented from it would have necessarily arisen—most importantly, how would the restored Church deal with dissent? The Anglican Church held immense power before the Interregnum. Surely, the intolerance and fierce persecution by the Anglican Church before the Civil War would have made dissenters weary of restoring the Anglican Church.

Despite the uncertainty of a restored Anglican Church, when the “New Parliament” recalled Charles II the mood at Oxford was one of great celebration. Not only did Royalist Anglicans have reason to celebrate, but moderate Presbyterians who had accepted the Restoration of Charles II as a means to achieve peace did as well. Wood recorded that bells were rung and bonfires were made “and some rumps or 2 tayles of sheep were flung into a bonfire at Qu. coll. gate.”⁴¹ Apparently people also threw some rumps at the window of Dr. John Palmer, because “He had been one of the rump parliament, and a great favourite of Oliver.”⁴² If the Royalist sentiment was not felt before the Restoration of the Monarchy it certainly was during it.

The restoration of those who had been expelled from Oxford in 1648, and the reinstatement of the statues that had governed the University prior to the Civil War was a

⁴⁰ Allen Hinds, ed., “Venice: May 1660,” *Calendar of State Papers Relating to English Affairs in the Archives of Venice*, Volume 32: 1659-1661. British History Online, (<http://www.british-history.ac.uk/report.aspx?compid=90056>).

⁴¹ Wood, *Life and Times*, 304.

⁴² Wood *Life and Times*, 304.

significant victory for the Anglicans and Royalists.⁴³ Wood wrote that Parliament ordered that the chancellors of the University see that the statutes which governed Oxford prior to the English Civil War be restored, and those that had been unjustly been put out of their headships, fellowships, and offices be restored according to those statutes.⁴⁴ Although some members who were formerly expelled could not be restored (reasons ranged from death, to marriage, to conversion to Catholicism) many fellows and heads of colleges were reinstated. This was the responsibility of Parliamentary visitors, once again. Although there was some contention with the visitors, Wood asserted that everything went much smoother than it had when the Presbyterian visitors had come to the University twelve years earlier.⁴⁵

The Election of the “New Parliament” and the Restoration of Charles II would eventually culminate in the Restoration of the Anglican Church in England and Oxford. Wood wrote that after the “New Parliament” was called nearly everything at Oxford was restored. The Book of Common Prayer was reinstated as well as the surplice. Items that had been associated with Monarchy and defaced were also refurbished and restored.⁴⁶ The University had made nearly a completely about face in the span of not much longer than a decade.

Oxford was a microcosm of what was happening in England. It was not that everyone in the nation or at Oxford suddenly became Cavalier Anglicans overnight. The Commonwealth’s failure to bring stability to the country after English Civil War caused many moderate Presbyterians to consider recalling the King. At Oxford, it was the relentless attacks on learning from radicals that pushed many Presbyterians over to the Cavalier side. This allowed a tightknit,

⁴³ Anthony Wood, *The History and Antiquities of the University of Oxford Vol. 2*, trans. John Glutch (Oxford: Printed for the editor, 1792), 699. GALE (<http://find.galegroup.com/ecco/infomark.do?&source=gale&prodId=ECCO&userGroupName=durh54357&tabID=T001&docId=CW101301824&type=multipage&contentSet=ECCOArticles&version=1.0&docLevel=FASCIMILE>)

⁴⁴ Wood *History of Oxford*, 699.

⁴⁵ Wood, *History of Oxford*, 701.

⁴⁶ Wood, *History of Oxford*, 698.

conservative, and well-structured group of Anglicans to challenge the Commonwealth's legitimacy and argue that the Restoration of the King and Church was the path to peace.

The restoration of the King offered a glimmer of hope to Anglicans and some Presbyterians. The Restoration of Charles II signaled the possibility for peace and stability after decades of conflict. This was as true in England as it was at Oxford. The replacement of radical Presbyterians with more moderate Presbyterians in Parliament, coupled with support by the army, secured the success of the Restoration of the Charles II. The Restoration of the Anglican Church of was a different matter. All religious sects had a stake in the restoration of the Anglican Church. Just what the nature of the Church would be in relation to dissenters was a crucial matter. It is here that Locke and Edward Bagshaw enter into their debate over 'matters indifferent' and the ultimate power of the magistrate in religious matters.

Chapter 2

In Necessary Things, Unity; in Doubtful Things, Liberty; in All Things, Charity: The Locke-Bagshaw Debate

For Locke, the debate over ‘indifferent matters’ was more than just a debate over whether the magistrate had the power to impose rites and ceremonies that were not necessary for salvation in divine worship. The *Two Tracts*, written in 1660, were born out of a highly polemical environment in which one’s opinion on ‘indifferent matters’ could have drastic results. Locke was not concerned solely with abstract concepts; rather he was concerned with the immediate concerns of the Restoration period, especially the re-establishment, and the stability of the Anglican Church. Locke’s principal interest was not composing a theoretical framework to deny liberty and argue for absolutism. Rather, Locke was interested in providing a prescriptive judgment on how to solve the religious strife that was plaguing England. Locke thought that uniformity throughout the church was vital for peace. For Locke, achieving uniformity relied on the authority of the magistrate to impose ‘indifferent matters’ in divine worship.

Adiaphora (or indifferent matters)⁴⁷ as they related to the Church of England were religious rites and ceremonies imposed in divine worship that did not affect a subject’s salvation. The wearing of the surplice, for instance, was not a practice that was necessary for a minister’s salvation, but it was still imposed upon subjects by the magistrate. The reasons for imposing such rites or ceremonies were varied and ranged from the desire for uniformity in the church, to the expression of the power of the King in Parliament as head of the church.

⁴⁷ Although *Adiaphora* is a larger philosophical concept regarding the moral value of actions, here it will be used interchangeably with ‘indifferent matters’ and will only refer to ceremonies and rites imposed by the church that were not necessary for salvation.

The debate over *adiaphora* had its origins in the beginnings of the Anglican Church. In July of 1536, an agreement was made in the “Ten Articles” of the English Church. The first five articles concerned faith. Things that were ordered by scripture, in order to achieve salvation, were laid out in these articles. For instance, the articles stated “that the sacrament of baptism was instituted and ordained in the New Testament by our Saviour Jesus Christ, as a thing necessary for the attaining of everlasting life.”⁴⁸ Baptism was not something that was optional; it was necessary for salvation.

The last five articles concerned ceremonial practices. These were practices that the priests would teach the people, but the observation of such ceremonies were not necessary for salvation. Regarding the worshipping of the saints the articles stated “that all bishops and preachers shall instruct and teach our people [that] salvation, cannot be obtained but of God only, by the mediation of our Saviour Christ; yet it is very laudable to pray to saints in heaven, whose charity is ever permanent to be intercessors.”⁴⁹ Although praying to the saints was not necessary for salvation it was still encouraged.

It was the last five articles that were disputed. If these things were not necessary for salvation could people be compelled to observe them? Early on, in the days of Henry the VIII, when the Church had yet to distinguish itself fully from the Catholic Church, the gravity surrounding ceremonial practices was minimal. As Reformation thought began to influence and conflict with the Anglican Church’s teachings, the controversy became more significant.

⁴⁸ Thomas Fuller ed. “The Sacrament of Baptism” *The Church History of Britain, From the Birth of Jesus Christ until the Year 1648* (Oxford: Oxford University Press, 1837), 145, accessed May 7 2013, http://books.google.com/books/about/The_Church_history_of_Britain.html?id=ZVYEAAAAQAAJ .

⁴⁹ Thomas Fuller ed. “Of Praying to Saints” Ibid *The Church History of Britain, From the Birth of Jesus Christ until the Year 1648* (Oxford: Oxford University Press), 153, accessed May 7 2013, http://books.google.com/books/about/The_Church_history_of_Britain.html?id=ZVYEAAAAQAAJ .

Different interpretations of the bible would challenge the authority of imposing practices that were not explicitly laid down in scripture.

The Thirty-Nine Articles of the English Church were given royal assent in 1571.⁵⁰ The Thirty-Nine Articles were similar to the Ten Articles, because they included things necessary and not necessary for salvation.. Article XX, asserting the power of the Church to decree in ‘indifferent matters’ stated,

The Church hath power to decree Rites or Ceremonies, and authority in Controversies of Faith: and yet it is not lawful for the Church to ordain any thing that is contrary to God's Word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of Holy Writ, yet, as it ought not to decree any thing against the same, so besides the same ought it not to enforce any thing to be believed for necessity of Salvation.⁵¹

This article established the authority of the Church to impose matters in divine worship. The problem was whether there was anything ‘indifferent.’ The surplice, for instance, was not grounded in scripture, yet the church did decree that ministers wear it. Likewise, the use of the common prayer book was contested because it contained ancient prayers not contained in the bible.⁵² Some theologians, such as Thomas Cartwright, believed that anything that was not specifically put down in scripture could not be imposed.⁵³

⁵⁰ “Thirty nine articles of the Church of England,” Anglicans Online, accessed May 7, 2013, http://anglicansonline.org/basics/thirty-nine_articles.html.

⁵¹ “Thirty nine articles of the Church of England,” Anglicans Online, accessed May 7, 2013, http://anglicansonline.org/basics/thirty-nine_articles.html.

⁵² Mark Chapman *Anglicanism: A very short introduction* (Oxford: Oxford University Press, 2006), 39. EBRARY (<http://libproxy.unh.edu/login?url=http://site.ebrary.com/lib/unh/Top?id=10180290>).

⁵³ Chapman, *Anglicanism*, 38.

Article XXXIV was ambiguous because it allowed for diversity in worship and seemed to be opposed to article XX. The article stated,

it is not necessary that Traditions and Ceremonies be in all places one, or utterly like; for at all times they have been divers, and may be changed according to the diversity of countries, times, and men's manners, so that nothing be ordained against God's Word.

Every particular or national Church hath authority to ordain, change, and abolish, Ceremonies or Rites of the Church ordained only by man's authority, so that all things be done to edifying.⁵⁴

This article was meant to account for the different cultures or traditions that the Church might encounter when proselytizing. This article seems to suggest that individual churches or ministers would have the power to abolish ceremonies or rites ordained by man's authority, but that conclusion would be misleading. As article XX stated, it was the authority of the Church to decree 'indifferent matters' not a rite of local churches or parishes. Nevertheless, the two articles were controversial.

The Act of Uniformity⁵⁵ and the Act of Supremacy,⁵⁶ enacted in the same year as the thirty-nine articles, decreed that ministers use the Book of Common Prayer, and named Elizabeth

⁵⁴ "Thirty nine articles of the Church of England," Anglicans Online, accessed May 7, 2013, http://anglicansonline.org/basics/thirty-nine_articles.html.

⁵⁵ "Singular ministers in any cathedral or parish church, or other place within this realm of England, Wales, and the marches of the same, or other the queen's dominions, shall from and after the feast of the Nativity of St. John Baptist next coming be bounden to say and use the Matins, Evensong, celebration of the Lord's Supper and administration of each of the sacraments, and all their common and open prayer, in such order and form as is mentioned in the said book" see Elizabeth I "Elizabeth's Act of Uniformity 1559" in *Documents Illustrative Of English Church History* edited by Hardy, Gee, Hardy, Henry, and Hardy John William New York: Macmillan, 1896. Hanover Historical Texts Project. <http://history.hanover.edu/texts/engref/er80.html>

⁵⁶ Bishops and ministers were compelled to swear "I, A. B., do utterly testify and declare in my conscience that the queen's highness is the only supreme governor of this realm and of all other her highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes as temporal, and that no foreign prince, person, prelate, state, or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm", see Elizabeth I, "Elizabeth's Act of Supremacy 1559.")" in *Documents Illustrative Of*

as the supreme governor of the Anglican Church, respectively. These acts were a clear attempt to maintain uniformity throughout the Church of England, and assert the power of the magistrate as the head of the Anglican Church.

The ultimate question was how to prove whether the magistrate did or did not have such authority to impose indifferent matters in divine worship. The answer lay, at least in part, in scripture. The problem with relying on scripture, however, was the ambiguity with which one derived the authority for or against *adiaphora*. *Adiaphora* could be both supported and denied through scripture. Debates grounded in scripture were more like biblical gymnastics than anything else.

It would be a mistake, however, to assume that the only thing at stake in the debates over *adiaphora* was biblical interpretation. The debate over *adiaphora* was intimately tied in with the relationship between the magistrate and the Church as well as the need to establish uniformity amongst followers of the Church. Because of this, Locke and Bagshaw's debate over *adiaphora* in the late 1650's and early 1660's evolved into an argument over the nature and scope of the government.

The debate over *adiaphora* was deeply intertwined with the authority of the King in Parliament as the head of the Church of England. We can look once again at Elizabethan period for examples. The Act of Supremacy named Elizabeth as the supreme governor of the Church of England.⁵⁷ To assert that in 'indifferent matters' subjects should be able to choose how they worship not only challenged the Anglican interpretation of the bible, but it also challenged the

English Church History edited by Hardy, Gee, Hardy, Henry, and Hardy John William (New York: Macmillan, 1896). Hanover Historical Texts Project, (<http://history.hanover.edu/texts/engref/er79.html>).

⁵⁷ Queen Elizabeth I "Elizabeth's Act of supremacy (1559)" in *Documents Illustrative Of English Church History* edited by Hardy, Gee, Hardy, Henry, and Hardy John William New York: Macmillan, 1896. Hanover Historical Texts Project (<http://history.hanover.edu/texts/engref/er79.html>).

Interestingly enough this was a different title than her father held which was the supreme head of the Church of England *see* Chapman, *Anglicanism*, 32.

authority of the King (or Queen) as the head of the Church of England. It was never a question whether the King in Parliament had the power to legislate contrary to the word of scripture. The contention was whether they had the authority in religious matters that were not explicitly grounded in scripture. Some feared, including Locke, that denying the authority of the Magistrate in ‘indifferent matters’ was a slippery slope that would lead to the denial of the authority of the magistrate in civil matters as well.

The theologian Richard Hooker (1553-1600) was an influential figure in the debate over ‘indifferent matters.’ One of the interesting things that he did was to ground his argument first in a philosophy of law and then discuss the debate over ‘matters indifferent.’ Mark Chapman explains that Hooker tried to refute the claim that all laws were derived from god. Hooker believed that there were some laws that were derived from reason rather than revelation.⁵⁸ Hooker then applied this philosophy of law to other matters such as the matters of the church. Hooker wrote, “the church hath authority to establish that for an order at one time which at another time it may abolish, and in both may do well...Laws touching matter of order are changeable, by the power of the church; articles concerning doctrine not so.”⁵⁹ Hooker recognized that the Church could not change matters directly derived from scripture, but in ‘indifferent matters’ the Church did have authority to act and abolish as it pleased.

In the *Two Tracts*, Locke echoes Hooker in many ways, most importantly, the shifting away from biblical interpretation to a debate over law. Chapman argues that Hooker’s ideas reflected a convergence point of many competing ideas including stoic natural law tradition and the Augustinian emphasis on the need for government remedy for human sin. Chapman says that

⁵⁸ Chapman, *Anglicanism*, 43.

⁵⁹ Richard Hooker “The Laws of Ecclesiastical Polity” Mark Chapman, *Anglicanism: A Very Short Introduction* (Oxford, Oxford University Press, 2006) 43. EBRARY (<http://libproxy.unh.edu/login?url=http://site.ebrary.com/lib/unh/Top?id=10180290>).

what united all of these ideas was the belief that uniformity under the monarch is central.⁶⁰ In Locke, we see the same concern for uniformity and the necessity of law and government to quell unrest.

The debate over ‘indifferent matters’ resurfaced in the mid 1650’s. A key person in the rekindling of the debate was Henry Jeanes (1611-1662), a Church of England clergyman who defended Presbyterianism.⁶¹ Jacqueline Rose notes that there is no clear explanation why Henry Jeanes, in 1657, decided to respond to a decade old attack on the directory of worship, which replaced the Book of Common Prayer.⁶² It is peculiar that Jeanes would have felt compelled to defend something that was not an immediate threat. Given that it was 1657, before the death of Cromwell and the dissolution of the commonwealth, the return of the King and the Church of England was not as significant as it would be in a couple of years. In either case, Rose notes Jeanes echoed many of the arguments that had been previously been put forth in earlier generations.

Although the debate over *adiaphora* during the Restoration was far from new it was still significant. By the time the debate over *adiaphora* resurfaced during the Restoration, it had been debated for over a century. As Rose notes, for this reason, many of the arguments that were brought forth during the Restoration were really just regurgitations of past arguments. Although that fact seems to discount the importance of the debate over ‘indifferent matters,’ when the Restoration started to become a real possibility, non-conformists and Anglicans would have had a vested interest in making a successful argument one way or another. For Anglicans, it meant the

⁶⁰ Chapman, *Anglicanism*, 44.

⁶¹ J. William Black, ‘Jeanes, Henry (1611–1662),’ in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004) accessed 21 April 2013 <http://www.oxforddnb.com/view/article/14677>.

⁶² *The Directory of the Publick Worship of God* replaced the Book of Common Prayer used by the Church of England. See Jacqueline Rose, “John Locke ‘Matters Indifferent’, and the Restoration of the Church of England” *The Historical Journal* 48 (2005): 608, accessed February 15, 2013, 606. JSTOR <http://www.jstor.org/stable/4091715>

possibility of the full Restoration of the Anglican Church. For non-conformists, it meant the possibility of liberty of conscience in religious worship.

Edward Bagshaw (1629/30-1671) was an extreme Calvinist. He was educated first at Westminster, and after, elected to a studentship at Christ Church in May of 1646 and matriculated on February 1, 1647. Bagshaw graduated with a B.A. in 1649 and an M.A. in 1651. In 1656 he was appointed second master at Westminster under his old school master Richard Busby. The two had difficulty getting along, and in 1658, Bagshaw was expelled from his position. Bagshaw returned to Oxford after his expulsion.⁶³ Bagshaw penned *The Great Question* shortly after his return.

Bagshaw argued in his pamphlet that the magistrate did not have the authority to impose ‘indifferent matters’ in divine worship, because it conflicted with Christian liberty of conscience. Bagshaw further argued that it was against Christian doctrine for a Christian magistrate to go against one’s liberty;⁶⁴ it was directly against gospel precepts to do so;⁶⁵ it was contrary to Christian practice; and, there were various inconveniences that attended such practices.⁶⁶

Locke did not pen the *Tracts* until 1660, a couple of years after the debate resurfaced. The *Tracts* were two separate works, one in English and one in Latin. Neither *Tract* was published.⁶⁷ The English tract was written sometime late in 1660 and was a direct response to Bagshaw’s pamphlet *The Great Question Concerning Things Indifferent*. On the letter at the end of the English tract Locke wrote December 11, 1660, so it is reasonable to assume that he

⁶³ N. H. Keeble, ‘Bagshaw, Edward (1629/30–1671)’ in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), accessed 2 May 2013, <http://www.oxforddnb.com/view/article/1044>.

⁶⁴ A fundamental concept for Bagshaw was the idea that Christian’s had freedom of conscience see Bagshaw, *The Great Question*, 2.

⁶⁵ Bagshaw is saying only that it is against scripture for the magistrate to impose ‘indifferent matters’ in divine worship on their subjects. He is not saying that indifferent matters do not exist in scripture. Some, though rare, did believe that there were no indifferent matters in scripture see Chapman, *Anglicanism*, 38.

⁶⁶ Edward Bagshaw, *The Great Question*, 2-10.

⁶⁷ The names currently used are those given by Abrams when he translated and published them. See Philip Abrams, introduction to *Two Tracts on Government*, by John Locke (Cambridge: Cambridge University Press, 1967), 4.

composed the English tract shortly before that.⁶⁸ Likewise, Edward Bagshaw's pamphlet *The Great Question Concerning Things Indifferent*,⁶⁹ which the English *Tract* was a response to, was not published until September of the same year, so unless Locke had read it before it was published then it is likely Locke did not begin work on the English *Tract* until after Bagshaw's publication.⁷⁰

Locke's Latin *Tract* was penned sometime in 1661-2, and was the theoretical framework that developed out of the English *Tract*. Bagshaw was not mentioned in the Latin *Tract*. Much the same as the English *Tract*, the Latin *Tract* lacks in originality. The influence of Locke's contemporary Robert Sanderson is strong in the Latin *Tract*, and Philip Abrams notes that many sections of the Latin *Tract* are near exact copies of sections of Sanderson's lectures.⁷¹

It is unclear if Locke knew Bagshaw personally. It is possible the two knew each other, given that Bagshaw was a student of Christ Church at the same time Locke was a student there, but no correspondences between the two exist. Further, because Locke never published the *Two Tracts*, it is possible that Bagshaw was never aware of them. With the exception of the English *Tract* it is not clear whether Locke or Bagshaw were responding to each other. Neither of the authors (separate from the English *Tract* which was a point by point refutation of Bagshaw's pamphlet) addresses each other specifically in their writings.

It is possible that Locke knew of Bagshaw before Bagshaw published his pamphlet. Bagshaw had a reputation as a controversial figure both at Westminster School and Christ

⁶⁸ Abrams, introduction, 10.

⁶⁹ Edward Bagshaw, *The Great Question Concerning Things Indifferent in Religious Worship Briefly Stated and Tendered to the Consideration of All Sober and Impartial Men* (London, 1660). Early English Books Online (http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:33336)

⁷⁰ It would not have been impossible for Locke to have come in contact with Bagshaw's pamphlet before it was published given that they were both students at Christ's church see Abrams, introduction, 10.

⁷¹ For a closer comparison of Sanderson's work on Locke see Abrams, introduction, 71-73. See also Robert Sanderson, *Several Cases of Conscience Discussed in Ten Lectures in the Divinity School at Oxford* (London, 1660). Early English Books Online (http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:115597).

Church. In fact, he had somewhat of a family history of controversy.⁷² Anthony Wood, (1632-1695) antiquary and contemporary of Locke, wrote Bagshaw was a smart man, but was also a hot head and known for being dangerous and seditious. Wood wrote (perhaps falsely) that Bagshaw was an Anabaptist, and while he was at Oxford he was very loose with his morals.⁷³ After being ejected from his position at Westminster School in 1657, Bagshaw eventually found himself imprisoned for various lengths until shortly before his death in 1671.⁷⁴

Though Locke and Bagshaw were different, they were not polar opposites in their philosophical views. In fact, the two agreed on many things. Abrams notes four points that Bagshaw and Locke agreed upon: Both men thought that there were such things as ‘indifferent matters;’ both thought that ‘indifferent matters’ were a relative and dependent condition; both subscribed to a hierarchic and legalistic idea of moral obligation; and, both strongly supported the Restoration of the King.⁷⁵ Further, Bagshaw did not believe in liberty in civil ‘indifferent matters’ but only in ‘indifferent matters’ in divine worship.

It was specifically over ‘indifferent matters’ in divine worship that the two diverged. As previously stated, Bagshaw rejected the assertion that the magistrate had the authority to impose

⁷²His father Edward Bagshaw asserted that a Parliament could be held without bishops, and that bishops could not meddle in civil affairs. This attracted the attention of the then bishop of Canterbury William Laud who was attempting to increase the power of the Church of England. Laud put an immediate stop to Bagshaw, and he eventually found himself imprisoned see Anthony Wood, *Athenae Oxonienses. An exact history of all the writers and bishops who have had their education in the ... University of Oxford, from ... 1500, to the author's death in November 1695. ...* By Anthony Wood, M.A. In two volumes. (London: R. Knaplock and J. Tonson, 1721), 315-316. GALE

<<http://find.galegroup.com/ecco/infomark.do?&source=gale&prodId=ECCO&userGroupName=durh54357&tabID=T001&docId=CB132712799&type=multipage&contentSet=ECCOArticles&version=1.0&docLevel=FASCIMILE>>. 315

⁷³ Anthony Wood, *Athenae Oxonienses*, 315, 491.

⁷⁴ Anthony Wood, *Athenae Oxonienses*, 491.

⁷⁵ Bagshaw said “none...is more satisfied with the present government or hath a more loyal and affectionate esteem for his majesty’s person and prudence than this writer...he doth heartily wish that all parties would agree to refer the whole cause of ceremonies to his Majesty’s single discretion.” Edward Bagshaw, preface to *The Great Question Concerning Things Indifferent in Religious Worship Briefly Stated and Tendered to the Consideration of All Sober and Impartial Men* by Edward Bagshaw (London, 1660), 2. EEBO (http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:115597).

‘indifferent matters’ in divine worship, because he believed it conflicted with Christian Liberty, which he believed was fundamental component of Christianity. Locke disagreed with Bagshaw over whether Christian liberty was being abused. Locke did not think that imposing ‘indifferent matters’ in divine worship restricted the liberty of subjects. Locke wrote, in response to Bagshaw’s claim, “an outward set form of worship should necessarily take away the spirituality of religion I cannot think.”⁷⁶ Locke thought that since God only required, “worship of the heart and spirit,” it did not matter what kind of ‘indifferent matters’ accompanied this worship, because they did not affect the believer’s beliefs.⁷⁷ Locke, then, was not an extreme absolutist; rather, he held a different conception of what liberty entailed.

Locke could not differentiate between the magistrate’s authority in civil ‘indifferent matters’ and religious ‘indifferent matters.’ Bagshaw thought that it was perfectly reasonable for the magistrate to have absolute authority in civil ‘indifferent matters,’ and deny the magistrates authority in religious ‘indifferent matters.’ Locke took a different view, writing that the objections Bagshaw brought forth, “oppose and uproot the power of the magistrate in civil indifferencies as much as in those of religion...if the authority of the magistrate is withdrawn...from the one, it collapses in the other.”⁷⁸ For Locke, to deny the authority of the magistrate in one sphere of ‘indifferent matters’ was to deny him in the other sphere as well.

If there was nothing new in either Locke or Bagshaw’s works, that is, if both men were regurgitating arguments that had already been put forth for almost one hundred years, then the question arises as to why they decided to compose their works at all? This is an important

⁷⁶ John Locke, “English Tract” in *Two Tracts on Government*, ed. Philip Abrams (Cambridge: Cambridge University Press, 1967), 163.

⁷⁷ In the “Latin Tract” Locke argues that no matter the case subjects are at least obligated to suffer under the magistrate (passive obedience). If the act that a magistrate imposes is also lawful then the subject is also obligated to act (active obedience). Since it is lawful for the magistrate to impose ‘indifferent matters’ subjects must obey passively and actively. See John Locke, “Latin Tract” in *Two Tracts on Government*, ed. Philip Abrams (Cambridge: Cambridge University Press, 1967), 220.

⁷⁸ Locke, “Latin Tract,” 240.

question, because throughout the Latin *Tract* Locke ends up constructing his first known cohesive Philosophy of law that was, if not directly, greatly influenced by his refutation of Bagshaw's pamphlet.

Part of the reason that Locke was so interested and passionate about 'indifferent matters' was because of the role that 'indifferent matters' held at Oxford. The wearing of the surplice at Oxford was a controversial issue. Many Presbyterians and non-conformists were opposed to wearing the surplice and protested the prospect of being forced to wear it.

Edward Bagshaw was central in trying to rid the University of the surplice in the 1650's, and it is probable that Locke knew this.⁷⁹ It is also more than likely that Locke was aware of the Presbyterian response to the possibility of the reinstatement of the surplice during the Restoration. Anthony Wood wrote that amongst many tactics that the Presbyterians used to try and stifle the dropping numbers amongst their adherents was an attempt to show the absurdity of the wearing of the surplice, some went so far as to say that the devil himself walked around in the garment.⁸⁰

The controversy over the surplice did not stop with words. Anthony Wood recalled that, "some varlets of Christ Church were so impudent (whether set on by the Presbyterians or no, I know not) to goe on the 21 January this yeare (166[1]) about 11 or 12 of the clock at night to a chamber under the common hall...and thence to take away all such surplices that they could find: and being so done, to throw them in a common privy house belonging to Peckwater Quadrangle, and there with long sticks to thrust them downe into the excrements."⁸¹ The controversy over 'indifferent matters,' such as the surplice, was more than just scholastic debates. Presbyterians at Oxford felt very strongly about the imposition of 'indifferent matters' and were willing to take action.

⁷⁹ Jacqueline Rose, "John Locke 'Matters Indifferent,'" 608.

⁸⁰ Wood, *Life and Times*, 377

⁸¹ Wood, *Life and Times*, 379.

With the exception of the *Tracts* Locke refrained, for the most part, from interjecting any strong political opinions in his correspondences with others. It was clear, however, that Locke was unsatisfied with the political environment of England prior to writing the tracts. In a letter to his father in 1658, for instance, Locke expressed his distrust of the major political parties of the period as well as his overall distrust of mankind.⁸² From his earliest correspondences, while at Oxford, it is clear that Locke held a bleak view of the political world.

Locke also seemed to have held negative views of some of the more extreme non-conformists. In a letter that he wrote to his father in the fall of 1656 he described having seen a group of Quakers at Westminster Hall. One of the Quakers apparently refused to take off his hat while giving testimony, and it was struck off of his head. Locke was unsympathetic to the Quaker and seemed to actually approve of the gesture saying to his father that, “the rest of his brethren may do well to imitate him, the keeping the head to hot [sic] being dangerous for mad folks.”⁸³

In another letter Locke described the trial of James Nayler and other Quakers at Westminster Hall in 1656. James Nayler apparently believed himself to be the son of God. Locke described his expressions as unusual and his language as canting, which he found hard to understand. Locke wrote that he later went by the room where Nayler and the rest were ordered to retire, and he described the scenario as especially odd, noting the humming noise of one while the other sung holy, holy, holy.⁸⁴ He concluded finally that he was, “weary of the Quakers.”⁸⁵

⁸² Cranston, *Locke*, 40.

⁸³ John Locke, “Locke to John Locke, sen., 25 October 1656 (4, 30)” in *The Correspondences of John Locke* vol. 1, ed. E.S. De Beer (Oxford: Clarendon Press, 1976), 41-42.

⁸⁴ John Locke, “Locke to John Locke, sen., 15 November 1656 (29, 43),” in *The Correspondences of John Locke* vol. 1, ed. E.S. De Beer (Oxford: Clarendon Press, 1976), 44.

⁸⁵ Locke, “Locke to John Locke, sen., 15 November 1656 (29, 43),” 44.

Locke's tumultuous experience at Oxford most likely influenced his opinion regarding liberty in 'indifferent matters.' In the preface to the reader of the English *Tract*, Locke wrote, "I no sooner perceived myself in the *world* but I myself in a storm, which hath lasted almost hitherto, and therefore cannot but entertain the approaches of a calm with the greatest joy and satisfaction." Locke wrote that it was the prospect for peace that obliged him to dispose, "men's minds to obedience to that government which hath brought with it that quiet and settlement which our own *giddy folly* had put beyond the reach, not only of our *contrivance*, but *hopes*."⁸⁶

One might wonder whether Locke found 'indifferent matters' a pressing subject given that he never published anything that he wrote. If he felt so passionate, as his rival Bagshaw, why did he, unlike Bagshaw never actually publish the *Tracts*?

We can only speculate as to why Locke decided against publishing the *Tracts*. Locke's correspondences with Gabriel Towerson suggest that Locke was in conversation about publishing the English *Tract*. Gabriel Towerson wrote to Locke in March of 1661, "I heare Mr. Bagshaws booke is so well lik'd of as that it is probable it may pass a second impression; and you may perhaps doe god and the church a piece of seasonable service if you would pleas'd to print your answer to it."⁸⁷ There appeared to be a sense of urgency emanating from Towerson in his attempts to get Locke to publish his work.⁸⁸

The printing of the English *Tract* never materialized, however. It is possible that the decision was out of Locke's hands. It may have been that Locke's friend Samuel Tilly neglected

⁸⁶ John Locke, preface to "English Tract," in *Two Tracts on Government*, ed. Phillip Abrams (Cambridge: Cambridge University Press, 1967), 120.

⁸⁷ Gabriel Towerson "Gabriel Towerson to Locke, 12 March 1661 (108, 118)," in *The Correspondences of John Locke* vol. 1, ed. E.S. De Beer (Oxford: Clarendon Press, 1976), 167.

⁸⁸ In a letter sent to Locke from Towerson on 9 of April 1661 after Towerson had already suggested to Locke that he publish his response to Bagshaw he wrote that, "this day fortnight your friend Mr. B[agshaw] preach'd at st. Maries and in the close of his service insisted upon his old theme, and though he prayed for Archbishops and Bishops yet he tooke away their power and made it a mark of AntiChrist to impose Ceremonies." See Gabriel Towerson "Gabriel Towerson to Locke, 9 April 1661 (115)," in *The Correspondences of John Locke* vol. 1, ed. E.S. De Beer (Oxford: Clarendon Press, 1976), 170.

to follow through with making sure that all the papers needed were brought to the printer to compose a complete pamphlet.⁸⁹ Letters between the printer and Tilly as well as Tilly and Locke suggest that Tilly was slow to get things done.⁹⁰ Historians have also speculated that Robert Sanderson's works made Locke's argument irrelevant.⁹¹

It seems much more likely, however, that just as Locke's response to Bagshaw's pamphlet, and interest in 'indifferent matters' was born out of the political uncertainty of the Restoration, his reasoning for not publishing the tracts was a result of legislation that affirmed the power of the magistrate in 'indifferent matters.'⁹² It was clear by May of 1661 that the Anglican Church would be fully restored, and the Christian liberty that Bagshaw argued for would not be realized.⁹³

The debate over indifferent matters was an old debate and the chances of one argument winning out over another were slim. For Locke, the debate was more than just a debate over 'indifferent matters.' The debate was over a fundamental disagreement about the authority of the magistrate. For Locke, this had potentially serious implications. Locke lived through a tumultuous time period in England, and whether he was correct or not, Locke at least partly blamed the enthusiasts of his day for many of England's troubles. The debate with Bagshaw was a way for Locke to provide a descriptive account of the problems of England, and a way for him to prescribe a solution for stability. Locke did not pen the *Two Tracts*, because he was a full fledged absolutist, but rather because he saw that the only way to achieve peace and stability was

⁸⁹ James Allestry, "James Allestry to Samuel Tilly, 14 May 1661." in *The Correspondences of John Locke* vol. 1, ed, E.S. De Beer (Oxford: Clarendon Press, 1976), 178-79.

⁹⁰ Upon returning Locke's papers Tilly apologizes to Locke for keeping his papers for so long see Samuel Tilly "Samuel Tilly to Locke, 7 March [1662?] (127)," in *The Correspondences of John Locke* vol. 1, ed, E.S. De Beer (Oxford: Clarendon Press, 1976), 185.

⁹¹ Abrams, Introduction, 12.

⁹² The Act of Uniformity was given royal assent on May 19, 1661, for instance. See Abrams, introduction, 14.

⁹³ Abrams, Introduction, 14.

through a conception of law in which the magistrate could bind their subjects and maintain uniformity.

Chapter 3

A Leap of Faith? Locke's Shift from Absolutism to Toleration

Locke's *Essay on Toleration*, written in 1667 or 1668, is initially surprising given his attitudes expressed in the *Two Tracts*. In contrast to the *Two Tracts*, Locke argues in the *Essay on Toleration* that speculative beliefs should be tolerated by the magistrate. At least ostensibly, the *Essay on Toleration* can be viewed as a refutation of the *Two Tracts*. Locke's personal experiences and friendships suggest that he may have started to consider toleration as a viable option. The continuation of religious instability in England, even after various acts were passed that asserted the power of the Church, and forced uniformity within it, may have also suggested to Locke that intolerance was not the most viable pathway to peace or stability. The significance of the *Essay on Toleration* is that, like the *Two Tracts*, it was a political statement; written in response to a specific set of circumstances that Locke was faced with. If we think about it this way, the movement from the *Two Tracts* to the *Essay on Toleration* may not have been that radical of a step. In both of Locke's works he was primarily concerned with stability; the leap from the *Tracts* to the *Essay on Toleration* may have been a practical step rather than a theoretical step.

When Charles II gave his Declaration at Breda in 1661, which promised liberty of conscience to dissenters, it was not meant to be an empty promise. John Marshall notes that Charles II supported Restoration attempts to obtain toleration within the Anglican Church through comprehension by broadening the terms of communion, which would have allowed more protestants to join. He also supported indulgence, or toleration of subjects who chose to

remain outside the church. In December of 1662, for instance, Charles II issued a declaration of indulgence suspending the penal laws against dissent.⁹⁴

Conservative members of Parliament bent on maintaining and spreading Anglican Church government, however, foiled Charles's II attempts at toleration. Marshall cites two major groups within the Anglican Church that shaped Restoration policy. The "high swaying" parties were concerned with destroying the nonconformists, and the "high prelatists"⁹⁵ thought the Anglican Church was of divine institution and necessary to order. These groups ensured that nonconformists would face both persecutions within and outside the church.

Although these groups were not the majority in Parliament, influential figures within the Anglican party helped to increase the power and advance the interests of the Anglican Church. One of these figures was the archbishop of Canterbury Gilbert Sheldon. Sheldon was an influential figure during the Restoration, not only because he was a conservative Anglican, but also because he recognized that the staunch Anglicans were not a majority in Parliament. Further, Sheldon realized that Charles II was not in favor of crushing dissent. Sheldon was crucial in keeping pressure on the bishops to attend the House of Lords in person and vote in the interests of the Anglican Church.⁹⁶

The influence of the conservative Anglicans within Parliament eventually led to the passage of the Corporation Act of 1661, which limited municipal office to royalist Anglicans; The Act of Uniformity of 1662, which reinforced the Book of Common Prayer; and, the Conventicle Act of 1664, which penalized anyone who attended a dissenters church, and anyone

⁹⁴ John Marshall, *John Locke Resistance, Religion and Responsibility* (Cambridge: Cambridge University press, 1994), 35.

⁹⁵ Marshall, *John Locke*, 35.

⁹⁶ John Spurr, 'Sheldon, Gilbert (1598–1677)', in *Oxford Dictionary of National Biography* (Oxford University Press, 2004), accessed 7 April 2013, <http://www.oxforddnb.com/view/article/25304>.

who allowed their building to be used by a dissenting congregation.⁹⁷ These acts played a double role. They were aimed at maintaining uniformity within the church, but they were also clear attempts to persecute dissenters outside of the church.

The problem, however, was that these acts did not lead to the type of peace and stability that Locke had hoped for in the *Two Tracts*. In fact, the Acts created an even deeper division between the Anglican Church and non-conformists. When the Act of Uniformity was passed over seventeen hundred clergy were either ejected from the Anglican Church or resigned for not complying with the order to follow the Book of Common Prayer.⁹⁸ The acts that dealt with nonconformists outside of the church only worsened relations between Anglicans and nonconformists by penalizing and ostracizing non-conformists.

Although there is no definitive evidence for what provided the shift from the absolutism in the *Two Tracts* to the arguments for toleration made in the *Essay on Toleration*, there are some early indications for why Locke might have started to consider religious toleration. Locke's friendship with Robert Boyle and Anthony Ashley Cooper (later first Earl of Shaftesbury) suggests the possibility that he may have been moving away from the rigid uniformity expressed in the *Tracts*. Further, Locke's observations of religious diversity without conflict during his trip to Cleves may also provide clues for the switch to toleration.

⁹⁷ David Ross ed. "The Clarendon Code," Britain Express, accessed May 7, 2013, <http://www.britainexpress.com/History/stuart/clarendon-code.htm>. For the texts of the acts stated above see John Raithby, ed., "Charles II, 1662: An Act for the Uniformity of Publique Prayers and Administrac[i]on of Sacraments & other Rites & Ceremonies and for establishing the Form of making ordaining and consecrating Bishops Preists and Deacons in the Church of England.," *Statutes of the Realm: volume 5: 1628-80*, British History Online, <http://www.british-history.ac.uk/report.aspx?compid=4730> see John Raithby ed., "Charles II, 1664: An Act to prevent and suppress seditious Conventicles.," *Statutes of the Realm: volume 5: 1628-80*, British History Online, <http://www.british-history.ac.uk/report.aspx?compid=47357>. See John Raithby ed. "Charles II, 1661: An Act for the well Governing and Regulating of Corporations," *Statutes of the Realm: volume 5: 1628-80*, British History Online, <http://www.british-history.ac.uk/report.aspx?compid=47300>.

⁹⁸ Marshall, *John Locke*, 33.

Robert Boyle (1627-1691) was an important figure in the scientific community in the mid-seventeenth century. Boyle could be best characterized as an independent in religious matters. Although he conformed to the Anglican Church in 1660, Boyle remained sympathetic to dissenters who chose not to conform to the Restored Church.⁹⁹ Boyle was unsympathetic to the high-churchmen, and Michael Hunter, suggests that, so long as the term is used flexibly, Boyle could be considered a Latitudinarian.¹⁰⁰

Locke was fond of Boyle and sought his friendship and approval in the 1660's.¹⁰¹ It is very possible that Locke's personal relationship with Boyle affected his views on toleration. Marshall cites Locke's letters to Boyle while Locke was in Cleves as significant, given that Locke was discussing with Boyle the different religious sects that inhabited the town and the relative peace among them. Perhaps Locke's visit to Cleves and his observation of the peace between different religious sects helped motivate the validity of toleration that his friend Boyle had already believed in.

In November of 1665 Locke accompanied Sir Walter Vane as his secretary on a diplomatic mission to Frederick William of Hohenzollern, elector of Brandenburg, who was then at Cleves.¹⁰² Locke's correspondences with Robert Boyle during his time spent at Cleves suggest that he might have been starting to consider toleration as an effective political policy. Locke wrote in a letter to Robert Boyle that despite the fact that Catholics, Calvinists, and Lutherans were all allowed to publicly worship as they pleased; there was no animosity between the three

⁹⁹ Michael Hunter, 'Boyle, Robert (1627–1691),' in *Oxford Dictionary of National Biography* (Oxford University Press, 2004) , accessed 7 April 2013, <http://www.oxforddnb.com/view/article/3137>.

¹⁰⁰ Hunter, 'Boyle, Robert (1627–1691)."

¹⁰¹ Marshall *John Locke* 46.

¹⁰² E.S. De Beer "Locke's visit to Cleves in 1665-6," in *The Correspondence of John Locke* ed. E.S. De Beer (Oxford: Clarendon Press, 1976), 225-26.

groups on the basis of religion.¹⁰³ Locke attributed the peace between the different sects partly to the power of the magistrate and, “partly to the prudence and good nature of the people, who (as I find by enquiry) entertain different opinions, without any secret hatred or rancour.”¹⁰⁴ This was wildly different from what Locke was used to in England, where the power of the magistrate seemed to have no real effect on the stability and peace between subjects.

Locke’s observation of the peace between differing religious sects is significant in light of his writing on what he sees as human nature in the *Two Tracts*. Locke wrote in the *preface* to the *English Tract*, “Nor is it to be hoped that the prudence of man should provide against [anarchy and tyranny],” because, “so long as men have either *ambitious thoughts* or *discontented minds*...which is not to be looked for in this world.”¹⁰⁵ Locke held somewhat of a Hobbesian concept of man: he was by nature prone to quarreling. Given this, it would not have been possible for liberty to provide stability, because strife between those who disagree would naturally arise.

Locke’s conception of human nature in the *Tracts* was more than likely conditioned by the turbulent political, social, and religious environment that he experienced in England and Oxford, specifically. Locke’s experience at Cleves could have undermined the assumptions about human nature that he expressed in the *Two Tracts*. The possibility of men with differing religious opinions living in peace meant that it was possible for religious liberty to be realized without chaos necessarily ensuing. If the good of the people was the measure of the magistrate’s injunctions, as Locke stated in the *Tracts* and the *Essay on Toleration*, Locke could now at least

¹⁰³ Not all religious sects were allowed. Locke notes that the Anabaptists (probably Mennonites) were not publicly tolerated. See John Locke, “Locke to the Hon. Robert Boyle, 12/22 December 1665 (197),” in *The Correspondence of John Locke* ed. E.S. De Beer (Oxford: Clarendon Press, 1976), 228.

¹⁰⁴ Locke, “Locke to the Hon. Robert Boyle, 12/22 December 1665 (197),” 228.

¹⁰⁵ John Locke, preface to the “English Tract,” 119

entertain the possibility that since men could live in peace with varied religious beliefs, religious ‘indifferent matters’ did not need to be in the scope of the magistrate’s authority.

Anthony Ashley Cooper (1621-1683), later first Earl of Shaftesbury, would have had a significant influence on Locke’s views on toleration. Shaftesbury was a very influential figure during the Restoration Period. He was a supporter and ally of the King, and accompanied Charles II on his return to England in late May of 1661. Shaftesbury was sympathetic to dissenters and supported Charles II’s Declaration in 1662 suspending the penal laws against dissent. He also opposed and tried to soften the acts that restricted and persecuted dissenters (such as the Conventicle Act of 1664).¹⁰⁶

Locke first befriended Shaftesbury when he went to stay with him at Exeter House on Easter of 1667. They quickly built a close relationship, and Locke only returned to Oxford occasionally during the next sixteen years. Locke quickly became Shaftesbury’s advisor on various state and business affairs that Shaftesbury was involved in.¹⁰⁷ If Locke was not already considering toleration, his close relationship with Shaftesbury could have pushed him towards it.

An exact date for when Locke wrote the *Essay on Toleration* is not available, but it was sometime in 1667 or 1668.¹⁰⁸ Marshall notes also that it is not clear what exact purpose the *Essay on Toleration* served, but it is extremely likely that consultations with Shaftesbury, who would have needed such a discussion in the period in which the pleas for comprehension began, played a significant role in the essay’s construction. It is possible that it was written and meant for perusal by the King, or it could have been the product of discussions that Locke had with his

¹⁰⁶ Tim Harris, “Cooper, Anthony Ashley, first earl of Shaftesbury (1621–1683),” in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), accessed 7 April 2013 <http://www.oxforddnb.com/view/article/6208>.

¹⁰⁷ Marshall, *John Locke*, 47-48.

¹⁰⁸ Marshall, *John Locke*, 49.

Oxford friends at Exeter House (Locke did have conversations in 1670, but it is not clear that the *Essay on Toleration* was a result of earlier discussions).

Locke premises the *Essay on Toleration* by stating that the trust and authority of the magistrate is vested in the magistrate for the sole propose of the good of his subjects. As in the *Tracts*, Locke does not put forth an argument that relies exclusively on the divine right of kings (*jure divino*) or power derived from the consent of the people. Locke instead uses a sort of utilitarian argument to prescribe what the magistrate ought and ought not to do in relation to the good of the realm.

The most obvious difference between the two is the three assertions that Locke puts forth regarding speculative opinions, ‘indifferent matters’ in divine worship, and societal virtues and vices.¹⁰⁹ Locke argued that in purely speculative opinions, men are entitled to complete toleration. Those beliefs included the belief in the trinity, transubstantiation, antipodes, and Christ’s personal reign on earth.¹¹⁰ Locke’s assertion that the trinity was a speculative opinion and should be tolerated was fairly extreme. Marshall notes that even John Owen, once dean of Christ Church and known for his tolerationist views, saw the Trinity as indisputable, and therefore did not think that antitrinitarians should be tolerated.¹¹¹ Locke’s, it seemed, had become fairly radical.

Locke asserted that in ‘indifferent matters,’ whether they were religious or not, men were entitled, so long as they did not disturb the state, to toleration. However, as soon anyone’s actions began to disturb the peace, the magistrate could prohibit those actions. More specifically, this meant that the magistrate could do things like limit speech that was seditious. Further,

¹⁰⁹ John Locke, “Essay on Toleration” in *Locke Political Essays* ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), 136.

¹¹⁰ Locke, “Essay on Toleration,” 137.

¹¹¹ Marshall, *John Locke*, 50.

although Locke believed that the magistrate could not compel subjects to believe one thing or another, and that the magistrate should not legislate on ‘indifferent matters,’ Locke argued that if the magistrate did try to compel men against their consciences, they should do what their consciences required of them, but they were bound to submit to the magistrate’s punishment. Subjects did not have a right to overthrow a magistrate who violated their liberty of conscience.¹¹²

Locke asserted that moral virtues and vices should not be legislated for or against by the magistrate. Locke explained that since the lawmaker had nothing to do with moral virtues and vices, the magistrate ought not to legislate regarding them.¹¹³ However, as with the first two assertions on toleration, if the moral virtues and vices threatened to disturb the peace and stability of the realm, the magistrate could legislate against them.

None of this toleration was to be afforded to papists, according to Locke. It is interesting to note that many of the reasons why Locke wished to afford toleration to non-conformists were precisely the reasons he did not want to afford it Papists. For instance, a general feature of the *Essay on Toleration* is the notion that if religious sects are given freedom to practice how they wish it would diminish the possibility of those same religious sects attempting to usurp the power of the magistrate. So long as those religious groups are happy, they will be happy with the magistrate. The papists, however, could not share this same sort of sentiment.

Locke is not critical of papists solely because of their religion or religious beliefs. Locke was critical of the papists because of the political implications that arose from the structure and nature of the Catholic Church. Locke wrote, “as to the papists, tis’ certain that several of their

¹¹² Locke, “Essay on Toleration,” 141-143.

¹¹³ Locke, “Essay on Toleration,” 144.

dangerous opinions, which are absolutely destructive to all governments but the pope's, ought not to be tolerated in propagating those opinions."¹¹⁴ Because the papists owed their allegiance to someone other than the magistrate, their dissidence could not be tolerated. In England, Papists would have to occupy a double role. They would at one and the same time be subject to the Pope as well as the English magistrate. Because they held their ultimate allegiance with the Pope, however, the threat to the stability of the country was far too serious to award them toleration.

Marshall asserts that a key difference between the *Two Tracts* and the *Essay on Toleration* was that the '*Essay*' asserted that spiritual good was not a part of the good that the magistrate was to seek.¹¹⁵ Locke wrote that the magistrate's concerns were only those between men and men. Therefore, anything that pertained to the divine was beyond the bounds of magisterial power. If two men choose to worship at different times, neither man was affected by the decision of the other to do so; therefore, the magistrate should not legislate regarding times of worship.

The difference between Locke's two pieces is important. In the *Tracts* Locke argued for the authority of the magistrate in religious 'indifferent matters' because the authority of the magistrate in civil 'indifferent matters' depended upon it. To deny one was to deny the other. In the *Two Tracts*, Locke was not saying that the magistrate *must* impose various 'indifferent matters' in either sphere; he was only saying that the magistrate had the *authority* to do so if he choose to do so. Conformity was not the crucial issue in the *Tracts*. Locke asserted that the magistrate had absolute authority, because he thought that stability was achievable only through uniformity.

¹¹⁴ Locke, "Essay on toleration," 151.

¹¹⁵ Marshall, *John Locke*, 51

Viewed in this way the two works seem irreconcilable. To assert that the magistrate did not have authority in religious ‘indifferent matters’ appeared to lead to the ultimate denial of the magistrate in all matters. This was precisely what Locke was worried about when writing the *Tracts*. The negation of the authority of the magistrate in both civil and religious ‘indifferent matters’ would leave the magistrate ostensibly powerless. The magistrate would not even be able to do something as fundamental as levy a tax.

It is possible that in the *Essay on Toleration* Locke was not explicitly denying the authority of the magistrate in matters that did not pertain to the good of the state. Statements by Locke such as, “in things of this world over which the magistrate hath an authority, he never does...any further than it concerns the good of the public”¹¹⁶ would suggest that he was denying the magistrate’s authority outright in ‘indifferent matters.’ However, these statements seem to conflict with later statements such as, “if the magistrate...endeavor to restrain or compel men contrary to...their own consciences, they ought to do what their consciences require of them, as far as without violence they can; but withal are bound at the same time quietly to submit to the penalty the law inflicts for such disobedience.”¹¹⁷ Taken at face value it appears as though Locke is saying that the magistrate cannot impose laws that are not aimed at the general good of the people, but also that the magistrate has the authority to punish subjects if they disobey an unjust law, and the subjects *must* submit to the punishment.

The problem is how to derive the magistrate’s authority to punish subjects who disobey laws that are not within the scope of the magistrate’s power to enact. If the magistrate does not have authority to enact laws regarding ‘indifferent matters’ then any law he enacts regarding

¹¹⁶ Locke, “Essay on Toleration,” 137.

¹¹⁷ Locke, “Essay on Toleration,” 143.

‘indifferent matters’ would seem to be invalid. This would explain why Locke would suggest that subjects ought to disobey, but it does not explain why they would also have to submit to penalties for disobedience. How could Locke grant that the magistrate does not have the authority to legislate in a given matter, but if he does and subjects disobey, he also has the authority to punish them for not submitting to the very law, which he had no authority to enact?

The way to relieve this tension might be to distinguish between what Locke thought a Magistrate *can* do and what a magistrate *ought* to do. The *Two Tracts* outlined a theory of law in which the magistrate had an absolute authority over his subjects; the *Tracts* were concerned with what a magistrate *could* do. The *Essay on Toleration* argued that the magistrate *ought not* to legislate in matters that did not pertain to the good of the realm, but it did not necessarily deny him the authority to do so. In this sense, Locke could argue that subjects *ought* to disobey laws in which the magistrate *ought not* to legislate over, and at the same time argue that they must submit to any penalty the magistrate imposes for disobedience. The magistrate’s authority to punish disobedience emanates from what a magistrate *can* do. That the subject *ought* to disobey emanates from what the magistrate *ought not* to do, not what the magistrate cannot do.

If this interpretation of authority in the *Essay on Toleration* is correct, then it suggests that Locke had not moved completely away from the assertions put forth in the *Two Tracts*. Locke thought that the magistrate *ought not* to legislate in matters that did not affect the good of the realm, but the magistrate’s position as magistrate meant that he still *could* legislate, and subjects would have to submit or face punishment. Locke had altered what the subject could do when faced with such a dilemma (they could passively disobey), but he was unwilling to alter the power of the magistrate. To say that a subject may passively disobey, but must face the penalties

that come from passive disobedience is not an extreme shift from the obligations of the subject in the *Tracts*.

The significance of such a distinction is important because it shows that the difference between the two works were not as great as they seemed on the surface, and it suggests that Locke was still primarily concerned with stability. Though he was willing to grant toleration to nonconformists, and even advocate disobedience, he limited it to passive disobedience. Had Locke been concerned solely with the liberty of the individual subject, perhaps he could have advocated active disobedience, but because stability was a central feature, he was not willing to allow it.

Both the *Essay on Toleration* and the *Two Tracts* were a response to a specific political, social, and religious context that Locke was enmeshed in. In both pieces Locke was trying to formulate a way to achieve stability and peace between religious sects in England. Despite the differences between the two, both the *Essay on Toleration* and the *Two Tracts* were the same in their ultimate goal: to solve the political and social upheaval amongst the various religious sects in England. It is possible that Locke was influenced by his more liberal friends. Locke's travel to Cleves may have showed him that toleration was a possibility in England. It is clear that both pieces were political statements. Neither works were as radically different in principle as they may have seemed on the surface i.e. the difference between the *Two Tracts* and the *Essay on Toleration* lie largely in practicality rather than theory. The *Essay on Toleration* was not a radical theoretical shift in Locke's thought; rather it was a shift in the practical application of such a theory.

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