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Chapter 1 : Natural rights and Spinoza's Essay on liberty : Fugitive Essays

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The natural law concept existed long before Locke as a way of expressing the idea that there were certain moral truths that applied to all people, regardless of the particular place where they lived or the agreements they had made. The most important early contrast was between laws that were by nature, and thus generally applicable, and those that were conventional and operated only in those places where the particular convention had been established. This distinction is sometimes formulated as the difference between natural law and positive law. Natural law is also distinct from divine law in that the latter, in the Christian tradition, normally referred to those laws that God had directly revealed through prophets and other inspired writers. Thus some seventeenth-century commentators, Locke included, held that not all of the 10 commandments, much less the rest of the Old Testament law, were binding on all people. Thus there is no problem for Locke if the Bible commands a moral code that is stricter than the one that can be derived from natural law, but there is a real problem if the Bible teaches what is contrary to natural law. In practice, Locke avoided this problem because consistency with natural law was one of the criteria he used when deciding the proper interpretation of Biblical passages. In the century before Locke, the language of natural rights also gained prominence through the writings of such thinkers as Grotius, Hobbes, and Pufendorf. Whereas natural law emphasized duties, natural rights normally emphasized privileges or claims to which an individual was entitled. They point out that Locke defended a hedonist theory of human motivation Essay 2. Locke, they claim, recognizes natural law obligations only in those situations where our own preservation is not in conflict, further emphasizing that our right to preserve ourselves trumps any duties we may have. On the other end of the spectrum, more scholars have adopted the view of Dunn, Tully, and Ashcraft that it is natural law, not natural rights, that is primary. They hold that when Locke emphasized the right to life, liberty, and property he was primarily making a point about the duties we have toward other people: Most scholars also argue that Locke recognized a general duty to assist with the preservation of mankind, including a duty of charity to those who have no other way to procure their subsistence Two Treatises 1. These scholars regard duties as primary in Locke because rights exist to ensure that we are able to fulfill our duties. Simmons takes a position similar to the latter group, but claims that rights are not just the flip side of duties in Locke, nor merely a means to performing our duties. While these choices cannot violate natural law, they are not a mere means to fulfilling natural law either. Brian Tienrey questions whether one needs to prioritize natural law or natural right since both typically function as corollaries. He argues that modern natural rights theories are a development from medieval conceptions of natural law that included permissions to act or not act in certain ways. There have been some attempts to find a compromise between these positions. Adam Seagrave has gone a step further. God created human beings who are capable of having property rights with respect to one another on the basis of owning their labor. Another point of contestation has to do with the extent to which Locke thought natural law could, in fact, be known by reason. In the Essay Concerning Human Understanding, Locke defends a theory of moral knowledge that negates the possibility of innate ideas Essay Book 1 and claims that morality is capable of demonstration in the same way that Mathematics is Essay 3. Yet nowhere in any of his works does Locke make a full deduction of natural law from first premises. More than that, Locke at times seems to appeal to innate ideas in the Second Treatise 2. Strauss infers from this that the contradictions exist to show the attentive reader that Locke does not really believe in natural law at all. Laslett, more conservatively, simply says that Locke the philosopher and Locke the political writer should be kept very separate. Many scholars reject this position. That no one has deduced all of natural law from first principles does not mean that none of it has been deduced. The supposedly contradictory passages in the Two Treatises are far from decisive. While it is true that Locke does not provide a deduction in the Essay, it is not clear that he was trying to. Nonetheless, it must

be admitted that Locke did not treat the topic of natural law as systematically as one might like. Attempts to work out his theory in more detail with respect to its ground and its content must try to reconstruct it from scattered passages in many different texts. Unless these positions are maintained, the voluntarist argues, God becomes superfluous to morality since both the content and the binding force of morality can be explained without reference to God. The intellectualist replies that this understanding makes morality arbitrary and fails to explain why we have an obligation to obey God. With respect to the grounds and content of natural law, Locke is not completely clear. On the one hand, there are many instances where he makes statements that sound voluntarist to the effect that law requires a law giver with authority Essay 1. Locke also repeatedly insists in the Essays on the Law of Nature that created beings have an obligation to obey their creator ELN 6. On the other hand there are statements that seem to imply an external moral standard to which God must conform Two Treatises 2. Locke clearly wants to avoid the implication that the content of natural law is arbitrary. Several solutions have been proposed. One solution suggested by Herzog makes Locke an intellectualist by grounding our obligation to obey God on a prior duty of gratitude that exists independent of God. A second option, suggested by Simmons, is simply to take Locke as a voluntarist since that is where the preponderance of his statements point. A third option, suggested by Tuckness and implied by Grant , is to treat the question of voluntarism as having two different parts, grounds and content. With respect to content, divine reason and human reason must be sufficiently analogous that human beings can reason about what God likely wills. Others, such as Dunn, take Locke to be of only limited relevance to contemporary politics precisely because so many of his arguments depend on religious assumptions that are no longer widely shared. At times, he claims, Locke presents this principle in rule-consequentialist terms: At other times, Locke hints at a more Kantian justification that emphasizes the impropriety of treating our equals as if they were mere means to our ends. Waldron, in his most recent work on Locke, explores the opposite claim: With respect to the specific content of natural law, Locke never provides a comprehensive statement of what it requires. In the Two Treatises, Locke frequently states that the fundamental law of nature is that as much as possible mankind is to be preserved. Simmons argues that in Two Treatises 2. Libertarian interpreters of Locke tend to downplay duties of type 1 and 2. Locke presents a more extensive list in his earlier, and unpublished in his lifetime, Essays on the Law of Nature. Interestingly, Locke here includes praise and honor of the deity as required by natural law as well as what we might call good character qualities. At first glance it seems quite simple. On this account the state of nature is distinct from political society, where a legitimate government exists, and from a state of war where men fail to abide by the law of reason. Simmons presents an important challenge to this view. Simmons points out that the above statement is worded as a sufficient rather than necessary condition. Two individuals might be able, in the state of nature, to authorize a third to settle disputes between them without leaving the state of nature, since the third party would not have, for example, the power to legislate for the public good. Simmons also claims that other interpretations often fail to account for the fact that there are some people who live in states with legitimate governments who are nonetheless in the state of nature: He claims that the state of nature is a relational concept describing a particular set of moral relations that exist between particular people, rather than a description of a particular geographical territory. The state of nature is just the way of describing the moral rights and responsibilities that exist between people who have not consented to the adjudication of their disputes by the same legitimate government. The groups just mentioned either have not or cannot give consent, so they remain in the state of nature. Thus A may be in the state of nature with respect to B, but not with C. According to Simmons, since the state of nature is a moral account, it is compatible with a wide variety of social accounts without contradiction. If we know only that a group of people are in a state of nature, we know only the rights and responsibilities they have toward one another; we know nothing about whether they are rich or poor, peaceful or warlike. Instead, he argued that there are and have been people in the state of nature. How much it matters whether they have been or not will be discussed below under the topic of consent, since the central question is whether a good government can be legitimate even if it does not have the actual consent of the people who live under it; hypothetical contract and

actual contract theories will tend to answer this question differently. There are important debates over what exactly Locke was trying to accomplish with his theory. One interpretation, advanced by C. Macpherson, sees Locke as a defender of unrestricted capitalist accumulation. Macpherson claims that as the argument progresses, each of these restrictions is transcended. The spoilage restriction ceases to be a meaningful restriction with the invention of money because value can be stored in a medium that does not decay 2. The sufficiency restriction is transcended because the creation of private property so increases productivity that even those who no longer have the opportunity to acquire land will have more opportunity to acquire what is necessary for life 2. The third restriction, Macpherson argues, was not one Locke actually held at all. Locke, according to Macpherson, thus clearly recognized that labor can be alienated. He argues that its coherence depends upon the assumption of differential rationality between capitalists and wage-laborers and on the division of society into distinct classes. Because Locke was bound by these constraints, we are to understand him as including only property owners as voting members of society. Alan Ryan argued that since property for Locke includes life and liberty as well as estate Two Treatises 2. The dispute between the two would then turn on whether Locke was using property in the more expansive sense in some of the crucial passages. While this duty is consistent with requiring the poor to work for low wages, it does undermine the claim that those who have wealth have no social duties to others. Previous accounts had focused on the claim that since persons own their own labor, when they mix their labor with that which is unowned it becomes their property. Robert Nozick criticized this argument with his famous example of mixing tomato juice one rightfully owns with the sea. When we mix what we own with what we do not, why should we think we gain property instead of losing it? Human beings are created in the image of God and share with God, though to a much lesser extent, the ability to shape and mold the physical environment in accordance with a rational pattern or plan. Only creating generates an absolute property right, and only God can create, but making is analogous to creating and creates an analogous, though weaker, right. Since Locke begins with the assumption that the world is owned by all, individual property is only justified if it can be shown that no one is made worse off by the appropriation. Where this condition is not met, those who are denied access to the good do have a legitimate objection to appropriation. Once land became scarce, property could only be legitimated by the creation of political society. Waldron claims that, contrary to Macpherson, Tully, and others, Locke did not recognize a sufficiency condition at all. Waldron takes Locke to be making a descriptive statement, not a normative one, about the condition that happens to have initially existed. Waldron thinks that the condition would lead Locke to the absurd conclusion that in circumstances of scarcity everyone must starve to death since no one would be able to obtain universal consent and any appropriation would make others worse off. In particular, it is the only way Locke can be thought to have provided some solution to the fact that the consent of all is needed to justify appropriation in the state of nature. If others are not harmed, they have no grounds to object and can be thought to consent, whereas if they are harmed, it is implausible to think of them as consenting. Sreenivasan does depart from Tully in some important respects. The disadvantage of this interpretation, as Sreenivasan admits, is that it saddles Locke with a flawed argument. Those who merely have the opportunity to labor for others at subsistence wages no longer have the liberty that individuals had before scarcity to benefit from the full surplus of value they create.

Chapter 2 : Spinoza's Political Philosophy (Stanford Encyclopedia of Philosophy)

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A Review of Contemporary Liberal Thought, vol. Although the editorials were unsigned, they were probably written by the Editor Leonard P. Liggio or the Managing Editor John V. It is republished with thanks to the original copyright holders. Natural Law and Liberalism Natural Law The complex tradition of natural law exercised a profound, but historically problematic, influence on modern natural rights theory and the equally complex liberal tradition. Liberalism, as the political philosophy of absolute human rights, might well be described as an ideology of freedom in search of an ethical justification - which perhaps only natural law can supply. Furthermore, at the heart of natural law lies an antithesis with radical political implications: From the ancient Greek political gadfly Socrates to the modern civil disobedients Thoreau and Solzhenitsyn, humans have appealed to a "higher law" or true natural law to protest and rebel against unjust conventional laws. In his essay Professor Veatch draws this same ethical distinction between nomos and physis as an intrinsic unit-idea of natural law: For it is an implication of any doctrine of natural law or natural right that the marks and standards of a natural justice are such as to make it recognizable, even in the face of whatever the prevailing conventional or customary justice may affirm to the contrary. Indeed, in this sense natural laws are held to be evidenced by nature itself, and to be there, as it were, right in the facts for all to see, if we have but eyes to see, and are not blinded by habit or by convention or by social conditioning or whatever. So understood, natural law was charged with a radical liberal and revolutionary potential to challenge all illegitimate state authority and edicts by submitting these to the rival sovereignty of individual reason and ethical judgment. Thus natural law concealed a subversive potential akin to imperium in imperio. What was right for man was rationally discoverable by human reason consulting human nature and its ends. This concept of what was "naturally right" for man led to the concern for natural rights characteristic of a significant strand of the modern liberal tradition. This approach opposed state-centered legal positivism and voluntarism, or the doctrine that law is whatever a ruler wills. From the natural law perspective, law to be true law must be an act of the intellect corresponding to the natural order of justice rather than a simple act of the will of a legislator. Since private reason, not civil authority, defined true law, natural law paved the way toward principled civil disobedience and the liberal legal order based on the inviolable rights of the individual moral conscience. Liberalism Liberalism flourished and then declined to the extent that it consistently and radically defended such individual rights and to the degree that it was nourished by the absolutism of the "higher law" or natural law doctrine. Liberals worked massive and radical social and political upheavals by rationally questioning the rightness of laws and institutions. Just as natural law, liberalism also rejected the unnatural interference of nomos in the form of arbitrary, conventional laws, legal privileges, and economic intervention. What have you done to deserve all these blessings? You took the trouble to be born, and nothing more. Otherwise, a rather ordinary man! But liberalism, after such monumental achievements, declined in the nineteenth century - in large measure because it abandoned natural law and absolute human rights in favor of a utilitarianism that allowed the rights of society to take precedence over individual rights. To the layman an abstruse and idle philosophic game, the is-ought split was fraught with profound practical consequences to man and society: How can we factually justify so radically value-laden a concept as human rights or freedom? Freedom and rights continue in jeopardy unless a philosophical justification can rescue these concepts from being nothing more than subjective whims, no. An Introduction to Legal Philosophy. Hutchinson University Library, , second revised edition. Henning, and Archibald S. The Quest for a Principle of Authority in Europe: Bibliography Helpful bibliographical aids or surveys of the history of the natural law tradition include: The Changing Profile of the Natural Law. Approaches to Natural Law: From Plato to Kant. Supplemental studies

or bibliographical tools for human rights theory include: Rex Martin and James W. Machan, Human Rights and Human Liberties: Last modified April 13,

Chapter 3 : Natural Rights - Constitutional Rights Foundation

Hobbes and Locke on Natural Rights According to the natural right theory, the state of nature is the original condition of human beings in regard to any common authority.

A Natural Right is a universal right that everyone has all around the world. In particular, Natural Rights is a political theory that maintains that an individual enters into society with certain basic rights and that no government can deny these rights. Us as humans were born with these natural rights. Natural rights grew out of the ancient and medieval doctrines of natural law, which is the belief that people, as creatures of nature and God, should live their lives and organize their society on the basis of rules and precepts laid down by nature or God. The concept of a natural right can be contrasted with the concept of a legal right. A legal right is specifically created by the government, while a natural right is claimed even when it is not enforced by the government. Is Private Property a Natural Right? I consider Private Property a Natural Right. Private Property plays a big role within Natural Rights. Many philosophers including Locke, Marx, and Rawls each had their position on private property. This leads to the question: What is Private Property? If I had to define Private Property, I would say it is any property that is not public property, and may be under the control of a group or a single individual. It is like a claim to something that excludes others from having that same privilege. The one philosopher that I will talk about is John Locke. John Locke was a prominent western philosopher born in Locke was a major social contract thinker who argued that all people know what to do and why they do it therefore making sense. He also says that the right to property is in fact a natural right. He believes this because outside to any government or society, you have the right to property. I agree with Locke here because you are entitled to your right of property outside of any government and society in which they have no say. Locke had a broad sense and a narrow sense of the way we use property. The broad sense is that it covers a wide range of human interest and aspirations. The narrow sense is material goods. Locke believes that property is created by the application of labor and that property

Chapter 4 : The Five Conceptions of American Liberty | National Affairs

Their natural rights included that of life, liberty and property and the idea of these rights being held by each individual is often said to be the primary influence of the American Declaration of Independence.

The Declaration of Independence and Natural Rights Thomas Jefferson Library of Congress Thomas Jefferson, drawing on the current thinking of his time, used natural rights ideas to justify declaring independence from England. Fighting at Lexington, Concord, and Bunker Hill had already broken out between the colonists and British troops. Even so, most in Congress wanted to work out some mutual agreement with the mother country. For more than a year, the Americans had sent petitions to England proclaiming their grievances against the British government. Colonists even appealed to the British people, pleading with them to elect different members of Parliament who would be more open to compromise. But the "British brethren" refused to do this. Soon after Jefferson arrived in Philadelphia, Congress assigned him to draft a document explaining why the colonists had taken up arms against England. Neither Parliament nor King George, however, were interested in negotiations to prevent all-out war. In August , King George issued a proclamation charging that the Americans "had proceeded to open and avowed rebellion. This act allowed the seizing of American ships, justified the burning of colonial towns, and led to sending war ships and troops, including foreign mercenaries, to put down the rebellion. Meanwhile, the royal governor of Virginia offered freedom to slaves who joined the British cause. These actions by the British king and government inflamed Americans who were undecided about independence and made war with England all but certain. In May , the Continental Congress took a fateful step and passed a resolution that attacked King George himself. This was not the first time in English history that such a thing had occurred. This led to the so-called Glorious Revolution , which drove James off the throne. Now, almost years later, a formal declaration of independence by the Continental Congress was the only thing standing in the way of a complete break with King George. The Declaration of Independence Even before the Continental Congress declared independence, most colonies along with some towns, counties, and even private organizations had issued their own declarations. In most cases, these statements detailed British abuses of power and demanded the right of self-government. On June 8, , the Continental Congress voted to write a declaration of independence and quickly appointed a committee to draft a formal document. But the job of actually writing the draft fell to Thomas Jefferson, mainly because John Adams and other committee members were busy trying to manage the rapidly escalating war with England. Working off and on while attending to other duties, Jefferson completed his draft of the declaration in a few days. He argued in his opening two paragraphs that a people had the right to overthrow their government when it abused their fundamental natural rights over a long period of time. Then in a direct attack on King George, Jefferson listed 20 instances when the king violated the rights of the American colonists. Having thoroughly laid out his proof that the king was a "tyrant" who was "unfit to be the ruler of a people," Jefferson continued on to condemn the British people. Jefferson ended his draft by stating, "we do assert and declare these colonies to be free and independent states. Jefferson grew depressed as more and more of his words were cut or changed. He later wrote that the Congress had "mangled" his draft. On July 2, , the Continental Congress voted to declare the independence of the American colonies from English rule. On the Fourth of July, they approved the final edited version of the Declaration of Independence. There would be no turning back now. In these two paragraphs, Jefferson developed some key ideas: Jefferson was a man of the Enlightenment. This was the period during the 17th and 18th centuries when thinkers turned to reason and science to explain both the physical universe and human behavior. Those like Jefferson thought that by discovering the "laws of nature" humanity could be improved. Jefferson did not invent the ideas that he used to justify the American Revolution. He himself said that he had adopted the "harmonizing sentiments of the day. As a man of the Enlightenment, Jefferson was well acquainted with British history and political philosophy. He also had read the statements of independence drafted by Virginia and other colonies as well as

the writings of fellow revolutionaries like Tom Paine and George Mason. In composing the declaration, Jefferson followed the format of the English Declaration of Rights , written after the Glorious Revolution of Most scholars today believe that Jefferson derived the most famous ideas in the Declaration of Independence from the writings of English philosopher John Locke. Locke wrote that all individuals are equal in the sense that they are born with certain "inalienable" natural rights. That is, rights that are God-given and can never be taken or even given away. Among these fundamental natural rights, Locke said, are "life, liberty, and property. To serve that purpose, he reasoned, individuals have both a right and a duty to preserve their own lives. Murderers, however, forfeit their right to life since they act outside the law of reason. Locke also argued that individuals should be free to make choices about how to conduct their own lives as long as they do not interfere with the liberty of others. Locke therefore believed liberty should be far-reaching. By "property," Locke meant more than land and goods that could be sold, given away, or even confiscated by the government under certain circumstances. Jefferson, however, substituted the phrase, "pursuit of happiness," which Locke and others had used to describe freedom of opportunity as well as the duty to help those in want. The purpose of government, Locke wrote, is to secure and protect the God-given inalienable natural rights of the people. For their part, the people must obey the laws of their rulers. Thus, a sort of contract exists between the rulers and the ruled. But, Locke concluded, if a government persecutes its people with "a long train of abuses" over an extended period, the people have the right to resist that government, alter or abolish it, and create a new political system. Some slave owners argued that slaves would become equal and worthy of natural rights only when they became civilized. For Jefferson, a life-long owner of slaves, this was a much more complex issue. At an early age, Jefferson concluded that slavery was wrong. To his credit, he attempted to denounce slavery, or at least the slave trade, in the Declaration of Independence. Some scholars believe that Jefferson agreed with the Scottish philosopher, Francis Hutcheson , that all men are born morally equal to one another and that "Nature makes none masters, none slaves. It appears that while Jefferson opposed slavery in principle, he saw no obvious way to end it once it became established. If the slaves were freed all at once, Jefferson feared that white prejudice and black bitterness would result in a war of extermination that the whites would win. He fretted that if slaves were individually emancipated they would have nowhere to go and no means to survive on their own. Of course, Jefferson along with most other Southern plantation owners were also economically dependent on slave labor. The best Jefferson could come up with was a plan to take slave children from their parents and put them in schools to be educated and taught a trade at public expense. Upon becoming adults, they would be transported to a colony somewhere and given tools and work animals to start a new life as a "free and independent people. Slavery in the new United States of America would last another 89 years until the end of the Civil War. But even then, the equality promised in the Declaration of Independence was denied not only to African Americans, but also to other minorities and women. Even today, Americans are still not certain what equality means in such areas as affirmative action, sex discrimination, and gay rights. The Declaration of Independence has no legal authority. But its words have resonated as the ideals of the United States. Abolitionists in the 19th century asked Americans to live up to the ideal of equality and eliminate slavery. The civil rights movement of the 20th century pressured America to honor the commitment made in the declaration. The document still speaks to us today about the rights of Americans, as it did in What similarities and differences do you see? Write a letter to Thomas Jefferson expressing your views on his ideas about equality and slavery. Making the Declaration of Independence. Form small groups to discuss the meaning of the three natural rights that Jefferson identified in the Declaration of Independence: What does this right specifically refer to in our lives today? The groups should then post their answers for the rest of the class to see. Hold a general class discussion and vote, if necessary, to drop or keep the meanings that each group has developed for the three rights.

Chapter 5 : Utilitarianism and Natural Rights - Oxford Scholarship

This essay will discuss the political thinking of Karl Marx, John Locke and Jeremy Bentham and their idea that the power of natural rights by individuals is 'nonsense upon stilts'. The first part of the essay will assess the idea of rights and the difference between legal and moral rights.

The confessional rifts of the seventeenth century were certainly an important part of context in which Spinoza composed his Tractatus Theologico-Politicus [hereafter: The early part of the seventeenth century was marked by a religious schism that rapidly took on political significance. The Arminians, or Remonstrants, defended religious toleration on the grounds that faith is expressed in the conscience of the individual, and so is not subject to the coercive power of the state. The doctrinal and political views of the Remonstrants were opposed by the conservative Gomarists followers of Franciscus Gomarus , or Counter-Remonstrants. For a little over a decade roughly â€" , the dispute raged on, expanding outward from Holland and Utrecht. Finally, in , a national synod convened the Synod of Dort to define more clearly the public faith. The fallout from the Synod of Dort was disastrous for the tolerant Arminians. The Advocate of the States of Holland, Johan Oldenbarnevelt, who staunchly defended the Remonstrants, was put to death. And Arminians throughout the country were purged from town councils and universities Israel , ff. The second half of the century witnessed its own major theologico-political dispute in the United Provinces. At the center, once again, were two theologians: Disputes between Cocceian and Voetians began over abstruse theological matters, but developed into a larger political and cultural affair. The Voetians led the assault on the Cartesian philosophy being taught in the universities. They thought that the new science advocated by Descartes, with its mechanistic view of the material world, posed a threat to Christianity in a variety of ways Nadler , â€"2 and â€" Spinoza was no stranger to religious persecution. As is well known, he was himself excommunicated from the Jewish community in Amsterdam in While Spinoza apparently endured the excommunication with characteristic equanimity, fellow Dutch apostate Jew, Uriel da Costa, was unable to bear the indignity of excommunication from the Amsterdam Jewish community. In â€"when Spinoza was only eight years oldâ€"da Costa, who had denied the immortality of the soul and challenged the status of the Torah as divine revelation, took his own life. In Koerbagh published two treatises that provoked the wrath of the Calvinist clergy. In the more scandalous of the twoâ€"Een Bloemhof van allerley lieflijkheyd A Flower Garden of all Kinds of Loveliness â€"Koerbagh ridiculed a number of traditional religious doctrines and practices, and, in the process, articulated his own religious and metaphysical views. Among the shocking views that he advanced were that Jesus is not divine, that God is identical with nature, that everything is necessitated by the laws of nature the laws of God , and that miracles are impossible. These are all positions that Spinoza consistently endorsed. However, while Spinoza was famously cautious, Koerbagh was not, publishing the works in Dutch thereby making them accessible to the general literate public under his own name. Consequently, Koerbagh was tried and sentenced on charges of blasphemy. During his subsequent imprisonment under squalid conditions Koerbagh became ill, and he died soon thereafter in Arminians and liberal republicans were dealt another major blow in In this so-called disaster year rampjaar , French troops, under the command of Louis XIV, invaded the United Provinces, capturing a number of Dutch cities Nadler , Grand Pensionary chief statesman and legal advisor Johan de Witt shouldered much of the blame for this military embarrassment. De Witt was the leader of the States of Holland for much of the republican period that followed the death of Stadholder a quasi-monarchical position held by the House of Orange William II in Shortly afterward he and his brother, Cornelis, were brutally killed by a zealous mob. This incident evoked uncommon anger in Spinoza, who was an admirer of de Witt and the republican ideals for which he stood. Van den Enden was an ex-Jesuit and radical egalitarian with revolutionary tendencies. He was put to death in after having been found guilty of conspiring to depose Louis XIV in order to establish a free republic in Normandy. Van dan Enden was an anti-clerical democrat who appears to have profoundly influenced Spinoza. We know that Spinoza read De Cive carefully and that it was

among his possessions when he died in He might also have read Leviathan, which appeared in Latin in , as Spinoza was completing the TTP, although we do not know this for sure Sacksteder Here I want to mention the impact of Dutch Hobbesians on Spinoza. Hobbesian thought was introduced into Dutch political discourse by Lambert van Velthuysen, an anti-clerical, liberal physician Tuck ; Blom However, because it remains unclear how much Pieter added and how much he profited off his studious younger brother, I will refer to these authors of these writings simply as the De la Courts, so as to avoid attribution problems. Indeed, De Witt is thought to have written two chapters in the second edition of their book Interest van Holland see Petry , According to them, the aim of the state is to ensure that the interests of rulers are tied to the interests of the ruled, which is possible only if one adopts a series of institutional measures, such as the use of blind balloting, the removal of hereditary posts, and the rotation of offices. Republics, they argued, will be marked by greater checks against self-interested legislation than monarchies see Blom Spinoza evidently studied these works carefully; his institutional recommendations in the Tractatus Politicus [hereafter: It was likely the writings of the De la Courts that impressed upon Spinoza the perspicacity of Niccolo Machiavelli. The notion of balancing the interests of competing parties was ultimately derived from Machiavelli see Haitsma Mulier , â€" Spinoza, like Machiavelli, understood that prescriptions for improving the governance of a state can be offered only after one has a proper diagnosis of the problems and a proper grasp of human nature. Collectively, these three claims entail that human behavior, like the behavior of everything else, is fully necessitated by, and explicable through, the immutableâ€"and non-providentialâ€"laws of God or Nature. This forms a significant part of the metaphysical backdrop against which Spinoza develops his political theory. This naturalism led him to adopt radical views regarding the source and status of rights, obligations, and laws, distinguishing his work from other seventeenth-century political theorists. This is a direct rebuke not only of defenders of the divine right of kings, but also of most accounts of natural rights as entitlements that were embraced by many seventeenth-century theorists. Moreover, this naturalism also rules out dualistic views of nature according to which there is a normative order of things, or a way that things should be, that stands in contrast to the actual order of things. This view undermines the teleological assumptions that form the basis of natural law theory, whether Thomistic or Protestant. Even those who wished to separate natural law from theology e. According to this view, humans act contrary to nature when they act contrary to the prescripts of right reason. In both of these passages, Spinoza criticizes the assumption that man is governed by his own set of rational, normative laws, rather than the laws that govern the rest of nature. In short, by adopting the view that nature is univocal and that man is governed by the same laws as everything else in nature, Spinoza rejects the natural law tradition Curley ; A. Garrett ; for contrasting views, see Kisner and Miller He introduces this concept in TTP 16, where he boldly writes: By the right and order of nature I merely mean the rules determining the nature of each individual thing by which we conceive it is determined naturally to exist and to behave in a certain way. For example fish are determined by nature to swim and big fish to eat little ones, and therefore it is by sovereign natural right that fish have possession of the water and that big fish eat small fish. For it is certain that nature, considered wholly in itself, has a sovereign right to do everything that it can do, i. TTP 16, ; cf. In claiming that the right of nature is coextensive with the power of nature and that the coextensivity of right and power applies mutatis mutandis to the individuals in nature, Spinoza is simply rejecting non-naturalism, rather than making a positive normative claim. In fact, I take it that the coextensivity thesis is not to be understood as offering a new normative standard; rather, it is intended as a denial of any transcendental standard of justice see Curley , ; Balibar , In other words, natural right is the liberty to do anything consistent with the natural law ibid. In short, as A. Specifically, it covers those actions that are not contrary to the law of nature. In Leviathan, however, Hobbes seems to advance an account of natural right that is apparently not bound by such normative constraints Ch. But while it may seem that in the later work Hobbes strips the concept of natural right of all normative content, even the view expressed in Leviathan may be seen to be at odds with a thoroughgoing naturalism. With regard to political theory, the difference between Hobbes and myself, which is the subject of your inquiry, consists in this, that I always preserve the natural right in its entirety [ego

naturale jus semper sartum tectum conservo], and I hold that the sovereign power in a State has right over a subject only in proportion to the excess of its power over that of a subject. Hobbes thinks that we incur binding obligations when we make pledges under the appropriate conditions. To demand otherwise would be absurd, since men are bound by nature to choose what appears to be the greater good or lesser evil. We are bound by nature to act on our strongest interest and cannot be obligated by previous agreements to break this inviolable psychological law of nature. If a sovereign is to maintain its right, it must legislate wisely, so as not to incite insurrection. But given his naturalism and repudiation of rights and obligations as traditionally understood, one might be left wondering how or whether Spinoza could offer a normative political theory at all. And just as the individual ought to do those things that maximize his or her own power or welfare, Spinoza takes it as axiomatic that the state ought to do those things that maximize the power of the people as a whole e. The Tractatus Theologico-Politicus As indicated above, throughout the seventeenth century the United Provinces were riven by disputes concerning, among other things, the political authority of the church. The stated goals of this work were to parry charges of atheism Spinoza was hilariously unsuccessful in this respect , to oppose the prejudices of the theologians, and to defend the freedom to philosophize Epistle My exposition of the political claims of the TTP will focus on the last two goals. This will be followed by an analysis of the role of the social contract in the TTP. Through careful linguistic and historical exegesis Spinoza identifies numerous textual inconsistencies, which, with some philosophical buttressing, lead Spinoza to deny the exalted status of prophets, the objective reality of miracles, and the divine origin of the Pentateuch. We may call the claim that faith is distinct from reason the separation thesis and the claim that religious law is dependent on and determined by civil law the single authority thesis. And a good deal of the biblical criticism in the TTP can be understood as paving the way for the separation thesis, since in the earlier chapters much of what Spinoza is doing is undermining the claim of Scripture as a source of genuine knowledge. Rather, it lies in the simple moral truths that Scripture contains, which encourage obedience to the state Ch. The books of Scripture are written for an unsophisticated, uneducated audience and convey information in a way that is suited to such an audience, in the form of fantastical accounts and parables that appeal to the imagination rather than the intellect. This ethical understanding of religion is reflected in the way that Spinoza re-conceives of several crucial religious concepts. For instance, he claims that a text is sacred to the extent that it fosters devotion to God and charity to others e. Since the aim of religion is obedience and good works, and the aim of philosophy is truth, religion and philosophy ought not to be seen as rivals. According to Spinoza, because reason and faith have separate domains, neither is subservient to the other. The separation thesis has profound political import, since by claiming that religion is not, like philosophy, a source of knowledge, Spinoza undercuts the grounds for the theological disputes that were the source of considerable unrest in the Dutch Republic. The dominant message of the separation thesis is that Scripture is not the source of metaphysical knowledge and so we ought not to treat it as an authority in these matters. Like Hobbes, he embraces the Erastian position that religious law is realized through the will of the civil authority Ch. The crux of the single authority thesis is this: The obvious, yet important, implication of the single authority thesis is that clerics are at best spiritual advisors with no real claim to political power. The problem of dual allegiances divine and civil is overcome, since the two authorities converge in the form of the sovereign. The argument against ecclesiastical power here depends upon the supposition that there is no transcendental standard of piety. Of course, a sovereign could delegate authority to religious functionaries, but Spinoza cautions against this, using the case of the Hebrews to illustrate the dangers of priestly authority. The decisive turn that precipitated the decline of the first Hebrew state came with the ascendance of a priestly order. Spinoza punctuates his historical analysis of the Hebrew state by drawing four lessons about the theologico-political problem, three of which are relevant here.

Chapter 6 : Natural Law and Liberalism - Online Library of Liberty

- The Bill of Rights Essay "Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others.I do not add 'within the limits of the law because law is often but the tyrant's' will,and always so when it violates the rights of the individual" -Thomas Jefferson.

Natural Rights Alan Chudnow asks if there are any natural rights which can be derived from reasoning. Many philosophers and political theorists have believed that man is endowed with certain natural rights. We have equal rights, legal rights, prison riots, the right to life, and a right to choose. The jurist Wesley N. Hohfeld defined four different generic types of rights: For example, the right to practice a religious belief is a guarantee that others will not persecute one for this choice. Immunities, which are rights to not do something and imply a guarantee of freedom from burdens that one might otherwise face. For example, the immunity from having to give evidence against oneself in court. Claims, which are rights that imply others will do something in your interest. For example the right to repayment of a loan implies a duty on the part of the debtor. Powers, which are rights of an individual to deny usage to others. For example, the right to a sandwich implies a power to deny others from eating it. The key point of this breakdown is that each type of right implies that others accept or at least ought to accept a disability, liability, or duty to respect this right. Rights imply mandatory obligations that can only exist: In Leviathan, Hobbes argues that men, in the state of nature, have a right of nature to use their abilities to survive. What would count as natural rights? In the theological context, natural rights are defined by the obligations that God passes down to man. Theological beliefs are also identifiable with specific cultures e. Each of these cultures had and has very specific and different views about human rights. Because rights defined on theological terms are provided from outside nature and are culturally specific, it seems inappropriate to label rights derived using theology as natural. In the anthropological context, a natural right would imply those obligations that ancient humans, in a primitive existence long past, took upon themselves on behalf of their fellows. Hobbes, Locke, Rousseau and other philosophers, have used the pre-societal condition, not to analyse the moral existence of Neolithic man, but to suggest how humans might have behaved if they had existed in a state without a specific culture. Occasionally, we do read of weird cases of children raised without socialisation, for example by wolves or by abusive parents. While there are also those who voluntarily forgo a social existence e. The idea of human nature is difficult to grasp. To many, human nature is defined by the way humans might act in the presocietal context described above. To me, this seems neither natural or useful. I think that it is more useful to consider human nature as the typical psychological behaviour of humans across specific cultures. Unfortunately, attempts to define human behaviour as being for good or for evil or as generous or selfish are gross oversimplifications of very complex and very diverse behaviour. Using this definition of human nature, natural rights would be understood as the typical rights that humans grant each other across all societies and cultures. One problem with this approach is that there are likely no-rights that are in common to all societies. It is easy to think of societies that have denied universal rights to life, liberty, and property e. Further, the idea of natural rights as common rights seems to very strongly imply that natural rights are not different or more special than cultural rights the opposition of natural rights. Everything that exists, exists in nature. All rights that we respected in the past, currently, or at any time in the future will be respected in the state of nature. It does, however, demonstrate the difficulties of reasoning out things that are natural. One approach, pioneered by Hobbes, Locke, and Rousseau is to define rights in terms of a social contract. This is also what the contemporary philosopher John Rawls want to do: Singer A Companion to Ethics p. As a practical matter, this may leave utilitarian-based rights on shakier ground as the social objectives change. For example, in the US there is currently a debate about the right to bear arms, a right that I believe may have been useful years ago but not today. Analogous to geometry, where axioms cannot be proved, rights are taken as social axioms. But of course this still leaves us with the question of how self-evident any rights really are. References Sabine, George A History of Political Theory.

Revised by Thomas Thorson. Social and Political Philosophy: Readings from Plato to Gandhi. Anchor Books, New York A good source for extracts of the key basic papers in political philosophy, including: Aristotle, Locke, Hobbes, and others. A Companion to Ethics. Blackwell Footnotes [I hate footnotes, but these ones fought back when I tried to clobber them! They all refer to the books listed above. For Hobbes, the primary right of a each citizen is a claim of security. This claim is guaranteed by the obligation of the absolute monarch to protect. People by inclination are good to one another.

Chapter 7 : What Are Natural Rights? - John Locke - Essay

Spinoza's answer was covered in my last essay, in which I explained his theory of inalienable rights. Inalienable rights, according to Spinoza, are those rights (i.e., powers) that are so embedded in human nature that they cannot possibly be transferred, abandoned, or otherwise alienated in any circumstances.

Carl Eric Scott Summer In American civic and political life, nearly everyone is a champion of liberty, but not everyone means the same thing by that term. We hold several conflicting ideas about liberty, though we are usually unaware of that fact. This lack of awareness means that, whenever a conflict between these conceptions leads to a political dispute, people on all sides of the dispute are apt to be shocked and to regard their opponents either as enemies of liberty or as lacking any understanding of what it really means. This adds to both the bitterness and the confusion of our most prominent political and cultural battles. To better understand our common life, therefore, we need to step back and examine the different meanings of liberty and how they have played out in our history and continue to shape our contemporary debates. When we carefully consider the idea of liberty through the lens of the American political tradition, we find that Americans have held, and continue to hold, five interlocking but distinct understandings of the term. But they are theoretically distinct and fundamentally in tension in ways that have shaped our history and will certainly shape our future as well. The core principles of natural-rights liberty are those expressed in the opening of the Declaration of Independence, and they are correctly regarded as reflecting the teachings of John Locke, as well as other early-modern liberal thinkers. The core practice of classical-communitarian liberty, meanwhile, is given most vivid display by Alexis de Tocqueville in his descriptions of the participatory townships he observed in s New England. That the principles and practice of early-American politics tended to answer to two different understandings of liberty is one key reason why the political teaching of the American founding is no simple matter. In contending with some political questions, such as breaking away from Britain, these two conceptions complemented one another. But regarding other questions, such as the ratification of the Constitution, they tended to oppose one another. Many of the Anti-Federalists â€" the writers and activists who opposed ratification â€" insisted that the key political unit for the fostering of liberty would have to remain the small polis-like republic, whereas the authors of the Federalist Papers famously made a case for the superior ability of the extended republic to secure natural rights. Of course, certain Lockean understandings of politics permeated the thought of many of the Anti-Federalists as well. Still, it is easy to show that Jefferson was more Lockean than classical republican when it came to the fundamentals of politics, and it is easy to recall several famous passages from the Federalist Papers that warn that small republics foster, among other rights-endangering maladies, majority faction and continual war-making. Natural-rights doctrine did a great deal to light the fire of American independence: We can trace its influence upon key figures like James Otis, John Dickinson, John Adams, Thomas Paine, and others, and we can work out the way it supplied key doctrines of the revolution. This point is well illustrated by an anecdote from the s about a conversation between an elderly veteran of the Battle of Concord, Levi Preston, and a young historian, Mellon Chamberlain. That experience had significant influence in key respects prior to their widespread adoption of natural-rights doctrine. Over time, the hold that the classical-communitarian conception of liberty had exercised over our thought and sentiment ebbed, particularly as the prominence of the town in American life diminished. A similar spirit of prudence pervades the Federalist Papers, which is one long reflection about what kind of union and government is necessary to preserve liberty given what experience teaches us about human nature, political dynamics, and geostrategic realities. The founders were not for a come-what-may insistence upon perfectly securing all natural rights, nor were they for following out every implication of natural-rights thought. Such radicalism would likely result in the inability to establish or maintain effective government, and thus in the inability to secure any rights at all. Instead, the founders and perhaps adherents of natural-rights liberty in America more generally understood liberty as the prudential protection of natural

rights. Louisiana and Lochner v. The Lochner era of American jurisprudence, which ran roughly from to , saw state courts and the Supreme Court strike down laws that, for instance, regulated wages and work hours because such laws violated a right to contract as one chose. But regardless of how one comes down on the question of constitutional interpretation, one might still find the overall conception of liberty here compelling. Such economic self-reliance does not necessarily translate into social atomization. Still, the basic idea here can be captured by a rather individualistic image: This is the primary content of liberty, and what its defense mainly requires, once the two necessary conditions of liberty â€" law-bound government and the removal of the threat of enslavement â€" have been achieved. Moreover, it is the successful use of these economic liberties that is seen as the key to giving the other aspects of liberty their vigor. We still commonly hear libertarians and conservatives say that we can know whether liberty is increasing or diminishing simply by gauging whether there is increasing or diminishing freedom for the operation of private enterprise. The goal is a market system made as free as is practicable, so as to allow the individual to achieve real self-reliance. Good politics protects the free operation of the economic arena by discouraging, through regular legislative politics and through constitutional restrictions of government powers, the temptation of poorer majorities to take from the more prosperous. Good politics also protects such liberty by resisting the operation of monopolies in business or labor markets and by generally opposing laws that grant subsidies, protect collective-bargaining agreements, set up market-entry barriers, fix prices, and the like. The claim underlying this understanding of liberty is that it is not just a prudent theory of political economy that opposes such laws but the demands of liberty itself, and thus of the Constitution as well. This hope was coupled, however, with a fear that if political advances did not keep up with and regulate the advances in other fields, democracy would suffer severe degradation, including a loss of effectual individual liberty. Yes, for the industrial wage-laborer, this formal liberty would mean he could not be made a slave, but how would this really matter if his family was likely to suffer life-threatening penury the moment he left or lost his job? Not only would he live a life shorn of opportunities for self-development, but he would probably be pressured to conform to the behavior, perhaps even the political and religious behavior, approved of by his employer. Such men would be drawn to creeds dedicated to the overthrow of liberal-democratic government. Liberty is not separable from such justice, nor can it be understood by focusing on the individual alone, since it is only the socially just society that makes truly free individuals possible. They found two dogmas particularly regrettable. Progressives traced the roots of this individualism to the founding itself, but many of them put more of the blame upon economic theories of later origin. Either way, while such individualism had been a useful creed for pioneer farmers and small-town merchants to hold, the modern economy was increasingly coming to be divided into corporations and wage-earners. Thus, belief in inviolable individual rights, and particularly the rights to contract and use property freely, actually served to further entrench the power of corporations against that of individuals. The second dogma was that of old-fashioned American federalism, which held that the power granted the national government by the Constitution to regulate interstate commerce mainly applied to commercial exchanges between the states. The regulation of an economic activity occurring within one state could only be undertaken by that state, even if the product of it affected the entire nation. This dogma was in denial about the truly national nature of the American economy, the Progressives asserted. At their best, the ties earlier Americans had to their towns and localities fostered patterns of fraternal care for their fellow citizens; but now such instincts had to be given means of being exercised through the emerging national community if they were to exist at all. In sum, justice could not be limited to the honoring of individual rights; it had to be social justice, and the proper political arena for its pursuit was the nation. Correctly understood, liberty was nothing but another way of speaking about the mutual enjoyment of such justice. Aspects of it had been affirmed by the Supreme Court in a number of landmark First Amendment decisions since the s regarding political expression, the regulation of obscenity, and the non-establishment and free-exercise of religion. Wade, and Lawrence v. The core idea of personal-autonomy liberty is the notion that the individual should be allowed to do whatever he wishes, so long as he does not harm others or violate their rights. Indeed, all modern democratic nations

have witnessed, and will continue to see, some majorities becoming convinced that society will be harmed by permitting certain lifestyles â€" such as those of the overweight or uncleanly, the uneducated, the drug-addicted or otherwise vice-besotted, the sexually deviant or promiscuous, or those publicly adhering to a false religion or atheism. Personal-autonomy liberty pushes against societal regulation of all these aspects of life and flatly rejects it with respect to consensual sex and religious opinion. But this understanding was not embraced by all or even most of the founders. And with respect to sexuality, the record of state legislation was even more repugnant to the personal-autonomy idea of liberty. We could turn to various political theorists to more fully understand personal-autonomy liberty, but simpler articulations of it may be found in the public declarations of two of our Supreme Court justices: The Constitution on its face is The text marks the metes and bounds of official authority and individual autonomy. When one studies the boundary Casey, the decision that reaffirmed the core holding of Roe v. Wade, spoke of the same vision: Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. It is now clear that, so long as the Court remains dedicated to this understanding, it will eventually overturn laws that prohibit same-sex marriage. This fifth conception of liberty is clearly ascendant in our time. On the right, this has meant the rise of a libertarian social ethic rather than a communitarian conservatism. And on the left, it has meant a de-emphasis of the progressive ideal of liberty even as progressivism has appeared resurgent in the Obama years. As recently as the s, there were large numbers of pro-life Democrats who, like the social-gospel Progressives or New Deal Catholics of old, mainly cleaved to the progressive notion of liberty and certainly did not accept the overall personal-autonomy conception. But they are a dying breed now, and typically in those instances when the progressive ideal of liberty comes into conflict with personal autonomy on the left, it is the progressive ideal that must make way. The classical-communitarian conception of liberty, meanwhile, is the least championed one today in American politics. It tends to oppose itself to both the Democratic and Republican coalitions, and thus far its political impact has been negligible. Liberals today emphasize and to some degree combine conceptions four and five, conservatives one and three, and libertarians three and five, although all tend to assume they hold only a single and straightforward conception of liberty. In fact, one benefit of the five-fold framework offered here is that it leads us away from the dichotomous frameworks typically used to analyze liberty, and it allows us to see not only that liberty means different things to different people, but that it can mean multiple things to each of us. The same people similarly make no distinction between the progressive and personal-autonomy conceptions of liberty. Everything is reduced to two opposing sides. All of these dichotomies are too simplistic for making fair judgments or adequate accounts of history. The five-fold framework offered here avoids such reduction. It thus allows the examination of liberty to become dialogic and dynamic, shedding light on American history and on our misunderstandings or misrepresentations of it. In fact, both liberals and conservatives form their ideas of liberty through the lens of their understanding of history â€" and the ways they do so are instructive. Why did our conceptions of liberty develop as they did? By this account, our journey from the founding to the present has involved two key corrective steps. First, the progressive conception was formulated in response to the way the natural-rights conception developed over time into an economic-autonomy ideal of liberty. This response involved something of an overreaction, however, for the progressive conception was too negligent of civil liberties, as these were associated with the natural-rights tradition, and too complacent about the potential for government expansion into all areas of life. So a second corrective step was taken, involving both a re-appreciation of inviolable individual liberties tied to the Bill of Rights and a further carving out, particularly through the right-to-privacy cases, of a much larger sphere of personal autonomy in non-economic matters. And regarding the trend illustrated by the right-to-privacy cases, the following from Justice Brennan is similarly revealing: Until the end of the nineteenth century, freedom and dignity in our country found meaningful protection in the institution of real property To a growing extent economic existence now depends

on less certain relationships with government In the old days, the dignified sphere of individual liberty was economic, but now, given the growing power that progressives had given and think they ought to continue to give to government, a new approach was needed. Originalist constitutional scholars harp on the inconsistency of a liberal court that, after emphatically rejecting economic substantive due process in the late s, turned to what was essentially non-economic substantive due process from the s forward. But if it was not a move that made perfect sense as an interpretation of the 14th Amendment, it is easily understood as being motivated by a need to guarantee the individual some arena for autonomous action. And it also helps explain the mix of progressive liberty and autonomous-individual liberty that now defines the left. This development of American progressivism and liberalism is certainly an important part of the story of our conceptions of liberty. But two alternative conservative explanations give us reason to think it is not the whole story. The Progressives rejected these elements and began to shape the government in a manner, later taken much further by New Deal and Great Society liberals, which undermined each of them. It is crucial to understand how novel this interpretation of Progressivism has been. Prior to the work of these scholars, the dominant academic understanding was that Progressivism had been an obviously necessary response to growing corporate power in America, and that, in comparison with more fundamental critiques of capitalism, it was in many ways quite tepid.

DOWNLOAD PDF NATURAL RIGHTS AND SPINOZAS ESSAY ON LIBERTY.

Chapter 8 : Natural and legal rights - Wikipedia

Liberty is derived from the Latin word liber which means free. It is a word of negative meaning denoting absence of restraint. It is a word of negative meaning denoting absence of restraint. Its primary significance is to do what one likes, regardless of all consequences.

This is the philosophy on which the American Constitution and all Western political systems today are based. But there are many different interpretations of the natural law, from the Ciceronian to the Thomistic to the Grotian. What version of natural law supports liberal politics? Some argue that this is a misguided question. This is probably the greatest controversy in Locke interpretation today. Natural law theories hold that human beings are subject to a moral law. Morality is fundamentally about duty, the duty each individual has to abide by the natural law. Is Locke a follower of Hobbes, basing his theory on right rather than natural law? What difference does it make? The moral logic is something like this: This right is the fundamental moral fact, rather than any duty individuals have to a law or to each other. The priority of individual right reflects our separateness, our lack of moral ties to one another. Individuals create societies and governments to escape this condition. The sole purpose of the contract is to safeguard the rights of each citizen. Locke speaks of a state of nature where men are free, equal, and independent. Is it natural law or Hobbesian natural right? The Founding Fathers, in the Declaration of Independence, speak of both natural rights and natural laws. Natural law and natural right may be combined, but if they are, one must take precedence over the other. Hobbes had argued that freedom and equality, and the priority of individual right, meant that individuals in the state of nature could pursue their survival and interest without limitation. They had no duty to respect the rights of others. This is why the state of nature was a state of war. The source of this duty, he says, is natural law. Hobbes and Locke agree that individuals have a right to property in the state of nature, but Hobbes denies that individuals have any duty to respect the property of others. Locke says individuals have a duty to respect the property and lives and liberties of others even in the state of nature, a duty he traces to natural law. Here, then, is the issue in the natural lawâ€”natural right dichotomy: How extensive is this loophole? In the beginning of the Second Treatise, Locke seems to claim that the state of nature is a place of peace and harmony. This is the deepest controversy in Locke interpretation today, a controversy that is sometimes acrimonious. Even for those who see Locke as a kind of Hobbesian, though, it is generally agreed that Locke believes in some degree of natural duty to respect the rights of others. Similarly, for those who see Locke as a natural law thinker, there is controversy over the source of that law. Locke says, in the First Treatise of Government and elsewhere, that God is the source of the natural law. But God is much less in evidence in the Second Treatise. Further, if Locke is serious about natural law, it is clear that his version of natural law is quite different from that of other natural law thinkers, such as Thomas Aquinas. If Locke is a natural law thinker, his version of natural law is much more individualistic, much closer to Hobbes, than were previous versions. For contemporary Americans, one reason for studying Locke together with Hobbes is to understand the character of liberalism. A liberal system such as ours enshrines individual rights, but its health depends upon people exercising those rights responsibly. It depends on people taking seriously their duty to respect the rights of others. Many observers believe that, while Americans today are eager to claim their rights, too few are willing to shoulder the attendant responsibilities. Is a rights-based society doomed to degenerate into simple selfishness? Or is it possible to construct a rights philosophy with a robust element of responsibility built into it? Must such a philosophy place natural law above individual right? Must this law have a religious dimension? These are questions that should send us back to Hobbes, Locke, and the architects of the American Constitution. Natural Rights and the New Republicanism, Chs Princeton University Press, This is a more extensive statement of the quasi-Hobbesian interpretation. This presents a more traditional interpretation of Locke as a natural law thinker. Another interpretation of Locke as natural law thinker.

Chapter 9 : Locke's Political Philosophy (Stanford Encyclopedia of Philosophy)

In this essay I present a sketch of a classical natural law approach to natural rights and private property. The approach is "classical" insofar as it is grounded in metaphysical assumptions of the sort defended by ancient and medieval philosophers like Plato, Aristotle, and Aquinas â€" assumptions very different from the paradigmatically modern, post-Cartesian metaphysical assumptions.

History[edit] The idea that certain rights are natural or inalienable also has a history dating back at least to the Stoics of late Antiquity and Catholic law of the early Middle Ages , and descending through the Protestant Reformation and the Age of Enlightenment to today. For example, Immanuel Kant claimed to derive natural rights through reason alone. The United States Declaration of Independence, meanwhile, is based upon the " self-evident " truth that "all men are â€¦ endowed by their Creator with certain unalienable Rights". Hart argued that if there are any rights at all, there must be the right to liberty, for all the others would depend upon this. The Zoroastrian religion taught Iranians that citizens have an inalienable right to enlightened leadership and that the duty of subjects is not simply to obey wise kings but also to rise up against those who are wicked. Leaders are seen as representative of God on earth, but they deserve allegiance only as long as they have farr, a kind of divine blessing that they must earn by moral behavior. The Stoics held that no one was a slave by nature; slavery was an external condition juxtaposed to the internal freedom of the soul sui juris. Seneca the Younger wrote: As the historian A. We think that this cannot be better exemplified than with regard to the theory of the equality of human nature. McIlwain likewise observes that "the idea of the equality of men is the profoundest contribution of the Stoics to political thought" and that "its greatest influence is in the changed conception of law that in part resulted from it. Furthermore, every man is responsible for his own faith, and he must see it for himself that he believes rightly. As little as another can go to hell or heaven for me, so little can he believe or disbelieve for me; and as little as he can open or shut heaven or hell for me, so little can he drive me to faith or unbelief. Preservation of the natural rights to life, liberty, and property was claimed as justification for the rebellion of the American colonies. As George Mason stated in his draft for the Virginia Declaration of Rights , "all men are born equally free," and hold "certain inherent natural rights, of which they cannot, by any compact, deprive or divest their posterity. The distinction between alienable and unalienable rights was introduced by Francis Hutcheson. Unalienable Rights are essential Limitations in all Governments. One could not in fact give up the capacity for private judgment e. The right of private judgment is therefore unalienable. Like Hutcheson, Hegel based the theory of inalienable rights on the de facto inalienability of those aspects of personhood that distinguish persons from things. A thing, like a piece of property, can in fact be transferred from one person to another. According to Hegel, the same would not apply to those aspects that make one a person: The right to what is in essence inalienable is imprescriptible, since the act whereby I take possession of my personality, of my substantive essence, and make myself a responsible being, capable of possessing rights and with a moral and religious life, takes away from these characteristics of mine just that externality which alone made them capable of passing into the possession of someone else. When I have thus annulled their externality, I cannot lose them through lapse of time or from any other reason drawn from my prior consent or willingness to alienate them. Such rights were thought to be natural rights, independent of positive law. Some social contract theorists reasoned, however, that in the natural state only the strongest could benefit from their rights. Thus, people form an implicit social contract , ceding their natural rights to the authority to protect the people from abuse, and living henceforth under the legal rights of that authority. Many historical apologies for slavery and illiberal government were based on explicit or implicit voluntary contracts to alienate any "natural rights" to freedom and self-determination. Any contract that tried to legally alienate such a right would be inherently invalid. Similarly, the argument was used by the democratic movement to argue against any explicit or implied social contracts of subjection pactum subjectionis by which a people would supposedly alienate their right of self-government to a sovereign as, for example, in Leviathan by

Thomas Hobbes. According to Ernst Cassirer , There is, at least, one right that cannot be ceded or abandoned: They charged the great logician [Hobbes] with a contradiction in terms. If a man could give up his personality he would cease being a moral being. For by such an act of renunciation he would give up that very character which constitutes his nature and essence: Neither can any state acquire such an authority over other states in virtue of any compacts or cessions. This is a case in which compacts are not binding. Civil liberty is, in this respect, on the same footing with religious liberty. As no people can lawfully surrender their religious liberty by giving up their right of judging for themselves in religion, or by allowing any human beings to prescribe to them what faith they shall embrace, or what mode of worship they shall practise, so neither can any civil societies lawfully surrender their civil liberty by giving up to any extraneous jurisdiction their power of legislating for themselves and disposing their property. Then it turned out to make considerable difference whether one said slavery was wrong because every man has a natural right to the possession of his own body, or because every man has a natural right freely to determine his own destiny. The first kind of right was alienable: But the second kind of right, what Price called "that power of self-determination which all agents, as such, possess," was inalienable as long man remained man. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights In the 19th century, the movement to abolish slavery seized this passage as a statement of constitutional principle, although the U. As a lawyer, future Chief Justice Salmon P. The law of the Creator, which invests every human being with an inalienable title to freedom, cannot be repealed by any interior law which asserts that man is property. The concept of inalienable rights was criticized by Jeremy Bentham and Edmund Burke as groundless. Bentham and Burke, writing in 18th century Britain, claimed that rights arise from the actions of government, or evolve from tradition, and that neither of these can provide anything inalienable. Presaging the shift in thinking in the 19th century, Bentham famously dismissed the idea of natural rights as "nonsense on stilts". In The Social Contract , Jean-Jacques Rousseau claims that the existence of inalienable rights is unnecessary for the existence of a constitution or a set of laws and rights. One criticism of natural rights theory is that one cannot draw norms from facts. Moore , for example, said that ethical naturalism falls prey to the naturalistic fallacy. John Finnis , for example, contends that natural law and natural rights are derived from self-evident principles, not from speculative principles or from facts. Fourth president of the United States James Madison , while representing Virginia in the House of Representatives, believed that there are rights, such as trial by jury , that are social rights , arising neither from natural law nor from positive law which are the basis of natural and legal rights respectively but from the social contract from which a government derives its authority.