

Cicero's Legacy and the Story of Modern Liberty

by

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Dissertation submitted in partial fulfillment of
the requirements for the degree of Doctor
of Philosophy in the Department of
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ABSTRACT

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Abstract

There is a widespread belief among scholars that liberalism and republicanism are two alternative traditions, that the ideal of liberty for individuals to freely order their own lives and ideal of liberty for political communities to govern themselves developed in tension with each other. The deeply influential historical account that undergirds this view has provided reasons for believing that the two ideals are not only historical rivals, but conceptually incompatible—and that reconciliation between the two is always synthetic and a matter of compromise.

I challenge this account by arguing that both of these traditions derive from Cicero and that they can be reconciled on a Ciceronian foundation. I argue that Cicero—not Machiavelli—ought to be considered the central figure in the republican tradition and classical source for liberalism as well. I show that Cicero offers a theory of politics according to which republican self-government and the freedom and security of individuals are inextricably linked and mutually reinforcing. In other words, Cicero articulates a vision that blends that liberal and republican ideals of freedom into one coherent whole. I then illustrate how this ideal lies at the core of John Locke's early articulation of natural rights. And finally, I demonstrate that the American Founding constitutes the culmination of this Ciceronian tradition of liberal republicanism.

Dedication

For Irene Hawley and Irene Collins: my first teachers, and my best.

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I first encountered Cicero as a high school freshman in Ned Ligon’s Latin class. He helped me to see through Cicero’s pardonable vanity to the brilliant theoretical mind behind it. But, it was at Tufts that I first truly discovered political philosophy as the field that asked the questions that had always fascinated and driven me. Vickie Sullivan, Ioannis Evrigenis, and Rob Devigne were three of the finest teachers and guides I could have asked for. It is thanks to their cultivation and encouragement of me that I decided to take the leap and pursue a career as a political theorist. Each of them has continued to provide support and feedback as I have embarked on writing this dissertation.

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This dissertation is dedicated to both the Irenes.

Introduction: From Rome to America

Plutarch tells a story. Near the end of his life, Augustus Caesar went to visit one of his grandchildren. The boy had been reading one of Cicero's works, and fearing his grandfather's wrath, he attempted to hide the book. But, the first Roman emperor—the man who had consented to Cicero's execution—took the book, read some of it to his grandson, then handed it back saying "a learned man, my child, a learned man and a lover of his country"(Plutarch 1919, 49).

Whether apocryphal or not, the story is indicative of Cicero's philosophical afterlife. Cicero's thought remained admired even after the end of the republic to which he dedicated his life (admired, indeed, even by the man who had a leading role in destroying the republic and Cicero himself). Until the 19th Century, it seemed that each successive development in western intellectual life made room for Cicero. He offered something for everyone. Augustine, Ambrose and other Church Fathers condemned many of the works of the pagans, but they exempted Cicero, whose ideas they freely borrowed.¹ Medieval scholastics, such as Aquinas, appealed frequently to Cicero as an authority. Cicero was popular among the Renaissance humanists, particularly Petrarch, who considered Cicero his favorite Roman (Pocock 2009, 56). Among the Reformers, Martin Luther implied Cicero's prospects on Judgment Day were considerably better

¹ The most obvious example of this is Ambrose's *De officiis*, openly modeled on Cicero's work of the same names.

than those of many prominent Christians.² Martha Nussbaum has called Cicero's *De officiis* "perhaps the most influential book in the history of western political philosophy"(Nussbaum 2000, 178). But, it may be that it is actually we moderns who owe the most to Cicero's political thought.

Such a claim is counterintuitive and controversial for a number of reasons. Among scholars of political thought, the attention paid to Cicero is miniscule compared to that devoted to figures such as Plato, Aristotle, Machiavelli, Hobbes, or Rousseau. As a philosopher in his own right, he is considered largely derivative of the Greeks. His role in shaping the development of subsequent political thought is even more overlooked, in part because the most influential general accounts of the history of political have certain conceptual blinkers that leave little opportunity for recognizing Cicero's importance.

Benjamin Constant famously posited a fundamental difference between "*The Liberty of the Ancients Compared with That of the Moderns*." According to Constant, modern liberty consists of protections for the individual and private property against arbitrary harm or interference from rulers. Ancient liberty consisted in the ability to participate collectively in making rules for the community, against which the individual had no special rights or safeguards (Constant 2016). The same distinction can be found in *Two Concepts of Liberty*, where Isaiah Berlin claims that there is "scarcely any discussion of individual liberty... in the ancient world." Berlin finds support for this contention in

² As preserved in (Smith 2015, 342).

Condorcet's rejection of the notion that individual rights were a concept known to the Greeks and Romans (Berlin, 2000, 201). Although he approaches the issue from a profoundly different perspective, Leo Strauss agrees that modern thought is characterized by a fundamental break with that of the ancients. Strauss explicitly denies that Cicero is any kind of exception to this division (Strauss 1953, 135).

To the extent that this common narrative has been challenged at all, it has largely been through attempts to make room for Constant's version of ancient liberty in modernity.³ It has become popular especially to look to the political thought and practice of Athens for resources to increase or improve democratic participation and deliberation.⁴ In a parallel movement, some theorists have suggested that an alternative to liberal political values can be found in a tradition they term "republican"(Philip Pettit) or "neo-Roman"(Quentin Skinner).

These neo-republicans make two important contributions. First, they correctly call our attention to the fact that the modern period (from the Enlightenment to the present day) witnessed not only the emergence of a focus on individual rights in theory and practice, but also a renewed insistence on republican government. We have come to view ourselves as citizens, rather than subjects—individuals not only entitled to security in our persons and possessions, but also as rightful participants in political decision-

³ There are few but valuable exceptions to this trend, individuals who have pointed to the presence of an ideal of so-called "modern liberty" among the Romans, including Benjamin Straumann, Michelle Clarke, Jed Atkins, and Chaim Wirszubski. I will discuss each of these further in this project.

⁴ See, for instance, much of Josiah Ober's work, as well as many others.

making. Second, Pettit, Skinner, and others have correctly traced this commitment to republicanism⁵ to the thought and practice of the ancient Romans. If we wish to better understand ourselves politically—both our normative ideals and our actual institutions—the Romans appear far closer to us than the Greeks in outlook and circumstance. For the Romans as well as for us, the size and composition of the polity makes the radical democracy of the Greek polis impossible. Indeed, the very terms we use—*citizen, republic, liberty*—come down to us from the Latin (in some cases from Cicero’s own attempt to provide Latin with a philosophical vocabulary).

But, the value of these two neo-Republican contributions is seriously undermined by two corresponding flaws. First, in positing republicanism as a tradition and coherent set of values *essentially* in opposition to liberalism, the neo-republicans have conjured up a historical and conceptual divergence where there is none. Figures such as Locke, Montesquieu, and others saw no inherent conflict between the negative rights of the individual and collective self-government. They found the two ideals mutually self-reinforcing, at times even mutually necessary. This belief was also reflected in the American Founders' decisions when establishing their new republic. To conceive of liberalism and republicanism as rivals thus not only commits a historiographical error, but also a conceptual one. It obscures today something many of

⁵ I include Skinner's "neo-Romanism" within the term "republican" at this point for the purposes of brevity. Later, I will argue that Skinner's position—that the label of "republican" should be reserved only for those who reject outright all forms of monarchy—is rejected by nearly all the major figures of the republican tradition he identifies, including Cicero, Machiavelli, Montesquieu, and Locke.

the early moderns considered plain common sense: liberalism and republicanism are part of the same project of realizing human freedom.

I believe that this flaw in the neo-republican account is in large part caused by a second mistake. Although the neo-republicans almost unanimously trace the origins of the republican ideal to classical Rome, most have devoted very little attention to Roman political thought (Skinner is a partial exception to this). There are some understandable reasons why the leading neo-republicans might feel it unnecessary to examine the Roman case closely. Since Pettit's project is to assert the modern relevance of a theory of government and an ideal of freedom, it might seem superfluous to engage in a serious genealogy of ideas. Yet, as a result of this oversight, Pettit fails to adequately understand the foundation of the tradition he claims to identify, many key figures of which insisted that in fact republicanism and liberalism ought to be linked.

For their parts, scholars such as Skinner or J.G.A. Pocock have been centrally concerned with the history of modern political thought. We might expect them to care more about the real role Roman ideas played in our political development. Yet, both view political philosophy not as a serious discourse about normative commitments, but rather a rhetorical exercise in which value-laden language is employed in the service of strategic political goals (Skinner 2002, 1:6–7). As a result, the fact that Locke or Montesquieu or Harrington makes use of Roman examples or terms does not prompt

Skinner or Pocock to examine closely how the former is engaging with the latter; it is simply assumed that the appeal is based on considerations of rhetorical utility.

The problem with this approach is that the early modern thinkers Skinner and Pocock study were much closer readers of the classics—especially the Romans—than Skinner and Pocock give them credit for. Moreover, they did in fact look to them for authority and inspiration. Therefore, to truly understand the thought that shaped the modern period, we need to understand how the central figures in that development read and understood the Romans.

This brings us back to Cicero. An attempt to account for the impact of the entirety of classical Roman thought on modern political philosophy would be far too huge an undertaking for a single dissertation. But, fortunately, there is reason to hope that a narrower focus on the role of Cicero in shaping the landscape of modern political thought could go much of the way to completing the same task. A prolific author, Cicero stands virtually alone as the sole political philosopher of the first rank in Rome's republican period. Cicero was an inspirational figure to leading Renaissance humanists, and by the beginning of the early modern period, his works were a central component of the usual educational curriculum (Mitsis 2003, 52). He was the subject of a number of popular biographies in the 17th and 18th Centuries. Colonial officials brought copies of his works abroad with them on their imperial assignments (Nussbaum 2000, 179). Cicero was read nearly everywhere. Thus, it is hardly surprising that Cicero was an

overwhelming favorite among the key figures of the Enlightenment. Luminaries such as Locke, Montesquieu, Voltaire, Hume, Smith, Adams, and Burke all acknowledge significant intellectual debts to Cicero. Cicero's position as the most eloquent defender of the liberty of the Roman Republic made him an ideal inspiration for these philosophers who, in different ways, sought to realize freedom in the political sphere.

From our contemporary perspective, the Enlightenment turn to Cicero might seem strange. Cicero acquired an undeserved reputation as a derivative and unoriginal thinker among scholars of the 19th Century, from which he is only now beginning to recover. Thanks to the work of scholars such as Atkins, Straumann, and others, we are slowly beginning to see again that Cicero was in fact a highly independent thinker. He borrowed freely from Greek philosophy, but he combined the lessons learned from the Greeks with Roman political sensibilities and his own insights gained from a life of political practice and study.

The result is a unique political vision. Cicero was a persuasive and serious proponent of Roman *libertas*—freedom or liberty. For Cicero, *libertas* lay in the security of a Roman citizen in his person and property against arbitrary physical harm or coercion. The Roman citizen possessed this *libertas* thanks to his standing as a citizen of the *res publica*—the republic or commonwealth. The commonwealth could itself be considered free for the same reason as an individual. The liberty of the commonwealth—indeed the existence of the commonwealth itself—is lost whenever

someone can dominate it by force—when the established institutions, collective self-government, and the rule of law are replaced by the arbitrary will of one or more individuals. The liberty of the individual thus depends on the liberty of the commonwealth. But, there is also something valuable in republican government beyond its instrumental role in protecting an individual's person and property. As a citizen, one is a co-owner of the commonwealth. The citizen enjoys a certain dignity from exercising his responsibility in participating in the political system, rendering and rewarding public service, earning and conferring glory. Thus by engaging in politics, the citizen develops and expresses the loftiest qualities of human nature, and politics becomes an arena for the practice and display of virtue. Undergirding this entire system is Cicero's account of natural law, which is fundamentally distinct from Aristotle in ways that prove very significant to early modern thought.

The version of republicanism Cicero offers differs substantially from other theories typically considered archetypal examples of post-classical republicanism such as those of Machiavelli and Rousseau. Counterintuitively, Cicero envisions a political society that more closely resembles modern circumstances and values than can be found in the works of those much more recent philosophers. Whereas Machiavelli sees internal struggle and external warfare as central to healthy republican politics, Cicero emphasized the value of the rule of law and civic rights. In contrast to the homogenous and radically democratic society of Rousseau's *Contrat Social*, Cicero proposes firm

checks on popular will, and accepts an open—even cosmopolitan—society. While he is undoubtedly a republican thinker, Cicero's peculiar republicanism incorporates many values we would today describe as liberal—including a concern for individualism, protection of private property, and a vision of citizens as rights-bearers. By offering a theory of politics that accommodates both republican and liberal aspirations, Cicero presents a model illustrating that there need be no fundamental or essential conflict between the two families of values. In many ways, Cicero's version of liberal republicanism is more normatively appealing *and* more politically realistic than the Machiavellian or Rousseauian alternatives. In this dissertation I argue that Cicero provided crucial arguments and conceptual resources on topics such as liberty, justice, rights, and the role of the state, that profoundly influenced the rise of liberal republicanism in 17th and 18th Century. And, since the United States was founded by men who saw themselves as part of this movement of liberal republicanism, it should be uncontroversial to point out that our contemporary political values and institutions owe in large part to those intellectual developments.

Cicero's intellectual closeness to us is what makes this project of interest beyond pure intellectual history. It makes an important contribution to our understanding of where our institutions and normative ideas about liberty have come from and how they have developed. In this respect it helps us understand ourselves better. Martha Nussbaum claims that many of the perversities of our contemporary normative political

thinking can be laid at the feet of Cicero (Nussbaum 2000, 180). Nussbaum is right about the unappreciated but central role Cicero's ideas play in contemporary thought. She is also right that making progress on theoretical or normative problems in contemporary thought often requires understanding where the ideas in question originate. But it is also the case that recovering the story of where some of our most fundamental political notions come from can help us see better what is good about them—and even holds out the promise of improving them by understanding them more fully. In some ways, at least, I argue we ought to turn more self-consciously *toward* Cicero, rather than away from him—as Nussbaum would have us do. Understanding Cicero's thought—and the tradition of political thinking it inspired—allows us to see a compelling account of how our ideas about the freedom of individuals and the freedom of political communities can be related. This Ciceronian tradition provides a way of seeing concepts like rights and constitutions as a way of achieving that reconciliation under a moral framework.

In sum, I seek to accomplish three goals in this dissertation. First, I will illustrate how Cicero offers us a compelling and coherent model for connecting the freedom of individuals to order their own lives with an idea of communal ownership over the political realm in such a way that each is a necessary complement to the other. Second, I will explore the role of Cicero's republicanism in giving rise to the liberalism of John Locke. Thus early modern liberalism (at least the Lockean variety) emerges out of the Ciceronian tradition. It is therefore not opposed to republicanism, but in fact derives

from it. Third, I demonstrate that the American Founding constitutes an attempt to realize in the realm of politics the ideas of this Ciceronian tradition of theory. In short, I look to show how our conception of "modern liberty" as a unity between liberal freedom and republican self-government represents the culmination of what we might call the Ciceronian tradition of liberty.

1.2 Organization of the Dissertation

After this introductory chapter, the argument of this dissertation proceeds in 5 stages, each focusing on what I take to be crucial moments in the development of this tradition. In chapter 2, I provide an account of the key features of Cicero's own political thought, at least as it addresses the relationship of republican government to individual liberty. This task alone is substantial, given the relative paucity of recent scholarly attention that has been paid to Cicero. The only modern attempt to offer a comprehensive analysis of Cicero's thought is Wood's *Cicero's Social and Political Thought*. Wood's work is impressive and insightful, but his Marxist assumptions cloud his analysis on several key points. He evinces a tendency to reduce Cicero to a product of his times, a reflection of the prejudices of his nation and class. The first chapter, then, accomplishes an important task of illustrating Cicero's version of republicanism in a way that reveals it to be coherent and theoretically valuable.

Since it would be impossible to give a complete account of Cicero's whole political philosophy in a single chapter, I will focus on those areas that I believe make

his version of republicanism unique, and which hold the most relevance when I turn later in the dissertation to modern thought. Thus, I will focus on the four themes of 1) natural law and the role of the state; 2) justice and property; 3) rights and citizenship; 4) the relationship between patriotism and cosmopolitanism. I will draw evidence from Cicero's most prominent theoretical political works, particularly *De officiis*, *De re publica*, *De legibus*, *Orator*, and *De finibus*. But, I will also appeal to Cicero's speeches and correspondence when they offer clarification or insight, as many later authors were almost as likely to refer to these as to Cicero's more clearly philosophical works.⁶

In the subsequent chapters of the dissertation, I turn to the modern period, illustrating the ways in which Cicero's ideas shaped debates about politics. Though we may at times take it for granted, it was not always obvious or commonly accepted that the liberal values of individualism, private property, and free personal movement had any necessary connection with republican government. On one side, Hobbes argues powerfully that the individual's security and personal liberty were best ensured under a sole ruler. On the other, Machiavelli's brand of republican politics only appears to confirm Hobbesian accusations that republics are rocked by convulsions, prone to sacrifice the lives, liberty, and property of their citizens for some notion of the common good or national glory. Yet in the 17th and 18th Centuries, an intellectual consensus began

⁶ Large portions of *De re publica* were not rediscovered until the beginning of the 19th Century, although many later authors relied heavily on the surviving fragments. Enlightenment authors often appeal to Cicero's speeches in place of missing theoretical writings. I bear this fact in mind in the later chapters.

to develop that liberal values and republican government not only *could* be combined, but that they were natural complements of each other. The chapters in this second part of the dissertation explore how Cicero helped provide the framework for an organically liberal republicanism to arise.

In chapter 3, I therefore turn to Machiavelli's challenge to Cicero. Machiavelli is taken by many to be the central figure in the republican tradition. He is often taken even as the exemplar of the tradition by scholars of various outlooks looking to articulate the relationship between republicanism and liberalism. Against this view, I demonstrate that precisely what is distinctive about Machiavelli's republicanism is its rejection of the central elements of the political vision laid out by Cicero. According to Machiavelli, the moral ground Cicero takes to be necessary for political life is in fact an obstacle to the healthy functioning of vigorous republican politics. In place of Cicero's commonwealth of natural law, rights, property, and peace, Machiavelli advocates for a violent, conflict-ridden republic organized for war and expansion.

In chapter 4, I examine the aftermath of Machiavelli's challenge to Ciceronian republicanism. If security and justice for individuals were incompatible with republican political flourishing, it seemed one had to choose. Two nearly simultaneous intellectual movements arose, both looking to Cicero (and opposing the absolutism of Hobbes), but accepting different horns of the dilemma proposed by Machiavelli. Hugo Grotius and Samuel von Pufendorf sought to vindicate Ciceronian natural law and justice, but

accepted that republican self-government was a threat to these ideals. Across the Channel, English Republicans looked to both Machiavelli and Cicero for inspiration to achieve republican self-government. But they rejected as limiting the natural law teaching about justice, rights, and limited government that Cicero had felt was essential.

Reconciling both of these movements was John Locke. In chapter 5, I explore Locke's intimate engagement with Cicero's political philosophy. Locke brings back together the elements that had appeared irreconcilable after Machiavelli. Individual freedom and security, rights to liberty and property, were all essentially dependent upon the people's ability to control their government. In contrast to many dominant accounts of liberalism and republicanism, I show here how Lockean liberalism emerges out of the tradition of Ciceronian republicanism.

In the 6th and final chapter, I conclude by examining the American Founding. The period between the signing of the Declaration of Independence and the ratification of the Constitution looms large as the pivotal moment in many historical accounts of the alleged quarrel between liberalism and republicanism. More importantly, this period holds special significance for us today because it gave birth to institutions (and expressions of ideals) that still govern much of our political life. I argue that the Founding constitutes the culmination of the Ciceronian tradition in that it sought to realize in practice the theory of liberty and government first articulated by Cicero and adapted by followers such as Locke. At the end of this chapter, I step back to consider

how we might think differently about our political ideals, and how we conceive of the relationship between liberalism and republicanism as theories of government and freedom.

1.3 A Great Controversy

The liberalism-republicanism question has proved itself noteworthy in recent decades because of the interdependence of the historical and contemporary/analytic political theory that have taken a stake in it. In other words, there is close relationship between the historical work of Pocock, Bailyn, Wood, and Skinner and the theoretical work of Pettit and Viroli. The former gains importance by its alleged ability to excavate a political ideal that has achieved new relevance. In turn, the contemporary theoretical work of the latter takes on much greater plausibility by its association with such venerable figures as Aristotle, Cicero, and Machiavelli. Similarly, the work of scholars such as Michael Zuckert and Thomas Pangle on Locke and the American Founding bears directly on the broader Straussian project of diagnosing the contemporary “crisis of modernity,” which Leo Strauss attributes to the break from classical political thought allegedly sought by early modern thinkers.

In this light, it is worth briefly pausing here in the introduction to illustrate more fully the two competing accounts of modernity that this dissertation challenges. The first is that of Strauss. Strauss argues that the Enlightenment of the 17th and 18th Centuries developed upon a fundamental break with classical political philosophy. According to

Strauss, classical political philosophy was primarily contemplative; it concerned itself with attempting to discover the best political order, but believed that such an order could only become a reality by chance (Strauss 1953, 151–52). Strauss explicitly includes Cicero as one of the foremost ancient philosophers who held this view (Strauss 1953, 134-136). In contrast, modern political philosophy (which includes Enlightenment political philosophy) is fundamentally active, it seeks political knowledge in order to actualize the best political order. Strauss thus sees in the early moderns a self-conscious rejection of the essence of classical political philosophy (Strauss 1953, 165-202).⁷ This thesis influences a number of subsequent scholars, such as Zuckert, Pangle, and Sullivan, as well as Harvey Mansfield, Paul Rahe, and others.

This dissertation complicates Strauss's story in two ways. First, Cicero, while an open follower of Plato, does not share Plato's preference for the *vita contemplativa* over the *vita activa*. He explicitly endorses the superiority of the active political life over the passive philosophical life and argues that the value of philosophy comes primarily from its ability to inform our actions (*De officiis* 1.19).⁸ Second, Cicero's works were so ubiquitous in the 17th and 18th centuries that his period could then hardly be seen as characterized by a total rejection of classical political thought. The testimony of Hume

⁷ See also: (Strauss 1989).

⁸ Lest one be inclined to suggest that Cicero was being esoteric in these passages, one ought to bear in mind that Cicero's life testifies compellingly to his estimation of the relative worth of the political and philosophical lives. Whenever he faced a choice between engaging in philosophy or political activity, Cicero chose political activity.

and others does confirm that Aristotle and Plato held little sway at this time. As Hume puts it, "the fame of Cicero flourishes at present, while that of Aristotle is utterly decayed"(Hume 2011, 1.7). Therefore, these centuries are better understood not as a break from all classical thought, but rather as a period where certain classical authors declined in popularity, while others—Cicero in particular—ascended. If anything, the relationship of Enlightenment thinkers to Cicero evinces an awareness of the *necessity* of returning to the past for models and examples of how free government might work, given the contemporary dearth of such models and examples.⁹

As noted above, this dissertation even more deeply challenges the account of modernity that emerges from the writings of the "Cambridge School" historians of political thought and of the neo-republicans. Scholars such as Pocock and Skinner have long focused on early modernity as the period in which liberalism came into its own as a powerful—even dominant—political philosophy. They have argued that liberalism's rise during this time occurred at the expense of another, older, tradition of political thought: republicanism.¹⁰ According to this narrative, the liberalism of Locke, Smith, and others sought to overcome the political values and ideas found in Machiavelli and his successors. While the latter group had advocated an understanding of liberty found in the vigorously contested politics of a free (i.e. non-monarchical) state, the former

⁹ The foremost historian of the Revolutionary period testifies to this lack of examples available to the Founders (Bailyn 1992, 23–26).

¹⁰ This argument can be found in Pocock (2009), and Skinner (1998). For his part, Skinner has since switched terms from "republican" to "neo-roman."

thinkers located liberty in the unimpeded action of the individual and the protection of property. For liberals, only force or the threat of force can interfere with liberty, while for republicans, any form of constraint that arises from a condition of dependence or domination can be equally detrimental for liberty (Skinner 1998, 84–85). There remains disagreement among adherents of this school whether the apparent contest between liberalism and republicanism issued in liberal triumph or some kind of garbled synthesis at the end of the 18th Century.¹¹

I argue that the presence of Cicero's influence on both sides of this alleged divide is not simple historical coincidence. The way in which Cicero combines both republican and liberal values into a *coherent* synthesis would have made the idea of a fundamental incompatibility between the two implausible to many early modern thinkers. The quintessential republican good of a self-governing community and the liberal ideal of individuals free from interference need not be set at odds. Cicero provides compelling reasons why republican government and republican virtues are essential guards and important complements of the individual freedom valued by liberals like Locke and the Founders, who appeal to Cicero's authority to defend those claims. At the same time, we find these same figures employing Ciceronian arguments for the intrinsic (not merely

¹¹ Skinner believes that liberalism defeated and discredited republicanism ("neo-roman theory") (1998, x). Gordon Wood sees the ratification of the US Constitution as a kind of liberal coup against the republican values of the Revolution (G. S. Wood 1998). In contrast, Sullivan—herself a critic of the Cambridge school—sees Hobbes and Machiavelli as two sources of influence that combine to create a *post hoc* synthesis (in England at least) (2006).

instrumental) good of paradigmatically republican values such as political participation, public service, and the prevention of domination. If this dissertation is successful, we can again recognize Cicero as an originator of a tradition of thinking about politics that takes republican self-government to be eminently compatible with liberal ideals. The emergence of liberal political philosophy during this period would then appear not as a rejection of republican politics, but rather as a rejection of *Machiavellian* republicanism, and a reaffirmation of a much older republican tradition, whose origins we can trace to Cicero.

Indeed for all their differences, I argue that the Straussian and Cambridge School interpretations of this period share a fundamental overestimation of Machiavelli's importance. For Strauss, Enlightenment thought is a continuation of Machiavelli's break with classical political philosophy. For Skinner, Pettit and others, the image of republican politics of Machiavelli's *Discorsi* and carried on by the so-called "commonwealthmen" appears to be the only significant version of republicanism.¹² Beyond occasional lip service to his importance in the republican tradition, Pettit and Pocock especially largely ignore Cicero. Pocock's dense *Machiavellian Moment* refers to Cicero a mere five times in its six hundred pages.¹³ Pettit refers to Cicero as a central figure in the republican tradition, but mentions him only twice more in *Republicanism*,

¹² Pettit modifies this view in later works, identifying a separate, Franco-German strain of republicanism, which I engage briefly in chapter 3. But, Pettit sees this tradition, too, as opposed to liberalism.

¹³ For comparison, Pocock refers to Aristotle several dozen times, despite the testimony of many of Pocock's own subjects that Cicero was held in much higher regard than Aristotle. See, for example Hume (2006), 1.4..

both times only in passing. Skinner does take seriously Cicero as a source of republican ideas, but he sees Machiavelli as agreeing with Cicero on almost all important questions, and thus as the modern representative of republican thought. Despite their protestations, for these scholars, "neo-Roman" essentially refers to thought indebted to Machiavelli's account of Roman republicanism. Machiavelli's contributions to political philosophy are indeed monumental. But the Cambridge school scholars and Strauss tend to overlook the alternative of Cicero. Strauss misses Cicero's ability to address Enlightenment concerns about liberty, rights, and equality in a way that other ancient philosophers could not. For the Cambridge School, they fail to see how appealing Cicero's liberal and pacific republican vision could be in comparison to the chaotic and bellicose republic of Machiavelli's depiction.

While modern scholars have overlooked the Ciceronian alternative, I show that the thinkers of the Enlightenment did not. Nearly everywhere one looks during the 17th and 18th centuries, one finds Cicero lurking, yet substantive references to Machiavelli are almost nowhere to be found. At his death, Locke's library contained more works by Cicero than any other author (Mitsis 2003, 52). Montesquieu devoted an entire discourse to Cicero, and planned another inspired by *De officiis*. A young John Adams often declaimed Cicero's orations against Catiline aloud in his room (Bailyn 1992, 26). Although opposed on some of the most fundamental questions, both Kant and Hume appeal to Cicero on questions of virtue. Kant's cosmopolitanism and the just war

theories of Grotius and Pufendorf acknowledge sizeable debts to Cicero. Martha Nussbaum explains that Adam Smith often failed to cite Cicero when quoting him because to do so would insult the reader's intelligence, so central were Cicero's ideas to the educated discourse of the day (Nussbaum 2000, 179). It is thus perhaps not hyperbole when Neal Wood describes Cicero as a "culture-hero of the age" (N. Wood 1988, 3). And—though few recognize it— his shadow still looms over us today.

Aristotle had argued that a certain kind of political wisdom can only be acquired through experience. As a *novus homo* who rose to Rome's highest office without a military background, Cicero certainly earns himself a hearing in this respect. His forceful prose and masterful use of language undoubtedly contributed to his appeal as an authority for early modern thinkers. Still more fundamentally, Cicero's writings are supported by a more basic—and perhaps more important—kind of experience as well. In him could 17th and 18th Century writers—including the American Founders— find a profound philosopher who had the experience of living as a free citizen in a free republic. Cicero's passionate and persuasive defense of the value of such a political order may be what most commended him to individuals who sought to realize liberty for states and citizens alike.

“I shall employ every moment of the day and of the night in thinking, insofar as thought is required, of the liberty of the Roman people and of your dignity; nor I shall recoil from action and activity, where that is called for.”

--Third Philippic 33

Chapter 2: Cicero’s Vision of Free Citizens and a Free Commonwealth

Cicero lived in an age before “isms,” and the suggestion that his thought expresses ideals of liberalism or republicanism would have perplexed him. Yet, his political philosophy contains within it many of the key features of both traditions. This would be relatively uninteresting if Cicero merely offered a range of relatively unconnected views about politics, a constellation of policies and positions that happen eclectically to satisfy some liberal or republican demands.¹⁴ Probe deeply enough and one can find some liberal or republican element or resemblance in the works of many major political thinkers.

My argument claims far more than this. First, Cicero in fact provides the building blocks for both liberalism and republicanism before their emergence. Moreover, even before their alleged division into separate camps, Cicero’s political philosophy shows the underlying compatibility of liberal and republican aspirations. I will show that ideal of freedom that blends these two traditions, which emerged in the 17th and 18th Centuries

¹⁴ For a depiction of how liberal republicanism might emerge as an eclectic *post hoc* synthesis, see (Sullivan 2006).

and animated the American Founding, owes its fundamental articulation to Cicero. The Enlightenment philosophers who brought this vision to life drew explicitly and heavily from Cicero's philosophy. If "modern freedom" is the combination of constitutional republican self-government with the freedom of individuals to order their own lives and property without interference, it turns out to be far less of a recent development than is generally supposed.

In this chapter, I outline the liberal and republican elements of Cicero's political thought. There is even now no universally agreed upon account of liberalism, I suggest that Cicero's political philosophy incorporates several ideas that have historically been associated with liberal political philosophy. 1) Cicero conceives of individual citizens as bearers of rights—particularly rights against violence and physical restraint. 2) He offers a conceptual distinction between the public and private spheres, a distinction that requires limited government and includes a special respect for the institution of private property. 3) Cicero asserts that the moral principles that animate domestic politics apply also to the commonwealth's interaction with those external to it. In other words, the foreign policy of a commonwealth must be governed by normative considerations and not simply referred to calculations of national self-interest.¹⁵

¹⁵ The list of thinkers from the early moderns to contemporary theorists typically considered "liberals" who hold some or all of these views is extremely lengthy. It includes Locke, Kant, Mill, Jefferson, Rawls, Nozick, and many others.

While there is similarly no complete consensus about the content of republicanism, Cicero's status as one of the earliest members of the republican tradition far less controversial.¹⁶ In particular, Cicero holds the following views typically associated with republicanism. He considers political community and the activity of politics as worthy ends in themselves—rather than mere means subordinate to the activity of the private sphere. He strongly prefers a regime of mixed government and expresses a special opposition to the absolute rule of a single individual—it is important for the political society as well as the individual citizen to be free from domination. He appreciates collective decision-making and political contestation. Finally, he places high value on patriotic virtue and self-sacrificing commitment to the good of the political community.¹⁷

In what follows, I illustrate the way in which Cicero's political thought offers us a version of republicanism that is fundamentally open to liberal aspirations. I focus on four key themes central to almost any comprehensive political philosophy, where we might expect there to be tension between liberal and republican ideals, to show how Cicero's model navigates them.¹⁸

¹⁶ See: (Pocock 2009, 371) and (Pettit 1997, 5) and much of the work of Skinner.

¹⁷ (Skinner 1998a) and (Pettit 1997) may offer slightly different versions of what precisely constitutes the common thread of republicanism (or neo-roman theory for Skinner). But, I believe many in the above list of Cicero's major republican themes would be recognizable in the major historical thinkers typically considered republican, including Machiavelli (of the *Discourses*, at least), Harrington, Nedham, Trenchard, Gordon, and even Rousseau, whose status as a republican is more controversial (Pettit 2013).

¹⁸ Even though most of *De re publica* was lost to the early moderns, I make use of it here because it helps us understand Cicero's overall political theory better. However, where I can, I focus on those pieces of it that

First, I explore Cicero's account of the origins and natural ends of political society, what he means by the central concept of *res publica*—the commonwealth—and what its essential features are. After this, I discuss three kinds of dynamics that flesh out Cicero's liberal republicanism: how citizens ought to relate to each other, how citizens relate to the commonwealth, and finally how the commonwealth as a whole relates to those external to itself. Since Cicero insists that a commonwealth must include agreement about justice or right, I suggest that justice is the key principle to capture citizens' proper relations to each other. For Cicero, justice is grounded on humanity's natural sociality and is fundamentally concerned with community, yet it also entails strict protections for the citizen against harm or interference with his property. In turn, Cicero proposes that citizens' relationship to the state be characterized by a system of rights and duties that protect the citizen against arbitrary power, but which primarily serve to structure proper relationships within the political community. As for the relationship of the commonwealth to foreigners, aliens, and other states, Cicero offers an interesting balance of patriotism and cosmopolitanism in which we appear as citizens not only of our particular states, but also of the universal community of rational beings. As such we have a complex set of privileges and responsibilities that transcend our own

would have been known to the early moderns through fragments or repetition in the works of other writers, such as Augustine.

political communities and govern how we may treat outsiders. On the one hand, we can find the rudimentary elements of pacific cosmopolitanism in Cicero's treatment of foreign policy. On the other hand, his theory could also justify republican aspirations to universal empire on moral grounds.

From seeing Cicero's thought so organized and depicted, we can glean an image of a republican thinker whose thought demonstrates the potential deep compatibility of republican and liberal ideals. At the conclusion of this first chapter, I step back to look at what understanding of liberty—*libertas*—emerges from this survey of Cicero's political thought and find that it has both liberal and republican valences. For Cicero, liberty requires *both* the protection of the individual from constraint and interference *and* the preservation of the community as self-governing and un-dominated.

Before diving into my argument, it is necessary to say a few words about reading Cicero. Several decades ago, to argue that Cicero had anything at all original or worthwhile to say about political philosophy would have been controversial. The eminent scholar M.I. Finley captured a general spirit when he wrote with exasperation of the "nonsense" of taking Cicero seriously (Finley 1983, 128, n. 17). At best, Cicero was a valuable resource for learning about the doctrines of his supposedly authoritative sources, especially the Stoics. More recently, the work of Wood, Atkins, Nicgorski, Straumann, and others has admirably demonstrated the value of examining what Cicero says on his own terms. However, taking Cicero at his word can also pose a certain

problem. Cicero adamantly and repeatedly insists that he ought to be considered a follower of Plato, "that divine man," and he acknowledges that his *De re publica* and *De legibus* are overtly modeled on Plato's *Republic* and *Laws* (*De legibus* 1.15).

So, must we concede on the basis of Cicero's own testimony that we can find nothing in his thought that we cannot get from the original source in Plato? This is the position essentially adopted by Leo Strauss, who writes that Cicero "who must be supposed to have known what he was talking about, was wholly unaware of a radical difference between Plato's teaching and his own"(Strauss 1953b, 135). Fortunately for us, however, Cicero does give us reason to believe he is not simply Plato's pupil. According to Cicero, Plato does provide the model for the best kind of skepticism that avoids the opposing extremes of dogmatism and Pyrrhonism (*De officiis* 2.7-2.8). Cicero is also happy to try to imitate Plato's dialogical style of philosophic writing. But, he remains independent with respect to content: "it is easy enough to translate [Plato's] ideas, and I might do that if I did not prefer to be myself" (*De legibus* 2.17). Politics in particular seems to be a place in which Cicero sees a wide difference between himself and Plato. The sharpest articulation of his critique comes from Laelius in *De re publica*, who explains that Plato's city in speech "may be a noble state, but it is totally alien to human life and customs"(*De re publica* 2.21).¹⁹ Cicero's own extensive political experience gives

¹⁹ A charge essentially repeated in *De oratore* 1.224. For more on Cicero's disagreement with Plato about realism and the best practical regime, as opposed to the best conceivable regime, see(Atkins 2013, 56–64).

him special insight into precisely this issue. The character Scipio expresses Cicero's own self-understanding when he declares:

So I ask you to listen to me, not as one wholly ignorant of Greek ideas, nor as one preferring their ideas to ours—particularly on this topic, but as a Roman citizen... inspired from childhood with a zeal for learning, but having been educated much more by experience and native instruction than by books (*De re publica* 1.35).²⁰

One cannot help noting that Cicero's criticism of Plato's ideal republic closely parallels Machiavelli's famous critique of previous political philosophy in chapter 15 of *The Prince*. As we shall see, Cicero does not join Machiavelli in offering calculating *realpolitik* as the alternative to such airy theorizing. For Cicero, moral concerns should still guide our political action. But we must be sure to base our principles on what sort of creatures human beings are and how they can and do live.

2.1 Natural Law and the Purposes of the Commonwealth

For this reason, it makes sense to begin our exploration of Cicero's political theory by examining his view of human nature, especially its politically salient features. According to Cicero, human nature is a mixture of the animal and the divine. We consist

Caspar also argues that Cicero's imitation of Plato in *De legibus* is primarily a matter of style, not substance (Caspar 2011, 160–61).

²⁰ Cicero expresses a similar sentiment in his own voice at the beginning of the dialogue: "I should be considered an authority, since some earlier men were skilled at discussion but from whom came no great deeds, and others performed admirable deeds, but were poor reasoners" (*De Re Publica* 1.13).

of two parts: body and mind (*corpore animoque*)(*De finibus* 5.34).²¹ The body we share with all other living creatures. The mind allows us to participate in reason, which sets us apart from other animals and unites us with the divine (*De officiis* 2.11). Humanity's mental faculties give rise to all of our highest qualities and achievements. In particular, philosophy and politics are only possible because of our ability to reason, remember, speak, and comprehend cause and effect (*De finibus* 2.113, *De officiis* 1.11). Virtue, or moral worth (*honestas*), is a good we can only appreciate and practice through our capacity as rational beings.

According to Cicero the origins of political society can be found in both aspects of our nature. Political life is necessary to secure essential bodily needs. The natural world is at once bountiful and niggardly to human beings. On the one hand, the rest of creation (plants, animals, and inanimate objects) exists for human use and consumption (*De legibus* 1.25). But, in comparison to the animals, which the earth nourishes lavishly with food, we human beings "supply ourselves with food barely—or not even barely—with great labor" (*De finibus* 2.111). Although the earth produces much that makes human life possible and even pleasant, human beings could not enjoy those fruits without cooperation.

²¹ Although this may seem self-evident, Cicero suggests that many rival political theories fail to grant one side or the other of our nature its due. The Epicureans envision man as guided solely by pleasure, which is based purely in bodily sensation (*De finibus* 1.55). They fail to give man's higher rational nature its just priority. Cicero is much more sympathetic to the Stoic point of view. But, the Stoics flatly deny the existence of bodily goods (*De finibus* 4.26-28). They fail to recognize the obvious consequence of the fact that we are corporeal beings.

Neither medical care, nor navigation, nor agriculture, nor the harvest and preservation of fruits and other crops could exist at all without human work... or indeed our houses, by which the power of the cold is defeated and the oppression of the heat is allayed, how could they have been produced for the human race, or afterwards repaired – when they collapsed because of strong winds, or earthquakes, or simple age – if common life had not taught us to seek help from our fellow men in such instances? (*De officiis* II.12-13)²²

Thus, human association is necessary in part because human beings are not naturally equipped to survive or thrive without cooperation. Since such cooperation requires "human administration," politics is likewise necessary for human survival (*De officiis* 2.12).

But, Cicero insists that human beings are also drawn to political life for higher, non-instrumental reasons. While human society eases the needs of our body, it is also absolutely required by the rational aspect of our nature. Our rational nature makes us social, providing us with speech and a desire for fellowship for its own sake: "the same nature, through the power of reason, connects one person to another for a common speech and life... it drives him so that he prefers that social intercourse and gatherings should exist and that he himself should attend them" (*De officiis* 1.12). So strong is natural human sociality, that even if all our bodily wants were perfectly satisfied, we would still crave society with others and would be miserable without it. "Just as bee swarms do not

²² Cicero goes on to enumerate many other necessities (or near-necessities) of human life that are dependent on cooperation, including the domestication of docile animals, the protection against predators, the irrigation of fields, and the importation of goods not to be found locally.

congregate to make honeycombs, but, because they are social by nature, they make honeycombs, so too human beings, but to a much greater extent" (*De officiis* 1.157).²³

Cicero identifies a third factor in the origin of political society, one that is neither purely rational, nor derived directly from our bodily needs: property.

Republics and states were set up in large part so that people could hold onto what is their own. For, while human beings were originally led by nature to congregate, nevertheless they first sought protection in cities with the hope of safeguarding their property. (*De officiis* 2.73)²⁴

The issue of property's relationship to political life is a complex matter in Cicero's thought. Cicero does not believe that private property exists by nature; the natural world was created for humanity's use and belongs—at least originally—to all humanity in common (*De finibus* 3.57, *De officiis* 1.21).²⁵ Individuals and groups have carved out pieces of this common stock for themselves by various means: occupation of vacant territory, conquest, agreement, lot, etc. (*De officiis* 1.21). Cicero suggests that kings first arose among many peoples (including at Rome) because of the need for someone to protect this property from internal and external enemies. Cicero maintains that the protection of private property against theft or redistribution is an important moral imperative for the state (*De officiis* 2.73). But despite Cicero's reputation as an unreflective

²³ Cf. *De finibus* 3.65. This echoes Aristotle's view that humanity is naturally political that that even if our bodily needs were all met, we would still congregate for the sake of communal life (*Politics* 3.6.1278b17).

²⁴ See also *De re publica* 1.41.

²⁵ In contrast, see *Topica* 90, the deviation of which Barlow reasonably ascribes to the rhetorical nature of that treatise (Barlow 212). In chapter 5, I will explore the relationship of Cicero's view to John Locke's theory of the origins of property.

apologist for the cause of the wealthy against the poor²⁶, at least on this topic his story has greater nuance.

For when the poor multitude were being oppressed by those who had more wealth, they fled to some one man outstanding in virtue, who protected the weak against injustice, and with equity established, held the highest and the least under an equal justice. (*De officiis* 2.41)

Similarly, when the justice of this one man waned (or he was succeeded by another less virtuous), laws were substituted for the judgment of a single individual, which "always spoke to all with one and the same voice" (*De officiis* 2.42).

I will return to discuss Cicero's views on property below. For now it is sufficient simply to number it among the main causes Cicero believes drove the origin of political societies. Cicero argues that the good political order must never completely lose its grounding in these three origins—natural needs, sociality, and property. But, to determine how these elements ought to be satisfied in a well-functioning commonwealth, we need to understand Cicero's normative framework, his natural law doctrine.

The discussion of natural law offered by Cicero in *De legibus* is the most complete extant classical account of the natural law doctrine and perhaps the most influential in the history of political thought. But just as the *De legibus* is explicitly a sequel to *De re publica*,²⁷ so too does its natural law teaching depend on premises set forth in the

²⁶ For instance (N. Wood 1988, 91) and (Nussbaum 2000).

²⁷ As expressed at *De legibus* 1.15, 1.20.

previous work. That the final part of the *De re publica* establishes the foundation for the first arguments of *De legibus* is indicative of the unified whole that the two dialogues form. There, Cicero offers a literal vision of the cosmic order that allows us to locate the place of human political life in relationship to the whole.

De re publica concludes with the famous Dream of Scipio.²⁸ In it, Scipio is guided in his sleep by his adoptive grandfather to the celestial realm, where he learns about the nature of the cosmos. Scipio is shown how the vastness of the universe is organized by orderly principles. The stars and planets revolve and orbit according to different intervals. But the grand effect of their diversity is complete harmony.

That [harmony] comes about by the force and motion of the orbs themselves, which take place in distinct and unequal intervals—but yet with each part established by reason (*pro rata*)—and by moderating highs with lows, creates various harmonies with equal proportions. (*De re publica* 6.18)

Out of hierarchy, difference, and motion comes cosmic harmony. This harmony is established and ensured by a rational supreme god, who oversees the whole (*De re publica* 6.17).

At the beginning of the *De legibus*, Cicero makes it clear that his forthcoming account depends on this understanding of a divinely and rationally ordered universe: "all nature is ruled by the command, power, reason, mind, or divine will (or whatever other word would more clearly signify what I mean) of the immortal gods" (*De legibus*

²⁸ At least, this is the last extant portion of the *Republic*. There is some scholarly debate about whether some portion of text is missing after the conclusion of the dream (see Atkins 45, n. 92). No one, however, contends that the arguments of the dialogue continue after this.

1.21).²⁹ This means that whatever is given to us by nature is given purposefully. Because human beings alone among the rest of creation share in the reason (*ratio*) that characterizes gods, they possess a kinship with the gods and occupy a privileged place in the natural order. The divine reason that governs the cosmos and gives it order is understood as a kind of law—in fact, the highest and truest form of law. Cicero thus offers his famous definition of natural law:

Law (*lex*) is the highest reason (*ratio summa*), innate in nature, which commands what is to be done and prohibits the opposite. This same reason, when it is established and perfected in the mind of a human being, is law... If this has been expressed properly—and indeed I think that it basically has been—it is necessary to seek the beginning of justice in law. For that [law] is the force of nature, it is the mind and reason of the wise person, the standard of justice and injustice (*De legibus* I.18-19).³⁰

Many scholars have noted that this understanding of law appears inspired by the Stoic formulation, according to which the term "natural law" is redundant because the only law properly so-named is the law of nature.³¹ Cicero acknowledges the inferior dignity of written human laws in comparison to this highest law (*De legibus* 1.19).

Whereas written human laws are particular and are limited by the flawed human wisdom that gives rise to them, the natural law is perfect—perfectly rational and perfectly just. Moreover, the natural law applies to all human beings equally in their

²⁹ Cicero acknowledges that he might have to begin his argument establishing this position if his interlocutors do not grant it. Since Epicureans believed the universe to be chaotic and ungoverned by the divine (see *De finibus* 1.17-18, *De legibus* 1.21), we might expect the Epicurean Atticus to object. But, he reservedly allows Cicero to continue, which we might construe as a recognition of the work the *somnium Scipionis* does for Cicero's argument here.

³⁰ This definition is reiterated at *De legibus* 1.33, 2.11, 2.13, and *De re publica*, 3.33.

³¹ See (Asmis 2008), (Watson 1971), and (Atkins 2013, 165). Atkins notes, however, that Cicero insists that this version of natural law is meant to appeal to followers of Plato and Aristotle as well (p. 166-68).

capacity as rational creatures(*De legibus* 1.30). The fact of an objective, rational, natural law for everyone invalidates all forms of moral relativism. Cicero denounces as "the most stupid idea" the suggestion that people's institutions or laws can *determine* what is just. The common acceptance of robbery, deception, murder, or adultery would not, by the mere fact of popular approval, make those things just (*De legibus* 1.42-45). So, we are prompted to ask: what does natural law have to say about the commonwealth and its laws? What would make them just?

The very idea of the commonwealth holds an exalted position according to the natural order in *De re publica*. Indeed, Zetzel and Atkins have shown that the cosmos itself in Scipio's dream is organized according to the principles of an ideal monarchical commonwealth defended by Scipio in Book 1 of the *Republic*.³² Despite the ultimate smallness and apparent insignificance of even the largest empire on earth (Rome), Scipio is assured that great rewards wait in heaven for the leaders and preservers of commonwealths(*De re publica* 4.13, 4.29). But a republic or commonwealth (*re publica*), properly so-called is not simply any state.

Scipio offers the following definition:

The commonwealth (*res publica*) is the concern of the people (*res populi*). However, a people is not any collection of human beings gathered in whatever way, but a sizable group allied together by agreement about

³² I translate "*res publica*" as commonwealth instead of republic, in part to avoid the conceptual confusion of having to discuss "monarchical republics."

right (*consensu iuris*) and common interest (*utilitatis commune*) (*De re publica* 1.39).³³

In the discussion that follows, we learn that while the governing principles of the commonwealth must be related to those motives that first prompted human beings to gather together, they are not identical to them. Cicero insists that the greater factor in humanity's earliest associations is our natural sociality. Preserving that sociality, the common good, is the primary end of the commonwealth (*De re publica* 1).

This definition of a *res publica* notably omits any mention of any particular form of government. Scipio explains that monarchies, aristocracies, democracies, and mixtures of the three can all be *res publicae*.³⁴ As long as such regimes preserve the common interest and agreement about right, they qualify. Conversely, any of these regimes can become tyrannical if the ruling element ceases to concern itself with the common good. In these cases, the *res publica* no longer exists. Wood insists that the best way to translate *res publica* is by "state," and he credits Cicero with being the first to conceive of the purpose of the state "in largely non-ethical terms" (N. Wood 1988, 120). But, all evidence suggests that a *res publica* is not any state; Cicero makes it quite clear that the state (understood as the institutions of government or political rule) can and does persist under the conditions of tyranny but that the *res publica* cannot (*De re publica*

³³ Although much of *De re publica* was lost until 1819, this definition was preserved and passed on through St. Augustine's citation of it in *The City of God. Iuris* in this context could also be construed as "law" or "justice." I have rendered it as "right," because that seems to be best to approximate the various possible meanings at play.

³⁴ That republics can have monarchs or some office with kingly power contradicts the prevalent definition of "republicanism" presented by Skinner (Skinner 1998a).

3.43-44, *De officiis* 2.3). True, the purpose of the commonwealth is not to transform its citizens by promoting a single human type as the highest manifestation of virtue, as Plato's *kallipolis*. But, it remains defined by its moral purpose of serving the common good through an agreement about right or justice.³⁵

Many scholars have identified the resonance of this division with Aristotle's framework, wherein kingship, aristocracy, and *politea* are each contrasted to tyranny, oligarchy, and democracy.³⁶ For Aristotle, too, the distinguishing factor between good regimes and bad lies in their attention to the common good (*Politics* 3.6). Yet, many recent commentators have noted there is also something distinctively *Roman* to Cicero's account of a *res publica*.³⁷ Scipio signals this immediately before he offers his definition, when he claims to be speaking more from his experience as a Roman than from his study of Greek philosophy. Wood, Atkins, Asmis, and others have explored how Cicero's definition plays on the sense in which *res* denotes property.³⁸ Therefore, *res publica* can also be considered to mean something like "public property" (or "commonwealth" in both its usual sense and more literally). In this way, the people who

³⁵ For more on Wood's inappropriate rendering of *res publica* as "state," see: (J. Barlow 2012, 218). Wood even appears to contradict himself on this issue (N. Wood 1988, 145).

³⁶ (Asmis 2004), (Atkins 2013). It is a matter of dispute whether Cicero had direct access to Aristotle's works (Asmis 2004), (Frede 1989). But, he was certainly familiar with the teachings of Aristotle's school (*De officiis* 1.2).

³⁷ We will also see that their conceptions of freedom differ substantially.

³⁸ See, for instance, (Atkins 2013, 131-133).

make up the *res publica* are also its owners, for which reason Cicero famously affirms that "the safety of the people must be the supreme law" (*De legibus* 3.8).

Atkins argues persuasively that this whole analysis of the ideal of a *res publica* is suffused with Roman conceptions of property, ownership, and business partnerships.³⁹ Just as Roman law considered partnerships to be based on good faith agreements by individuals who associate together for some common advantage, so too on a grander scale is the partnership of the commonwealth. All participants in a partnership were required to contribute to the common endeavor in some way—although not necessarily in the same or equal ways. By virtue of their contributions, each participant was also entitled to partake of the benefits. Such a partnership could persist unless its subject matter ceased to exist, or a partner committed a significant injustice against another.

For Cicero, the *res publica* is the highest human manifestation of such a partnership. It is for this reason that such high rewards are alleged to await in the heavens for "the founders and preservers of such partnerships" (*De re publica* 4.13,4.29). As noted above, Cicero—perhaps surprisingly— asserts that any form of government could *conceivably* satisfy the conditions to qualify as such a partnership. If that were the last word on the matter, it would be strange for us to consider Cicero a "republican" at all, much less an important figure in the republican tradition. It turns out that Cicero

³⁹ The paragraph that follows is thoroughly indebted to Atkins' discussion (2013, 131-134).

accepts the idea of purely monarchical, aristocratic, or democratic commonwealths in theory, but he rejects them in practice on moral and practical grounds.

These two objections to the simple forms of a commonwealth are closely related to each other. In *De Officiis*, Cicero argues at length for the necessary unity of *honestas* and *utilitas* (*De officiis* 2.9-10). In the case of *res publicae*, Cicero argues that the simple forms of government are unstable and incline toward revolution and tyranny. But, they are unstable in large part precisely because as partnerships of the whole citizen body, they distribute rights, honors, and responsibilities unfairly. Because they are unjust, simple forms of government are also unpractical.

At first, it appears that there is much to be said for monarchical government. In a way that undermines Skinner's claim that one cannot be republican without rejecting on principle the idea of monarchy, Cicero sees no contradiction in terms in speaking of monarchical *res publicae*.⁴⁰ After all, the universal cosmopolis of gods and men—the cosmos itself—is ruled monarchically by the supreme deity (*De re publica* 4.17). It makes sense to Cicero that the earliest human political societies followed this model, and appointed the most virtuous among them to be king over all (*De officiis* 2.41). The need to deal decisively with danger and crisis makes the concentration of power in one person often useful and sometimes necessary (*De re publica* 1.63). But, human beings are

⁴⁰ This tendency manifests throughout the later republican tradition that Skinner studies, and can be found in Machiavelli's reference to "princes of republics" (Mansfield and Tarcov 1998) or Montesquieu's description of England where "the republic hides under the form of monarchy" (Montesquieu 2009, 6.19).

relatively equal in their rational capacity and in their proclivity to vice (*De legibus* 2.30-31). Therefore, we cannot expect to stably enjoy a situation where one individual or successive individuals from the same family line are so superior in wisdom and virtue to the rest that they can govern effectively and justly. Kings easily transform into tyrants (*De re publica* 2.47). This is what led the Romans and other early peoples to substitute laws for kings, which would address citizens equally and impartially (*De officiis* 2.42). The rule of law would be substituted for the arbitrary rule of an individual's will, and so it becomes that "a magistrate is a law that speaks, and a law is a silent magistrate" (*De legibus* 2.3).

Even under a just king, however, there is a problem. "The people that is ruled by a king lacks a great deal, and above all it lacks liberty [*libertas*], which does not consist in having a just master, but in having none" (*De re publica* 2.43). Here Cicero raises the crucial issue of liberty, and defines it as the absence of a master. Elsewhere, he describes the common goal of kings and philosophers as "needing nothing and obeying no one, they might enjoy liberty, the mark of which is to live just as one pleases" (*De officiis* 1.70).⁴¹ Cicero's understanding of liberty as freedom from the constraint of other's arbitrary wills to live according to your own is exceptional among other Roman thinkers (Wirszubski 1950, 8). For Cicero, liberty for the individual lies in the freedom to act that exists in the absence of arbitrary domination. There is a connection here with Pettit's

⁴¹ See also *Paradoxa* 34.

understanding of republican liberty as the absence of arbitrary power over someone. In this light, subjection to a fair system of law does not make one unfree (Pettit 1997, 5). As Cicero says, "we are therefore slaves to the law so that we may be free" (*Pro Cluentio* 146). But, for Pettit, the mere equal subjection of everyone to a common system of law in which everyone enjoys "the capacity to stand eye to eye with your fellow citizens, in a shared awareness that none of you has a power of arbitrary interference over another" constitutes freedom (Pettit 1997, 5).⁴² But, Cicero makes it clear that those features are the *conditions* of liberty. Liberty itself still lies in the freedom from constraint that emerges from those conditions.

Not only individuals, but the whole *res publica* can lose its liberty (and therewith, its very existence). Just as the individual citizen enjoys liberty when he is free to act unconstrained by arbitrary and unlawful power, so too the political community. The violation of the rule of law and the concentration of unchecked arbitrary power in the hands of any individual or group are the hallmarks of the loss of liberty. The aims of the individual and the political community to recover liberty become united. According to Cicero, such was the case under Caesar's dictatorship, and his assassination returned Rome to liberty, albeit only briefly (*Second Philippic* 26-29, 80, 85-86).

⁴² Pettit thus insists that an individual whose freedom to act is constrained not by arbitrary power, but by interference from a government in which she has power equal to others is not a violation of republican freedom. Pettit is forced into the logical contortion of declaring that such a person should be considered "non-free, but not unfree" (1997, 26, n.1).

But, such liberty cannot be secured by democracy. Pure democracy, too, tends toward corruption. By making total liberty and equality its goal, the people come to view the wealthy and well-to-do as enemies. This is a violation of the fair partnership that should characterize a *res publica*. Democracy fails to grant superior honor and responsibility to those who prove the best servants of the public good, offering political power to demagogues who flatter and fan the people's hatred of the wealthy (*De re publica* 1.53). It also fails to respect private property claims. In order to achieve its ends, Cicero believes such a radically democratic populace will be inclined to raise up a tyrant to beat down the nobles (*De re publica* 1.68).

In turn, a purely aristocratic commonwealth (which Cicero understands as an aristocracy of merit, rather than wealth or birth) would benefit greatly from the deliberative wisdom of its governing body. True aristocracies also fairly reward the truly deserving according to their merit (*De re publica* 1.51-53). But in such a regime, the great mass of people still want for the liberty they lack under a monarch, and the regime lacks the ability to make rapid decisions.⁴³ Such commonwealths thus face instability from the unfree people within and from dangers without.

The moral failings of the three simple types of regime thus make them unstable in practice. From this arises Cicero's doctrine of the mixed regime.

⁴³ See (Wirszubski 1950, 82–83).

If there is not an equitable balance in the state of rights and duties and responsibilities, so that there is enough power in the hands of the magistrates and enough authority in the judgment of the aristocrats and enough freedom in the people, then the condition of the commonwealth cannot be preserved unchanged (*De re publica* 2.57)⁴⁴

The drawbacks of each simple regime are to be ameliorated through combination, while at the same time preserving the unique goods represented by each. For Cicero, Rome offers the closest approximation of this best practical regime, although it is a Rome of the past, deliberately and overtly idealized.

Cicero defends a mixture of the three types of government, and a "blending" of rights and duties (*De legibus* 3.28). Straumann sees Cicero here laying the foundation for the very concept of constitutionalism that would engross much of early modern thought (Straumann 2016). For Cicero, the nature of the balance is important, and he depicts Rome's early history as the story of attempting to achieve the ideal combination of the different elements. At some point, however, a highly desirable (if still imperfect) arrangement was reached. Consuls, and (*in extrimis*) dictators, represented the monarchical element in the constitution, allowing for decisive response to crisis. The common people acquired the right to vote, the right to appeal harsh sentences to the whole community, and the tribunate. This last possessed veto power over all other magistrates and gave the people as a corporate body protection for their interests and at the same time a relatively benign outlet for their resentment of the nobles. Wood

⁴⁴ Although its most succinct expression comes in *De re publica*, which was only rediscovered in the early 19th century, the general outline of Ciceronian mixed government can be found throughout those works of Cicero that were widely read in the early modern period, for instance, in *De legibus*.

especially sees Cicero as contemptuous of the common people and unconcerned with their rights, and even suggests that the idea of mixed regimes is in general a scheme for defending privilege and unjust inequality (N. Wood 1988, 159). Nevertheless, Cicero explicitly endorses these concessions to the people not only as necessary and expedient, but as their just dues (*De legibus* 3.23-24, 3.27). They have the ultimate power in the commonwealth. Yet, Cicero does clearly prefer that the people defer to the wise and public-spirited nobles, who in many ways form the center of gravity of his ideal constitution. Especially in times of peace, Cicero envisions the nobles prudently and cooperatively guiding the ship of state. The resulting order is not essentially characterized by feverish internal conflict and competition, as Machiavelli's version of Roman republicanism promotes.⁴⁵ Instead, the *res publica* should resemble the celestial order, in which various different bodies and motions combine to form an ordered harmony.

For it works out that if the senate is in charge of public deliberation, and if the remaining orders are willing to have the commonwealth guided by the deliberation of the leading order, then it is possible through the blending of rights, since the people have power and the senate has authority, that that moderate and harmonious order of the state be maintained (*De legibus* 3.28)

Of course, Cicero's support for a mixed constitution is hardly unusual among classical thinkers. As Atkins notes, Plato, Aristotle, and Polybius were all available as

⁴⁵ In contrast also to Pettit's claim that the cultivation of political contestation is an essential characteristic of republicanism.

potential models for Cicero's defense of the mixed regime. Cicero ultimately rejects Polybius' model of a mixed regime that relies on assumptions of rationally self-interested actors. For him, human beings are more complex than Polybius' model suggests, and our political institutions must be prepared to accommodate human diversity and irrationality (Atkins 2013, 118). According to Atkins, Cicero follows much more closely Plato's and Aristotle's example in defending a mixed regime in which chance must be accounted for and in which concessions to the "natural-but-not-completely-rational desire for democratic freedom" must be made in order to render the regime practical (Atkins 2013, 113-114).

It is undoubtedly true that Cicero laments the licentious excesses that arise in the name of democratic liberty. But, liberty properly understood is not something to which Cicero proposes "concessions" for the sake of practicality. In a significant break from Aristotle and Plato, it is a central moral goal of the regime to secure liberty for itself and for the citizens as individuals. Not only for the rabble, the desire for liberty moves even the great-souled man: "a spirit well-trained by nature will not be willing to obey [even] for its own benefit someone whose advice, teaching and commands are not just and lawful" (*De officiis* 1.13). Nor does Cicero seem to subscribe to Aristotle's vision of freedom found in "political rule," which is characterized by "ruling and being ruled in turn" (*Politics* 1332b25). As noted above, Cicero is quite content for the elites in the Senate to make most of the political decisions, and as long as the people retain ultimate

power and are protected in their rights, they retain their liberty. Scholars as diverse as Pettit, Zuckert, and Pocock have connected Cicero with Aristotle as joint pillars of classical republicanism, but on the central question of what characterizes liberty, they part ways.

This liberty of the commonwealth is so morally important that its preservation demands even the ultimate sacrifice of one's life. Cicero's final speeches against Antony express his passionate commitment to recover and defend the liberty of the *res publica*. "Let us at last take our fathers' spirit and courage, resolving to regain the freedom that belongs to the Roman race and name, or else to prefer death to slavery" (*Third Philippic* 28). Cicero proposes to lead in this effort by example: "I shall employ every moment of the day and of the night in thinking, insofar as thought is required, of the freedom of the Roman people" (*Third Philippic* 33). Even allowing for the exaggeration of rhetoric in the heat of the moment, the central place of liberty in Cicero's vision of republican politics clearly distinguishes his political philosophy from that found in Aristotle's *Politics* or in Plato's *Republic* or *Laws*. The commonwealth and its citizens must be free.

2.2 Justice and Property

But, the commonwealth must also be just. Cicero comes much closer to Aristotle and Plato by placing justice at the center of his discussion of the good political regime. Tellingly, he makes *agreement* about justice a definitional component of his commonwealth. He thereby introduces a requirement for something like consent. It is

not enough for the regime to simply *be* just; the citizens must agree about what justice is. This condition flows in part from the fact that since a *res publica* is the common property of its constituent citizens, we could not expect it to function practically without some general consensus about how citizens ought to relate to one another. Such a consideration applies to all organizations, not merely commonwealths: even a band of pirates cannot operate without its members observing rules of justice at least amongst each other (*De officiis* 2.40). But Cicero takes great pains to resist the conventionalist suggestion that agreement by itself makes something just and that any agreement about justice can form a commonwealth.⁴⁶ The laws of the commonwealth have to be evaluated by the just standard of natural law, they are not themselves the standard. According to Cicero it is "most ignorant of all" to "consider just all things which have been established by a people's institutions or laws." He continues: "it is a sign of insanity to hold that these things are by opinion, not fixed by nature" (*De legibus* 1.42-45).

So, what is justice by nature? Not only to be observed among the powerful, "justice must be maintained even towards the lowliest... even slaves"(*De officiis* 1.41). Cicero offers a succinct definition in *De officiis*: one must not harm others unless provoked by wrongdoing, and one must treat common property as common and private property as private (*De officiis* 1.20-21). Injustice lies in the violation of these conditions

⁴⁶ Hobbes provides perhaps the clearest contrast to Cicero's position here when he argues that justice does not exist prior to agreement and contract (*Leviathan*, ch. 13). I will return to discuss the consequences of this contrast in chapters 4 and 5.

or in allowing others to violate them when one is in a position to prevent it (*De officiis* 1.23). Such an account of justice later becomes the classically liberal aspiration to avoid harm and protect private property. But if we examine it closely, we find that Cicero blends it harmoniously with his general republican outlook.

Colish sees in Cicero's definition of justice a combination of "the traditional Platonic-Aristotelian *suum cuique* formula with values drawn from Roman law"(Colish 1990, 146). But Colish's view understates somewhat Cicero's divergence from Plato and Aristotle. The difference between Cicero and Plato, Aristotle (and the Stoics) is especially noticeable in the second component of Cicero's definition of justice. But, even the apparently straightforward first rule of justice constitutes a change at least of emphasis and orientation from the Aristotelian-Platonic framework. I propose to consider both elements of Cicero's conception of justice in succession.

Plato and Aristotle would not likely disagree with Cicero's first rule of justice, the prohibition of unprovoked harm.⁴⁷ But, neither arrives at that conclusion the same way Cicero does, and the underlying reasoning matters here. In Aristotle's *Politics*, the just is either conventional and therefore coterminous with the lawful, or it is about relations of equality—whether proportional equality or numerical equality.⁴⁸ Harming others is a violation of justice therefore either because it breaks the law, or because it violates the

⁴⁷ Although, Socrates in Plato's *Apology* denies that one ought to harm someone else *even if* provoked by harm (25b-e).

⁴⁸ See: Aristotle, *Ethics* (5.6.1129a30-1135a15), *Politics* (3.9.1280a11)

rightful dynamic of proportional or numerical equality. In Plato's *Republic*, justice is eventually discovered to be "the minding of one's own business and not being a busybody" (Bk. 4, 433b). The just individual will therefore refrain from harming others because he will be focused solely on his own affairs (in particular: his soul), which are the only things of true importance (Bk 4, 443a-e).

As noted above, Cicero resists the identification of the just with the lawful. Also entirely absent from his definition of justice is Aristotle's concern for proportional and numerical equality. Cicero was certainly concerned with the issues of proportional (or aristocratic) equality and numerical (or democratic) equality, but he does not theoretically link it very closely to his definition of justice (*De re publica* 1.53). Instead, Cicero places the avoidance of harm at the forefront. By nature—i.e. according to right reason and supreme natural law—human beings are in fellowship with one another. Unprovoked harm is injustice because it violates this sacred fellowship. Cicero cites Plato's Ninth Letter approvingly: "we are not born for ourselves alone" (*De officiis* 1.22). But, even as he calls on Plato for support, he rebukes him for having only a partial understanding of justice. The normative obligation to human fellowship that Plato and the Stoics acknowledge not only prohibits us from committing injustice, but it requires us to prevent others from suffering injustice when we have the power to stop it. By this standard, Plato's just man, the archetypical philosopher, is not sufficiently just: "they observe one type of justice, indeed, that they should harm no one else by inflicting

injustice, but they fall into another; for hindered by their devotion to learning, they abandon those whom they ought to protect... such men abandon the fellowship of life" (*De officiis* 1.28-29).

From this analysis of the first component of justice, we can glean that Cicero's grounding of "the most illustrious of the virtues" in human fellowship allows him to blend certain liberal and republican aspirations. On the one hand, the central focus is placed on the avoidance of unwarranted harm to the individual, who is therefore entitled to certain protection. On the other hand, it is insufficient for us to follow Plato's just man and mind our own business. Our fellowship with others demands that we actively aid them when they face injustice. This fact makes the republican value of community-oriented public-spiritedness a necessarily component of being just, "our country claims one part of our birth" (*De officiis* 1.22). It further makes a career in public service morally obligatory for those who are most capable of preventing injustice (*De officiis* 1.28-29).

It turns out that the fundamental value of human fellowship also undergirds the second aspect of Cicero's understanding of justice: the protection of private property. Here Cicero innovates even more clearly on the traditions of Plato, Aristotle, and the Stoics that he claims to follow. The traditional formulation of *suum cuique* that Colish finds in Cicero's definition becomes explicitly about respecting the distinction between public and private property. For Colish and Wood, this indicates the influence of Roman

property law on Cicero's thinking. Colish and Wood point out that the idea of private property receives no similar deference in the teachings of Plato, Aristotle, Polybius, or the Stoics (Colish 1990, 1:146; N. Wood 1988, 130). In Plato's case, private property (not to mention private family life) is in fact forbidden to the guardian class of the kallipolis. Aristotle objects to Plato's communism, but his objection is based primarily on the practical infeasibility of such a scheme, and secondarily on the grounds that such an arrangement would restrict the performance of such virtues as liberality (*Politics* 2.3.1261b33, 2.5.1263b11).

Cicero's defense of private property on the grounds of human fellowship might at first seem odd. As noted above, Cicero denies that any particular property is private by nature, and he recognizes that property is often acquired by conquest and other forms of injustice (*De officiis* 1.21). Why then would he insist that respect for private property is an essential element of justice and thereby one of the moral aims of any good commonwealth?⁴⁹ Martha Nussbaum sharply criticizes Cicero on this issue. She points to the ways in which Cicero claims property can be acquired, and notes that they "look morally different, yet Cicero makes no moral distinction among them." Acquiring property by agreement is morally different from acquiring it by conquest. She points out that Cicero presents no reason why we should "think there is any close relationship

⁴⁹ It is noteworthy that Cicero's clearest definition of justice is offered in the first book of *De officiis*, wherein he claims to be at least loosely following the Stoic Panaetius. But, Cicero elsewhere reveals that he understands the Stoics to consider private property morally irrelevant (*De finibus* 4.22).

between existing distributions and the property rights justice would assign"(Nussbaum 2000, 182).⁵⁰ In light of the fact that nothing is the property of a private individual by nature, and that much is appropriated unjustly, isn't Cicero's commonwealth doomed to injustice if it protects existing property relationships?⁵¹ If Nussbaum's challenge stands, Cicero's conception of the state as a protector of private property is deeply morally compromised. If Cicero's state is fundamentally the defender of unjust possession, there might be little value in examining his political philosophy any further as a live alternative to prevalent accounts of republicanism.

Nussbaum's objection is not wholly without merit. But, Cicero is not as oblivious to the problem as he might appear. As Atkins has demonstrated, it is not fair to attribute to Cicero a kind of "proto-Hegelianism" that identifies the morally rational with the actual or the historic (Atkins 2013, 6). But, Wood ascribes to Cicero just such a view. Wood believes there is a simple explanation for Cicero's defense of property: Cicero's own social circumstances lead him to prefer a system in which "the security of the dominant propertied classes" was assured. According to Wood, Cicero accepts the conventional wisdom that the distinction between rulers and ruled is inevitable. This premise, combined with the necessity of a division of labor, allowed him to defend as

⁵⁰ Nussbaum concludes that Cicero could only seriously hold this position if he agreed with the radical Stoic position that external goods are not goods at all and are morally worthless. Therefore, to complain about one's distribution of goods denotes a lack of virtue.

⁵¹ Nussbaum is only the most prominent objector along these lines. Garnsey too rebukes Cicero for feeling that "he could introduce the matter of the origins of private property without even considering the issue of legitimacy"(2007, 118).

just the protection of the wealth of the few against the demands of the many poor (N. Wood 1988, 95).

But, Cicero's vision of a commonwealth in which all citizens have some share in political power undermines the claim that Cicero acknowledges a clear and stable distinction between rulers and ruled. Nor is his defense of property so theoretically biased in favor of the wealthy as Wood and Nussbaum suggest. In his account of the origins of commonwealths, Cicero argues that primitive kings and later laws arose to protect the property of the *poor* against the depredations of the wealthy (*De officiis* 2.41). Cicero is not at all blind to the immorality of seizing the property of others without their consent. In *pro domo sua*, he details his own experience with this injustice when his house was expropriated and demolished during exile. He is emphatic in his denunciations of the avarice that motivates those in power to take advantage of others for profit, which he describes as "the worst vice" (*De officiis* 2.77). Of course, merely demonstrating that Cicero is not so morally obtuse as to approve the acquisition of property by force or fraud is not enough to escape the accusations laid at his door by Nussbaum. In fact, Cicero's acknowledgment of the unjust origins of much of our property might only serve to accentuate the injustice of a theory of a commonwealth and of justice which rejects any call to re-order property distribution. How then is the fundamental goal of human fellowship advanced by this provision of justice?

In Cicero's view, the protection of private property is essential to preserving the *concordia* without which human fellowship cannot persist.⁵² Although he recognizes that the Stoic view of nature is indifferent to private property, Cicero nevertheless employs two different Stoic examples to illustrate how private property is *compatible* with the natural law. To explain how we might justly derive private property from the property-less state of nature, Cicero ascribes to the Stoic Cato the following analogy:

Just as, though the theatre is a public place, yet it is correct to say that the particular seat a man has taken belongs to him, so in the state or in the universe, though these are common to all, no principle of justice militates against the possession of private property (*De finibus* 3.67)

For these reasons, we may rightly obtain property by long uncontested occupation or by inheritance. It is furthermore permissible for each citizen to attempt to enlarge his property as long as he does so without interfering with others. Here Cicero quotes the Stoic Chrysippus "when a man runs in the stadium he ought to struggle and strive with all his might to be victorious, but he ought not to trip his fellow-competitor or push him over" (*De officiis* 3.42).⁵³

Private property goes from being merely compatible with human fellowship to actively required for it because the failure to respect a distinction between *meum* and *tuum* ruptures the social harmony and creates chaos. Cicero is keenly aware that much of the violence and disorder suffered in Rome under Sulla, Caesar, and others was

⁵² Cf. (J. Barlow 2012).

⁵³ Adam Smith later adopts this example verbatim as he explains the nature of private property.

fueled by a lust for spoils (*praeda*) of the vanquished (*De officiis* 2.27). As Barlow puts it "the passion to acquire and the passion to regain that which has been stolen are passions that create civil discord"(J. Barlow 2012, 236–40). Cicero fears not primarily the grasping greed of the masses, but rather aspiring tyrants driven by ambition for power and dissolute aristocrats hoping to wipe out extreme debt and maintain their lavish lifestyle.⁵⁴

Cicero's approval of the example of Aratus of Sicyon demonstrates the importance of social harmony to justice. Having liberated a city from a tyrant after fifty years of oppression, Aratus was faced with a dilemma. Many dispossessed rich men expected to be restored to their property, but their property was not then in the hands of those who had stolen it during the tyrant's rise to power. Instead, people who had legally bought or inherited it without injustice now held it.⁵⁵ Recognizing the justice of the claims of both sides and seeing that communal fellowship would not be served by a new round of confiscations and redistributions, Aratus instead sought abroad for funds to compensate either new or old owners. Cicero considers Aratus' solution the ideal response to such a dilemma. Obviously, it is unlikely that every such conflict can be solved by the fortuitous intervention of foreign donations. But, Cicero's endorsement of Aratus' solution helps illustrate Cicero's view that the exact arrangement of who owns

⁵⁴ For instance: *In Catalinam* 2.17-18.

⁵⁵ This dilemma about the unjust origins of property is one that lies at the foundation of virtually any extant polity.

what is not at the heart of justice. Rather, what is important is the social harmony that arises when everyone respects the property of others as a general rule and treats others with good faith. This—and not some reactionary concern for the privileges of his class—is the theoretical source for Cicero's opposition to the cancelling of debts and radical redistribution: "for there is nothing that holds together a commonwealth more powerfully than good faith" (*De officiis* 2.82). Moreover, the possession of property entails moral—if not legal—obligations to support and care for members of one's family, community, and even strangers (*De officiis* 1.42-1.58). Cicero gives us reason to believe he would even accept moderate redistribution and agrarian reform, within the limits established by human fellowship (*De officiis* 3.30).⁵⁶

Nussbaum and others are likely to remain unconvinced of this defense of Cicero's view of the relationship of private property to justice. For those who see political justice as essentially connected with transforming economic and social relationships to make them more egalitarian, Cicero's defense of a commonwealth in which private property is held securely cannot be just. But, it suffices here to defend the more modest point that Cicero's view of justice is not a hypocritical betrayal or contradiction of his natural law teaching, nor classist cloak for privilege. Moreover, we see again how Cicero's view on private property blends liberal and more communal values. On the one hand, as with the prohibition of harm, Cicero's understanding of

⁵⁶ Cf. (N. Wood 1988, 204).

property in a commonwealth protects individuals by requiring that every citizen be secure in his possessions. But, that security is not meant to isolate citizens, but rather to ensure the conditions of trusting community. Moreover, wealth that may accumulate for some under those conditions of security comes with the moral obligation to care for others who rely upon them.

2.3 Rights and the Rule of Law

This liberal-republican balance of protecting citizens as individuals while simultaneously incorporating them into a community is perhaps most on display in Cicero's theory of rights. The invention of rights had long been considered a late medieval or early modern invention, the theoretical development of which is acknowledged as one of the great achievements of modern liberalism. From Constant and Condorcet to Berlin and MacIntyre, the consensus ran that the concept of rights is entirely absent from the thought and even the vocabulary of the ancients—including the Romans.⁵⁷ Strauss makes Hobbes the founder of liberalism on the ground that liberalism is fundamentally about rights, and Hobbes is the first thinker to link the proper function of the state with the protection of rights (Strauss 1953b, 181–82).

More recently, this view has come under attack by those pointing to the clear presence of rights in Roman law.⁵⁸ The meaning of *ius* in Latin is even more ambiguous

⁵⁷ See, for instance, (Berlin 2000, 201), (MacIntyre 2007, 67).

⁵⁸ Critics of it include (Atkins 2013), (Clarke 2014), (Donahue 2001), and (Wirszubski 1950)).

than the word "right" is in English. Charles Donahue explains that *ius* can mean "a whole body of normative rules, a legal order, as well as "right" in either sense of the English word." He finds hundreds of instances in Justinian's *Digest* in which *ius* clearly refers to "right" in our sense of a licit power or claim (to act or possess) that is held by an individual (*ius habere, ius esse alicui*) (Donahue2001, 507-509). According to Roman legal doctrine, these rights were held by law and convention, not by nature.⁵⁹ Nevertheless, they were wide-ranging, protecting many of those elements that Cicero considered key aspects of justice, including the possession and use of property and bodily security, as well as voting, a formal trial, and legal appeals.⁶⁰

This Roman understanding of rights plays an important role in Cicero's political theory.⁶¹ Precisely because rights are absent from Greek political thought and practice, Atkins suggests that the concept is one of the key resources that enabled Cicero to make "his original contribution to political philosophy"(Atkins 2013, 121). Extrapolating Atkins' line of thought, Cicero takes on enormous significance for us as the earliest extant theorist of rights. Looking at him in this light, we find a very interesting foundational account of this concept that has since become ubiquitous. Cicero follows the example of Roman law in denying that rights are derived directly from nature. Rights do not precede the political partnership. But, he also rejects a view of rights as

⁵⁹ Wirszubski (1950), 69; Clarke (2014), 226, Atkins (2013), 139.

⁶⁰ See (Atkins 2013, 124–28) Atkins (2013), (Wirszubski 1950, 24–26).

⁶¹ Cf.(Colish 1990,146), (Wirszubski 1950, 86–87),(Atkins 2013, 128). The following analysis is deeply indebted to Atkins' argument (128-154).

merely conventional or legal. They occupy a middle ground, as conditions of just relationships within a properly constituted commonwealth. Political communities or their rulers do not have complete discretion to order the rights of their citizens as they see fit.⁶²

The fundamental right, from which the other rights may be inferred to flow, can be found in the very definition of a commonwealth. Atkins explains that the term *res publica* "plays upon the use of *res* in Roman law to designate property." Cicero lays heavy emphasis on the genitive of possession in describing the *res publica*, driving home the idea that the commonwealth *belongs* to its citizens (Atkins 2013, 131–32). Every citizen has a partial ownership right in the commonwealth as a special kind of property, which must by definition be organized for common advantage (*utilitatis communione*) (*De re publica* 1.39). Since a commonwealth is also characterized by an agreement about justice, and justice entails treating private property as private and public property as public, it follows that recognition of the ownership rights of citizens is a necessary component of a well-functioning commonwealth. In other words, there are both public and private property rights in Cicero's commonwealth. As Atkins argues, "the fact that the people own the *res publica* implies the right to manage this property"(Atkins 2013, 138). The failure to recognize that all have a share in the public affairs and interest is a

⁶² As Atkins puts it (p. 139), "Scipio's analysis of *res publica* clearly establishes non-coincidence between the rights that citizens possess as citizens and those conferred by the prevailing governing authority. It is his normative conception of political society provides the space for the relevant zone of non-coincidence." See *De re publica* 3.35.

major reason to disqualify in practice oligarchies and monarchies from being considered commonwealths (*De re publica* 3.43-44). Such was Caesar's crime; by seizing control of state and treating it as his own, he essentially destroyed the *res publica* (*De officiis* 2.3-4).

The fact of equal ownership does not require every citizen to be equally involved in the running of the commonwealth. Like any substantial piece of property, it is often wise to place the day-to-day running of the *res publica* into the hands of skilled managers. The Roman Senate is Cicero's model of a deliberative body that fills this role. But this is a matter of prudence, not of justice: "every commonwealth... needs to be ruled by some sort of deliberation in order to be long lived. That deliberative function, moreover, must always be connected to the original cause which engendered the state (i.e., common advantage and justice)"(*De re publica* 1.41). Under such conditions, there is "a blending of rights, since the people have power and the senate has authority"(*De legibus* 3.28)⁶³

Cicero makes it clear that he expects a commonwealth to function best when the majority of people defer to the judgment of a public-spirited deliberative body, and he envisions voting laws that encourage such deference. But, the people remain entitled to the ballot as a "safeguard" of their liberty (*vindicem libertatis*) (*De legibus* 3.38). Deriving

⁶³ Hannah Arendt considers the distinction between power and authority crucial, and claims to derive her understanding of the two at least in part from the Romans, including Cicero. See: (Arendt 1970).

from their status as co-owners of the commonwealth, the people enjoy a matrix of other rights, which collectively both constitute and safeguard their liberty.

Cicero conceives of these rights in a way that blurs the distinction found in the disagreement between the views of Michelle Clarke and the neo-republicans about the liberty of the Romans. Clarke disputes the contentions of Skinner, Pettit, and others that an essential component of Roman liberty was the freedom from arbitrary power. In Clarke's view, the Romans "conceptualized their liberty in terms of immunity from the physical abuse that was, in their view emblematic of absolute power." According to Clarke, the Romans actually sought to safeguard their liberty with certain kinds of arbitrary powers.⁶⁴ In the case of Cicero, it is certainly true that arbitrary powers play an important role in safeguarding liberty. Cicero disappoints his more aristocratic brother by defending the arbitrary power of the tribunes, which he sees as both a pragmatic tool to reduce civil discord and as an expression of the people's right to protection against oppression (*De legibus* 3.23-3.26). But, it is also clear that liberty in Cicero's commonwealth is more substantive than bodily security.

The right of *provocatio* is a compelling example of how Cicero envisions important rights both as protections for individuals and as expressions of the rightful power of the community as a whole. *Provocatio*—or appeal to the Assembly of the People—was part of the more general right to a fair trial. According to Cicero, it is "the

⁶⁴ Compare: (Pettit 1997, 5), (Clarke 2014, 216).

characteristic of a free state... that no individual be deprived of life or goods without a trial"(*De domo sua* 33). Anyone convicted could appeal the judgment to the people. For Cicero, this right is especially important to protect the individual against bodily harm (*De re publica* 2.62). But, the right also reflected the just claim of the people as a whole to be the final judge of matters within the community, and was in this respect "the protectress of the state and the defender of liberty"(*De oratore* 2.199).⁶⁵

Clarke points to Cicero's prosecution of Verres as proof that Roman liberty and rights were about protecting individuals from bodily harm. But, in fact we find there strong evidence that Cicero sees rights as about *both* protecting individuals *and* about the Roman people's supreme authority. Cicero depicts with great pathos the scene in which a Roman citizen is publically and brutally whipped and crucified without being allowed his appeal, while his plaintive cry "I am a Roman citizen" is ignored. Cicero asks rhetorically: "does liberty, that precious thing, mean nothing? Nor the proud privileges of a citizen of Rome?... A Roman citizen could be bound and flogged in the marketplace by a man who owed his rods and axes to the favor of the Roman people?"(*In Verrem* 2.2.3-5) In this passage, Cicero calls attention not only to the outrage inflicted on one citizen unjustly, but he also points out the perversity that the magistrate who carried out

⁶⁵ For more about the right of *provocatio* and its relationship to the protection afforded citizens by the tribunes as expressed in the *Lex Valeria* and the *Lex Porcia*, see (Wirszubski 1950, 24–26).

the illegal punishment owed his authority to the Roman people, whose right to be final judge he disregarded.

Cicero's prosecution of Verres calls attention to another central issue to Cicero's conception of the relationship of rights to liberty: the rule of law. Living through (and eventually dying in) the turbulent final years of the Republic, Cicero was especially aware of the precariousness of liberty in an environment of lawlessness. The tendency of powerful individuals to impose their will on the community as a whole without regard to law destroys the rights of the people. Once again, Caesar stands as the negative example that demonstrates this danger. By appointing magistrates, passing and voiding laws, and ignoring legal procedures Caesar essentially made himself monarch and destroyed the liberty of the Roman people both collectively and as individuals.⁶⁶

Although it is not necessary for citizens in a commonwealth to be socially or economically equal to one another, the law must speak to them equally (*De officiis* 1.88, 2.41). They are all equally members of the partnership. Thus, no commonwealth can possess laws that single out specific individuals for punishment or reward: "they did not want laws to be carried out against private men—that is the meaning of *privilegia*—because there is nothing more unjust than that, since it is the essence of law to be a decision or order applying to all" (*De legibus* 3.44).⁶⁷ The passage of laws that do not

⁶⁶ See: *Second Philippic*: 64, 80-87. *Third Philippic*: 12.

⁶⁷ This is strongly resonant with Rousseau's position on general laws in the *Social Contract* (2.4).

apply equally to all would indicate that the commonwealth has fallen under the control of a single tyrant or a tyrannical faction, which is advancing its own interests over the interests of the whole.

The worst form of unlawfulness is violence. Cicero contrasts modes of contention, by speech and by force, and determines that the former is worthy of human beings, the latter proper to beasts (*De officiis* 1.34). In this respect, Cicero's republicanism is perhaps most clearly different from Machiavelli's. Machiavelli, who read *De officiis*, transforms and reverses Cicero's argument about the superiority of laws to force or fraud, and suggests that occasional acts of violence are in fact necessary to the healthy functioning of republics.⁶⁸ Not so for Cicero. Unlawful violence towards citizens is anathema to the spirit of fellowship that characterizes a healthy commonwealth. "There is nothing more destructive for states, nothing more contrary to right and law, nothing less civil and humane, than the use of violence in public affairs in a duly constituted commonwealth" (*De legibus* 3.42).

The proper mode of contention is through speech, our rational, peaceful faculty. Cicero is perhaps best known as an orator and a theorist of oratory. It is not my intention here to add to the great volume of scholarship on Cicero's rhetorical thought. The details

⁶⁸ In chapter 18 of the *Prince*, Machiavelli evokes a metaphor drawn from Cicero's *de officiis* (1.34): that contending through law is worthy of human beings, while contending by force is the province of beasts. But, whereas Cicero had deployed it to affirm the superiority of non-violence, Machiavelli uses the example to advocate for the use of force. See also Machiavelli's prioritization of good arms over good laws in *Prince* 12, and his preference to keep republics virtuous through frequent acts of public violence at *Discourses* 3.1, (among many others).

of Cicero's theory of rhetoric are not important for our purposes. What is important is the stress Cicero lays on rhetoric as the proper vehicle for resolving conflict. In the next chapter I will explore in some detail the significance of the divergence between Machiavelli and Cicero on the role of speech.

There is only one exception to Cicero's prohibition of extralegal violence. When the very existence of the commonwealth is immanently threatened, it is permissible for even a private citizen to use whatever force is necessary to preserve the *res publica*. For this reason, Cicero approves of Publius Nasica's murder of Tiberius Gracchus. Perhaps self-servingly, Cicero sees his own execution of the Catilinarian conspirators in the same light (*De officiis* 1.76, *In Catalinam* 4). But, ultimately, Cicero does not view these acts as violations of the bonds of fellowship that characterize the commonwealth, but rather as reflections of the highest imperative of those bonds: "*salus populi suprema lex*" (*De legibus* 3.3). The good of the community must be allowed to trump the rights of any of its members that threaten to destroy it utterly. On this ground, tyrannicide is justified (*De officiis* 3.32). By raising themselves above the laws, violating the rights of the people, and eliminating their power to manage their communal affairs, Caesar and other tyrants threaten to destroy the *res publica* (*Second Philippic* 34,116). For that reason, they no longer are entitled to the protections of its laws.

2.4 Patriotism and Cosmopolitanism

Yet this principle of *salus populi suprema lex* seems to imply that the good of the community would trump not only lesser laws within the commonwealth, but also any consideration of the good of those outside the commonwealth. Cicero indeed endorses a view of patriotism in which the citizen should be prepared to sacrifice life itself for the sake of commonwealth. Yet Cicero also clearly believes that we have certain obligations towards every human being that constrain a commonwealth's pursuit of its own self-interest, constraints which become especially relevant in times of war. In exploring how Cicero can hold both of these views simultaneously, I argue that he reconciles them by adopting a modified version of Stoic cosmopolitanism, imagining every person as a citizen of at least two commonwealths: their immediate political community and the universal cosmopolis. Cicero's position makes his version of republicanism interestingly compatible with the values of international peace and concord expressed in liberal cosmopolitanism.⁶⁹ But, it might also provide the theoretical-moral justification for a commonwealth to aspire to universal empire.

Turning first to Cicero's account of patriotism, we find it occupies an exalted place among the virtues. "True glory rests on virtue, which is best demonstrated by services done to the state" (*Ad familiars* 10.12). The feelings of patriotism and love of country are natural, not simply conventional, and reflect our status as rational beings

⁶⁹ In contrast to the bellicosity of Machiavelli's republicanism and the provincialism of Rousseau's.

suited for fellowship and society (*De finibus* 5.66). After all, we are "not born for ourselves alone. Our country claims one part of us, our friends another" (*De officiis* 1.22).

As a result, Cicero commends the example of Regulus, who willingly faced torture and execution when he returned (bound by oath) to Carthage after refusing to advocate for a prisoner exchange disadvantageous to Rome. In the whole catalogue of duties and responsibilities, the commonwealth holds priority even over parents (*De officiis* 1.57). In defiance of Antony, Cicero asserts that he himself would "freely offer up my body, if my death would restore liberty of the state" (*Second Philippic* 118). This is the proper attitude of the statesman, to refer every consideration to the good of the commonwealth.

But, Cicero's insistence that the "commonwealth is dearer to me than life itself" falls tellingly short of Machiavelli's later boast that "I love my native city more than my soul" (*Ad familiares* 10.12).⁷⁰ Reason of state must ultimately submit to moral considerations. It turns out that there are some things so obscene, such as impiety toward parents, that one should not sully oneself by undertaking them even for the sake of the commonwealth. Cicero maintains this position in part through an (perhaps sophistical) argument that it would never benefit a proper commonwealth to have impious citizens (*De officiis* 1.159, 3.90). That argument does not explain why Cicero believes we ought to keep promises even made to enemies in war. In such cases it is

⁷⁰ Cf. Machiavelli's *Letter to Vettori* 1513.

quite clear that our commonwealth *could* benefit from dishonesty. Regulus could have traveled to Rome, rejected the Carthaginian deal, and simply refused to return. His death, then, is only partially attributable to love of country; it was also caused by his honoring his oath to the enemy that he would return.

This is the correct moral choice according to Cicero, because our participation in our commonwealth does not sever all the natural bonds that connect us to the whole of humanity in the fellowship of rational beings. These bonds impose on us certain duties to all human beings, although those duties remain less comprehensive than our responsibilities to our family, friends, and country. In general, we have an obligation to contribute to those things that form the common stock of mankind, and we ought to share freely with any stranger or foreigner anything that would not lessen our own portion: such as fire, access to fresh water, good advice(*De officiis* 1.23, 151).⁷¹

But, as the case of Regulus shows, the relevance of the general human fellowship to political action is most fraught in the case of war. As I will explore in a later chapter, Cicero's teaching on just war became hugely influential in later thinking. The fundamental principles of his argument, however, are relatively succinct. Since human beings are naturally in a state of fellowship with each other, war ought only be undertaken "that we may live in peace, without injustice; and once victory has been

⁷¹ In chapter 5, I will explore the close relationship of this principle to Locke's law of nature wherein we ought to preserve ourselves and others commensurate with our own self-preservation.

secured, those who were not cruel or savage in warfare should be spared" (*De officiis* 1.34). War then, is for the sake of just peace, which is "tranquil liberty" (*pax est tranquilla libertas*) (*Second Philippic* 113). A people may justly go to war to preserve themselves or their liberty. But, they must conduct the war with an eye to restoring the natural human fellowship. This is why the conquered and all those surrendering must be spared, even if they wait until the battering ram has touched their walls. Moreover, no war can be conducted without first following the proper procedures of declaring it, and demanding restitution (*De officiis* 1.36).⁷²

No simple apologist for Roman behavior, Cicero does not hesitate to call attention to the instances where his countrymen have failed to meet the standard for just war. The principle that surrendering enemies must be spared at all times directly contradicts the Roman practice of sparing only those who yield before the ram touches the wall.⁷³ He condemns Roman soldiers who use subterfuge to escape captivity (*De officiis* 1.40). He seems especially troubled by the Roman decision to raze Corinth, which he can only hope served to remove the cause for future wars, the cruelty of the act being otherwise a gross violation of the principles of human fellowship (*De officiis* 1.34, 3.46).

As I suggest above, Cicero's conception of that universal human fellowship in terms of the Stoic cosmopolis helps him harmonize his patriotic strain with the universal

⁷² Cicero here defers to Roman fetial laws.

⁷³ (E.M. Atkins 1991, 15, n.3).

principles of natural law. Although many Stoic thinkers supposed that only the perfectly rational (sages and the gods) were citizens of the cosmopolis, Cicero takes a more egalitarian view, including all human beings (*De legibus* 1.23).⁷⁴ In this way, the universal human fellowship takes a more definite shape than just any vague community. It is a *civitas*, a state (*De legibus* 1.23). Like any good state, the universal *civitas* is governed by laws and justice: "there will not be one law here, another in Athens, one law now, another in the future, but a single, eternal, unchanging law binding all peoples always" (*De re publica* 3.27-3.33). The cosmopolis is governed by the supreme deity, who rules with perfect justice. From that the cosmic perspective, even great human empires are but tiny barely visible specks (*De re publica* 6.15-6.17).

It might then seem as though patriotic service to such (cosmically) tiny entities as commonwealths would be morally insignificant. But commonwealths gain their apparently outsized moral status by virtue of their imitation or resemblance to the perfect cosmic order.⁷⁵ The concrete political community in which we live binds us more closely and carries with it greater responsibilities, because we are more intimately connected to each other within it. But we are all, in a sense, dual citizens. The laws of the commonwealth ought to reflect the laws of nature, which ought in turn to be the law governing the interaction of nations (*De officiis* 3.69). Violence between nations then is to

⁷⁴ Also: *De officiis* 1.51, 2.11, *De finibus* 3.64. For the alternative Stoic view of a cosmopolis of sages and gods, see (Colish 1990, 39), (Marquez 2012, 191).

⁷⁵ See (Atkins 2013, 67).

be considered a last resort, just as it is within the commonwealth. Peaceful and civic patriotic service takes priority over military achievements.⁷⁶

This cosmopolitanism lends a moral dimension to the foreign policy of Cicero's republicanism. It certainly appears more pacific in principle than Machiavelli's political philosophy.⁷⁷ It is more open to foreigners than the closed society of Rousseau's state in the *Social Contract*.⁷⁸ Similar to later theories of Kant and others, there is a moral obligation to seek peace. There are rules governing just war. There is even a nascent idea of international law. All of these aspects suggest that Cicero's republicanism contains an element we might consider an expression of incipient liberal internationalism.

And, yet, there is also a darker side to this reconciliation of patriotism and cosmopolitanism. Cicero is not unaware of the potential for tension between our natural patriotism and our responsibility to the whole of humanity. In Scipio's Dream, even as Cicero's hero experiences the transcendent perspective in which he can survey the whole of the cosmos, his eyes are drawn repeatedly back to the little dot that is Rome's empire. Even Scipio is not free from tendency to prefer his native land to the whole rest of the world. Cicero makes sure that Scipio is rebuked for his parochial over-attachment (*De re*

⁷⁶ A principle that allows Cicero to claim his own achievements as at least equal to if not greater than those of military heroes, Caesar and Pompey (*De officiis* 1.75-77).

⁷⁷ For comparison, see *Discourses* 1.1, among many other places where Machiavelli makes war the central concern for healthy politics, including republican politics. In *The Prince* 5, he endorses the Roman decision to raze Greek citizens that Cicero so deplors.

⁷⁸ In *The Social Contract*, Rousseau explicitly rejects the presence of anything (for instance religion) that gives citizens the impression they have "two fatherlands," thereby dividing their loyalties (4.8.16).

publica 6.17, 6.20). But, Cicero's own *corpus* suggests that he himself is not totally immune from the temptation to seek a reconciliation between patriotism and cosmopolitanism on grounds more favorable to his native commonwealth. We can see elements in Cicero's thought strikingly similar to the logic of European imperialists of the sort analyzed by Uday Mehta in *Liberalism and Empire* and in Jennifer Pitt's *A Turn to Empire*. As I will argue in Chapter 6, it is hardly a coincidence that Cicero functioned as "a kind of biblical text" for colonial officials and public policy makers during the height of Europe's colonial period (Nussbaum 2000, 180).

Cicero is obviously aware that Rome during his day—and even in the earlier period in which he imagines it to most closely resemble the ideal commonwealth of *De re publica*—ruled over a massive empire acquired by force. On its face, such an empire seems contrary to the principles of cosmopolitan fellowship. Cicero provides one justification, that—at least during the virtuous early period prior to the corruption of later times—Rome gained its empire through wars fought in defense of itself and its allies. But, he also adds another kind of war to the *just* sources of Rome's extensive rule: war for the sake of empire (*bella de imperio*) (*De officiis* 2.26). Cicero insists that this sort of war must be conducted even more humanely and restrainedly than wars of self-defense, but that very insistence *confirms* that he views such wars to be potentially just (*De officiis* 1.38). How can such wars be compatible with the natural law that mandates human fellowship and peace?

Perhaps Rome's wars for empire can be justified if they are the means by which the peaceful and liberal commands of the natural law are brought into reality. Recall that the idealized version of the earlier Roman republic found in *De re publica* was not simply an example of a commonwealth, but was the *best* practical commonwealth (*De re publica* 2.66).⁷⁹ The laws of that Rome, while not exactly the same as the laws Cicero derives from natural law in *De legibus*, are nearly identical. The principle that there be "not one law here, another in Athens... but a single, eternal, unchanging law binding all peoples" is unlikely to come about in a world filled with countless different states. But, if the state that best approximates the natural law in its own laws were to conquer the other states, they could be brought into conformity with the natural law.

Cicero nowhere quite draws that explicit conclusion, but there is evidence from St. Augustine that he comes close in now-lost parts of *De re publica*. In the dialogue, there is a debate between justice and injustice. According to Augustine's summary, the case for injustice points out that a commonwealth "cannot grow without injustice... if an imperial state, a great commonwealth, does not subscribe to that injustice, then it cannot rule over provinces." Justice replies that subjugation is beneficial for those who cannot obey natural law on their own. "When the right to do injury is taken away from wicked people: the conquered will be better off... do we not see that the best people are given the right to rule by nature herself... why then does the god rule over man, the mind over

⁷⁹Cf. (Atkins 2013, 64).

the body...?"(*De civitate Dei*, 19.21). This seems like Aristotle's argument for natural slavery in *Politics* 1.5. In Cicero's version of the argument, however, the emphasis is placed on the tendency of those incapable of self-rule to harm others. In contrast to the vision of Scipio's Dream, in which the good statesman imitates the deity by guiding and governing his commonwealth, now the good commonwealth itself resembles the god, ruling over the conquered peoples. Of course, it follows from Cicero's account of natural law that those who do not follow it are—by definition—prone to commit injustice against others. For this reason, Cicero's injunction that wars be carried out only for the sake of a "just peace" might stretch to include Rome's wars of imperial conquest. Once again, Cicero comes close to endorsing this conclusion. He acknowledges that Rome's empire of his day had fallen into injustice, but "as long as the empire of the Roman people was maintained through acts of kind service and not through injustices... we could more truly have been entitled a protectorate than an empire of the world"(*De officiis* 2.26).⁸⁰ Perhaps the natural law calls for a universal empire to enforce the peace?

In *De legibus*, we find a passage that encapsulates the ambiguity between the explicit strain of liberal cosmopolitanism and the undercurrent of liberal imperialism. Near the beginning of the second book, Cicero and his interlocutors embark upon a digression. The passage is worth quoting at length:

⁸⁰ Marquez argues that Cicero's navigation of the competing claims of patriotism and cosmopolitanism ("urbs and orbis") eventually issues in something "strikingly similar to the model of the modern national state" (2012, 203).

I believe that both Cato and all those who come from the towns have two fatherlands, one by nature and the other by citizenship. Cato was born at Tusculum but was given Roman citizenship...and had one fatherland by place of birth, the other by law...But of necessity that one takes precedence in our affections whose name "commonwealth" belongs to the entire citizen body, on behalf of which we have an obligation to die, to which we should give ourselves entirely and in which we should place and almost consecrate everything we have... I will never deny that this [Arpinum] is my fatherland, while recognizing that the other one is greater and that this one is contained within it... has two citizenships but thinks of them as one citizenship (*De legibus* 2.5)

On the surface, this is simply a comment about the status of Roman citizens who (like Cicero himself) hail from the towns (*municipia*), and not the city of Rome. But, Cicero's language invites the reader to connect the analysis to Scipio's dream. Just as citizens of Arpinum and Tusculum owe greater allegiance to the more perfect commonwealth of Rome that encompasses their small towns, so too would citizens of Rome or anywhere else be bound in loyalty to the most perfect and universal commonwealth of the cosmopolis.⁸¹ Such a reading reinforces the pacific and cooperative internationalism that characterizes the overt principles of Cicero's republicanism.

But Cicero's statement could prompt still further consideration. The towns of Arpinum and Tusculum were once independent states themselves. Rome subjugated them and eventually incorporated their inhabitants into Roman citizenship. Cicero's ancestors may have died fighting to preserve Arpinum's independence from Rome, but now he professes absolute loyalty to Rome, and considers himself an equal member of

⁸¹ Caspar comes close to suggesting this reading: "Cicero seeks to inculcate an affection for the natural law republic in those gentlemen who will be called upon to rule in it, or at least those who will rule in the lesser versions that exist in their own republics" (106).

Rome's commonwealth. Cannot this be the model by which Rome absorbs the rest of the world, achieving peace and bringing human beings into conformity with natural law? Rome's actual practice with regard to conquered peoples becomes the framework and justification for a true universal empire in accordance with the liberal demands of natural law. As Marquez suggests, "Cicero's political community is—in contrast to the modern national state but like Rome—potentially unlimited: it justifies an empire ruled by law that succeeded in integrating politically many of its conquered peoples, but an empire nonetheless"(Marquez 2012, 204).

While Cicero's explicit statements about the general rules governing the foreign policy of a commonwealth support liberal/cosmopolitan norms of just and peaceful interaction, those statements coexist with this imperialist alternative. Cicero the Roman evinces a tendency to see his particular fatherland as exceptional. For him, Rome might just bear the potentially world-historical mission of bringing natural law to the unruly human race.

2.4 Conclusion

This chapter necessarily takes a general survey-like approach, inasmuch as it attempts to give an overview of Cicero's whole republican vision. I could well have included further sections on the role of the orator or the philosopher in the

commonwealth, but those topics have been covered well by others.⁸² I have attempted, however, to draw out those elements of Cicero's republicanism that make it distinctive—particularly those aspects that illustrate its compatibility with liberal values. In Cicero, we find a vision of a commonwealth in which every member has a claim to ownership. Citizens possess rights that reflect their status as owners, but which also protect their bodies and goods from harm and arbitrary interference. Citizens enjoy the liberal freedoms of protection against bodily harm or invasion of property under the regularized conditions of the rule of law. But, the good commonwealth also embodies a republican vision of freedom in which the sovereignty of the whole citizen body is recognized and collective self-determination is essential. Such commonwealths are bound by norms of justice that do not depend simply on consent or convention. Instead, commonwealths must conform to universal rules of justice. These rules also preclude a cold-hearted *realpolitik* in the relationship of the commonwealth with outsiders. The just demands of natural law provide the framework by which to incorporate Cicero's republicanism into a liberal cosmopolitan order. But, they may also provide moral grounds to justify aspirations to universal empire.

In the next chapter, I will turn to Machiavelli, viewed by many as resuscitating and modernizing the Roman republican tradition that begins with Cicero. Instead, I will show that Machiavelli breaks fundamentally with Cicero. Understanding the nature of

⁸² See, respectively, Baraz (2012), Garsten (2006).

Machiavelli's divergence will enable us to see that it is Cicero, not Machiavelli who provides the basis for modern liberal republicanism.

“The commonwealth is dearer to me than life itself.”

— Cicero, *Ad Familiares* 10.12

“I love my native city more than my soul.”

— Machiavelli, *Letter to Vettori* 1513

Chapter 3: A Commonwealth Without Justice: Machiavelli’s challenge to Cicero and a contest for the soul of republicanism

Interlude: Cicero’s afterlife from the fall of the Republic until Machiavelli:

Giving weight to Hegel’s dictum that the owl of Minerva flies only at dusk, the Roman Republic collapsed a few short years after Cicero declared its constitution the best practical regime. Indeed, Cicero lived just long enough to see his beloved republic extinguished before he himself was executed for his allegiance to it. The manner of his death ensured an immortal reputation as a martyr for republican liberty. In 44 and 43 BC, Cicero delivered a series of speeches, the *Philippics*, in which he attacked Mark Antony as a tyrant and exhorted his fellow citizens to reclaim their liberty. But, Antony’s alliance with Octavian finally put an end to republican hopes. Cicero was proscribed, hunted, and executed. The *Philippics* so enraged Antony that he ordered Cicero’s head and his hands—because they had written the speeches—be displayed on the Rostra in

the Forum, and his wife reportedly took his tongue and repeatedly it repeatedly with her pin.⁸³

With the rise of the principate, one might expect that Cicero's reputation as a champion of the republic would have limited the influence of his works. But, instead, it flourished, perhaps in part because the early Roman emperors—beginning with Augustus—sought to preserve at least the appearance of the old constitutional forms. Cicero's son was allowed to proclaim the death of Antony to the city of Rome. The story from Plutarch at the beginning of this dissertation suggests that Augustus himself admired Cicero's patriotism.⁸⁴ The Stoicism of Seneca, Aurelius, and others bears the marks of Cicero's innovations. Cicero's rhetoric became the absolute standard for eloquence. In sum, Cicero's theoretical legacy thrived in spite of the sea-change in political circumstances that followed his death.

Although the advent of Christianity meant the loss or destruction of many pagan works, Cicero's found favor with many of the early Church Fathers.⁸⁵ Of his texts that were lost (particularly, large portions of *De re publica* and *De officiis*) in the upheavals at the end of the Western Empire, important fragments were preserved in the writings of

⁸³ Plutarch's *Life of Cicero*.

⁸⁴ Cassius Dio reports that Augustus—then Octavian—argued for two days against Antony's decision to proscribe Cicero.

⁸⁵ In fact, some of the Church Fathers were troubled by the strength of their own affection for the pagan Cicero. Jerome tells of a fevered vision of his own judgment in which God asks "what art thou?" In response to Jerome's reply "a Christian," God declares "No. Thou art a Ciceronian." On the other hand, Augustine credit's Cicero's lost *Hortensius* for his conversion to Christianity. Cf. Slaughter (1921).

Lactantius and Augustine. Ambrose wrote a Christian adaptation of Cicero's moral thought, also titled *De officiis*. In *De Civitate Dei*, Augustine accepts Cicero's definition of a republic as a people united by a common understanding of right organized for common benefit.⁸⁶ However, as the Roman Republic receded further into the past and political systems bearing little resemblance to it took its place, Cicero's rhetorical thought (rather than his political and moral theory) came to constitute his legacy.

This state of affairs lasted until the Renaissance, which witnessed the revival of republican government throughout Italy and the rise of civic humanism, self-consciously inspired by the pre-Christian classical world. Although Pocock has sought to portray this period as one animated by an admiration for Aristotle's thought, Skinner and Hans Baron (1938) have demonstrated compellingly that Cicero was by far the dominant classical figure, especially (but not only) for the Italian humanists.⁸⁷ As Mark Hulliung (1983, 9) puts it, "under the sponsorship of the civic humanists Cicero was restored to his position, lost during the Middle Ages, of citizen and advocate of the *vita activa*." At the center of this movement was Petrarch, who proclaimed the superiority of Cicero to Aristotle, and launched a massive search of monasteries' libraries for the lost

⁸⁶ Augustine then argues that without Christianity, no political organization could ever meet Cicero's high standard. (*De Civitate Dei* XIX 23-24.)

⁸⁷ Although the recovery of Cicero's philosophy was strongest in Italy, it is worth noting that the second book off of Gutenberg's press was *De officiis*. It was also one of the first off the first press in France (Skinner 1998), 196.

works of the writer whom he called “the great genius of antiquity”.⁸⁸ Following Petrarch’s example, other luminaries of the age sought inspiration from Cicero’s political ideas expressed in his theoretical writings, his speeches, and even his letters. Among these were Latini, Manetti, and Bruni, all of whom took seriously Cicero’s political views on questions of virtue, the union of philosophy and rhetoric, political prudence, and the qualities of the statesman. The Ciceronian conception of *virtus* and his writings about the education of a gentleman (especially *De officiis*) actually spawned the creation of a number of humanist schools in Italy. As Skinner puts it, “the key to interpreting the humanism of Petrarch and his successors lies in the fact that, as soon as they recovered this authentically classical perspective, they turned themselves into fervent advocates of the same Ciceronian ideals” (Skinner 2002, 88-89)

3.1 Enter Machiavelli

It was into this world saturated with Cicero’s thought that Machiavelli appeared. Oceans of scholarly ink have been spilled in debates over the meaning of Machiavelli’s writing and his legacy. It is not my intent here is to add much more than a few drops. This chapter explores Machiavelli’s engagement with Cicero’s thought and argues that Machiavelli’s project is an attempt to fundamentally revalue the legacy of the Roman republic, and therewith, republicanism itself. With this revaluation, Machiavelli aims to overthrow the understanding of Roman republicanism — most powerfully expressed by

⁸⁸ See (Skinner 2002, 84, 88).

Cicero and which had again become dominant among civic humanists of his age.⁸⁹ As we found in the last chapter, Cicero's Rome—as the manifestation of the best practical commonwealth—was worthy of admiration because of its correspondence to natural law, its just institutions, its fair dealing with others, and its government by wise, public-spirited individuals who employed deliberation and discussion to resolve questions. Machiavelli looks to the same Rome and sees a republic worthy of emulation because of its willingness to engage in *injustice*, its warlike capacity for imperial expansion, and the often-violent contestation between its classes. Whereas Cicero had defended a civil kind of contestation in speech, bounded by firm moral laws and protection for individuals, Machiavelli emphatically suggests that the logic of contestation accepts no such limitation. In short, the political vision Machiavelli puts forth constitutes a rejection of many of the central components of the *res publica* found in Cicero.

In illustrating Machiavelli's rejection of Cicero's republicanism, I seek in this chapter to achieve three goals. The first is to demonstrate on the theoretical level the divergence of the political visions offered by Machiavelli and Cicero.⁹⁰ If they are to be considered part of the same "republican tradition" at all, we must take them as fundamental alternatives, and not treat Machiavelli's thought as part of some natural

⁸⁹ For more on the role of Cicero in the Italian Renaissance, see especially (Baron 1938) and (Skinner 2002a).

⁹⁰ Hulliung has gone far in this direction already, demonstrating that Machiavelli's love of republics can be traced to an approval of their capacity for conquest and his political ethics a blueprint of force and fraud in the service of power accumulation. In this sense, he writes of Machiavelli's "inversion" of Cicero, turning him "upside down" (Hulliung 1983, x).

development of Ciceronian themes. Second, by establishing these differences, I lay the groundwork for us to see the scope of the *rejection* of Machiavelli's innovations in the rise of liberalism *and* liberal republicanism during the 18th Century. Although some of Machiavelli's philosophical ideas about the conquest of *fortuna*, or his critique of Christianity may have greatly influenced later philosophy on the supra-political level, we shall see that his innovations on Cicero's republicanism were ultimately abandoned by most of the major authors of the succeeding republican tradition (not to mention the liberal tradition), who found his violent, amoral republicanism far less palatable than Cicero's original. Third, this chapter established the grounds for my concluding chapter in which I argue that Cicero *still* offers a more appealing and compelling version of republicanism, and that modern neo-republicans err badly when they seek to ground the revival of republicanism on Machiavelli instead of Cicero.

The argument of this chapter proceeds in the following way. First, I briefly situate my argument in relation to the contemporary state of scholarly literature. The enormous amount of scholarship on Machiavelli in recent decades—combined with the fact that my focus in this dissertation is on Cicero—requires me to confine my treatment of this great corpus only to what directly concerns Machiavelli's relationship to Cicero. Next, I explore the common ground shared by Machiavelli and Cicero—biographical, philosophical, and political—much of which has provided grounds for seeing Machiavelli's thought as a sympathetic development of Cicero's. I argue, however, that

this common ground only makes the division between the two sharper, as they essentially clash over the real legacy and lessons to be drawn from the Roman Republic, which for both constitutes the highest political achievement yet reached by humanity. I then turn to Machiavelli's critique and rejection of Ciceronian republicanism. I demonstrate that Machiavelli breaks with Cicero fundamentally by severing the concept of justice from the idea of a common good. Whereas Cicero considers justice to be a central aim of any good political order, Machiavelli demotes the very idea of justice to an afterthought at best. This rejection of the centrality of justice leads Machiavelli to abandon the Ciceronian understanding of Roman political virtue, replacing it with his modern *virtù*. This new *virtù* is what enables individuals and regimes to acquire power. Machiavelli thereby also rejects Cicero's pacific republicanism, according to which disagreement is best resolved through rational discussion and the commonwealth appears as part of a larger cosmopolitan political order. Instead, Machiavelli makes conflict the natural condition of politics on the domestic and international level. For Machiavelli, Rome shows that republics are at their most dynamic and healthy in the midst of class struggle, and that the best kind of republic is expansionist and rapacious toward its neighbors. Both Machiavelli and Cicero conceive of the freedom of the commonwealth as a whole in the same general way—a political community undominated by either a single individual or by an outside force. But, whereas Cicero's conception of rights links closely the liberty of the political community with the liberty

of the individual, Machiavelli severs that connection, and neglects the concept of rights entirely (thereby lending plausibility to neo-republican claims that republicanism offers an attractive model of freedom without rights). The tumults within and the demands of war external to Machiavelli's envisioned republic leave little room for the personal security that characterizes the liberty of citizens in Cicero's republic.

By the conclusion of this chapter, we should be able to see clearly that Cicero and Machiavelli represent two fundamental alternatives for republicanism. Moreover, we should begin to anticipate that precisely those features of Machiavelli's thought that distinguish him most from Cicero are those that later writers of the (especially liberal) republican tradition found unpalatable. Those are also some of the same reasons that we ourselves, when seeking a republican ideal that can speak to contemporary theoretical issues, should consider Cicero's model superior to that offered by his Florentine successor.

3.2 Machiavelli's Place: Prevailing Views

As I argued in the introductory chapter, I believe that much of our failure to take Cicero's thought seriously can be attributed to the contemporary overestimation of Machiavelli—both of his historical role as a figure in the republican tradition and of the potential for his political vision to hold theoretical appeal. In part, I suspect his popularity can be attributed to his unique way of writing: full of tantalizing allusions, often playfully self-contradictory, as Nietzsche puts it “presenting the most serious

matters in a boisterous *allegriissimo*, perhaps not without a malicious artistic sense of the contrast” (Nietzsche 1966, sect 28). Of his two greatest works, one appears to instruct princes and tyrants, the other to support free republics. For these reasons, Machiavelli can function as a kind of Rorschach test, wherein readers see reflected whatever they are looking for. The wide range of different interpretations that have been rendered of his work—perhaps more disparate than any other historical thinker—illustrates this phenomenon.

Of these, three different bodies of scholarly work bear on the subject of this chapter: the depiction of Machiavelli as the high point in a republican tradition that stretches from Aristotle to the American founders, advanced by the Cambridge School and adopted by neo-republicans such as Pettit and Maurizio Viroli; Strauss’ influential view of Machiavelli as the great immoralist and founder of modernity⁹¹; and John McCormick’s interpretation of Machiavelli as a radically democratic thinker. Of these three schools, I addressed the first two at some length in my introductory chapter, so I will do little more than offer a brief account of how they pertain to the subject of this chapter.

Contemporary theory is indebted to Pocock, Skinner, and other members of the Cambridge School for sparking the revival of interest in republican, Florentine, and

⁹¹ Among those accepting some version of this view are Harvey Mansfield, Nathan Tarcov, and Vickie Sullivan.

Roman political thought. However, the historical story they tell places far too much emphasis on the position of Machiavelli. For the Cambridge School, Machiavelli embodies the culmination of the recovery of Roman republicanism that took place in the Fourteenth and Fifteenth Centuries. Machiavelli becomes the conduit by which classical republicanism inspires “the Atlantic republican tradition” in England and America.⁹² As Clarke points out, despite their rejection of the idea of “continuities” in intellectual history, Skinner, Pocock and others essentially advance a story about the continuity of a republican tradition that stretches over two millennia (Clarke 2014).⁹³ They collapse the difference between Machiavelli and the preceding tradition of Roman republicanism centered on Cicero.⁹⁴ On that basis, they make plausible the claim that the liberalization of the republican tradition subsequent to Machiavelli constitutes a mere refinement of his political ideal, rather than what it is: a near-total rejection of those very things that distinguish Machiavelli from Cicero.⁹⁵ The story told by the Cambridge School historians is accepted rather uncritically by contemporary neo-republicans, who derive a kind of

⁹² See (Pocock 2009).

⁹³ For a representative statement of the Cambridge School’s opposition to the idea of “continuity,” see (Skinner 2002, 111).

⁹⁴ Marcia Colish goes furthest along these lines. Pointing to the numerous parallels between Machiavelli’s *Prince* and Cicero’s *De officiis*, she takes Machiavelli to be essentially in agreement with Cicero (Colish 1978). J.J. Barlow offers a less extreme version of the same view, according to which Machiavelli corrects and completes Cicero’s defense of the political life (J. J. Barlow 1999). David Fott temporizes further: although he finds “much similarity... between Cicero and Machiavelli,” he acknowledges that “Machiavelli appears to see a more frequent need for dishonorable action than does Cicero” (Fott 2008, 162). As we shall see, Fott’s position comes closest to seeing the gulf between Machiavelli and Cicero, but it remains a great understatement.

⁹⁵ This view occasionally also animates the work of scholars influenced by Strauss; see Sullivan (Sullivan 2006).

gravitas for their contemporary theoretical project by associating it with an august historical pedigree. So Pettit is able to claim that his republicanism is a revitalization of both Cicero and Machiavelli's republicanism(Pettit 1997, 5).⁹⁶

A valuable corrective to this view comes from Strauss. Strauss rightly takes seriously Machiavelli's own claim to originality, his desire to establish "new modes and orders" (*Discourses* 1, preface).⁹⁷ Although Machiavelli often exhorts his readers to imitate (his depiction of) classical political *practice*, Strauss notes that this exhortation is premised on a rejection of classical political philosophy(Strauss 1995; 16, 290). For Strauss, Machiavelli's innovation lies in his rejection of classical *and* Christian ideas of morality, virtue, and the role of justice in politics. In their place, Machiavelli offers a teaching of the necessity of injustice, the importance of knowing "how not to be good".⁹⁸ With respect to Cicero in particular, Harvey Mansfield notes that most references Machiavelli makes to him express a revision or criticism of his ideas (Mansfield 2001, 154–55).

Although Strauss, Mansfield, and others capably rebut the Cambridge/neo-republican view of Machiavelli as a continuation of classical ideas, they go even further

⁹⁶ In a more recent work, Pettit claims to have identified two republican traditions. But, his new discovery consists of a Franco-German republicanism centered on Kant and Rousseau. For Pettit, Cicero and Machiavelli (and Pettit himself) remain part of one coherent tradition sharing a common view of the good political order (Pettit and others 2013).

⁹⁷ In this chapter, the citations from Machiavelli's two major works are taken from the Mansfield and Tarcov translation of the *Discourses* (1998) and Mansfield's translation of the *Prince* (1998).

⁹⁸ Strauss returns to this point repeatedly (1995; 9, 11-12, 81, 171, 240).

than the latter in placing Machiavelli at the center of subsequent developments of political thought. Strauss argues that Machiavelli “initiates the Enlightenment” and describes even contemporary political theory as produced by “the heirs of the Machiavellian tradition” (Strauss 1995; 173, 12). In this dissertation, I make no attempt to deny that subsequent thought bears substantial Machiavellian influence on the supra-political philosophic level (in its emphatic rejection of teleology, desire to master *fortuna*, rejection of classical and Christian orientations towards humanity, etc.). But, I do argue that Machiavelli’s vision for *political* life does not prove appealing to subsequent influential political thinkers, (and, for reasons that will become apparent, we should be grateful for that fact).

Turning to McCormick, it is worth noting that his interpretation of Machiavelli—despite serious drawbacks—recognizes what an outlier Machiavelli is in the history of political thought. McCormick criticizes the Cambridge school in particular for “merging with too little qualification Machiavelli’s political thought and republicanism generally” (McCormick 2011, 9). For McCormick, the essence of Machiavelli’s thought is radically democratic. McCormick sees this as a break from the oligarchic republicanism envisioned by Cicero and adopted by Machiavelli’s contemporary, Guicciardini. McCormick is right that Machiavelli makes more room for popular participation than other republican thinkers, but in making this feature the cornerstone of Machiavelli’s thought, he is forced to ignore or explain away the many obvious *undemocratic*

elements present as well.⁹⁹ McCormick persuasively argues that later republican thought largely constitutes a rejection of Machiavelli's innovations.¹⁰⁰ But, that rejection is based on far more than Machiavelli's alleged democratic radicalism. The rapacious, tempestuous, morally untethered politics advanced by Machiavelli proves unpalatable for moral and prudential reasons to subsequent thinkers.

The arguments presented in this chapter aim primarily to serve as a corrective to the influential claims made by the Cambridge School and its neo-republican allies, to demonstrate that Machiavelli's republicanism—if we can even consider the author of the *Prince* a republican—is best understood as a rejection of the then-dominant account of the *res publica* offered by Cicero. Strauss, McCormick and their followers have already provided valuable critiques of part of the Cambridge school story, although, as I suggest above, they are by themselves not sufficient. Put simply, I believe we can say with Strauss that Machiavelli does constitute a break with classical political thought—including Cicero. With McCormick, we can say that subsequent political thought *also* does not follow Machiavelli in his vision for political life. In short, that Machiavelli's

⁹⁹ Even at first glance, one might pose against McCormick's view an obvious counterfactual: if Machiavelli were truly partial to democracy, why would he not take the Athens or some other classical democracy as his model, instead of the oligarchic Roman Republic?

¹⁰⁰ Although he does not develop the idea, McCormick alone among scholars seems to have noted that it is Cicero's model that wins out among thinkers subsequent to Machiavelli. McCormick sometimes refers to this anti-Machiavelli's alternative as Guicciardini's, but he always treats Guicciardini as essentially an heir to Cicero. See McCormick (2011), 9, 11, 66, 144.

ideas about political practice are an aberration in a republican tradition dominated by Cicero.

3.3 Cicero and Machiavelli: the Common Ground

The contrast between Machiavelli and Cicero is perhaps all the sharper because of the numerous biographical and theoretical similarities we find between them. Neither Italian came from ancient noble lineages, yet both rose by their own talents to positions of authority in their cities. Their status as newcomers to political power ensured that neither was ever quite accepted among the ruling families in their respective regimes. Yet, both demonstrated a passionate patriotism that was wholly unfeigned. They were compelled by shifting political circumstances into a forced retirement, during which they produced their most influential works of political thought. Both also lived long enough to see their republics overthrown and replaced by autocratic government.

Machiavelli also immersed himself in classical learning, including the works of Cicero. Indeed, as discussed previously, the intellectual milieu of Machiavelli's time was saturated with Ciceronian ideas, and he himself clearly read Cicero's works. On the theoretical level, too, Machiavelli follows Cicero on a number of important points. While both considered the merits of sole rulership, they strongly favored republican government. For both, republics are more to be identified by their commitment to the common good rather than by any strict institutional arrangement. The freedom of a republic lies in its not being dominated completely either by a single individual or

faction domestically, or by an external power. The absolute rule of one man is incompatible with a republic, but Cicero accepts the possibility of monarchical, aristocratic, and democratic republics in which institutional arrangements prevent such domination (*De re publica*, bk. 1). Machiavelli, for his part, speaks of “princes of republics” and republics founded by a single individual’s will (*Discourses* 1.2, 1.3, 1.9, 1.12, 1.16, 1.20). For both, the essential feature of a republic or a commonwealth is that only in such regimes is the common good to be found. The presence of some common good is definitionally part of Cicero’s understanding of a *res publica* (*De re publica* 1.39). For Machiavelli, it is less clear that republics *always* establish a common good, but only in republics is it *possible* for the common good to be found: “this common good is not observed if not in republics” (*Discourses* 2.2) and at any rate, “a republic has greater life and good fortune longer than a principality” (*Discourses* 3.9).¹⁰¹

Both agree with Aristotle that the best kind of political community has some mixture of the three simple regimes: monarchy, aristocracy, and democracy. For Cicero, this mixture ought to ensure that “magistrates have enough power, the council of leaders has enough authority, and the people has liberty” (*De re publica* 2.57).¹⁰² Machiavelli’s *Discourses* abounds with examples illustrating the superiority of a regime

¹⁰¹ See also: *Prince* 5.

¹⁰² See also: *De legibus* 3.27-28.

in which the vigor of a solitary executive is combined with some mixture of elite and democratic governance.

The two were critical of the tendency of some classical writers to imagine unrealistic and impractical political ideals without any connection to reality. In one of his most famous passages, Machiavelli writes:

It has appeared to me more fitting to go directly to the effectual truth of the thing than to the imagination of it. And many have imagined republics and principalities that have never been seen or known to exist in truth (*Prince* 15).

It is possible that Machiavelli meant to include Cicero—the author of the famous *Somnium Scipionis*— in that critique. But, Cicero is actually sympathetic to the kind of complaint Machiavelli raises here. While Cicero considers himself a disciple of Plato, he rebukes him for depicting an ideal regime “totally inconsistent with human life and custom” (*De re publica* 2.21).¹⁰³ Thus, both Machiavelli and Cicero feel that a necessary feature of valuable political thought is a capacity to address the facts about how human beings actually do live and interact.

All of these commonalities contribute to the final point of agreement between the two men: the status of the Roman Republic as the best example of political organization that humanity has yet produced. In Cicero’s *De re publica*, the characters of the dialogue seek the best practical regime—in contrast to Plato or Zeno’s best imaginable regimes—and find it to be the Roman republic (*De re publica* 2.3, 2.21). The laws of the Roman state

¹⁰³ See also: *De Oratore* 1.224.

most nearly approximate the eternal commands of the natural law and are characterized by a harmonious “blending of rights” (*De legibus* 3.27). Moreover, this regime is not the product of a single founder’s vision, but rather the gradual development over time of ever better and more just institutions (*De re publica* 2.2). It sustained itself by its faithful adherence to its religion and by the cultivation of civic-oriented virtue (*De re publica* 2.27-29).

For Machiavelli, too, the Roman Republic is the best example of a political regime that history has yet furnished, and which it most behooves a founder of a state to imitate (*Discourses* 1.2, 1.6). Machiavelli agrees with Cicero that the Roman regime was brought to near perfection by a long historical process (*Discourses* 1.2). The mixed regime of consuls, senate, assemblies, and tribunes was supported by Roman virtue, which in turn depended in large part on the politically salutary Roman religion (*Discourses* 1.11).

The ultimate disagreement between Cicero and Machiavelli is all the more intense because it takes place on the basis of these similarities. Both lay claim over the Roman Republic as the best example available to us of a good regime. But both see vastly different things to admire, and those aspects Cicero laments are the same that Machiavelli celebrates, while those that Cicero encourages are the ones Machiavelli prefers to abandon. In Machiavelli, we can see an attempt to wrest from Cicero the legacy of the Roman Republic. The influence of Cicero on the preceding tradition stretching from Augustine and Ambrose to Bruni, Guicciardini and Petrarch makes such

an attempt a daunting one. In place of Cicero's decent commonwealth characterized by rights and based on justice and an adherence to a transcendent moral law, Machiavelli seeks to glorify a martial, imperial, turbulent republic in which conflict—not harmony—signifies political health, and upon which justice has no essential bearing.

3.4 A Common Good Without Justice

We saw in the previous chapter how Cicero's definition of a *res publica*—a commonwealth—contains two features. First, a commonwealth must encompass a people united for common benefit. Second, that union must be based on an agreement about *ius*—right, or justice.¹⁰⁴ Moreover, the justice agreed upon cannot be any conventional understanding of justice; it must conform to *true* justice, the justice ordained by the natural law.¹⁰⁵ Only those political communities that meet this standard qualify as commonwealths. Undergirding this view is Cicero's understanding of a providential *cosmos*. Fortune may not always favor us, and we may sometimes have to adapt ourselves to unfavorable conditions, but the universe itself is not essentially chaotic or purposeless. The earth exists for human benefit, and human beings themselves exist in part to aid each other (*De officiis* 1.22). Although vice-prone, human beings have a natural orientation toward moral virtue, and virtue of some worth is accessible even to ordinary people. Human beings have a natural sociality that drives

¹⁰⁴ See: *De re publica* (1.39).

¹⁰⁵ See chapter 2 of this dissertation.

them to pursue fellowship with others for its own sake—and not merely for instrumental benefits. There is therefore a natural common good in human association. Violations of this sociality, committed by one citizen against another or one state against another, are contrary to right reason and forbidden:

For a man to take something from another for his own benefit to the other's disadvantage... destroys common human life and society... imagine if each limb had the idea to seize for itself the strength of its neighbor, necessarily this would weaken and destroy the whole body (*De officiis* 3.21-22)

For Cicero, as all human beings by nature are citizens of the universal cosmopolis of gods and men, the dictates of justice apply also to those outside our political community. This is the grounds for making justice a foundational component of a well-ordered commonwealth, and for the action of the commonwealth to be constrained by justice in its internal and external dealings.

Those who fail to live according to this rule of human fellowship reveal themselves to be like beasts clothed in human likeness (*De officiis* 1.105, 3.82). Human beings, as social and rational, ought to employ reason and discussion to resolve their disagreements. Force is only acceptable in response to the bestial behavior of others: “there are two ways of contending, one by discussion, the other by force, since the first is proper to human beings, the latter to beasts, we should only resort to the second if it is not possible to make use of the first” (*De officiis* 1.34). In particular, human injustice takes two different bestial forms: “deceit—like a fox, and force—like a lion, both are most improper to a human being, but deceit deserves the greater blame, for there is no

injustice worthier of punishment than that of individuals who commit the greatest betrayals while appearing to be good men" (*De officiis* 1.41). Machiavelli makes note of these Ciceronian metaphors, and puts them to a very un-Ciceronian use.

Machiavelli writes:

There are two kinds of combat: one with laws, the other with force. The first is proper to man, the second to beasts; but because the first is often not enough, one must have recourse to the second. Therefore it is necessary for a prince to know well how to use the beast and the man (*Prince* 18).

Machiavelli reverses the intention of Cicero's metaphor. Whereas Cicero warns against using force, Machiavelli insists that it is necessary, however bestial. It is also worth noting that the alternative to force for Machiavelli is not "discussion" as it is for Cicero, but "laws." Laws, after all, are state rules backed by force, a point Machiavelli himself makes when he writes in the *Prince* that good laws are simply the consequence of having good arms (12). Machiavelli leaves us with the choice between orderly and limited force, and unrestrained force. Resolving conflict by means of rational discussion or persuasion no longer seems to be an option for Machiavelli. There is not even a real choice between force and laws. One should therefore concentrate on nothing but war, "for that is the only art which is of concern to one who commands," good laws are the consequence of having a strong military, so there is no reason to give advice about lawmaking (*Prince* 12, 14). Citing Cicero, the most Machiavelli says on the subject of persuasion is that "though peoples, as Tully says, are ignorant, they are capable of truth and easily yield when the truth is told them by a man worthy of faith" (*Discourses* 1.4.1).

But here is absent any actual persuasion, much less any rhetoric or deliberative give-and-take between people seeking the truth in good faith through discussion that so characterizes Cicero's view of republican practice (the centrality of which is reflected in both Cicero's own occupation and the number of works he devoted to the subject). For Machiavelli, the objective is to cultivate trust so as to be believed in the critical moment, not to persuade through the force of argument.

Although *The Prince* and *The Discourses* contain chapters on almost any political topic that one might imagine—from “how much artillery should be esteemed by armies in the present times; and whether the opinion universally held of it is true” to “how a state is ruined because of women”—there is not one chapter devoted to rhetoric or persuasion.¹⁰⁶ Machiavelli teaches extensively how people can be forced, frightened, manipulated, or incentivized, but he does not seem to have considered it worthwhile to instruct political actors on how to *persuade*.¹⁰⁷ Rhetoric and speechmaking were a central component of Roman political practice, and Cicero argues that they are essentially the ways in which rational creatures living peaceably together ought to engage in political competition. Moreover, with the Ciceronian revival in Italy, rhetorical studies had once again begun to flourish in Machiavelli's day. Yet, Machiavelli pays them virtually no attention. In both the *Prince* and the *Discourses*, Savonarola most closely resembles a

¹⁰⁶Nor, for that matter, is there even one chapter devoted to justice.

¹⁰⁷ A few recreations of speeches are offered in the *Florentine Histories*—as examples. But, in the two works which Machiavelli claims to present his comprehensive political vision, advice on persuasion—as opposed to manipulation or threats— is passed over in near total silence.

statesman whose power rests on his rhetoric, and Machiavelli points to him as a prime example of the general rule that unarmed prophets are always destroyed (*Prince* 6). We might well wonder why Machiavelli feels discussion is a toothless form of political contestation.

The idea of a rationally ordered universe is entirely absent in Machiavelli's thought. Neither Cicero's *cosmos* governed by natural law, nor the divine order of Thomistic Christianity characterizes Machiavelli's view of the human condition. Fortune is no friend to human beings, but an enemy to be conquered. In the penultimate chapter of *The Prince*, Machiavelli addresses the issue of "in what modes [fortune] may be opposed" (*Prince* 25). Machiavelli employs two famous metaphors for fortune, whose rule over human affairs he seeks to overthrow. In the first, fortune appears as a violent river, "which, when they become enraged, flood the plains, ruin the trees and buildings... each person flees before them." The prudent individual anticipates this, and builds dikes and dams to contain the river's flood. In the second metaphor, Machiavelli's advice is still more proactive and violent: "fortune is a woman, and it is necessary, if one wants to hold her down to beat her and strike her down" (*Prince* 25).¹⁰⁸ In both examples, human beings cannot possibly aspire to live a life in accordance with the cosmic order.

¹⁰⁸ Strauss compares this aggressive orientation toward fortune with classical philosophy's resignation in the face of chance. He sees Machiavelli as thereby giving birth the modern project of the conquest of nature (Strauss 1995, 299–300). As discussed in the previous chapter, Cicero's life and political philosophy cannot be viewed as promoting resignation—they are oriented toward the active political life. But, for Cicero, neither nature nor our fellow human beings are inherently our enemies.

That order does not exist. Fortune is hostile—or, at best, indifferent—to us, so we must find some other way to achieve our goals.

There is no transcendent standard of justice to be found in indifferent nature, nor justice upheld by a rational order. As a result, human beings also have no natural orientation toward virtue, and no *natural* common good. Rather, Machiavelli assumes that an individual “who wants to make a profession of good in all regards must come to ruin among so many who are not good” (*Prince* 25). Faced with the caprice of fortune and the malignity of others, we find ourselves in a hostile world, so we naturally seek after power both to protect ourselves and to advance our other interests. Cicero considers avarice to be “the worse vice,” but for Machiavelli, “truly it is a very natural and ordinary thing to desire to acquire, and always, when men do it who can, they will be praised and not blamed” (*Prince* 3).¹⁰⁹ This precept leaves no room for justice as an independent ideal to motivate and constrain our action, nor can we hope to persuade other similarly self-interested actors to behave justly—deliberation will thus always be fruitless. As Mansfield points out, Machiavelli never mentions natural justice or natural law in *any* of his works (Machiavelli and Mansfield 1998, xii). In advising individuals, Machiavelli almost never mentions justice of any variety. When he does, justice is only considered in light of its instrumental value. The very origin of our sense of justice lies less in our natural concern for each other and more in our fear that we ourselves may

¹⁰⁹ Compare to *De officiis* 2.77.

come to harm (*Discourses* 1.2.3). Justice is a convention, to be broken when advantageous. To *appear* just is always beneficial, but to act because of a true concern for justice often leads a person to a bad end (*Prince* 19, *Discourses* 1.9.4, 3.34.3).

As we saw in the previous chapter, Cicero argues that justice requires us to avoid harming others, to prevent harm to them whenever possible, and to respect private and public property. For Cicero, justice demands that people be allowed to keep fairly accumulated wealth, and he denounces those who “steal from some the money they lavish on others” as practicing avarice in the guise of liberality (*De officiis* 1.43). Machiavelli stresses the value of violating all three prescriptions of Ciceronian justice. Machiavelli makes no mention at all of rights—to life, security, or property—a concept central not only Ciceronian republicanism, but also to the lived practice of Roman political practice, as we saw in the previous chapter. There is good reason to believe that the misconception that rights are not indigenous to republican theory can be traced Machiavelli’s silence about rights and to scholars like Pocock, Pettit, and Viroli, who have taken Machiavelli as the supreme exemplar of republicanism—and even of *Roman* republicanism specifically.

Cicero’s conception of rights, as manifestations of just relationships, linked the liberty of the republic to the liberty of its citizens. One of the key advantages of living in a free, self-governing, and well-ordered republic was the enjoyment of the rights such a republic would secure for the individual. In turn, the rights of the individual ensured

the proper balance and relationships that maintained the freedom of the republic and prevented it from collapsing into tyranny. *Libertas*—of the individual and the political community—is thus one of the central purposes of the political community. It is an end toward which the statesman ought to strive.

For his part, Machiavelli does emphasize the importance of the liberty of the political community. The *Prince* and the *Discourses* abound with Machiavelli's illustrations of the superiority of "free" republics over principalities (worse off still are those political communities which are dominated from without). But, Machiavelli goes on to leave little doubt that the freedom of the individual citizen is not only not central to his conception of political freedom, it is often in conflict with it. Machiavellian citizens do not securely enjoy bodily safety, the protection of their property, leisure, or the rights to fair trial that Cicero found so valuable about Roman practice. In his understanding of the common good achieved in republics, Machiavelli writes: "this common good is not observed if not in republics, since all that is for that purpose is executed, and although it may turn out to harm this or that private individual, *those for whom the aforesaid does good are so many that they can go ahead with it against the disposition of the few crushed by it*" (*Discourses* 2.2, emphasis mine).

It may seem that, contrary to the foregoing, Machiavelli does intend to carve out protections for some of the same rights defended by Cicero, even if he does not use the term "rights," or that he at least shares Cicero's concern for justice with respect to the

lives and property of citizens. On the subject of property, Machiavelli cautions princes against violating the goods (or women) of the people. But, he clarifies that this advice comes only because “men sooner forget the loss of their father than the loss of their patrimony” (*Prince* 17). In other words, it is better to kill a man than steal his money—and this only because his heirs may seek revenge. Machiavelli insists that republics ought to keep “the public rich and the citizens poor” (*Discourses* 1.37.1). Wealth acquired by force at the expense of others is *preferable* for Machiavelli to wealth acquired peacefully. As Machiavelli puts it, the successful rapacity of the Roman citizen army proves that “gold is not sufficient to find good soldiers, but good soldiers are quite sufficient to find gold” (*Discourses* 2.10.1). Cicero denounces avarice and pillage. But for Machiavelli, the plundering of others’ property is actually advisable and praiseworthy, as long as it is the property of those outside your state (*Prince* 16).

As for bodily harms, Machiavelli proposes not only that they be done, but that they should often be done all at once, so that people notice them less (*Prince* 8). At least, that is his recommendation for princes. When considering republics, Machiavelli is still more sanguinary, believing that only repeated spectacles of blood can keep people subservient to the laws: “one should not wish ten years at most to pass from one to another of such executions” (*Discourses* 3.1.3). The question of justice—that it might matter whether the condemned individuals *deserve* to die, whether they are even owed a fair trial—Machiavelli does not even mention.

Undoubtedly, Machiavelli often proposes such acts of injustice because they are the only means to achieve some good for the community, as in Cesare Borgia's pacification of Romagna (*Prince* 7). But, we cannot conclude from this that Machiavelli accepts such harms and injustice *only* if they are oriented toward some moral good beyond justice, since he is also willing to advise tyrants (*Discourses* 1.26), and "those who have attained a principality through crime" (*Prince* 8). It may be tempting to see Machiavelli as a tough-minded realist, who simply brings our attention to the fact that sometimes a prudent political actor needs to harm a few in order to save many—a kind of moral consequentialist.¹¹⁰ But at best, such an interpretation fits only some of Machiavelli's examples and advice. To illustrate his point that "subjects should either be benefitted or eliminated," Machiavelli rebukes those who "do not see that men individually, and a whole city together, sometimes sin against a state so that a prince has no remedy other than to eliminate it as an example to the others and *for his own security*" (*Discourses* 2.23.3, emphasis added). In other words, Machiavelli accepts the logic that it is sometimes necessary to destroy an entire city in order to terrify others and ensure the security of a single individual.¹¹¹

¹¹⁰ Hulliung aptly debunks this view of Machiavelli as a grim humanitarian realist, who suffers with the terrible knowledge that the truly good man must sometimes get his hands dirty. As Hulliung puts it: for Machiavelli, the truths about power were not regrettable, "they were exciting" (Hulliung 1983, 7).

¹¹¹ Even some of the instances that seem most conformable to a consequentialist reading of Machiavelli fail on closer inspection. For instance, much has been made of Machiavelli's approval of Cesare Borgia's pacification of Romagna, where he used admittedly brutal methods to establish a fair system of justice. A closer examination reveals that Machiavelli offers this example as proof of how "the duke had laid very good foundations for his power" (*Prince* 7), not of how justice sometimes requires harshness. One might also

A philosopher who would suggest such things might seem almost singularly unappealing as the source of inspiration for the sort contemporary project in political theory envisioned by Pettit, Viroli, and others. But, there are even influential voices outside of the neo-republican camp who hope to make similar use of Machiavelli. In particular, McCormick, despite disagreeing with a number of the historical claims put forth by Skinner and Pocock, nevertheless shares with the neo-republicans a desire to find inspiration for contemporary theorizing from Machiavelli. To draw something normatively appealing from the author of *The Prince*, McCormick prefers to focus on Machiavelli's advice to republics, rather than his advice to individual elite political actors (actual or potential "princes"). Here, McCormick claims to recover the unappreciated, radically democratic nature of Machiavelli's politics. McCormick bases his view on Machiavelli's famous "two humors" theory, according to which every political community consists of the common people, who "desire neither to be commanded nor oppressed by the great" and elites ("the great"), who "desire to command and oppress the people" (*Prince* 9).¹¹² Machiavelli strongly endorses the

point to Machiavelli's critique of "the Florentine people, who so as to escape a name for cruelty, allowed Pistoia to be destroyed" (*Prince* 7). But, in this case, Machiavelli is only illustrating the apparent contradiction of those who *do* claim to care about mercy, by illustrating how their merciful methods resulted in greater harm. Nowhere does Machiavelli enlist himself among those for whom mercy is a motivating factor.

¹¹² Also: *Discourses* 1.5.2.

Roman Republican model over those of Venice and Sparta because the common people were far more able to assert themselves in the former (*Discourses* 1.5.3).

McCormick rightly calls our attention to the fact that the kind of republic Machiavelli favors gives important space for popular participation than other republican models.¹¹³ But, McCormick wrongly concludes from this that Machiavelli's democratic republicanism contains within it a commitment to justice, where "the people's decency or onestà entails a fundamental disinclination to injure others... the people are capable of superior moral judgments" (McCormick 2011, 25).

For one thing, McCormick's interpretation requires him to consider Machiavelli's writings about princes and other elite political actors as "description." McCormick only seems to notice cases where Machiavelli "defines," "characterizes" or "refers to" the oppressive behavior of elites (McCormick 2011, 4). He tends to ignore instances where Machiavelli *advises* elites on how better to go about accumulating power or oppressing. There is no particular reason to believe that Machiavelli did not intend this advice with the same sincerity as his counsel to republics.¹¹⁴

But, let us set Machiavelli's advice to elites aside, and join McCormick in examining the desires of the people. McCormick makes much of Machiavelli's claim in *Discourses* 1.4 that Rome proves how "the desires of free people are rarely pernicious to

¹¹³ Although, it is not quite as democratic as McCormick claims, as Balot and Trochimchuk (2012) demonstrate.

¹¹⁴ Machiavelli's letter to Vettori strongly suggests that his willingness even to *work* for a prince expressed in the dedication of *The Prince* is not feigned.

freedom.” McCormick argues that the people are passive and deferential unless provoked by a threat to their liberty (McCormick 2011, 30). Of the nobles, McCormick states: “their oppressive nature is just a fact, a natural fact,” whereas “the people ‘only desire not to be dominated’” (McCarthy 2004, 146; emphasis in McCormick, but not in Machiavelli's original).¹¹⁵

Machiavelli's distinction between the desires of the nobles and the people is also the centerpiece of Pocock, Skinner, Viroli, and Pettit's project to excavate from Machiavelli especially the allegedly distinct “republican” conception of freedom as non-domination.¹¹⁶ Ignoring the rights that form such a central part of Cicero's conception of republican freedom, they seek to make a Machiavellian ideal of non-domination the characteristic republican conception of liberty. As noted above, insofar as this ideal applies to states in Machiavelli's thought and not to citizens, it is compelling. Machiavelli does indeed understand a “free” republic to be one that is neither dominated by the autocratic power of a single individual nor ruled by some external other political community. But, whereas Cicero's conception of freedom works analogously on the level of the individual and the community as a whole, Machiavelli's simply does not. While he does indeed find in the common people a desire not to be oppressed or dominated, Machiavelli does not propose ever to satisfy that desire

¹¹⁵ Cf. *Discourses* I.5.

¹¹⁶ For instance, see: (Pettit 1997, 28).

completely, since it would eliminate the political tension he finds so valuable in republics. Moreover, Machiavelli provides evidence that his ideal of non-domination is self-undermining when applied to the common citizens.

Contrary to McCormick's claims, it turns out that the people's desire not to be dominated is *not* a "natural fact" according to Machiavelli. Rather, it is circumstance-dependent. Should the people ever be free of oppression and the suspicion of oppression, they, too, would seek to dominate. Machiavelli describes Rome's conflict over the agrarian laws as arising because the plebs—after acquiring the tribunate for protection— began to seek to aspire to domination: "it was not enough for the Roman plebs to secure itself against the nobles by the creation of the tribunes... for having obtained that, it began at once to engage in combat through ambition, and to wish to share in honors and belongings" (*Discourses* 1.37.1). McCormick suggests that Machiavelli blames the elites (*grandi*) for the troubles over the agrarian laws (McCormick 2011, 89). But, the assignment of blame is beside the point. The example illustrates that Machiavelli does not believe that the common people are immune to the desire to rule. As soon as their fear of being dominated is abated, they look to dominate others. Thus, freedom as non-domination appears as an *inherently* unstable ideal in Machiavelli's thought; as soon as the people achieve their desired liberation fully, they will simply join the ranks of the dominators. Machiavelli distills this into a general maxim: "first one seeks not to be offended, and then one offends others" (*Discourses*

1.46.1). For this reason, we should take Machiavelli seriously when he writes that “one can say this *generally of men*: that they are ungrateful, fickle, pretenders and dissemblers, evaders of danger, eager for gain” (*Prince* 17, emphasis mine), and that the desire to acquire is universal (*Prince* 3).

We also find that even in its purer form, the Roman people’s desire for freedom was perfectly compatible with the oppression of others. Machiavelli writes of the Romans’ impressive success in conquering other peoples whose ferocity was born out of their desire to preserve their liberty—a liberty Rome destroyed. Machiavelli’s republicanism certainly does seek to preserve the liberty of the republic—its capacity for self-rule and its independence from other states. But, he knows that the success of such a republic will result in the loss of liberty—and sometimes total extermination—for its neighbors.¹¹⁷ Whereas Cicero imagines Rome to have brought justice and liberty to conquered peoples by extending them citizenship, Machiavelli views (and approves of) Rome extinguishing the liberty of other peoples (*Discourses* 2.2).

As with Machiavelli’s advice to individuals, republics may find the practice of justice useful. The rule of law can help channel class conflict into beneficial results and ameliorate the dangers that arise when the wronged seek revenge (*Discourses* 2.28.1,

¹¹⁷ This is still more evidence that Machiavelli is not some kind of moral consequentialist, seeking to do the greatest good for the greatest number. The Romans purchased their own liberty by killing and oppressing their many neighbors, and Machiavelli commends them for it. Hulliung (1983, 14) writes that Florentine Greatness for Machiavelli means at bottom “the list of cities once free and now subject to the yoke of Florence.”

3.1.2). But, justice should never get in the way of the communal interest. Cicero maintains that there were certain actions so dishonorable or unjust that one ought not do them even for the sake of the commonwealth (*De officiis* 1.159). Machiavelli rejects that idea, and excludes considerations of justice from proper deliberation about the welfare of the state (*Discourses* 3.41.) Machiavelli praises the Roman Republic for not hesitating to kill “an entire legion at once, and a city” (*Discourses* 3.49.1).

3.4 Machiavelli’s Leonine and Vulpine Virtue

We can glean from this that Machiavelli’s specifically republican doctrines differ occasionally in the particulars, but not in the principles, from his advice to princes. Republics are no more concerned with justice than are princes, and Machiavelli does not suggest they should be. As Strauss puts it, Machiavellian patriotism (and, we might add, Machiavellian republicanism) is a theory of “collective selfishness” (Strauss 1995, 11). This selfishness is not bounded by independent considerations of justice. Justice and communal self-interest have no necessary connection. Machiavelli recommends that republics advance the good of the community over the interests of any individual citizen and all outsiders—regardless of questions of right. Cicero asserted that justice was the “queen of the virtues;” without it, the other virtues become political vices (*De officiis*

3.28).¹¹⁸ Having dethroned the queen, Machiavelli's theory of political virtue does much to confirm the second part of Cicero's claim.

Viroli writes that "Machiavelli taught us with his writings and his life" that "civic virtue is not a martial, heroic, and austere virtue but a civilized, ordinary and tolerant one of citizens of commercial republics" (Viroli 2002, 13). The evidence presented above suggests already that Viroli is well off the mark. But, it remains to be seen how far. In Cicero's metaphor of the fox and lion, the lesson to be learned was that force and especially fraud were improper political tools for human beings capable of using reason to resolve differences and for whom virtue was an end in itself. In *The Prince*, Machiavelli takes up Cicero's example, and draws precisely the opposite conclusion. He accepts that the two methods are bestial and argues that the prince should practice both, using the methods of the fox to avoid traps (and set them) and the ways of the lion to frighten the wolves (*Prince* 18). Machiavelli emphasizes that the fraudulence of the fox is especially needful. In doing so, as we shall see, he turns Cicero's theory of political virtue on its head.

As a man who rose from obscure origins to the highest office in the Roman state, Cicero was anything but naïve about the requirements of political life. He knew well the political benefits that come with appearing to possess all manner of virtues. But, as his

¹¹⁸For instance, as we saw in the last chapter, Cicero believes that wisdom without justice leads philosophers to ignore harms taking place in their communities. *Page number subject to change: 38.*

normative theory of politics demands that individuals attempt to practice justice, the only way to gain such benefits and to achieve glory is “by being what we wish to seem” (*De officiis* 2.43). The morally upright (*honestas*) and the useful (*utile*) are identical. Machiavelli’s theory of politics, unencumbered by considerations of justice for its own sake, does not share the limitations that Cicero accepts. In particular, Machiavelli teaches his reader that it is important to learn “how not to be good, and to use this and not use it according to necessity” (*Prince* 15).

Colish contends that Machiavelli only intends this as a reminder to the overly-moral political elite that extreme circumstances sometimes necessitate conventionally unjust actions to secure the common good. She points to Machiavelli’s apparent critique of Agathocles of Syracuse, where he writes that “one cannot call it virtue to kill one’s citizens, betray one’s friends, to be without faith, without mercy, without religion; these modes can enable one to acquire empire, but not glory” (*Prince* 8).¹¹⁹ But, Machiavelli makes it clear that the contemporary problem of political fecklessness is not caused because political elites are so scrupulous that they need to be reminded that occasional acts of brutality or treachery are necessary.

Machiavelli makes it a methodological assumption “to presuppose that all men are bad, and that they always have to use the malignity of their spirit whenever they

¹¹⁹ See: (Colish 1978, 91). Colish also takes Cicero to be defending politically expedient actions as just, providing her with grounds for seeing Machiavelli as following Cicero’s political ethics.

have a free opportunity for it" (*Discourses* I.3.1). The princes and leaders Machiavelli is addressing are *already* quite bad; they are just not bad enough. Machiavelli titles the chapter 27 of the *Discourses* "Very Rarely Do Men Know How to Be *Altogether* Wicked or *Altogether* Good" (*emphasis* mine). The examples he offers show that Machiavelli is uninterested in teaching men to be altogether good. In particular, he rebukes Giovampagolo Baglioni, the tyrant of Perugia for failing to kill the pope and all his cardinals when he had the chance, an act Machiavelli terms "honorably wicked." "So Giovampagolo, who did not mind being incestuous and a public parricide, did not know how — or, to say better, did not dare [to kill the pope and the cardinals]... and he would have done a thing whose greatness would have surpassed all infamy" (*Discourses* 1.28).¹²⁰ To return to Machiavelli's apparent critique of Agathocles' treachery, we learn in the *Discourses* that no amount of vice poses an insurmountable obstacle to glory: "glory can be acquired in any action whatever, because in victory it is acquired ordinarily" (*Discourses* 3.42). Perhaps this is why, immediately after denying that it is possible to call Agathocles' actions virtuous, Machiavelli promptly refers to "the virtue of Agathocles" and describes his cruelties as "well used" (*Prince* 8). Despite his apparent admonition, Machiavelli asserts that victory brings glory automatically in its wake. As a result, no vice — as long as it helps him achieve his ends — will thwart a man's aspiration for glory.

¹²⁰ For more on this, see (J. T. Scott and Sullivan 1994).

Machiavelli thereby inverts Cicero's relationship between being and seeming virtuous. He writes of the virtues of liberality, faith, humanity, honesty, and mercy: "by having them and always observing them, they are harmful; and by appearing to have them, they are useful" (*Prince* 18). Much of the middle chapters of *The Prince* are devoted to explaining how individuals can feign the possession of virtues, while reaping all the benefits of their corresponding vices. We saw in the previous section how Machiavelli rejects Ciceronian liberality in favor of a scheme whereby one plunders abroad to appear liberal at home. Keeping faith—which for Cicero is an obligation we have even to enemies—in Machiavelli's estimation is not something to be done even with friends and allies. (*Prince* 18). He instructs a prince to "not depart from good, when possible, but know how to enter into evil, when forced by necessity" (*Prince* XVIII). It is of course impossible to acquire the useful reputation for virtue without occasionally performing good acts, but Machiavelli instructs his reader to abandon such a course, whenever it is useful or necessary.

Nor again do we find Machiavelli retracting these views about fraud when considering republics in particular. Gillespie rightly points out that Machiavelli is far from hostile to religion *per se*; Machiavelli has almost nothing but praise for the Roman religion.¹²¹ This religion was ideal because it allowed prudent leaders to frighten or manipulate the people in useful ways (*Discourses* 1.12, 1.13). It helped keep order and

¹²¹ Gillespie (n.d.), 13. See, *inter alia*, *Discourses* 1.11, 1.12, 1.13.

sustain republican institutions. Machiavelli also lauds republics that deceive their neighbors and enemies so as to conquer them: “peoples are often deceived in it who, greedy for present peace, close their eyes to whatever other snare might be laid under the big promises. Infinite cities have become servile in this way” (*Discourses* 3.12).

Cicero bases his prohibition of fraud on his understanding of human beings as essentially rational and social. As discussed in the previous chapter, the rational part of our nature is what we share with the gods. Those traits allow us to communicate, to persuade others, and to resolve disputes by appeal to logic and evidence. The social aspect of our nature leads us to prefer to co-exist peacefully, and ensures that there is some common good to be found. This is why Cicero’s political theory places such weight on rhetoric: debate, discussion, and persuasion are the proper methods for resolving political disagreements between social and rational creatures. For Machiavelli, it is not the part of us that is divine, but the part that is bestial that we must rely on.

That Machiavelli focuses on overturning Cicero’s critique of fraud should not be taken to mean that he underrates the value of force. Among such unscrupulous creatures as men, it is not enough to outsmart them, one must also simply be stronger. Cicero discusses at length the relative merits of governing by relying on fear or love. He concludes that love produces a far more lasting and reliable base of support, while fear inevitably engenders hatred (*De officiis* 2.23-24). Machiavelli disagrees. Since human beings are by nature unfaithful, self-interested, and ungrateful, it is foolish to trust to

their love for support. It is far more reliable to depend on fear (*Prince* 17), which in turn relies on force.¹²² For Machiavelli, republics are not immune from this logic. It is in republics that Machiavelli recommends regular public executions, and he praises Scipio for forcing the citizens at sword point to swear not to give up the fight against Hannibal (*Discourses* 1.11.1).

But the use of force internally against members of the political community is only a small part of the role force plays in Machiavelli's republicanism. Machiavelli's entire endorsement of the Rome as the best example of a republic is based on its excellent organization for imperial expansion. Machiavelli considers different kinds of republics, including the aristocratic Venice, and the austere Sparta. But, he concludes that neither of those is well-suited to expansion and conquest, which are necessary for intrinsic and extrinsic reasons. A republic concerned for its own safety can only ensure its own security by accumulating enough power to defeat any threat. But, perhaps more importantly, as we saw above, human beings are naturally acquisitive, so that conquest is a temptation that can never be avoided indefinitely—as the examples of Sparta and Venice demonstrate (*Discourses* 1.6). Machiavelli thus distills a general rule about free

¹²² Although Machiavelli agrees with Cicero that hatred must be avoided, he denies that fear necessarily results in hatred. Hatred can be avoided by refraining from certain particularly galling uses of power: despoiling subjects and violating their women.

republics: “a city that lives free has two ends: one to acquire, the other to maintain itself free”(Discourses 1.29.3).¹²³

For Machiavelli, the development of the Roman constitution was driven by the class conflict between the plebs and the nobles. This class conflict resulted in, among other things, the creation of the tribunate, which protected the interests of the plebs. Machiavelli criticizes writers, who (following Cicero) bemoaned Rome’s internal strife. To Machiavelli, those who do this chastise Rome for the very source of its greatness.¹²⁴ The Romans—unlike the Greek city states—also extended citizenship to their conquered enemies.¹²⁵ These innovations ensured that the Roman state never lacked for manpower and that the lower classes—by far the most numerous—could be trusted to serve in the army and bear weapons, because they felt assured that their interests were protected (*Discourses* 1.2-1.6). The verdict of *The Prince* is that republics are superior to principalities because in them is “greater life, greater hatred, greater desire for revenge”(Prince 5). McCormick is not wrong that Machiavelli’s theory contains

¹²³ McCormick denies this. He points to a passage from *Discourses* I.6: “if indeed necessity brings [a republic] to expand...”(2011, 57, emphasis McCormick’s). On this basis, McCormick claims that Machiavelli opens up the possibility of a non-expansionist republic. But, McCormick’s suggestion seems implausible. The forgoing paragraph contains Machiavelli’s proof of the necessity of expansion. Machiavelli’s “if” simply connects that proven premise to its conclusion.

¹²⁴ In the *Florentine Histories*, Machiavelli suggests that the class conflict in Florence failed to produce the same desirable result. But, Machiavelli makes clear that this fact does not undermine his general rule about internal conflict. The problem lay in the fact that the Florentine populace triumphed too completely over the nobility, depriving the nobility of their martial virtues. This example further undermines McCormick’s claim that Machiavelli invariably sides with the people in all instances of class conflict.

¹²⁵ Recall that in the last chapter, we saw that Cicero also defends the institution of the tribunes and the extension of Roman citizenship. But, he values both of these because of their contributions to justice. As we see here, Machiavelli sees their advantage for war.

substantial democratic elements, but those elements receive their justification from their utility in war-making, not from some appreciation of the justice of democratic arrangements.

3.5 Conclusion: The “Effectual Truth” of Republicanism

Near the core of Machiavelli’s challenge to Cicero lies a tacit accusation: the Roman Republic Cicero so adores for its conformity to justice could only be founded and sustained by injustice, and Cicero and later admirers of Rome blind themselves to that fact. Machiavelli makes much of Rome’s mythical founding in fratricide and suggests that this illustrates the fundamental truth about founding new regimes: one *must* commit injustice. Still further, Machiavelli charges that is not just the establishment, but also the maintenance of a free republic that requires regular spectacles of violence to preserve it, to overawe the people and keep potential tyrants at bay. Finally, the greatness of Rome that earned it more admiration than other ancient republics is attributable not to harmony but to the discord that enabled it to conquer the rest of the Mediterranean world.

This challenge has considerable appeal. It is not difficult to see how Machiavelli’s forceful presentation of the case could impress readers with its apparent realism. For contemporaries, his cynical wit must certainly have been a refreshing counter to the hypocritical ecclesiastical politics of the Borgia Papacy, and the fecklessness of the

Florentine state. His treatment of the example of Rome seems to us a more realistic depiction than Cicero's sanitized and idealized version.

But, I suggest that Cicero's approach may still have merit over Machiavelli's. For one, Cicero does not ignore the injustice of Rome's founding—he condemns Romulus' mythical murder of his brother as criminal (*De officiis* 3.41). He knows, of course, that sometimes political necessity demands the suspension of ordinary moral considerations, hence his dictum: *salus populi suprema lex*. His own response to the Catilinarian Crisis illustrates his commitment to that principle. But, Machiavelli's own arguments reveal that human beings need little help in "being bad." In that case, a salutary teaching of political virtue perhaps needs less to celebrate those occasions in which force and fraud are necessary than to encourage political actors to seek alternatives.

McCormick sees in Cicero a partiality to oligarchic rule that Machiavelli rightly rejects. There may be some truth in this. We saw in the previous chapter that Cicero's political vision had serious blind spots regarding the lower classes of society. But, the preference for harmony and discussion over division and violence also reflects a concern for justice absent in Machiavelli, a concern for a decent consideration of others that leads us to privilege persuasion over compulsion as a way of interacting. For Cicero, politics is about cooperation, as a result he favors peace over war, and even subjects war to the demands of justice, since all humanity belongs to one universal commonwealth. Nor is

Cicero blind to Rome's accumulation of power and wealth through conquest.¹²⁶ He accepts Rome's empire only on the grounds that it governs with justice and extends to all the rights and privileges of citizenship. As he perceives the injustice of the Roman people towards the conquered, manifested in avaricious rapacity, this—for him—undermines Rome's title to rule. Whereas Machiavelli locates Rome's perfection in its disunion, Cicero prefers to find it in harmony, a blending of rights in which the freedom of the people is protected and political division is resolved through discussion and deliberation. As for Cicero's alleged oligarchic sympathies, we should note that the quasi-liberal rights that distinguish his conception of republican freedom from Machiavelli's offer a way to provide the people with what Machiavelli himself says that they want: peace, leisure and protection for themselves and their property. Machiavelli may identify this desire in the people, but his political prescription deliberately thwarts the full satisfaction of it. Cicero's seeks to fulfill it.

As we turn to the next chapters, we will find that Machiavelli's challenge to Cicero produces a disjunction in Cicero's reception. The idea that the politics of a healthy republic is incompatible with a universal moral law will lead certain figures to choose republics and others to choose the moral law. Both groups still look to Cicero for inspiration, but draw different lessons from him. Later still, we will see how these two

¹²⁶ For more on this, see my paper: Cicero on the Question of Unjust Origins, *hopefully forthcoming in Polity, currently an R&R.*

Ciceronian strands are reunited by John Locke to produce a new liberal political theory. Finally, in the concluding chapter, we will briefly reopen the question for ourselves—for contemporary theory: which model of republican government is more desirable. In part for reasons explored in this chapter, I suggest that Machiavelli’s republic is not one in which most of us would like to live, and not merely for prudential reasons of self-interest. Machiavelli’s boast that “I love my country more than my soul” reflects a view that elevates patriotism over any moral considerations, over any justice that transcends national boundaries. Cicero’s imagined Rome may be less faithful to the harsh reality of that state’s politics, but, as a theory of government, it corresponds far better to our moral sense that patriotism can only be a true virtue if it is subordinate to justice.

It is an easy thing, for men to be deceived, by the specious name of Libertie... and when the same error is confirmed by the authority of men in reputation for their writings in this subject, it is no wonder if it produce sedition, and change of Government. In these westerne parts of the world, we are made to receive our opinions concerning the Institution, and Rights of Common-wealths from *Aristotle*, *Cicero*, and other men, Greeks and Romans...

Hobbes, *Leviathan*, ch. 21.

Chapter 4: Parallel Lives: Two Ciceronian traditions in the aftermath of Machiavelli

In the 16th and 17th Centuries, Machiavelli's response to Cicero produced a strange effect in the way Cicero's ideas influenced the leading political thinkers. In this period, two separate traditions of political thought emerged, both deeply influenced by Cicero, but largely independent of and even contradictory to each other: that of the new natural law tradition dominated by Hugo Grotius and Samuel von Pufendorf, and that of the English republicans. This chapter attempts to illustrate how this bifurcation developed, and to establish the grounds for understanding how Locke, Montesquieu, and the American founders reunited these Ciceronian traditions to give birth to liberal republicanism.

We have seen how Cicero's thought contains elements of what we now refer to as liberal and republican ideals. On the one hand, Cicero's understanding of a commonwealth entails citizens who hold a kind of ownership right over the *res publica*. Yet citizens also possess those same rights of ownership over themselves and their property, entitling them to strong protections against harm or interference. These

features, combined with humanity's natural sociability and the moral obligations deriving from natural law, made for a political ideal in which political contestation would play a significant but limited role, taking place through the civil and peaceful channels of rhetoric, persuasion, and electoral politics.

Machiavelli challenged the compatibility of these elements. For Machiavelli, the chaotic nature of the universe and the malicious nature of human beings means that the logic of contestation is essentially limitless. If the only way to protect oneself and achieve other ends is to acquire power, accepting moral limitations places one at a potentially fatal disadvantage. Those who see reality clearly must come to accept violence and injustice as ineradicable aspects of political life. One must choose: either the stagnant and corrupt principalities (and papacy) of contemporary Christendom clinging to the patina of a moral order, or the violently contested politics of the classical republics. In Machiavelli's eyes, that choice was an easy one.

The parallel stories of the new natural law theorists and the English republicans begin from this Machiavellian challenge. Both accept the much of the logic of Machiavelli's dichotomy, yet they grasp different horns of the dilemma that Machiavelli offers. Grotius, Pufendorf, and their followers set out to vindicate a politics of moral order, in which individuals enjoy rights and protection of themselves and their property, and where rulers have strong obligations to secure these goods for their subjects. But they accept from Machiavelli that such goals are incompatible with the messy

contestation of republican government and popular exercise of sovereignty. They associate republics—as Machiavelli did—with turbulence, violence, and injustice. Unlike Machiavelli, they consider these allegedly necessary features of republican life to be good reasons for rejecting republicanism as a form of government. On the other hand, the English republicans follow Machiavelli in preferring the tempestuous politics of a republic, but largely abandoning natural law, rights, and the other aspects of Cicero’s philosophy rejected by Machiavelli.

Both movements appealed to the authority of Cicero, and drew theoretical inspiration from him. For the English republicans, Cicero and Machiavelli were on the same side: defenders of republican freedom against despotism. For Grotius and Pufendorf, Cicero was at times an overtly anti-Machiavellian resource, one whose ideas of natural law formed the basis of their own moral-political system-building. In a sense, Machiavelli’s critique prompted a sundering of Cicero’s legacy into two: Cicero the republican statesman pitted against Cicero the natural law philosopher.

Part 1: A Natural Law for Modernity: Grotius and Pufendorf

The philosophical reliance on natural law as a particular way of determining the principles of morality and politics without a heavy dependence on revelation long predates Grotius and Pufendorf. Thomas Aquinas and the scholastics had developed a complex natural law tradition based on Aristotelian metaphysics and teleology. This great project depended in large part on an understanding of the universe as teleological,

the components of which are animated by intrinsic purposes. In the early modern period, the basis of this entire scheme was challenged by such individuals as Gallileo, Bacon, and Descartes. As Charles Tully puts it: “the philosophers of the new natural sciences advanced a concept of nature as a non-purposive realm of atoms on which God imposes, by an act of will, motion and an extrinsic order of efficient causes or regularities”(Tully 1991, xvii).

These new discoveries delivered a crushing blow to the foundation of the longstanding dominant natural law tradition. If there were no basis in fact for Aristotelian teleology, it could no longer be so plausible to justify this moral action or that political arrangement by reference to man’s natural ends. Moreover, the Reformation and the rise of the Westphalian state system meant that Europe would also be a place of wide (and ever-widening) religious diversity. This created a new challenge for political philosophers: “a new morality able to gain the consent of all Europeans to the new political order and bring peace would have to be independent of the confessional differences which divided them, yet also permit belief in and practice of these rival religions”(Tully 1991, xviii).

In response to this challenge, a group of philosophers sought to articulate a new natural law tradition, which would be grounded on premises not confessionally controversial, or undermined by the new discoveries of natural science. By far the foremost among these were Grotius and Pufendorf. First set forth by Grotius, the new

version of natural law was shortly thereafter expounded and systematized by Pufendorf. In the intervening years, two events occurred, which have occupied far more attention by contemporary political theorists and historians: the upheaval of the English Civil War and the publication of Hobbes' political philosophy. Yet, their works, especially Grotius' *On the Law of War and Peace* and Pufendorf's *Elements of Universal Jurisprudence*, *On the Law of Nature and of Nations*, and *On the Duty of Man and Citizen* (this last being a summary of the *Elements*), enjoyed a dominant place in the intellectual life of Europe for over a century. As I will discuss in the next chapter, their works profoundly influenced Locke and the American Founders as they developed the theoretical basis of liberal republicanism.

4.1.1 A Common Ground

Grotius and Pufendorf suggest that, despite the new confessional and political divisions of Europe, a political philosophy acceptable to all could be found if it were based on something common and accessible to all human beings, regardless of situation. Grotius and Pufendorf would settle on two such premises: the state of nature as a reconstructed natural position common to all human beings, and the motivation of self-love which all human beings experience.¹ Influenced by his older contemporary Grotius, Hobbes would follow in accepting both of these premises as the grounds for his own new political science, which has led some scholars (e.g. Tuck 1982) to include Hobbes as

¹ For more on this choice, see (Tully 1991, xix) and also (Carr 1994).

a member of this new natural law movement. This impression is strengthened by the fact that all three share a strong desire for peace and prefer monarchical government over republics or mixed regimes. However, Hobbes' version of natural law is in an important sense *amoral*, identical with prudence.² For Hobbes, there is no morality applicable to humans as humans (i.e., in their natural state, stripped of all socially acquired obligations), all justice is positive and issues from the commands of the sovereign. As a result, political arrangements and the rights and privileges of individuals are at the discretion of the ruler of the state. Hobbes denies that there is some objective standard or perspective from which to judge the justice of political institutions and decisions.

Such a view is fundamentally at odds with the project of Grotius and Pufendorf. They sought a decent political order, subject to the demands of morality. For them, natural law is a *moral* concept meant to ground a political order, and to give a standard by which to judge its justice. They thus construed not only natural law, but also the state of nature and the status of rights, in a way thoroughly different from Hobbes. Indeed,

² Hobbes defines a law of nature as "a Precept, or generall Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved" (Hobbes 1996, ch. 19). In chapter 25, Hobbes clarifies the amoral quality of these rules, arguing that justice comes into being only with a covenant, and is determined by the sovereign then set up.

Pufendorf sees himself in an important sense as a defender of his and Grotius' system *against* Hobbes.³

While Hobbes looked to natural science as the model for his science of politics, Grotius and Pufendorf looked to Cicero. Ciceronian philosophy was to form the backbone of this new natural law tradition, in much the same way that Aristotle provided the framework for the old Scholastic one. The Ciceronian valences in Grotius and Pufendorf's work are especially clear in distinguishing their views from Hobbes. In fact, Pufendorf writes in *The Law of Nature* that when arguing against Hobbes, "Tully hath left the most noble Testimony for our Purpose".⁴

However, it is important to note that Grotius and Pufendorf do not simply deploy Cicero rhetorically or polemically to provide respectable classical cover for their project. The two foundational premises of their doctrine (the hypothetical state of nature and the fact of human self-interest) are by themselves far from sufficient to simply derive the outlines of the moral political life characterized by peace, justice, and individual freedom that Grotius and Pufendorf desire. In fact, they may appear to be rather challenging or unpromising starting points. If individuals are inherently selfish and not naturally in society, how can they be reconciled to the duties and obligations

³ Carr describes Hobbes as Pufendorf's "self-declared primary antagonist" (Carr 1994, 20).

⁴ As quoted in (Hochstrasser 2000, 63).

that come with being in political communities? Cicero's political philosophy contains much of the underlying logic that Grotius and Pufendorf rely on to make their case.

In fact, Cicero provides unique resources for achieving the ends Grotius and Pufendorf outline, while avoiding the pitfalls of the earlier natural law doctrine. Like Aristotle, Cicero was a classical natural law philosopher. Unlike Aristotle, Cicero did not base his natural law on a theory of teleology. In fact, Cicero viewed the idea positing a single best or natural way of life for all individuals to be a kind of Procrustean bed (Hawley 2016). Our duties instead derive from our sociality, our common membership in a universal cosmopolis, and the demands of divine providence—not from a single best form of life we all naturally aim at (and not as citizens of any particular state).

Cicero's writings also contain versions of both of the premises from which Grotius and Pufendorf begin, making his philosophy compatible with their project from its very beginning. In his speech on behalf of Sestius, Cicero offers one of the earliest articulations of a state of nature, as it came to be understood. Cicero asks:

Who of you does not know that the nature of things is such that, once—before natural or civil law had been discovered—human beings were scattered and wandered separately over the land, holding only so much property as they could seize or keep by their own hand and strength, with violence and wounds? (*Pro Sestio* 42)⁵

Cicero goes on to posit that the establishment of law brought humanity out of this state of barbarism and laid the groundwork for civilization. Several aspects of this account

⁵ This passage, among others which may be found in Lucretius, decisively refutes Skinner's claim that the concept of a state of nature was "wholly foreign" to Roman thinkers (Skinner 1998b, 19).

prove striking. Not only does Cicero actually describe human beings in a condition where they were stripped of all political institutions, but he also assumes that without those institutions, human beings would live isolated lives, characterized by violence. Moreover, Cicero calls special attention to the fact that such a situation would make property particularly precarious and costly to retain.

As for the other initial component of the new natural law project, several of Cicero's works grapple with the fact of our instinctive self-love. Most notably, *De officiis* revolves around an attempt to reconcile individual self-interest with duty. Moreover, it presents this reconciliation as a means to achieving peace and social harmony, wherein members of political society understand their mutual obligations. As we shall see, here too Grotius and Pufendorf follow Cicero's lead as they attempt to construct a theory of moral and political duties compatible with—and even derived from—our self-interest. However, unlike Cicero, they view republican government with suspicion—as inimical to the peace and justice they seek.

Finally, Cicero may well have been an appealing source of guidance for reasons other than the actual content of this thought. As Grotius and Pufendorf sought to develop a theory that could resonate with Protestants and Catholics, it was likely advantageous that Cicero's appeal crossed sectarian battle lines. Already one of the most popular works of antiquity, *De officiis* was in fact the first secular work printed by the

Gutenberg press. Cicero's authority was acknowledged by such Catholics as Erasmus and More, but also by Luther, Calvin, and Melanchthon.

Grotius and Pufendorf make no secret of their reliance on Cicero; their major works contain hundreds of explicit references to him. Contemporary readers as well as modern scholars have noted that Cicero was at the heart of this new project. In particular, Benjamin Straumman has illustrated the fundamental ways in which Cicero provides the basis for Grotius' system.⁶ However, it appears that none have so far attempted to render an account of the exact nature the relationship between Cicero and Grotius and Pufendorf. As I argue in the rest of this section, such an oversight has significant consequences for our understanding of early modern political theory. Grotius and Pufendorf (whose thought, we recall, proved formative for such figures as Locke, Hume, Kant, and the American founders), derive their theory nearly entirely from Cicero's premises and rely heavily on Cicero's reasoning and arguments. They reject republicanism as a system of government suited to achieve their ends, but the rest of their project could well be described as an attempt to draw out of Cicero's thought a political philosophy for a new age.

4.1.2 Natural Law and the State of Nature

Although Pufendorf wrote after Grotius and is considered by many (including himself) to be essentially a follower of Grotius, he made a far greater effort than his

⁶ E.g. (Straumann 2015). See also: (Hochstrasser 2000, 57–58), (Nussbaum 2000, 179).

predecessor to present the new project systematically. Pufendorf suggests that there are three sources of knowledge about moral uprightness (*honestum*⁷): reason, civil law, and revelation. The first applies to us as human beings, the second as citizens, the third as Christians (Pufendorf 1991, 7). Sectarian division makes the last of these an unpromising source for building a political philosophy acceptable to all.⁸ Political divisions and the wide diversity of different laws and forms of government make the second similarly unsuitable. Pufendorf also adduces a deeper reason to look beyond civil law: just civil laws will ultimately be derived from natural law. In this, he is following Cicero.⁹ For the same reasons, Grotius denounces conventionalism and relativism as obstacles to the establishment of a just peace.¹⁰ Natural law is to be the basis of a universal political philosophy.

Grotius, citing Cicero, defines natural law as “dictate of right reason, shewing the moral turpitude, or moral necessity, of any act from its agreement or disagreement with

⁷ Note that Pufendorf (and Grotius) follow even Cicero’s philosophical vocabulary, *see ch. 1, pg. 15 of this dissertation*. It is also noteworthy that the title of Pufendorf’s most popular book—*De officio*, strongly recalls that of Cicero’s own.

⁸ Although, both Grotius and Pufendorf deny that there is any contradiction between the dictates of reason and true revelation. But, the former are available to all human beings *qua* human beings. Grotius even goes so far to clarify that natural law is not subordinate *even to God*: “the Law of Nature is so unalterable, that it cannot be changed even by God himself. For although the power of God is infinite, yet there are some things, to which it does not extend.” Grotius cites Biblical text to demonstrate that “God himself suffers his actions to be judged by this rule”(Grotius 2013, 1.1.10).

⁹ *See ch. 1, p. 12 of this dissertation*.

¹⁰ Grotius selects the classical skeptic philosopher Carneades to be the mouthpiece for such moral skeptics “so that we may not be obliged to deal with a crowd of opponents”(Buckle 1991, 17). In doing so, Grotius chooses for himself the same philosophical opponent as Cicero does in *De Re Publica*, instead of selecting any more contemporary figure.

a rational nature”(Grotius, 2013 1.1.10).¹¹ Pufendorf accepts this definition verbatim, but notes (rightly) that Grotius leaves rather vague what actually constitutes something being “in agreement...with a rational nature.” He clarifies by suggesting that that phrase entails a recognition that “man has been made a social animal by the Creator”(Pufendorf 1994, 63). What Pufendorf means by this clarification, and the argument he produces to defend it shall be explored below. For now, it is simply enough to point out that this addendum, too, is in line with Cicero’s view that it is precisely our rationality that makes us social.¹² Although he does not include it in his definition of natural law, Grotius agrees with this view of our natural sociality, paraphrasing Cicero (*De officiis* 1.12), saying that even if human beings lacked for no necessity, they would still be driven to associate with each other because of their desire for company (Grotius, 2013, prol.).

Given their view of human beings as naturally social, it may seem odd that Grotius and Pufendorf would find use in thinking about a state of nature. Certainly, the assumed asociality of human beings in the philosophies of Hobbes or Rousseau seems more obviously compatible with state of nature theorizing. But, for Grotius and Pufendorf—perhaps even more than those more famous state of nature theorists—acknowledge that for them, the state of nature is largely a hypothetical situation. They

¹¹ Compare it Cicero’s definition in *De Legibus* 1.18. See ch. 1, p. 11 of this dissertation.

¹² See *De officiis* 1.12, 1.157, and ch.1 pp. 8-13 of this dissertation.

deny that humanity as a whole ever existed in such a state (Pufendorf 1994, 143).¹³ But, from this hypothetical condition, they argue we can determine those rights, duties, and political arrangements that apply to all human beings without appealing to the support of divine revelation (Pufendorf 1994).

So, what can we know about human beings in such a state? For that matter, how can we know it? On this latter question of method emerges one of the few clear differences between the two. For Grotius, one powerful tool to distinguish what comes from nature and what from other sources (convention, revelation, etc.) was to look for what is common to human life universally, across cultures and times. For Pufendorf, our necessarily limited knowledge of the world makes such a method unreliable. He insists we must instead excavate the truth by imagining ourselves in the position of an individual without society and ask what such a person would know and do. For Pufendorf, this means that natural law is accessible to reason, but it does not mean that every individual must recognize it; it is not simply inherent. A few first principles may be obvious to all, but everything deduced from those by rational methods is included in natural law (Pufendorf 1994, 37)

Despite this divergence of method, Grotius and Pufendorf agree about the first principle we discern in human beings: self-love. Both argue that the love of self is

¹³ This is only partly because of humanity's natural sociality. More concretely, since revelation does not conflict with reason, both believe that we *know* that humanity as a whole never lived in such a state through the testimony of the Bible.

humanity's first and most natural source of motivation, expressed both negatively (our desire to avoid harm and death), and positively (our desire for things we find good and pleasurable). It is this quality that Pufendorf especially points to as a way of establishing that human sociability does not automatically allow us to assume human beings living in society (Pufendorf 1991, 132). Our wills, seeking out what we think is good, naturally lead us into conflict, where our love of self will always lead us to prefer our own good to that of others (Pufendorf 1991, 27).

Grotius and Pufendorf also argue that an awareness of God's existence is also available to us in such a state—even without revelation. For Grotius, this is evident from the (alleged) universality of religious belief, found in all cultures and times. For Pufendorf, God is deducible from reasoning about causation to a first cause; and that God governs the universe he creates is understood by the presence of order (regular cause and effect) in it (Pufendorf 1991, 39).¹⁴

From these two ideas, Grotius and Pufendorf argue we can discern our first duties. For Pufendorf especially, the idea of God is essential for natural law to be coherent to us. Pufendorf argues that for something to be properly considered a law, it must not only be conformable to our reason as something in our self-interest, but it must also be commanded by a superior capable of rendering punishment for disobedience.

¹⁴ Regardless of how we might now evaluate the plausibility of Pufendorf's logic, among contemporaries, his claims were thoroughly uncontroversial.

Thus, only by recognizing God and God's will (command) made manifest in our natural condition can we truly perceive natural *law*.

From our awareness of our own self-love and our understanding of God as the cause of all things, we must conclude that we are obligated to preserve ourselves. From our awareness that God is sovereign not only over each of us, but over all other human beings, we see that we have obligations toward them as well. Although, since our love of self is our strongest sensation, our duties to others must generally be assumed—at least provisionally—subordinate to our duty of self-preservation. (Grotius 2013, 1.2.1; Pufendorf 1994, 84). The attenuated duties to others include not harming them or their property (about which more below)—except when there is no other hope of saving oneself. More than this, we must also help our fellows whenever this would not cost us unduly (although, the limits of this duty remain unclear). To illustrate this principle, both rely on Cicero's list of examples of such aid: sharing one's fire, providing advice, etc. (Pufendorf 1994, 65; Grotius 2013, 1.2.11). The first two laws of nature are thus (1) to preserve oneself, but (2) to do it in such a way as does not conflict with the preservation of others (Pufendorf 1994, 84).¹⁵

We must also accept all other human beings as "our natural equals"(Pufendorf 1994, 159). In part, this equality derives from a recognition of a simple fact: our common weakness. Pufendorf cites Hobbes' argument that each of us is powerful and intelligent

¹⁵ For the relevance of this doctrine to Locke, see the next chapter of this dissertation.

enough to kill any other, given the right opportunity (Pufendorf 1994, 159–60).

However, Pufendorf argues that Hobbes' argument for natural equality is insufficient.

Equality has a deeper normative basis. We all also have a natural equality deriving from our equal *dignity* as rational creatures subject to the same ultimate sovereign, God, and thereby to the same natural law. Thus, we are entitled to say to each other: "I am not a dog or a beast, but as much a man as you" (Pufendorf 1994, 159). In this idea—that we have a certain moral equality in our shared divine sovereign and the equal application of natural law to us all—Grotius and Pufendorf again follow Cicero, and we can see here one of the clearest practical distinctions between this new natural law tradition they rely on and that deriving from Aristotle: there are no natural masters and no natural slaves (Pufendorf 1994, 38).¹⁶

For the same reasons we enjoy natural equality, a state of nature is also a condition of natural liberty. Without a natural superior, human beings are free to do whatever their will leads them to, as long as they are physically capable of doing it (Grotius 2013, 1.2.5; Pufendorf 1991, 117). The fact that God plants in us not only reason but a free will suggests that this liberty, like equality is not only a fact, but has something morally valuable in it (Pufendorf 1994, 78).

So, what would life for human beings in such a situation look like? Grotius and Pufendorf give considerable thought to the condition of property in such a state.

¹⁶ See: *De Legibus* 1.30 and ch1. p. 12 of this dissertation.

Following both Ciceronian and Biblical accounts, both agree that the world was given to humanity in common (Pufendorf 1994, 178). Therefore, all the natural world was once common property. In such a state, no one has a right, properly so-called, to private property; Grotius and Pufendorf follow Cicero (unlike Hobbes) in conceiving of rights as existing only in political society.¹⁷ However, we need to eat and drink in order to live. Thus, both Grotius and Pufendorf understand that a human being in such a state has a moral permission to “use things not claimed and to consume them up to the limit of his needs”(Grotius 2013 1.2.5).¹⁸ Pufendorf posits that humanity would tacitly but universally consent to such an arrangement (Pufendorf 1994, 180–81). The alternative is starvation. Both Grotius and Pufendorf rely on an argument provided by Cicero to illustrate how such an arrangement both is and is not like a system of private property. Grotius writes: “this Cicero has explained in his third book, on the bounds of good and evil [*De finibus*], by comparing the world to a Theatre, in which the seats are common property, yet every spectator claims that which he occupies, for the time being, as his own”(Grotius 2013, 1.2.2).¹⁹

Imagining ourselves in the state of nature—dispersed, and enjoying our equality, freedom, and usufruct property—Pufendorf acknowledges that we might at first find superficial attractions to such a state. But, those attractions are far outweighed by the

¹⁷ This will be discussed further below.

¹⁸ See also: (Buckle 1991, 29)

¹⁹ Compare to Cicero’s *De Finibus* 288.

inconveniences. First, even though the law of nature applies to us all, not everyone recognizes it or chooses to live according to it. Man is a fallen creature, and the commandment “thou shalt not kill” would be superfluous, unless we were the sort of creatures who are inclined at times to kill each other (Pufendorf 1991, 10). Without political society, our lives and our limited property would be totally insecure against depredation by those who defy the natural law.²⁰

This is not to say that Grotius and Pufendorf agree with Hobbes that humanity’s natural state is one characterized primarily by war. Grotius calls on Aristotle and Cicero as authorities for the proposition that, as war is for the sake of peace, peace is the more fundamental condition of humankind (Grotius 2013, 1.1.1). Pufendorf responds explicitly to Hobbes, suggesting that “the very equality of strength” that Hobbes sees as leading to the *bellum omnium contra omnes*, in fact inclines us to peace: “for no sane man likes to be in a fight with an equal unless he is driven to it by necessity or encouraged by an opportunity for success... both lives are exposed to danger, surely neither gains as much from victory as is lost by the one who is killed”(Pufendorf 1994, 145).²¹

Nevertheless, there would be enough such conflict and insecurity about the possibility of conflict to make the state of nature perilous for people. In addition, even those of us

²⁰ Pufendorf anticipates that someone might ask if that natural law as he defines it requires a superior capable of punishing violators, how could there be common violation? Pufendorf notes that God as sovereign will punish the violators, but the distance of that punishment necessarily leaves some undeterred, as is still the case for a fewer number in society (Pufendorf 1994, 87).

²¹ Here Pufendorf lays the groundwork for an argument that would more famously be deployed by Montesquieu and Rousseau.

inclined to obey the natural law may contribute to the violence, poverty, and waste of the state of nature. Without a political superior, we are forced to be the judges and avengers of violations against ourselves. But, we are inevitably poor adjudicators in our own case, and thus liable to punish more than is just or in situations where punishment is not called for at all, prompting cycles of violence (Pufendorf 1994, 87–88).²²

Finally, we must consider that the fact of our weakness is not only relative to each other, but also absolute. Following Cicero, Grotius and Pufendorf acknowledge that the earth does not readily yield its bounty to the unaided industry of a single individual. In order to achieve anything like a comfortable existence for ourselves, we require the help of others. Moreover, we crave the company of others for its own sake. Thus, paraphrasing Cicero, Pufendorf writes “man can render the greatest *help* to man (after the Great and Good God)”.²³ These two facts together constitute Pufendorf’s proof of humanity’s sociality: we need others to live, and we would choose to be with them for the sake of companionship even if we did not need them.

So, Pufendorf summarizes the situation of human beings in the state of nature:

Man, then, is an animal with an intense concern for his own preservation, needy by himself, incapable of protection without the help of his fellows, and very well fitted for the mutual provision of benefits. Equally, however, he is at the same time malicious, aggressive, easily provoked and as willing as he is able to inflict harm on others (Pufendorf 1991, 35)

²² Consider again Cicero’s description above of the barbarism of the state of nature.

²³ Compare to Cicero *De Officiis* 2.11.

So far, this is very compatible with Machiavelli's pessimistic evaluation of humanity's situation. But, whereas Machiavelli then recommends an amoral orientation where one does everything one can to acquire power and subdue others to one's own ends, Pufendorf and Grotius instead turn in a different direction, informed by Cicero's ideas of sociality:

The conclusion is: in order to be safe, it is necessary for him to be sociable; that is to join forces with men like himself and so conduct himself towards them that they are not given even a plausible excuse for harming him, but rather become willing to preserve and promote his advantages.²⁴ The laws of this sociality [*socialitas*], laws which teach one how to conduct oneself to become a useful member of human society, are called natural laws. On this basis, it is evident that the fundamental natural law is: every man ought to do as much as he can to cultivate and preserve sociality. (Pufendorf 1991, 35-36)

Thus, just as Cicero does, the new natural law tradition finds our fundamental duty to be the preservation of human sociability.²⁵ Moreover, just as Cicero renders it, this is a duty born out of our deepest self-interest.²⁶

4.1.3 The Politics of Natural Law

To achieve such a society, it is not enough for independent individuals to form loose associations for mutual protection.²⁷ The natural conflicts of our wills with each other, and the human tendency to prefer free-riding over contribution to common

²⁴ We might see in this expression an early version of Smith's insight that the most efficient way to get others to become useful to us is to make ourselves useful to them.

²⁵ See ch.1 p 13 of this dissertation.

²⁶ Pufendorf distinguishes strongly this view from that of Aristotle. According to Pufendorf, we are not "political animals," but are instead constantly tempted to violate the conditions of political life (Pufendorf 1994, 204).

²⁷ Of the sort imagined by Robert Nozick in *Anarchy, State, and Utopia*.

defense would make such an arrangement impossible. What is needed is a “perpetual union of the wills of all” and “some power [*potestas*], which shall be directly before their eyes, capable of inflicting suffering on those who oppose the common interest.” The only way to achieve all of this is for each to submit his will to the will of one man or assembly, such that what it wills can be taken as the will of all. Such an arrangement can only legitimately take place through agreement. The state that emerges from this is conceived as a moral person [*persona*]. This statement is one of the earliest modern articulations of representation (Pufendorf 1991, 136-137).²⁸

Thus far, the solution Pufendorf presents sounds much like that of Hobbes, for despite all of their prior theoretical disagreements. But, whereas Hobbes sees this as a merely descriptive aspect of human equality and freedom, for Pufendorf it is a normative one. Pufendorf thus converts a *modus vivendi* notion of the agreement to set up a government into a normative one. Coercion is an illegitimate way to get a person to consent to the contract, and anyone who dissents from it retains his natural freedom and remains outside the newly created state (Pufendorf 1991, 136). More importantly, because the agreement takes place among equals, there are in fact two agreements. The first unites all into one body ready for a state. After choosing a form of government, however, the people must make a new contract, between the rulers and ruled. By this

²⁸ See also: (Skinner 2002a, 2:61–62)

agreement the rulers bind themselves “to provide for the common security and safety, the rest bind themselves to obedience” (Pufendorf 1991, 137).

This distinction is crucial. Hobbes vehemently denies that there is any agreement between the sovereign and the people. In his view, the social pact takes place only among the people: to obey the sovereign. The people alienate all of their rights (save self-preservation) to the sovereign. Justice is then whatever the sovereign determines it to be.²⁹

But, on the grounds that human beings have equal moral dignity and are under moral law even in the state of nature, Pufendorf and Grotius are able to avoid Hobbes’ relativism and positivism. Since the basic rules of justice apply to human beings as human beings, there is a standard external to the state by which to judge and critique it. Rights, as a moral quality whereby we can justly command a person or possess a thing, are not alienated by forming this compact. On the contrary, it is only by forming political society that rights come into meaningful existence.³⁰ Pufendorf likens the original social pact to a bridge, connecting our limited duties in the state of nature to the more complex web of rights and duties that govern us in society (Pufendorf 1994, 68). The latter derive from our consent and may be specific to our particular political

²⁹ See Hobbes *Leviathan* ch.20.

³⁰ For this definition of rights, see (Pufendorf 1994, 46). Pufendorf insists that there are no rights, properly understood, in the state of nature, because the persons or objects over which one could have a right are under no obligation to present themselves for the use of whoever claims the right (Buckle 1991, 80). Grotius does not share Pufendorf’s technical exclusion of rights from the state of nature, but he agrees that rights are only ensured in society (Grotius 2013, 1.1.4).

community. However, these new rights and duties are still natural in an important sense. Buckle explains “they are natural in just the sense that the law of nature is natural: that is, they are either necessary to peaceful social existence, or possess a rational utility to that end” (Buckle 1991, 81). For this reason, consent is not all that is required for a good and just political order. The institutions and actions consented to must serve the ultimate purpose of advancing human good through cooperative society. This echoes Cicero’s idea of a *res publica*, which is formed in part out of an agreement about justice, but the justice agreed upon must be true justice.

Citizens in entering into society do suffer a loss of their natural liberty. Duties to obey just commands from the sovereign, to pay taxes, and interact civilly with their fellows now bear upon them. Perhaps most significantly, citizens must be willing to risk their lives in defense of the community. Grotius and Pufendorf have a much easier time explaining this duty than does Hobbes. For Hobbes, our entire purpose in joining the social contract is to secure our lives, which makes it difficult to explain why a person would then risk his life on behalf of it. But, for Grotius and Pufendorf, our desire for our self-preservation is only one of the causes that lead us to joining society. We also have a natural desire for community, *and* our service to that community is commanded to us by God, who can render far greater punishments for our defection than earthly suffering.

The citizens’ duties are joined by new rights they enjoy, and also the corresponding duties of their sovereigns. In society, what formerly existed as a loose

moral permission to *use* property to satisfy our needs becomes a real right to keep and hold property (Grotius 2013, 2.2.2). Citizens have rights to equal treatment and protection under the law. They cannot be punished for private thoughts or actions that harm no one (Pufendorf 1994, 160–61).³¹ Nor can they be taxed unduly. The government has the right to tax only for the purposes of defense and to ensure the prosperity of people (Pufendorf 1991, 153).³² As for sovereigns, they have an extensive set of duties, to uphold justice fairly and impartially, to cultivate virtue in themselves and forsake idle pleasures, to appoint honest and competent individuals as ministers, etc. (Pufendorf 1991, 151–54). All of these duties flow from the sovereign’s ultimate duty of advancing the common interest, which Pufendorf argues, citing Cicero’s famous principle: “the safety of the people is the highest law” (Pufendorf 1991, 151).³³

A sovereign’s failure to adhere to these duties would entail significant consequences. Perhaps most unlike Hobbes, Grotius and Pufendorf articulate a (limited) right of rebellion. Although they insist that citizens must bear a certain amount of ill-treatment or poor government, they agree that a sovereign who makes himself the enemy of the people justifies their rising against him (Pufendorf 1994, 91). Tuck identifies this right (along with property), as one of the two anti-absolutist elements of

³¹ Straumann argues that in construing justice as Cicero does (i.e. as concerned providing rules for behavior that prevent harm), Grotius explicitly rejects Aristotelian distributive justice (Straumann 2015, 119–29).

³² In an argument with important ramifications for the next century, Pufendorf insists that without prior agreement, colonists cannot be taxed for the debts of the mother country (Pufendorf 1994, 266).

³³ Compare to *De legibus* 3.8 and ch.1, p. 15 of this dissertation.

this political theory.³⁴ In fact, the complex web of rights and duties Pufendorf and Grotius depict as the essence of a just political order means that the entire system is non-absolutist in the Hobbsian sense. However, it is true that the right of rebellion does form the ultimate moral guarantee of all the others.

Moreover, because these rights and duties apply to all human beings once they have entered society, there are laws of mutual obligation between states as well. Indeed, the central thrust of Grotius' work in particular was the articulation of international laws and norms. Both Grotius and Pufendorf thus also disagree with Hobbes that the international realm ought to be characterized primarily as a state of war (Pufendorf 1994, 146; Grotius 2013, 1.1.1). In suggesting that sovereigns, too have obligations toward one another, Grotius aims at a kind of nascent cosmopolitanism, whereby the countries of the world coexist peacefully in mutual cooperation.³⁵ Sovereigns' mutual responsibilities stretch from the rights of envoys to the proper conduct of wars. The attempt to stitch together an international order that would bind a contentious state system together under the principles of justice is the particular contribution of Grotius to the development of modern cosmopolitanism. But, as Martha Nussbaum points out,

³⁴ See Tuck (1988) 79.

³⁵ See ch1. pp.40-45 for the discussion of Cicero's attempt to reconcile cosmopolitanism with patriotism in a system of sovereign states.

Grotius' dependence on Cicero to achieve this end makes Cicero the true originator of this effort.³⁶

In all of these arguments, it seems, Grotius and Pufendorf were heavily indebted to Cicero's thought. From the framework for natural law, to the fundamental duty of sociability, rights emerging only in society, anti-relativism/positivism, and finally cosmopolitanism, they draw upon Cicero's framework to present a new normative theory of politics that might gain acceptance in the new Europe. In one important particular, however, they diverge from Cicero: the issue of republican government. Neither Pufendorf nor Grotius excludes democracy and aristocracy as legitimate forms of government. Pufendorf, however, rules out mixed government as inherently unstable and prone to collapse into one of the three simple forms (Pufendorf 1994, 228). It is not certain whether either read Machiavelli's account of turbulent, violent republics, but Pufendorf at least lived through the chaos brought about through English republican aspirations in the English civil war.³⁷ He condemns "a certain class of writers" — contemporary and classical republicans — who insist that all legitimate government is popular government. Both Grotius and Pufendorf conclude that monarchy is the most effective form of government for achieving the ends of peaceful coexistence and cooperation that natural law demands. Grotius even selectively employs Cicero's own

³⁶ See: (Nussbaum 2000).

³⁷ And there is evidence that at least close associates of the two read Cicero. See Tully (1988, 7).

account of the rise of Caesar to defend monarchy as often the most effective form of government (Grotius 2013 3.3.10).

Grotius and Pufendorf's desire to establish peace leads them then to abandon one of the fundamental conclusions of Cicero's natural law teaching. They reject the idea that the moral equality of human beings need necessarily translate into anything like institutions that offer all some voice in the running of the public business (Pufendorf 1994, 161). Accepting Machiavelli's view that justice and political liberty are incompatible, they side with justice.

Part 2: An English Res Publica

The rise (and fall) of English republicanism took place at roughly the same time as the emergence of the new natural law tradition, flourishing between the publication of Grotius' *On the Law of War and Peace*, and Pufendorf's *On the Law of Nature and of Nations*. Unlike the natural law theorists, who formed a discrete project in which Pufendorf identifies himself clearly as the follower and expositor of Grotius' system, the English republicans cannot be characterized as a single coherent movement of political thought. The intellectual leaders spanned political orientations from limited monarchists to outright advocates of regicide, and from defenders of aristocratically dominated mixed regimes to proponents of radical democratic reform. None appear primarily as political philosophers, making truly profound or novel contributions to the history of

political philosophy, but rather as active political actors. As such, many of them adopted different and somewhat inconsistent positions as the political situation changed.

Perhaps the most extreme example of this was Marchamont Nedham, who began his career as a partisan of Parliament, became a royalist, wrote propaganda on behalf of the Commonwealth after the execution of Charles I, and finally returned to defending monarchy after the Restoration.

Most of the other individuals making up the loose constellation of figures considered English republicans—such as James Harrington, John Milton, Algernon Sidney, and Henry Neville—maintained greater consistency than Nedham, but their writings generally reveal them to be primarily concerned with the particular political developments going on around them. As such, it is impossible to discuss their works together as forming a single political philosophy. Moreover, it would be beyond the scope of this section to give fair treatment to the diversity of their thought.³⁸ The purpose of the following discussion is more limited: to establish that Cicero's thought provided these authors with much of the conceptual resources that they drew upon to establish their ideal of liberty. This ideal of liberty, I shall argue in the next chapter, is the primary lasting contribution English republicanism to the subsequent development of liberal republican thought on both sides of the Atlantic that took place in the following

³⁸ There are several large scholarly works that attempt to do precisely this, e.g. (Sullivan 2006), (Paul Anthony Rahe 2006), (Skinner 2002a), (Skinner 1998b), (Pocock 2009).

century.³⁹ Despite their disagreements and ideological divergence, I suggest that these thinkers largely shared an ideal of liberty according to which citizens can only ensure their ability to live freely, secure in their bodies and property, by retaining meaningful say in the affairs of government. In other words: individual liberty is analogous to and dependent on political liberty.⁴⁰

It is interesting that the major component of Cicero's political philosophy that Grotius and Pufendorf largely discard—his commitment to individual and political liberty—should be the central aspect of this thought adopted by the English republicans.⁴¹ In part, I believe this strange disjunction can be traced to Machiavelli's challenge to Christian and classical political thought. As we saw in the last chapter, Machiavelli rejects the idea that healthy politics is compatible with a stable political order organized upon firm moral principles. According to this view, attempting to maintain a political system grounded in fixed principles of justice will inevitably lead to corruption, stagnation, and failure.

³⁹ As I shall show in the next chapter, this argument runs counter to the dominant account of republicanism offered by its contemporary proponents, who argue that it is most of all in its ideal of liberty that republicanism most differs from liberalism.

⁴⁰ Skinner refers to these individuals as "neo-Romans" instead of "republicans" precisely because some of them are open to *some* elements of monarchical government (Skinner 1998b, 11). Nonetheless, following Cicero's definition of a *res publica* (which can likewise tolerate monarchical elements), I maintain the more common usage of referring to these individuals as "republicans."

⁴¹ The two traditions were not wholly opposed to one another. On rare occasions Harrington cites Grotius (e.g. Harrington and Pocock 1977, 171) and Sidney refers to the "Law of nature" (as cited in Sullivan 221), but neither truly adopts natural law reasoning in any systemic way.

Like Machiavelli, the English republicans were generally non-foundationalists, in that they did not attempt to derive the outlines of a just political order from first principles. Harrington's *Commonwealth of Oceana* stands out as an exception in that it at least attempts to offer a comprehensive outline of a republican constitution. Many leading figures were propagandists and pamphleteers, like Nedham, or wrote commissioned works often to defend political actions already taken, as Milton did.

In suggesting that Machiavelli's dichotomy between stagnant principalities and dynamic republics may help to explain the divergence between the natural law theorists and the English Republicans, I do not mean to suggest that the latter simply side with Machiavelli over Cicero. Just as the former seem to accept the fundamental political choice as Machiavelli presents it and simply choose to defend the moralized political order Machiavelli condemns, the latter also seem to accept Machiavelli's choice, but they choose republicanism along with him. In doing so, they do not abandon Cicero and other classical authors. Like Pocock and Skinner, they tend (with some exceptions) to view Machiavelli as a modern adherent to the same republican ideals as the Romans and Greeks. As such, they were not much less inclined to look to Cicero for inspiration than were Grotius and Pufendorf. But, while the latter looked especially to Cicero's more moral and theoretical works (*De legibus*, *De finibus*, etc.), the former were far more interested in Cicero the patriotic republican statesman and orator, preferring to draw on Cicero's political speeches, especially the Philippics—Cicero's famous denunciations of

Antony's tyranny and summons to restore the Roman Republic. Skinner points out that of all the classical writers available to the English republicans, "it is Cicero who is most interested in formal definitions of *libertas* and *servitus*" (Skinner 2002a, 2:314).

4.2.1 Which Ancient Liberty?

Contemporary scholars of republicanism have gone to great lengths to demonstrate that Machiavelli's particular version of republicanism dominated the English movement.⁴² Machiavelli clearly was important to some of the leading republicans, especially Harrington and his friend Neville. The former cited Machiavelli dozens of times in his major political works, and the latter even faked a letter purported to be written by Machiavelli in order to show this republican hero sympathetic to the Protestant sensibilities of the English revolutionaries (Harrington and Pocock 1977, 871; Neville and Machiavelli 1691).

But, there is some difficulty in demonstrating that Machiavelli is the central inspiring figure of the positive project of the English republicans. Besides Harrington and Neville, there is relatively little evidence linking the detailed contours of Machiavelli's thought to English republicans. For instance, in the case of Milton, Paul Rahe writes: "at no time did John Milton allow the thinking of Niccolò Machiavelli to

⁴² Especially noteworthy here are Pocock, Skinner, and Pettit. To a lesser extent, Sullivan falls into this camp as well.

shape in any fundamental way the manner in which he wrote about, defended, and surreptitiously tried to guide the nascent English republic”(Paul A. Rahe 2008, 104). Pocock is forced to present an arduous story of the circuitous route by which “patterns of Machiavellian thought” (note: not necessarily *Machiavelli’s* thought, but rather something mediated by a number of minor authors) became “domiciled” in an England that Pocock admits was dominated by a political and conceptual framework incompatible with it (Pocock 2009, 333–48).

The first half of the 17th Century in England possessed a far clearer and direct link to genuinely classical political thought (especially of the republican variety) in the form of widely published works of the Greeks and Romans in both the original languages and in translation. The English republican moment saw a flourishing of interest in and appeals to these ancient defenders of liberty. Of the Greeks, Aristotle was often invoked. More important still were the Romans. Historians such as Livy, Tacitus, and Sallust enjoyed wide popularity. But, the works of Cicero, the only great Roman *theorist* of republican liberty, were even more widely read. Although anyone who attended university during this period would have read his works (along with the others above mentioned) in Latin, the late 16th Century saw the publication of an English translation of *De officiis* that went through at least five editions and became a best-seller. Dozens of editions of Cicero’s *Philippics* were also published during this period (Skinner 2002a, 2:313).

No less an authority than Hobbes suggests that reading not Machiavelli but classical authors was a central cause of the English Civil War. He lists two names for particular opprobrium:

It is an easy thing, for men to be deceived, by the specious name of Libertie... and when the same error is confirmed by the authority of men in reputation for their writings in this subject, it is no wonder if it produce sedition, and change of Government. In these western parts of the world, we are made to receive our opinions concerning the Institution, and Rights of Common-wealths from *Aristotle*, *Cicero*, and other men, Greeks and Romans (Hobbes 1996, emphasis in the original)

Skinner agrees with Hobbes on this point, saying “there is a great deal to be said for Hobbes’s explanation”, pointing out that Hobbes “mounts a furious attack on Aristotle, and even more on Cicero and his followers, for equating monarchy with tyranny”(Skinner 2002, 2:308).

So, what is this ideal of liberty that emerges in England to oppose monarchy? As mentioned above, Pocock, Skinner, and others see the English republicans as drawing their conception of liberty from a tradition that traces back to Aristotle (Pocock) or the Romans (Skinner), crystallized and modernized by Machiavelli. The eclecticism and diversity of the English republicans makes locating their source of inspiration in any one classical thinker impossible. But, in one sense Pocock and Skinner are both right: the English republicans drew from many sources, including Aristotle, Cicero, and Machiavelli especially.

But the Cambridge school tends to ascribe a similar ideal of liberty to all of these writers, one based around a fundamental dichotomy of freeman and slave. As I have

shown in previous chapters, however, there is little grounds to believe in this alleged similarity. Nevertheless, it is worth briefly summarizing. The Machiavellian concept of liberty concerns exclusively a political community undominated by an outside force, and in fact deliberately denies individual liberty (free speech, free movement, bodily security, secure private property) to citizens within the community. Internal conflict, rather than peaceful order, characterizes healthy political life.⁴³ As for Aristotle, liberty is not really an ideal at all. Citizens of the good regime must be free (in the sense of not being slaves), but this is one of the many necessary (but not sufficient) conditions to the actual end of the regime: the good life.⁴⁴ Neither of these thinkers shares with Cicero an ideal of liberty, “the mark of which is to live just as one pleases” and in which one enjoys security in one’s body and property(*De officiis* 1.70). Without this concept of individual liberty, of course, it is impossible to construct for those other two thinkers an analogy between the liberty of the citizen and the liberty of the state.

Skinner especially tries to link Aristotle’s vision of citizens “ruling and being ruled in turn” to Cicero and Machiavelli (Skinner 2002, 2:315). But, for Machiavelli, the common people never ultimately get to rule, and an effective political leader never allows himself to be “ruled in turn.” As for Cicero, being ruled by law, and not by men at all, is preferable, and for instances where political judgement is unavoidably required,

⁴³ See chapter 3 of this dissertation.

⁴⁴ See chapter 2 of this dissertation.

he prefers that the people possess power without using it, instead deferring to wise public-spirited statesmen.⁴⁵ With these distinctions in mind, we can possibly tease out what vision of liberty the English republicans deployed in their struggle against the monarchists.

Harrington stands out as perhaps the most well-studied of the English republicans. His *Commonwealth of Oceana* is among the most systematic of the works written by this group, as it presents a full plan of a state, fleshed out in (at times, excruciating) detail. We find in it an eclectic mix of inspirations, coupled with a few genuinely original political inventions. Noteworthy is the fact that Harrington's thought is one of several that does not absolutely rule out an element of kingship in the ideal political system, represented in *Oceana* by the position of archon.⁴⁶ He proposes a form of mixed or composite government that includes monarchic, aristocratic, and democratic elements, with a preponderance of power placed in this last. Harrington's vision of a republic resembles Machiavelli's in some important ways, especially in the central role that an armed citizenry plays in it. There is also an element of the Aristotelian cycle of ruling and being ruled in the rotation of offices.⁴⁷ But, Harrington also expresses a strong preference for the rule of laws and not men (Harrington and Pocock 1977, 171).

Harrington cites Cicero as an authority to show that a few simple laws is the best way to

⁴⁵ E.g. *De legibus* 3.28.

⁴⁶ For more on Harrington's toleration of monarchy, see (Hammersley 2013).

⁴⁷ See (Pocock 2009, 393)

be governed (Harrington and Pocock 1977, 187). Nedham agrees, also calling on Cicero as authority for his claim that Roman liberty lasted as long as the Romans were ruled by laws and ended once the rule of law was replaced by the will of individual men (Nedham 1650, 57).

Harrington goes further to show his opposition to an essential component of Machiavellian republicanism: the conflict of the orders. Like Cicero, Harrington envisions a large role for elites to guide the people without dominating them. After approvingly citing Cicero's views, writes "The balance I have laid down, though unseen by Machiavel... Wherefore, as in this place I agree with Machiavel that a nobility or gentry, overbalancing a popular government; so I shall show in another that a nobility or gentry in a popular government, not overbalancing it, is the very life and soul of it" (Harrington and Pocock 1977, 166). Sidney agrees that mixed government exists not to channel conflict but to establish peace (Sidney 1990, 195-200).

The protection of private property is a central component of this system, such that in *Oceana* property distributions govern much of the electoral politics. The Ciceronian view that the protection of property is a key element of true liberty reached even into Parliamentary debates. Sir Thomas Hedley denounced kingly prerogatives that place property of subjects "in the absolute power of another," noting that Cicero and Tacitus demonstrate the danger this poses (as quoted in Skinner 2002a, 2:320).

4.2.2 The Liberty of the State and the Liberty of the Citizen

Harrington draws on Cicero by name to establish a fundamental link between the individual liberty of citizens and the liberty of the community, pointing to the franchise as a special safeguard to people's liberty: "the election or suffrage of the people is freest [when secret, so that it does not] impair a man's liberty" (Harrington and Pocock 1977, 181). For this reason, he later appeals to Cicero's *De legibus* to argue that absolute monarchy is incompatible with the liberty of citizens. Similarly, Nedham would argue that "an uninterrupted course of successive parliaments or assemblies of the people" and "free election of members" are essential constitutional conditions of freedom (Nedham 1650, 128).

Nedham especially relies on Cicero to help establish a connection between the freedom of individual citizens and a free republican form of government, naming him the "oracle of human wisdom." The link rests on a sense of human dignity and equality:

[republican government] is most suitable to the nature and reason of mankind: for, as Cicero saith, "Man is a noble creature, born with affections to rule, rather than obey; there being in every man a natural appetite or desire of principality." And therefore the reason why one man is content to submit to the government of another, is, not because he conceives himself to have less right than another to govern; but either because he finds himself less able, or else because he judgeth it will be more convenient for himself, and that community whereof he is a member, if he submits unto another's government. (Nedham 1650, 93)

He quotes Cicero's belief that a well-instructed man is resistant to obeying anyone unless for his own benefit, and derives from this and the passage above three principles that amount to republican self-government on the basis of popular sovereignty:

First, that by the light of nature people are taught to be their own carvers and contrivers, in the framing of that government under which they mean to live. Secondly, that none are to preside in government, or sit at the helm, but such as shall be judged fit, and chosen by the people. Thirdly, that the people are the only proper judges of the convenience or inconvenience of a government when it is erected, and of the behaviour of governors after they are chosen: which three deductions appear to be no more, but an explanation of this most excellent maxim, That the original and fountain of all just power and government is in the people.(Nedham 2011, 93)

The idea that monarchy is incompatible with citizens' liberty is hardly a surprising claim to be made by those seeking to overthrow a king. But, Skinner, Pettit, and other neo-republicans have made an effort to demonstrate that republican freedom is not—like 'liberal' freedom—the absence of external constraint and protection from the threat of harm to one's body or property. Instead, freedom *consists in* the contestation that ensures that not only is one unconstrained, but also that one is undominated.⁴⁸ Skinner connects Cicero in particular to this idea, quoting a passage from the Fourth Philippic that was especially popular among English republicans:

Do you call servitude peace? Our ancestors took up arms not only to be free but also to win power. You think that our arms should now be thrown away in order that we should become slaves. But what cause of waging war can be more just than that of repudiating slavery? For the most miserable feature of this condition is that, even if the master happens not to be oppressive, he can be so should he wish (as quoted in Skinner 2002, 2:314)

Milton reproduces this passage verbatim in his *Defensio*, and the sentiment expressed in it can be found in nearly all the English republicans who contrasted a state of liberty

⁴⁸ See introductory chapter for more on the neo-republican claims about the difference between liberal and republican freedom.

with the tyranny of a monarchy. However, a close reading of the passage reveals that for Cicero, freedom and power are distinct: “not only to be free, *but also* to win power” (emphasis mine). As discussed in Chapter 2, Cicero’s understands freedom as characteristic of one who can do as he wishes, secure in body and property. Some element of political power is essential to making that freedom secure, as this passage demonstrates, but it is not the same thing as freedom itself.⁴⁹ Milton demonstrates that he perceives the same relationship between the two positions as Cicero does, writing that when someone has absolute control over “our lives and estates,” we would be slaves, deprived of “that power, which is the root and source of all liberty” (Milton 2014, 299). In a world filled with morally corrupt and fallen creatures such as men, yielding up the safeguards of one’s liberty is a sure way to lose it. For this reason, Milton continues, any social contract of the Hobbesian variety in which nearly all liberties are given up is nonsensical, “a violation of their natural birthright” and “a kinde of treason against the dignitie of mankind” (Milton 2014, 299-300).

Sidney seems to agree, writing that “man is naturally free... equality of right and exemption from the domination of any other is called liberty” (Sidney 1996, 221). Such liberty cannot be justly taken without consent. Sidney follows the Ciceronian image that

⁴⁹ Milton, comes closer than any of the other English republicans to the views of Grotius and Pufendorf. He asserts that human beings are born naturally free, and that they must have yielded this freedom only through a contract. Like Grotius and Pufendorf (and unlike Hobbes), he argues that such a contract exists between governors and governed, and that the latter may rise up if the former fail to adequately serve the common good (Milton 2014, 11,12,15; Skinner 2002, 298)

those who possess liberty are like kings: “every man is king till he divest himself of his right” (Sidney 1996, 222).

The distinction alleged by Pettit, Skinner, and others, between liberty as the absence of interference and liberty as the absence of the *possibility* of interference (i.e. non-domination), may seem trivial, but it is at the very core of the neo-republican attempt to distinguish liberalism from republicanism as ideals. In a representative argument, Pettit claims that the ideal of non-interference can be satisfied in precarious situations: you might be the slave of a benevolent or indulgent master who lets you do whatever you want. But the master could at any time change his mind; whereas the ideal of non-domination is satisfied only when you enjoy the “absence of interference by arbitrary powers, not just in the actual world, but in the range of possible worlds” (Pettit 1997, 24–25). The arguments of Milton and Cicero show why this distinction is meaningless. In a world of fallen human beings who are inclined to vice, there is no such thing as a reliably benevolent slave master. Nedham begins *The Excellencie of a Free State* with an appeal to Cicero to establish this as his starting assumption: “as Cicero saith, there is a natural desire of power and sovereignty in every man, so that if any have once an opportunity to seize, they seldom neglect it; and if they are told it is their due, they venture life and all to attain it” (Nedham 2011, 104).

For this reason, the liberal idea of an individual safe from interference and harm can only be achieved by political institutions that give individuals power to protect

themselves from such violations.⁵⁰ Therefore, free institutions—suffrage, rule of law, some elements of popular government—are essential to having freedom as citizens. Harrington argues precisely this and suggests, using Ciceronian logic, that magistrates who usurp authority have in fact stolen something rightfully possessed by the people (Harrington and Pocock 1977; 170, 250).⁵¹

4.2.3 Cicero as Republican Symbol

We have seen that in the chaotic mess of English republican thought, Cicero's ideal of liberty and free government was at least one of the most significant influences. The ideas of Aristotle, Machiavelli, and the Roman historians are undoubtedly mixed in. But, as a symbol—a martyr, even—of republican liberty, Cicero seems to have held undisputed preeminence. Sir Thomas Hedley was not the only person to invoke Cicero on the floor of Parliament. In response to King Charles' refusal to assent to their demands for control over the militia, Parliament adopted Cicero's maxim of *salus populi suprema lex*, and on that grounds assumed control on their own authority. Cicero's principle thus provided the explicit justification for the first law ever put into effect by Parliament without royal assent, a significant waypoint on the road to England's civil war. When Charles subsequently tried to arrest five members of Parliament, they used language drawn from Cicero's *Third Philippic* to denounce anyone who attempted to

⁵⁰ For the additional alleged innovation of neo-republicanism—the distinction between arbitrary and non-arbitrary interference—see the discussion in the introductory chapter on Pettit's attempt to differentiate a state of “non-freedom” from “unfreedom.”

⁵¹ See the discussion of Cicero's *In Verrem*, ch. 1, pp. 36-37 of this dissertation.

carry out further such arrests as “a publick enemy of the Common-wealth”.⁵² When Robert, Lord Brooke, exhorted his officers to take up arms against the king, he appealed to “that great commonwealthman of the Romans, Cicero” (Strider 2013, 68). Indeed, even after Charles’ execution, Cicero’s name continued to serve as a rallying cry for republicans dissatisfied with the Protectorate that supplanted the English Republic. Neville himself incurred charges of impiety from Cromwell’s government after allegedly declaring in the House of Commons that he preferred Cicero to the Bible (Sullivan 187).⁵³ In each of these cases, Cicero’s status as a symbol of republican liberty was sufficiently established that appeals to him could be made to him not only in theoretical tracts for scholarly readers, but also in political rhetoric meant for public consumption, and even in acts of law.

From all this, it becomes clear that scholars have underestimated the Cicero’s importance in shaping the development of English republicanism.⁵⁴ The leading English republicans were engaged in serious political contestation, and certainly did not manage to articulate a common ideological doctrine of similar consistency to that of Grotius and Pufendorf. They often adopted, discarded, or modified their arguments and justifications for action as circumstances required. In doing so, they drew from a variety

⁵² For more on these two incidents, see (Skinner 2002a, 2:326).

⁵³ In the next chapter, we will find John Locke attempting to show one need not choose between Cicero and the Bible.

⁵⁴ A partial exception to this, as can be seen above, is Skinner. However, Skinner’s failure to adequately distinguish Cicero’s political vision from that of Machiavelli ensures that the uniquely Ciceronian contribution to English republicanism is lost in a relatively undifferentiated swirl of “neo-Roman” thought.

of modern and ancient sources for authority or inspiration. But, the name of Cicero stands out as one of the most important republican shibboleths.

These figures found little useful in Cicero's complex natural law doctrine. However, as a theorist and rhetorician of liberty, he was invaluable. Moreover, as this chapter demonstrates, they seem in general to have preferred Cicero's doctrine of liberty to those found in Aristotle or Machiavelli (or, for that matter, Hobbes). Here and there we may find an appeal to Aristotelian rotation of offices or a Machiavellian citizen army. But, only in Cicero could these republicans find support for an ideal of freedom in which individuals enjoy bodily protection, secure private property, and the liberty to move and speak as they will. Moreover, Cicero provides the logic to connect this liberty to a version of political liberty. Only free institutions, in which citizens have a real vote, can ensure that such liberty is protected—the rule of laws and not of men. In this way, the liberty of the state and the liberty of citizens are mutually dependent. Liberty thus becomes perhaps the central *goal* of a just regime.

Conclusion: Theses Ripe for Synthesis

Aside from their near chronological simultaneity, there appears little on the surface to link the new natural law philosophy of Grotius and Pufendorf with the republican project of Harrington, Milton, Neville, Sidney, and Nedham. The systematic, legalistic, and ultimately monarchical doctrines of the former seem to be entirely at odds with the polemical, inconsistent, and enthusiastically republican writings of the latter. In

this light, their mutual dependence on Cicero might appear to be coincidence, a case of both selectively drawing on a reputable classical author for support of arguments he would have had little to do with.

The evidence presented in this chapter challenges such a view. Examined closely, we see both groups taking Cicero's thought seriously and depending heavily on the conceptual resources and arguments he provides. In Cicero's philosophy, we find a compatibility between natural law and republican institutions. But, in the aftermath of Machiavelli's critique, that combination no longer appeared sustainable. I argue that the new natural law theorists and the English republicans constitute two genuinely Ciceronian traditions, each pursuing and developing different strains of Cicero's thought that were *apparently* incompatible. Grotius and Pufendorf seek to realize the Ciceronian ideal of a pacific cosmopolitan political order, in which each individual enjoys personal freedom and protection within a thick web of mutual rights and duties. But, they could find no room in such a project for the messiness of political contestation and the presumed violence and instability of republican government. Conversely, the English radicals adopted the unity of individual and political liberty as their ideal. But they found that ideal threatened by the institutions most closely associated with a fixed moral/political order ("the throne and altar"), and thus accepted Machiavelli's view that the latter must be overthrown.

However, as we shall see in the next chapter, this cleavage wrought at least in part by Machiavelli was not to last. Perhaps the modern thinker who read and followed Cicero most closely also happened to stand at the intersection of the two traditions explored in this chapter: John Locke. Although not a self-identified republican, Locke would articulate a vision of political freedom connected to individual freedom on the basis of a moral order grounded in natural law. Locke's project of combining the ideals of political liberty with natural law would be carried on by figures such as Montesquieu, Smith, and Hume—all of whom also relied explicitly on Cicero. This movement would come to culmination in the American Founding, which realized this political vision of liberal republicanism in an actual regime

“John Locke... must be confest to be the greatest Philosopher after Cicero in the Universe; for he’s throly acquainted with human Nature, well vers’d in the usual Affairs of the World, a great Master of Eloquence (Qualities in which the *Roman* Consul excel’d) and like him also a hearty lover of his Country, as appears by his Treatises of *Government* and *Education*, not inferior in their kind to the divinest Pieces of Tully.”

—John Toland, 1699

Chapter 5: Locke’s Ciceronian Liberalism

Introduction: Locke’s Curious Recommendation

In *Some Thoughts Concerning Education*, John Locke writes of the education of a young gentleman:

I know not whether he should read any other discourses of morality but what he finds in the Bible; or have any system of ethicks put into his hand till he can read Tully’s Offices not as a school-boy to learn Latin, but as one that would be informed in the principles and precepts of virtue for the conduct of his life. (Locke, 1989, sec. 185)

The near-total silence of scholars on the relationship between Locke and Cicero might lead a reader to assume that this passage is an aberration, and that Locke really did not mean to rank Cicero’s *De officiis* next to the Bible as a moral instructor.¹ Yet, Locke persists, both in private correspondence to friends and in other published works, repeatedly listing Cicero’s work—and only Cicero’s work—along with the Bible as the

¹Two notable exceptions to this silence are John Marshall and Phillip Mitsis, whom I discuss below.

foundational texts for teaching morality or ethics (he uses the terms interchangeably in his recommendations).²

This fact is significant because, in a sense, Locke's entire political philosophy derives from his ethics. A methodological and ontological individualist, Locke treats political societies as the creations of consenting individuals, who form governments in order to vindicate the natural law that binds them *as* individuals and determines their duties and obligations to their fellows. Thus, all normative political questions depend, at bottom, on ethical questions.³ Taking Locke's claims about the nature of ethics seriously means that Cicero's philosophy might well be central to Locke's political project.

In this chapter, I illustrate the ways in which we can understand Locke's thought much more clearly when we see its fundamental connection to Cicero. Moreover, looking both forward and backward from Locke, we see how Locke's thought represents the crucial penultimate step in establishing modern liberal republicanism. This liberal republican framework proves to be Ciceronian at its core, and to owe much of its modern formulation to Locke's reception and adaptation of Cicero.

In nearly all accounts which depict liberalism and republicanism as separate camps, John Locke appears near the forefront of any list of classical liberal thinkers.⁴ If indeed there were a contest (or a later synthesis) between liberalism and republicanism

² See Marshall 1994, 301.

³ More on this claim below.

⁴ On this, at least, figures as diverse as Quentin Skinner, Bernard Bailyn, Gordon Wood, Vickie Sullivan, Ruth Grant, and Leo Strauss can agree.

during the 17th and 18th Centuries, Locke *must* be a liberal, or else no one is. A few intrepid scholars have attempted to assert that latter alternative, arguing that even Lockean liberalism is an outgrowth of Machiavelli's republicanism.⁵ The difficulty with such a position is the absence of any evidence at all that Machiavelli had a direct influence on Locke.⁶

Almost all scholars have consequently assumed that Locke was not a republican. Yet, biographically, Locke had strong connections with the English republicanism. Locke's personal connections to English republicans, the Whigs and the Earl of Shaftesbury in particular, as well as the circumstances of his exile and return after the Glorious Revolution are well-known. Locke's biography also links him with the new natural law tradition. Besides owning and reading the works of both Grotius and Pufendorf, Locke may even have met Pufendorf in France, and at the very least moved in similar circles to him while in exile.⁷ In fact, immediately following the passage in *Thoughts Concerning Education* where he recommends reading Cicero, Locke goes on to suggest both Pufendorf and Grotius as further reading on the subject (Locke, 1989, sec.

⁵ For instance, Viroli describes liberalism as "incoherent republicanism" (Viroli 2002, 61), although he provides almost no historical evidence to support his view of liberalism.

⁶ The clearest example of this conundrum is the case of Margaret Michelle Barnes Smith's chapter on Locke in Rahe's *Machiavelli's Liberal Republican Legacy*. Barnes Smith's entire purpose is to show the importance of Machiavelli to Locke's thought, yet she is forced to admit at the outset that Locke never cites Machiavelli, nor refers to him in private correspondence. Her strongest piece of evidence for a link is the fact that Locke owned Machiavelli's work and quotes from a passage in Livy adjacent to one that Machiavelli was fond of repeating. This is hardly better than no evidence at all.

⁷ See: (Marshall 1994, 202)

186). Locke thus stands at the intersection of the two Ciceronian traditions discussed in the previous chapter. His political thought shows the influence of both.

Like the English republicans and their Whig successors, he supports free parliamentary government, while placing a high value on the freedom of the individual from interference. However, Locke also disapproved of the tendency of English republicans (and later, the Whigs) to advocate absolute Parliamentary sovereignty. He similarly rejected the positivist attitude that accepted no limits to Parliamentary authority. Moreover, Locke opposed the historicism in Whig arguments that grounded themselves on the “ancient Constitution” or inherited rights. In short, Locke felt that the English republican tradition and its heirs lacked a supra-historical principle on which to ground political norms or by which to limit the power of government.

Locke finds just such a principle in the newly articulated natural law doctrine of Grotius and Pufendorf. As we saw in the previous chapter, the natural law theory advanced by Grotius and Pufendorf rejected the teleological elements that discredited Aristotelian-Thomistic natural law and assumed human beings to be naturally free and equal. It addressed all human beings across religious affiliation, historical circumstance, and political situation. It aspired to serve as a standard by which all political arrangements could be judged, and presented a theory of rights to structure just relationships in a decent political society. Yet, the political arrangements defended by Grotius and Pufendorf came close to absolute monarchy and left little or no room for

participatory politics or for safeguards for the rights they ascribed to human beings in their natural state.

Locke brings both of these Ciceronian traditions together in a manner that draws on each to correct for the deficits of both. Building on the natural law arguments of Grotius and Pufendorf, Locke establishes a universal normative and theoretical ground for politics and a conception of natural rights. Yet, the just political system grounded in this law does not abolish natural human liberty; it protects and extends it. Locke comes close to presenting an authentically Ciceronian vision of politics for the modern world. In the next and final chapter, we will see how the American Founders contributed further innovations in republican constitutionalism that brought a modern Ciceronian *res publica* to life.

In this chapter I begin with a brief account of the direct evidence for Locke's reception and deep engagement with Cicero's thought. I then turn to Locke's natural law account and its connection to the Ciceronian theories of Grotius and Pufendorf. Finally, I show how Locke deploys Ciceronian conceptions of property, cooperation, and human nature to build his theory of freedom in political society. As I discussed in previous chapters, it would be anachronistic to describe Cicero as a "liberal."⁸ However, I suggest that it is not an accident that the early modern philosopher most engaged with Cicero's

⁸ Locke himself would not have recognized this term as a descriptor for his own thought. Our notion of classical "liberalism" does not in fact originate until the late 18th century when Adam Smith and other members of the Scottish Enlightenment first used the term in this manner.

thought gave birth to the first systematic liberal political theory in which the rights of the individual against harm and interference become the central object of legitimate government.⁹ Locke draws out of Cicero the important building blocks that he uses to construct his theory liberal freedom, rights, and limited government.

5.1 Locke and “Tully”

If the argument for Locke’s Ciceronianism lay solely in Locke’s location at the convergence of two other Ciceronian traditions, it would suffer from the same fatal flaw that characterizes the voluminous literature on Machiavelli’s posthumous influence that I have criticized above. Both the Cambridge School and its critics are frequently forced to deploy dubious claims of indirect influence and often implausible intertextual connections to show that Machiavelli’s influence lies behind developments in political thought after the zenith of English republicanism in the mid-17th Century. This is because few of the great 18th century political thinkers in the English speaking world show anything more than a dim awareness of Machiavelli’s existence. Here it is worthwhile to compare Pocock’s *Machiavellian Moment* with the collection of essays in Rahe’s *Machiavelli’s Liberal Republican Legacy*. Although the latter is explicitly a critique of the former’s account of Machiavelli’s influence in the “Atlantic Republican Tradition,” it

⁹ In treating Locke as the first thoroughgoing liberal, I recognize that there is a sizeable body of scholars who would award that honor to Hobbes. I am persuaded by Judith Shklar’s view that Hobbes’ endorsement of unlimited governmental power disqualifies him as a liberal. I also argue in this chapter that Locke shares far fewer premises and assumptions with Hobbes than is often alleged by those who see Locke as essentially drawing out liberal conclusions from essentially Hobbesian starting points.

still endeavors to show that Machiavelli stands behind the development of liberal republicanism in England and America. Yet, there is a feature common to nearly every essay in it devoted to thinkers after the subsidence of the English republican movement: each begins with an acknowledgement that there is little or no evidence that the thinker in question (Locke, Madison, Jefferson, etc.) even read Machiavelli.¹⁰

In contrast, there is abundant evidence that Locke's reconciliation of the two Ciceronian traditions takes place on the basis of deeply intimate and direct confrontation with the work of Cicero himself. In fact, Locke's interest in Cicero at times seems to border on obsession. As mentioned above, few scholars take any note of this relationship. Two exceptions are Phillip Mitsis' short essay, "Locke's Offices," in *Hellenistic and Early Modern philosophy*, and a small but rich portion of John Marshall's *John Locke: Resistance, Religion, and Responsibility*. Mitsis and Marshall concentrate on Cicero's relevance to Locke's social milieu and focus on Cicero's potential contribution to Locke's ethical and social thought. Mitsis draws out Locke's fascination with Cicero's view of praise and the role of social approval in teaching us moral virtue. Mitsis argues, however, that Locke's attraction to Cicero caused certain theoretical problems for Locke. According to Mitsis, Cicero's classical rationalism was ultimately incompatible with Locke's Christianity. In Marshall's view, Cicero was centrally important for how Locke

¹⁰ Rahe 2006.. This critique does not apply to those essays in the work devoted to English republicans proper, where Machiavelli's influence is clear and direct or to the essays on John Adams and David Hume, who clearly did read Machiavelli.

thought about teaching the qualities of character proper to a gentleman. Marshall notes that Cicero may have been especially valuable to Locke because his work in reconciling the *honestum* and the *utile* proved to be of great help to Locke in his struggle to reconcile his hedonic premises about human motivation with our duty to do good to our fellows (Marshall 1994, xvii). This last point is important and will be revisited below. Neither Mitsis nor Marshall delves much into the political dimension of the connection between Locke and Cicero. But, both do impressive work in providing evidence of the extent of Locke's personal interest in Cicero, to which the following discussion is indebted.

First, it is valuable to note the ubiquity of Cicero's thought in the general intellectual atmosphere in which Locke was educated and later wrote. As noted in the previous chapter, numerous editions and translations of Cicero's work, especially of *De officiis*, were circulating in England (and across Europe) in the 17th Century, in numbers that continued to rise through the 18th Century. It was, as Marshall notes, "a basic text at schools such as Westminster and Eton, and at various Cambridge and Oxford colleges". Locke's own education featured *De officiis* in its curriculum, and as a censor of moral philosophy at Christ Church, Oxford, he appears to have taught the text himself. Locke's friend John Toland describes it as a "common fashion at schooles" to begin the moral education of young gentlemen with *De officiis* (Marshall 1994, 162). In this respect, then, Locke's recommendation to start with Cicero in teaching ethics reflects his acceptance of a common educational practice.

In the last chapter, we saw that Cicero's ideas featured prominently in many of the major works of political thought of the 17th Century, including Grotius and Pufendorf, who significantly influenced Locke. In exile in Holland, Locke found himself "living in an environment where Cicero's thought was as clearly at the center of moral discussion and of the conceptualisation [sic] of social relationships of friendship as it was in England" (Marshall 1994, 300). Locke's intellectual companions, such as Toland and Jean Barbeyrac, acknowledge Cicero's ubiquity and praise his work profusely. Indeed, Neal Wood goes so far as to say that Cicero was to this early modern Europe "what Aristotle had been to the late medieval world of ideas: an inspiring, informative, and illuminating preceptor" (N. Wood 1988, 1).

Yet, even in a time and place in which Cicero's thought was widely available, Locke's deep interest in Cicero was unusual. By the age of nineteen, Locke was already peppering his personal correspondence with quotations from Cicero (Mitsis 2003, 52). This tendency only intensified with maturity. Among Locke's friends in Holland was a Dutch bookseller and editor of an edition of Cicero's letters. Mitsis identifies in their correspondence "an escalating attempt on the part of both men to outdo each other both in their mastery of Ciceronian style and in the breadth of their Ciceronian references" (Mitsis 2003, 53). Marshall identifies a similar dynamic in Locke's letters to his closest Dutch friend, where both men conceptualized their relationship as one of Ciceronian *amicitia* (Marshall 1994, 300). In *Thoughts Concerning Education*, Locke makes a rule out of

this habit, where he recommends that young men model their letters—in Latin or English— on “Tully’s Epistles, as the best pattern whether for business or conversation” (Locke 1989, sect. 189).

The contents of Locke’s library reflect his interest; there we find more copies only of the Bible than of *De officiis*. Locke’s library contains multiples editions of many of Cicero’s other works, as well as volumes of Cicero’s letters to his friends and family (Locke, Harrison, and Laslett 1971, 108–9). After Locke himself, the author whose work features most prominently in his library is Cicero.¹¹ Noting Locke’s meticulous recording of his opinions of the quality and value of these books, Mitsis writes: “the extent of Locke’s knowledge as well as his passionate interest in the details of various editions would, I think, be sobering to even the most bookish of contemporary classical scholars” (Mitsis 2003, 53).¹²

Locke’s published and unpublished works also show clear signs of his attitude toward Cicero. He chose for the frontispiece of *An Essay Concerning Human Understanding* a quotation from *De natura deorum*.¹³ The epigraph for the *Second Treatise* comes from *De legibus*.¹⁴ An unpublished essay called “Venditio,” on certain questions of

¹¹ Or, possibly: the second-most, depending on how one counts entries. Compare (Mitsis 2003, 55) with (Marshall 1994, 301).

¹² Mitsis also notes that Locke apparently so valued these possessions that “as an aged bachelor, Locke gave an expensive copy of *De Finibus* to his young sweetie” (Mitsis 2003, 53).

¹³ Although it is beyond the scope of this chapter to dwell on epistemology, Neal Wood is persuasive in suggesting that Locke’s skepticism about human knowledge and preference for speaking in terms of probability is connected to Cicero’s moderate skepticism (Wood 1988, 60).

¹⁴ This will be revisited below.

commercial ethics is modeled overtly on a discussion from the third book of *De officiis*. Perhaps most telling is a discovery among Locke's papers from the later part of his life: several pages on which Locke was working out an exact chronology of Cicero's life and works. This is notable because Locke is known to have attempted such a project for only one other individual: Jesus Christ (Marshall 1994, 301; Mitsis 2003, 53). Harkening back to the opening discussion of this chapter, we are again confronted the fact that the significance of Cicero to Locke's thought may be second only to Christianity.

Such a suggestion, of course, can only be demonstrated by an examination of Locke's works. But, at the very least, this evidence for Locke's interest in Cicero makes all the more surprising the lack of attention this relationship has received from scholars.¹⁵ Given the herculean detective work performed by many scholars to demonstrate the importance of Machiavelli to Enlightenment political thinkers even in cases where there is no reason to think that the latter actually read the former, one can only wonder what they would make of such clear evidence of a direct connection to Cicero. Even before any analysis of Locke's texts, it is clear from these biographical details that Locke was deeply engaged with Cicero's thought, and that this engagement influenced not only his work as a scholar, but his social life as a person. It would in fact be far more surprising if this influence did not also extend to Locke's political thought.

¹⁵ In addition to Mitsis and Marshall, Neal Wood and Benjamin Straumann also at least recognize that there is some connection between Locke and Cicero. But, as latter two are not centrally concerned with Locke, neither devotes more than a few paragraphs to exploring the nature of the relationship.

In what follows, I will demonstrate that Locke's political thought was in fact deeply indebted to Cicero. In blending together English republicanism and the new natural law, Locke reunites two modern Ciceronian traditions that had appeared opposed to one another. Locke achieves such a synthesis, I will further argue, by returning to the source, to Cicero's own thought. Cicero is thus in a sense both grandfather and godfather of Lockean liberalism.

5.2 The Conundrum of Locke's Natural Law

One of the pieces of evidence mentioned above provides perhaps the clearest sign that Locke's political thought (and not merely his social/ethical thought, *pace* Mitsis and Marshall) owes a great deal to Cicero. He chooses for the epigraph of his greatest political work, the *Second Treatise of Government*, Cicero's famous declaration: "*salus populi suprema lex esto*" [the welfare of the people shall be the highest law]. *De legibus* is noteworthy in part as the location of Cicero's most extensive elaboration of his doctrine of natural law. Locke also makes it clear from the very beginning of his own political *magnum opus* that his philosophy rests on a doctrine of natural law. In the *Second Treatise of Civil Government*, Locke refers to natural law almost immediately, in the first few lines of the first chapter. Here—as it often appears, natural law appears to have priority over natural rights—the right in question having to derive from natural law (or positive divine law) to be legitimate. Reiterating his argument from the first treatise, Locke writes that Adam's heirs lacked a right to dominion over the world, and adds that even

if they had such a right, there is “no law of nature nor positive law of God that determines which is the right heir in all cases” (II 1).¹⁶

Throughout the *Second Treatise*, Locke continues to appeal to the law of nature for his argument. It forms the basis for his claims about our rights, our conduct in the state of nature, and the powers and purposes of government. Yet, nowhere in this work does Locke define the law of nature, or explain what it is, where it comes from, or how we know its content. He is equally unforthcoming in the *First Treatise*, where he also refers repeatedly (although less often than in the *Second Treatise*) to the law of nature. He identifies the law of nature with “the law of reason” (I 101), but this is hardly illuminating.¹⁷

The absence of a clear definition of natural law seems to be a major problem for Locke, since his entire argument appears to rest on the content of this law. How can a reader evaluate Locke’s claims without access to the premises of the argument? How do we know the natural law enjoins what Locke says it does? For some readers, the solution to this problem is easy: we are not meant to take Locke’s assertions about natural law at face value.

There are in fact a number of influential scholars who deny that Locke really is a natural philosopher at all. More precisely, they deny that Locke himself believed in any

¹⁶ References for the *Two Treatises* are drawn from Locke and Laslett 1988, but cited parenthetically.

¹⁷ In the *Second Treatise*, he says that reason “is that law” (II 6).

natural law, and that his references to it were a rhetorical ploy to seduce readers into accepting his political prescriptions. The most notable of these is Leo Strauss, who argues in *Natural Right and History* that Locke intentionally left tensions in his work that could only be resolved by abandoning natural law as chimerical. Strauss focuses in particular on Locke's claim that the natural law is supported by sanctions of reward and punishment in the afterlife for obedience and disobedience. Yet, Strauss points out, Locke acknowledges the insufficiency of reason to prove that an afterlife exists. Since the natural law must be accessible to unaided human reason, Strauss argues Locke has on his own terms disproven natural law's existence (Strauss 1953, 203–4). According to Strauss, Locke's real natural law teaching is hardly different from Hobbes', who reduced the natural law to prudent calculation of self-interest (Strauss 1953, 220–31). For Strauss, the divergence between Locke and Hobbes is relatively small, and takes place on the grounds of deep agreement about the nature of human beings and the normative issues of politics.

Strauss's discussion is relatively cursory. The argument is presented with considerably more force and subtlety by Michael Zuckert in *Natural Rights and the New Republicanism*. Zuckert proceeds through a number of apparent tensions in Locke's work, relating to the role of reason, human self-ownership vs. divine ownership, and the role of natural rights. Zuckert resolves these tensions by arguing that Locke himself is leveling a sophisticated critique of natural law, particularly of the sort advanced by

Pufendorf and Grotius. Zuckert argues that once natural law and its theistic premises are debunked, the only thing left that remains are the natural rights that constitute Locke's real political agenda (Zuckert 1994, 258–59). As this chapter continues, I will respond more fully to the arguments presented by Strauss and Zuckert. But, as the logic of this chapter requires us to begin with Locke's natural law theory, some preliminary answer to Strauss and Zuckert seems necessary.

First, it is important to reiterate the frequency with which Locke appeals to natural law, especially in the *Second Treatise*. This fact alone establishes a presumption that Locke is serious about the natural law, and places the burden of proof on those arguing that Locke does not mean what he repeatedly says. Second, as I will argue, Locke's theory of natural rights is inextricably dependent on a theory of natural law. Thus, to remove the latter to allow the former to stand on its own is to destroy the foundation of the very structure Locke appears to be building. In this chapter, I argue that understanding Locke as depending on a Ciceronian idea of natural law can resolve many of the tensions that form the crux of the Zuckert-Strauss reading. For the purposes of this dissertation, there remains one other reason for viewing Locke as a theorist of natural law – even *if* the skeptical reading of it is true: the Americans who based their new regime in large part on Locke's political philosophy saw him as such.¹⁸ In an overt

¹⁸ A version of this last point is made by Steven Dworetz in *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution*, even though Dworetz himself finds the theistic natural law interpretation of Locke untenable (Dworetz 1990, 33-34). Zuckert acknowledges this as a valid point of view, but rightly notes that it

echo of Locke's language, they famously appealed to "the Laws of Nature and of Nature's God".¹⁹ Thus, whether Locke meant for it or not (and, again, I believe he *did*), natural law was a central part of the doctrine he bequeathed to those who followed him.²⁰ I will revisit some of the arguments for the Strauss-Zuckert position throughout this chapter, but it is important at the outset to provide some provisional reasons why an examination of Locke's thought can operate on the assumption that Locke was in earnest about natural law.

Returning to Locke's *Two Treatises*, we find that after systematically rebutting Robert Filmer's theological argument for the divine right of kings in his *First Treatise*, Locke turns in the *Second Treatise* to establishing his positive account of the nature, origins, and limits of political power. Whereas in the earlier work, Locke had engaged Filmer on his own ground (historically and theologically), in the latter he makes no such appeals. Locke's argument in the *Second Treatise* is almost completely ahistorical and does not appeal to any particular religious view (beyond positing the existence of a

is largely irrelevant to interpreting Locke on his own. For my part, I believe both the theistic and the natural law elements expressed by Locke are sincere, and I plan to show in this chapter that recognizing the Ciceronian valences in Locke's thought provides a way to read him that does not require us to abandon substantial portions of his argument in the *Second Treatise* as deliberate hokum. However, even for those unpersuaded about Locke's deepest intentions, the argument of this chapter should be valuable in understanding how the received version of Locke's argument might work.

¹⁹ It may be worth pointing out that the Declaration of Independence in fact appeals to the "Laws of Nature and of Nature's God" *before* moving on to rights, just as Locke does.

²⁰ An even more extreme version of Dworetz' point comes from Thomas Pangle, who argues that the American Founders, too, held esoterically skeptical views about the God of natural law (Pangle 1988, 289, n. 17).

creator god, which is not offered as an assumption but rather as a deduction by unaided reason). In this, Locke differs substantially from most other Whig thinkers, whose arguments often depended heavily on Protestant theology or claims about historically inherited rights of Englishmen.²¹ Peter Laslett argues that Locke's decision to abstract away from the historical enabled his work to retain its relevance better than other writers (for instance, Sidney) who reached similar conclusions (Locke and Laslett 1988, 79). This is undoubtedly true. But, that does not mean we should see Locke's ahistorical approach as primarily a tactical choice.²² Locke finds historical appeals inadequate to the task of finding the truly just political order, not least because Locke understands that "is" (or, in the case of historical arguments: "was") cannot straightforwardly yield any "ought".²³ The existence of tyrants in the past does not justify contemporary tyranny. Instead, Locke follows Grotius and Pufendorf by seeking a normative standard for politics that transcends any particular circumstance. Also like Grotius and Pufendorf, he locates such a standard in the natural law.

²¹ For comparison, consider Algernon Sidney's *Discourses Concerning Government* (Pangle 1988, 289), also highly influential among American colonists, which delves in painstaking detail into the specifics of the development of the English constitution to prove the author's claims.

²² In fact, Locke paid a price for his frame of argument in the shorter term. Even after the Glorious Revolution, the ascendant Whigs wanted to emphasize the continuity of the new regime with English history, rather than accept Locke's more radical interpretation. As a result, they "went to considerable lengths to disassociate themselves" from Locke's views (Ashcraft 1986, 184). See also, (Zuckert 1994, 101–2).

²³ Locke writes: "at best an argument from what has been, to what should of right be, has no great force"(II 103).

Locke begins his detailed discussion of the law of nature in the second chapter of the *Second Treatise*, simultaneously with his introduction of the state of nature.

According to Locke, we can only understand the true nature of political power if we “consider what state all men are naturally in, and that is a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man” (II, 4). Human beings are thus also naturally equal to each other in the sense that there is no “subordination or subjection” between any of them (II 4). All powers and claims human beings naturally have with respect to each other are reciprocal. The most prominent of these reciprocal powers is the right to enforce the law of nature by punishing those who violate it. This law wills “the peace and preservation of all mankind” It forbids us from harming the “life, health, liberty, or possessions” of anyone without provocation, and commands us to preserve ourselves, and—where this is not threatened—to preserve others as well (II 6,7).

There are a few immediately striking features of this law of nature, which Locke claims is somehow identical with the law of reason. First, although Locke does not define the law in any further detail, nor explain how we come to know it, it is clear that this law bears almost no resemblance to Aristotelian natural law. There are no inherent ends or intrinsic purposes. This law is much more like a law in the ordinary sense: it commands and prohibits certain actions and behaviors and is backed by the threat of

punishment and the promise of reward. Moreover, this law denies natural slavery and instead vindicates natural liberty and equality. It is equally clear that this law differs significantly from Hobbes' account of the same topic—even if both do posit natural human equality. For Hobbes, our equality rests on our mutual ability to kill each other (Hobbes 1996, ch. 13). In contrast, Locke grounds natural equality in our equal human dignity as creations and possessions of God: “for men, being all the workmanship of one omnipotent and infinitely wise maker... whose workmanship they are, made to last during his not one another's pleasure...furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us” (II 6). This difference from Hobbes forms an important explanation for why the commonwealths of Locke and Hobbes diverge so greatly in their characteristics. For Hobbes, our natural equality is a dumb fact, a practical rather than moral constraint. As a result, it raises no problem for Hobbes' if his proposed political solution limits liberty and abolishes equality. Locke's position places great normative weight on our equality and liberty, and thus any decent political arrangement will have to somehow justify itself against this standard. In all of these respects (as well as identifying natural law with reason), the content of Locke's law of nature seems closely connected to the Ciceronian natural law of Grotius and Pufendorf.²⁴

²⁴ See part 1 of chapter 4 of this dissertation.

Moreover, the idea of freedom found here shows a blending of the allegedly distinct liberal and republican conceptions of liberty. Locke repeatedly emphasizes the importance of non-domination. Yet, this non-domination appears valuable because it ensures that we are not interfered with by others as we go about our business. Still, all of these claims about freedom, equality, and justice advanced by Locke depend on his assertion that they are supported by the law of nature—a law of nature he still has not adequately explained or defined.

Some of Locke's contemporary readers were no less perplexed by his reticence to explain what he meant by "the law of nature," than are many modern scholars. Some readers, professing a similar view to that held by Strauss and Zuckert, read Locke's *Treatises* (along with his *Essay Concerning Human Understanding*) and concluded that Locke was in fact following Hobbes. They could point to passages in the *Essay* where Locke argues—citing Cicero for his authority—that our sense of virtue and vice is determined by public approbation and blame, which obviously varies according to time and place (Locke and Nidditch 1991, II.xxviii.13). They charged him with transforming the law of nature into prudential calculation of self-interest, abolishing natural standards of right and wrong, virtue and vice. Locke denied not only this view, but that he himself had ever even read the "justly decried" "monster of Malmesbury".²⁵ With respect to his argument in the *Essay*, Locke insists that readers misinterpreted his position. Locke

²⁵ For more on these controversies, see Horwitz's introduction to his book (Horwitz et al. 1990, 6-9).

claims that the passage shows where our ideas come from, not their correctness according to “the Law of Nature, which is that standing and unalterable Rule, by which they ought to judge” (*Essay* II.xxviii.11, note). But, despite these specific rebuttals about what his natural law is *not*, Locke nevertheless continued to refuse to offer a positive account of precisely what natural law is or where it comes from.

James Tyrrell, Locke’s friend, begged him repeatedly to respond to these charges, to explain what he meant by natural law, its relationship to divine law, and whether the divine rewards and punishments allegedly underpinning it could be demonstrated by the light of reason alone.²⁶ Locke’s continued refusal to do so further perplexed Tyrrell, since Tyrrell appears to have closely read an unpublished manuscript by Locke devoted entirely to natural law. Tyrrell could not understand why Locke would not vindicate himself by publishing it—nor did Locke explain his reasons for refusing. This work, which was only rediscovered and published in the mid-20th Century, was written in Latin and consists of a number of questions relating to the law of nature, which Locke proceeds to answer in turn. The contents of this manuscript go a long way toward helping us understand what Locke conceives the natural law to be.

²⁶ See: Horwitz et al. 1990, 20–29. That contemporaries should have leveled these concerns certainly adds plausibility to the Strauss-Zuckert thesis.

5.3 The Natural Law of the Questions: Reconciling *Honestum and Utile*

It is hazardous to attempt to interpret an author in light of unpublished writings—after all, writings often go unpublished for a reason. Nevertheless, this particular work was clearly more than an idle essay for Locke. He produced three copies of the manuscript, and even used an amanuensis to prepare a more polished version, which Locke himself then carefully read over and edited. According to Jenny Strauss Clay, the treatment of these manuscripts suggests the strong possibility that Locke—at least for some period—intended to publish the work. For these reasons, it seems legitimate to look to these *Questions Concerning the Law of Nature* for clarity about Locke’s views on the concept.

It may be that Locke chose not to publish because he found that he could not resolve some of the very problems identified by critics of his doctrine. But, it is also possible that Locke had more benign reasons for not publishing. It may be that Locke felt the job of explaining natural law had already been adequately done. In *Thoughts Concerning Education*, immediately after recommending Cicero’s “*Offices*” as the basic text (with the Bible) for educating a young man, he writes:

When he has pretty well digested Tully's *Offices*, and added to it, *Puffendorf de Officio Hominis & Civis*, it may be seasonable to set him upon *Grotius de Jure Belli & Pacis*, or, which perhaps is the better of the two, *Puffendorf de Jure naturali & Gentium*; wherein he will be instructed in the natural rights of men, and the original and foundations of society, and the duties resulting from thence. This general part of civil-law and history,

are studies which a gentleman should not barely touch at, but constantly dwell upon, and never have done with (Locke, 1989, sec. 186)

Striking about this passage is that Locke connects Cicero with Grotius and Pufendorf and lists these three as the teachers both of individual duty and of the principles of political society. Ruth Grant points to the same passage as evidence that Locke saw his project in the Second Treatise as the same as that undertaken by Grotius and Pufendorf (Grant 1987, 21–22). When we examine Locke’s unpublished *Questions Concerning the Law of Nature*, we find very close similarities between it and the accounts found in Grotius’ and Pufendorf’s work. More importantly for our immediate purpose, we find its argument compatible with arguments made in published works. For this reason, it makes sense to use it to help us shed light on the greatest lacunae of the Second Treatise: what the natural law is and how we come to know it.

The fact that the *Questions Concerning the Law of Nature* went unpublished is not the only feature that makes the work hard to interpret. The manner in which Locke writes also makes the task difficult. Unlike most of Locke’s other works, the *Questions* does not take the form of a straightforward, linear argument. It more closely resembles scholastic writings, in which questions are put forward and answers in the form of contending arguments are produced. Occasionally, Locke will refute one argument only several “questions” later, which can make it difficult to determine whether any particular argument is Locke’s final position. Nevertheless, a relatively coherent account of natural law can be drawn out of the work.

Locke's first question: "is there given a rule of conduct or a law of nature?" seems to get straight to the heart of the matter.²⁷ In his framing of the question, Locke implies that for him, the law of nature is identical to a universal rule of conduct.²⁸ Locke explains that such a rule has been referred to in different terms, all of which Locke finds acceptable, if properly construed. Cicero's formulations feature prominently in the vocabulary Locke uses: the law of nature is known as the "morally upright" (*honestum*), or as "right reason" (*recta ratio*).²⁹ In the latter case, Locke specifies that this cannot mean simply the faculty of the mind by which we speak and calculate, but rather "definite practical principles from which flow the sources of all virtues... what is rightly deduced from these principles is properly said to conform to right reason" (Horwitz et al. 1990, 99). This description fits with Locke's claims in other works, that the reason he endorses is not substantive (in the way that Plato's reason establishes ends for human life), but rather deductive, proceeding from established premises to draw correct conclusions (*Essay* II.i.34).³⁰ Finally, Locke gives his most comprehensive definition of natural law: "a law which each individual can discover by that light alone which is in us implanted by nature; to which too he ought to show himself obedient in everything... demanding a

²⁷ Diskin Clay translates the verb as "exist," but the word Locke uses is *detur*. Given the importance Locke's argument that the law does not simply "exist" but is rather "given" by God, it seems important to capture his sense here.

²⁸ Here we begin to see how Locke's ethics stand behind his politics.

²⁹ Horwitz et al. note the connection to Cicero's views expressed in *De Legibus* and *De re publica*, as well as the modernized version of the same concept in Grotius's work (Horwitz et al. 1990, 97 n. 6.).

³⁰ See also Grant (1987, 6–7, 21) for further discussion of this feature of Locke's understanding of reason .

rational account of his duty; and this is that famous precept 'live according to nature' which the Stoics urge upon us" (Q1).³¹

Locke finds this last definition most satisfactory, and uses it to distinguish natural law from any natural right: "for right [*ius*] consists in the fact that we have free use of something, but law [*lex*] is that which either commands or forbids some action"(Q1, folio 11). Locke explains that this law is not a "dictate of reason," as Grotius puts it (*De Jure* I.1.10), because reason does not lay down the law, but merely discovers it. In this correction, Locke follows Cicero rather than Grotius' innovation. His definition recalls Cicero's discussion in *De legibus*, where he too defines law as "right reason in commanding and forbidding" and separates natural law from natural right (*De legibus* 1.23, 1.33). The obligatoriness of the law derives both from the fact that its dictates are consonant with our rational nature *and* the fact that they are simply commanded by God. Locke's project thus more closely resembles Cicero's own in *De officiis* of demonstrating the fundamental unity of the *honestum* and the *utile* than that of Grotius.

This dynamic—that natural law expresses both what is conformable to us as reasoning beings and what is ordered by God—seems to be at the bottom of Locke's rationalism. It is how Locke resolves the tension between theistic and rational morality. The ultimate moral claims on us have a kind of double grounding: one deriving from our reason, the other from divine command. As we go along, we will also see that this

³¹ Here it is worth noting that Cicero was (rightly or wrongly) often numbered among the Stoics.

relationship can also help us to understand how Locke is able to describe obedience to natural law as both something in our self-interest and as something which trumps our self-interest.

Having established what natural law is, Locke then must prove its existence and account for how we know it. Locke explains that the “natural” feature of natural law means that it must be perceivable by human beings on their own, that is: without hearsay or special revelation. In this way, Locke distinguishes natural law from divine positive law (the spoken commands of God that one might find in the Bible and which most of us can only know through the testimony of others)—but not, of course, from divine law simply: both natural law and divine positive depend on God’s rewards and punishments for their sanction.³² To know such rules as law, Locke follows the definition of Grotius and Pufendorf and insists that law must be the known (or at least knowable) will of a superior and the rewards and punishments for obedience must also be known, since no one can obligate us without first having power over us (Q1, Q8).

Locke considers a number of accounts to prove the existence and knowability of the law, including Aristotle’s intrinsic ends, Grotius’ appeal to universal human consensus, and the Christian idea of an innate conscience. He rejects all of these. Locke’s critique of innate ideas, the same in the *Questions* and in the *Essay*, rules out any natural

³² This is not to say, as W. von Leyden does, that Locke felt that all laws, including human positive law were divine (Locke and Leyden 1954, 28). Obviously, human laws are not usually enforced by God’s wrath. For further critique of von Leyden’s position, see Horwitz (Horwitz et al. 1990, 49).

human conscience. Our ideas of right and wrong are taught to us by others; they are not innate. Locke refutes Aristotle and Grotius together by pointing out that an empirical look at human behavior reveals no such universal rules of behavior or ends. This refutation echoes Pufendorf's argument against Grotius (see p. 11 of ch. 3) and of Cicero's rejection of relativism in *De legibus* I.42, and II.13.³³

But, this raises a difficulty, which Locke acknowledges: if, in order to be binding, the law of nature must somehow be promulgated to mankind, how is it that the vast majority of humanity seem ignorant of all or at least some of it? Locke explains that the law of nature is in this respect like the principles of geometry. We do not need to rely on hearsay or revelation to understand the relationship of sides and angles in a triangle, yet few people have actually figured those truths out for themselves. As Locke puts it, using yet another analogy:

Good, rich veins of gold and silver lie hidden in the bowels of the earth, and moreover arms and hands and reason, the inventor of machines, are given to men, with which they can dig them out. Yet from this we do not conclude that all men are wealthy. First they much gird themselves for work and that wealth which has been hidden in the darkness must be excavated with great labor. It does not offer itself up to the idle and indolent (Q 2, folio 34).

For Locke, our vices—particularly our laziness and myopic concern for our narrow self-interest—prevent most of us from even bothering to try to figure out the true law of nature, contenting ourselves at most with what others tell us is right and just.

³³ In fact, Locke adopts one of Cicero's more peculiar arguments to claim that the intensity of human disagreement is in fact evidence of the existence of natural law: the disagreement shows that we feel the importance of the universal rule, but differ on interpreting it (Q 1, folio 17), compare to *De legibus* 1.47.

How then, should we reason rightly to understand the natural law? For Locke, all knowledge derives from sense experience, and knowledge of the natural law is no different. Locke begins with a relatively orthodox proof of the existence of God: the orderliness of the universe, the need for a first cause, and the fact that we are not the makers of ourselves leads us to recognize that there must be “some superior authority to which we are rightly subject, god, that is who holds over us a just and ineluctable power, who as he thinks proper [can raise us] to the heights of blessedness or thrust [us] down into wretchedness and punishment. From this... acknowledge of a legislator, or some superior power, to whom we are necessarily subject”(Q 5, folio 56).

Thus, Locke argues, reason establishes the essential criteria for a natural law: the existence of a superior, capable of rewarding and punishing us for obedience or disobedience to his will.³⁴ But, it is still necessary that reason also tell us what the divine will is. In language almost identical to that deployed by Grotius and Pufendorf, Locke argues that the same features in the observable world that point toward God’s existence illustrate also his will.³⁵ Since God does not create idly, we must be intended to use our faculties—especially reason—for God’s glory (Locke does not specify quite what this

³⁴ Horwitz notes that, when discussing the divine in this manuscript, Locke deliberately writes *deus*, rather than the Christian *Deus*, and occasionally refers to god in the pagan Roman manner reserved for Jupiter: “*optimus, maximus*.” For Horwitz, this is evidence that Locke’s manuscript contains contending voices: a pious Christian voice and an irreverent pagan one (Horwitz et al. 1990, 49). It seems to me more likely that, as Locke is attempting to demonstrate what is accessible to all—without the Christian revelation—he is adopting those references to the divine that would seem compatible with a natural religious mind, one that is likely to refer to the omnipotent as “the best and greatest.”

³⁵ Refer to part 1 of chapter 3 in this dissertation.

would entail, expressing his hope that there would be some later opportunity to discuss it). But, we certainly recognize ourselves as God's creation and therefore God's property, with an attendant duty to ensure our own preservation and even flourishing (Q 5, folios 60-61). Our own strongest natural impulses reinforce this same sense—and once again, God's command and our rational self-interest coincide.

We would likewise recognize that God has also created all other human beings and endowed them with reason, too. They are therefore the property and creation of God as well as we. Just as we are compelled to preserve ourselves as God's property, so too ought we preserve others whenever doing so does not conflict with our primary duty to ourselves. As a result, the first command of natural law with respect to others is the Ciceronian imperative to preserve human sociality: "[man] is impelled to form and preserve a union of his life with other men, not only by needs and necessities of life, but [also]... by a certain propensity to enter society, and is fitted to preserve it by the gift of speech and the commerce of language" (Q5 folio 61). Such a view precisely follows Cicero's account in *De officiis* of our duty derived from nature to preserve human sociality. There too, Cicero bases the duty upon our capacity for speech and reason, which compel us to associate both to acquire necessities of life and because we have a spontaneous desire for fellowship (*De officiis* I.12). It also echoes Cicero's claim the sovereignty of God over all of us places us in a community of law with all other rational

beings, united in our shared capacity for reason, and our shared subjection to the Creator (*De legibus* 1.22-23, *De finibus* 285).

Zuckert contends that the view expressed here amounts to Aristotle's claim that human beings are by nature political animals, which he traces through Cicero and Grotius (Zuckert 1994, 136).³⁶ But, in fact, this position places Locke in the Ciceronian camp *against* Aristotle. Aristotle's claim that we are political animals is a consequence of his argument that the city is natural. This he shows by arguing that the city achieves the end at which other associations aim: self-sufficiency.³⁷ The Lockean-Ciceronian position holds that society forms only partly to satisfy natural needs, we also desire company for its own sake.³⁸ We are in that sense naturally *social*, but precisely because we can gain some measure of self-sufficiency and even society without establishing political communities, we are not naturally political. Political life comes to be through contingent circumstances and human will.³⁹

Drawing this theory of natural law from the *Questions* allows us to see Locke's apparently abrupt pronouncements on the content of the natural law in the *Second Treatise* in a new light. We find the content of the natural law there identical to the

³⁶ Although, as mentioned above, Zuckert believes that Locke ultimately rejects the entire idea of natural law here discussed.

³⁷ Cf. Book 1 of the *Politics*.

³⁸ Pufendorf clarifies this very distinction (Pufendorf 1991, 133). Also, see chapter 2 of this dissertation.

³⁹ Nor is there any sense in Locke that political life is natural in the other Aristotelian sense, according to which the human *telos* is found in the exercise of practical reason in the experience of ruling and being ruled in turn. Cicero's pronouncements on the same subject are open to a wider variety of interpretations, but see (Hawley 2016) for my argument that Cicero in fact rejects this Aristotelian thesis as well, preferring to embrace a diversity of natural human ends.

content of it found in the *Questions*. This fact alone is strong evidence treating Locke as earnest in his discussions of the natural law. More importantly, we can now understand the reasoning whereby Locke arrives at his claims about what the natural law entails. What appears in the *Second Treatise* as a series of bald assertions about the content of natural law's commands does have a theoretical grounding. Moreover, the strong resemblance of Locke's reasoning in the *Questions* to the natural law theories of Grotius, Pufendorf, and Cicero—coupled with Locke's recommendation of those writers in the *Essay*, among other places—might explain why Locke felt it unnecessary to run through the argument again in the *Second Treatise*. Anyone who had been educated in the humanist tradition and had read their works (or anyone who had taken Locke's advice and mastered Cicero, Grotius, and Pufendorf) would see immediately why human beings have obligations to preserve themselves and others. His readers would likewise see immediately how our common condition as God's creations subject to his sovereignty means that there is no natural cause for any of us to rule another—thus grounding our freedom and equality in the same source.

But, Locke's formulation leaves out one final component necessary for establishing the validity of natural law: the existence of rewards and punishments. According to the Strauss/Zuckert thesis, this is where the Lockean version of natural law falls apart. They point to Locke's statement in the *Essay* that God has the power to uphold "divine law" with "Rewards and Punishments, of infinite duration, in another

Life" (*Essay* II.xxviii.8), and connect it with Locke's statements elsewhere in the *Essay* and in *The Reasonableness of Christianity* where he claims that reason cannot establish the existence of an afterlife.⁴⁰ If in fact our unaided reason cannot establish the rewards and punishments attendant on the natural law, it would seem that it no longer qualifies as natural law, and Locke's project of establishing a normative ground for politics accessible to all regardless of denomination has failed (or, in the Strauss/Zuckert reading: has rightly fallen away revealing Locke's true political teaching).

As I noted above, there is some plausibility to this argument. Locke nowhere explicitly responds to the problem as Strauss and Zuckert present it. However, I believe there is another, even more plausible reading of Locke's position that salvages natural law according to Locke's own criteria. It appears that Locke in fact presents two connected accounts of the rewards and punishments attending the natural law which illustrate both his indebtedness to Cicero's ethical-political thought, and his innovation on that Ciceronian foundation as he attempts his own reconciliation of *honestum* with *utile*.

First, we should note that Locke describes the "infinite" posthumous rewards and punishments as God's sanction for "divine law". The divine law, however, consists of two parts: positive divine law, which we know through revelation, and the natural law (*Essay* II.xxviii.8). While Locke undoubtedly claims that those posthumous

⁴⁰ See, for instance: (Strauss 1953, 202) and (Zuckert 1994, 211).

consequences for obedience and disobedience apply to both components of the divine law, there is no reason to believe he took them to be the *only* consequences supporting the two forms of law. If we come to learn about the eternal rewards and punishments through the revelation that brings us knowledge of divine positive law, might we not also discover other rewards and punishments connected to natural law through the same faculty of reason that brings us knowledge of it? In other words, might not the punishments attendant on natural law be natural?

Locke confirms this suspicion in the *Questions*. In his final question, he asks whether the foundation for the law of nature is each individual's self-interest, and almost immediately denies that it is. As a stalking horse for his argument, Locke chooses the same target as Cicero (and Grotius): Carneades. Using language taken almost verbatim from Cicero and Grotius, Locke attributes to Carneades the view that all decisions should be referred to the immediate self-interest of the individual agent.⁴¹

In rejecting Carneades, Locke clarifies that he does not mean that the natural law and private interest are opposed to one another—in fact the law is the “greatest defense” of the private good of individuals (Q12, folio 107). Locke asserts that “nothing is as conducive to the common advantage of the individual, nothing so protective of the safety and security of men's possessions, as the observance of the law of nature”(Q12,

⁴¹ Regardless of whether this is a fair depiction of Carneades' view, Locke uses him as Cicero does as the standard-bearer for total immorality. See notes 94-95 (p.235) of Horwitz (1990) for the several different places in which Locke appears to lift Grotius' and Cicero's descriptions of Carneades' views.

folio 108). The *general following* of the law of nature is in our interest because human cooperation and society can only persist if people deal fairly with each other. Without the natural law to provide a stable standard, our conceptions of virtue and vice would disintegrate, and therewith our ability to live together (Q1, folio 20).⁴² Developing an argument that is prominent in the *Second Treatise*, Locke insists that we are liable to be biased judges in our own case—that in many individual instances, we would be tempted to violate the law of nature. But, if people generally followed this principle, human society would become impossible and all the benefits we accrue from it would be lost. The immediate gain of violating the law of nature is thus outweighed by the high costs of making our “immediate’ self-interest our standing rule of action. Thus, Locke says boldly: “in truth, you want the decision of what is useful and what is not to reside in the power of another”(Q12, folio 108).

In this, Locke seems to follow Cicero closely. In *De officiis*, Cicero argues that, after the divine, the greatest benefactors of man are other men (*De officiis* II.10). Nearly all of the good things of this life come into being because of human society. For this reason, violating the natural law for our own short-term benefit harms us more

⁴² Jeremy Waldron mentions that it is a central hope of modern secular liberalism that one can surgically remove (or “bracket”) the theistic claims from Locke’s argument and still retain the rest of his liberal theory (Waldron 2002). A.J. Simmons, in his attempt to do just that, points to this kind of argument as Locke’s “rule-consequentialism” as the possible secular warrant for a Lockean view (Simmons 1992, 50). Eleanor Curran convincingly shows how God indirectly stands behind even this element of Locke’s theory (Curran 2013). My point here, however, is that even the rule-consequentialist argument presented is insufficient whether theistic at bottom or not.

generally because it undermines “the common life and fellowship of men.” It would be as if “every limb of the body thought it could profit by seizing the strength of its neighbor; necessarily the body as a whole would weaken and perish” (*De officiis* III.21). For his part, Locke brings Cicero himself into the argument, asserting that if we accept the Carneadean alternative, we must judge that Catiline “was a True Born son of nature and, since he invaded Rome, he was more deserving of empire over the world than Tully who defended it” (Q12, folio 112).

From this discussion, we see that Locke does believe that there are at least very obvious rewards for obedience to the natural law that can be discerned by unaided reason. Thus, “the rightness of an action does not depend on interest, but interest follows from rectitude” (Q12, folio 119). Punishments are discernable as well, at least on the level of society (the collapse of cooperation harms everyone). But, it is still not quite clear whether there is any rationally deducible punishment for the individual for breaking the natural law. After all, I can easily see how I benefit from a society in which people respect each other’s rights and property, but that does not give me a reason to do the same if I believe I could gain by being the only violator.

Locke recognizes this, and concludes the *Questions* with a reiteration of the importance of punishment as a sanction for all law. Yet, he does not offer there an answer to the problem. We find that solution, however, in the *Second Treatise’s* discussion of the state of nature, to which it is necessary to turn.

5.4 *The State of Nature and Rights: Locke Against Hobbes*

It should be apparent how Locke's account of natural law ensures that human beings originally find themselves in a state of nature. As we are all equal rational creations of God, there is no natural subordination of any of us to any other. There is therefore no natural government. The *First Treatise* establishes the same premise through Biblical arguments in a refutation of Filmer.

The account from the *Questions* also prepares us for how Locke's state of nature differs so radically from Hobbes'. Contrary to Strauss' claim, Lockean individuals are not the asocial beings that Hobbes' are. We are not naturally aggressive; we even seek each other's good when our own does not come into conflict. Nor is the state of nature one of lawlessness. The law of nature forbids us from harming ourselves or others and even commands our mutual aid and preservation when circumstances call for it (II 2). Immediately after summarizing the law of nature, Locke discusses who will enforce the law of nature and punish offenders: other human beings.

And that all men may be restrained from invading others rights, and from doing hurt to one another, and the law of nature be observed, which willeth the peace and preservation of all mankind, the execution of the law of nature is, in that state, put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree, as may hinder its violation: *for the law of nature would, as all other laws that concern men in this world 'be in vain, if there were no body that in the state of nature had a power to execute that law, and thereby preserve the innocent and restrain offenders* (II 7, emphasis added).

Locke here is responding precisely to the kind of critique made by Strauss and Zuckert.

He acknowledges that the law of nature would be "vain" without punishment, and

offers each person's own jealous defense of his own interest as the source of that punishment.

Locke uses a Ciceronian analogy in relation to this punishment. Cicero had likened those who violate the rules of justice by using force to beasts, who only appear as men and have in fact placed themselves outside of the community of human beings (*De officiis* I.105, III.82, *De legibus* I.30, etc.). So, Locke says about an aggressor: "having quitted reason, which God hath give to be the rule betwixt man and man, and the common bond whereby human kind is united into one fellowship and society...so revolting to his own kind to that of beasts by making force, which is theirs, to be his rule of right, he renders himself liable to be destroyed" (II 15).⁴³

Locke's logic thus far conforms closely to Cicero's claims in Book 1 of *De officiis*. As we recall from Ch. 1, Cicero asserted that the two principles of justice were that no one should harm anyone else unless provoked by wrongdoing, and that one should respect the property of others (more on Locke's views of the latter below) (*De officiis* I.21). When we are provoked by wrongdoing, we are entitled to deal out punishment to the offender sufficient enough to restrain them and to deter others from following his example (*De officiis* I.33). Locke echoes this language, saying the that right of punishment extends "to that degree, and with so much severity, as will suffice to make it an ill

⁴³ See further: (Grant 1987, 71). The anti-Machiavellian spirit of this argument should be evident from the discussion in chapter 3 of this dissertation.

bargain to the offender, give him cause to repent, and terrify others from doing the like” (II 8). With this final addition, Locke appears to have established the grounds for his understanding of the law of nature.

The final picture resembles very closely the Ciceronian version of natural law, although, like Grotius and Pufendorf, Locke expands and systematizes the role of the divine power standing behind the law. Recalling Locke’s own recommendations about teaching duty through *De officiis* and the Bible, we might see that Locke’s natural law theory consists of Ciceronian moral philosophy supported by a more overtly monotheistic natural theology.

This understanding of Locke’s natural law also helps us to better understand his theory of rights, especially as it relates to the other early modern theorist sometimes acclaimed as the founder of liberalism: Hobbes. Many scholars of various outlooks take Hobbes to be the crucial figure in the development of liberalism.⁴⁴ Insofar as both Hobbes and Locke present theories of pre-political natural rights and contracts in which Hobbes comes chronologically first, view is clearly true. It is not my intent here,

⁴⁴ Strauss, Zuckert, and others take Locke to be essentially Hobbesian in his basic premises, even if he draws different political conclusions. C.B. MacPherson’s famous argument about liberalism’s possessive individualism likewise places Hobbes and Locke in the same camp. Skinner, Pocock and others see Hobbes as the great opponent of their republican tradition, giving rise to the liberalism that would ultimately supplant it. In Sullivan’s account of the emergence of liberal republicanism in England, Hobbes provides the strain of liberalism that mixes with Machiavelli’s republicanism (Sullivan 2006). Of course, not everyone accepts this view. Judith Shklar famous claims that “Hobbes is not the father of liberalism” because “No theory that gives public authorities the unconditional right to impose beliefs and even a vocabulary as they may see fit upon the citizenry can be described as even remotely liberal” (Shklar 1989, 24). On this side we also have Locke’s repeated denunciation of Hobbes.

moreover, to attempt to adjudicate whether Hobbes or Locke deserves more credit (or blame) for inaugurating modern liberalism. Instead, I intend to show how recognizing the Ciceronian structure of Locke's natural law helps us to understand his theory of rights, and to see how Locke's rights differ in their nature and grounding from Hobbes', and finally how this difference can help explain why Locke derives a theory of free and limited government from his theory while Hobbes does not.

Simmons, expressing a common opinion, complains that Locke "offers no definition of a 'right' generally, nor does he ever say clearly what a right is" (Simmons 1992, 92). We have already seen that Locke offers at least the beginning of a definition in the *Questions*, where he explains that a "right [*jus*] consists in the fact that we have a free use of something, but law [*lex*] is that which either commands or forbids some action" (Q1, folio 11). We have seen already how Locke's language has sometimes implied that natural rights are derivative of natural law. Locke confirms this view: "man being born...with a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature, hath by nature a power to preserve his property, that is his life, liberty, and estate, against the injuries and attempts of other men" (II 87). The famous Lockean rights to "life, liberty, and estate" are simply the mirror image of those things from which we are prohibited by the law of nature. They exist (in a sense) in the negative space created by the duties of all individuals with respect to each other. To say that I have a right to something is to say that you have a

corresponding duty not to interfere with me over it. Pufendorf put this most succinctly: a right “in the strict sense” entails that there be a corresponding “obligation in another” (*De Jure* III.v.3).⁴⁵ This understanding of the relationship between rights and duties might well account for the initial affinity of Locke the rights theorist for Cicero the famous theorist of duties (*officiis*).

Pufendorf’s statement regarding the relationship between rights and duties is aimed explicitly at the theory of Hobbes. It is worth turning to Hobbes’ theory briefly, not only because Locke’s becomes clearer by contrast, but also because the differences in their views helps to explain how Locke is the only one of the two to draw liberal political conclusions from what appear to be common liberal premises. In doing so, we can also see Locke’s innovation on the Ciceronian tradition, giving rise to the powerful strain of overtly liberal theory that begins with Locke and continues through the American founding.

Hobbes is quite clear what he means by a right. Like Locke, he distinguishes right/*jus* from law/*lex*: “For though they that speak of this subject, use to confound *Jus*, and *Lex*, *Right* and *Law*; yet they ought to be distinguished; because RIGHT, consisteth in liberty to do, or to forbear; Whereas LAW, determineth, and bindeth to one of them.” Thus far, Hobbes and Locke appear similar. Their first fundamental right also at first appears to be the same, the right to life: “the right of nature, which writers commonly

⁴⁵ See on this: (Zuckert 1994, 275).

call *jus naturale*, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature." But, then Hobbes explains what he means by liberty: "By liberty is understood, according to the proper signification of the word, the absence of external impediments" (Hobbes 1996, ch. 14)). Elsewhere, Hobbes calls this condition in the state of nature a "blameless liberty" (Hobbes 1994, I.14.6).⁴⁶ This liberty is blameless because, as we have noted before (ch.3, p. 5), Hobbes denies that there are natural standards of justice and injustice, thus there is no reason for blaming any action taken in the state of nature. But, for the same reason, our apparently expansive rights come with no corresponding obligations for others to respect them. In the state of nature, each man is only "governed by his own reason" – which for Hobbes simply calculates the appropriate means to chosen ends, in this case: self-preservation. The laws of nature, Hobbes clarifies, "are not properly Lawes" they only become so once a sovereign comes into being that "obliges men to obey them" (Hobbes 1996, ch. 14). Until then, our right to life gives us a right to do or use anything we see fit for aiding our self-preservation, including the bodies of others.

For this reason, Hobbes' state of nature is a state of war: "that right of all men to all things, is in effect no better than if no man had right to any thing. For there is little use and benefit of the right a man hath, when another as strong, or stronger than himself hath right to the same" (Hobbes 1996, ch. 14). Thus, the Hobbesian solution is to give up

⁴⁶ See further on this: Spragens 1973, 179.

our rights, enter political society, and only then do obligations come into being: “when a man hath...abandoned or granted away his right, then he is said to be obliged, or bound” (Hobbes 1996, ch. 14). Whereas, for Locke, rights and duties appear together, for Hobbes, the presence of one entails the absence of the other.

Locke appears indeed to have Hobbes in mind in the *Questions* when he rails against the followers of Carneades, who think that “all right... should be determined by the interest of each individual” (Q12, folio 106). Locke even presents a powerful critique of Hobbes’ solution to the problem of the state of war that ensues from his premises. Hobbes suggests that we have an obligation not to break our covenant once we have agreed to give up our rights. But, Locke notes that there is no place to derive such an obligation from, if our self-interest would be served by breaking it: “men under the law of nature are [as these writers say] in a state of war. All society and trust, the bond of society, are destroyed. What reason for keeping promises, what force for the preservation of society...when all justice and equity is what is useful?”(Q12, folio 15).

Locke’s solution avoids this problem by drawing a conclusion from premises deeply embedded in the Ciceronian natural law tradition, which the tradition itself had nevertheless not considered. For all the cosmopolitan elements of the Ciceronian tradition as it appears not only in Cicero’s writings, but also in those of Grotius and Pufendorf, rights appear only among those in political society with each other. Rights

are the structure of just relationships and are reflected in law.⁴⁷ Following the Ciceronian tradition, we have seen that Locke takes the law of nature (*contra* Hobbes) to be a true law, binding, obligatory to all regardless of situation by virtue of the universal sovereign, God. Locke recognizes that it follows from this that the state of nature—even though it lacks political societies of human construction—is nevertheless a political society in one respect: it is under the sovereignty of God.⁴⁸ There is thus already the basis in Locke for a kind of natural cosmopolitanism of rights and duties.

The universal sovereignty of God means that the state of nature is not without law in Hobbes' "proper" sense, and we therefore are all in relationship with each other as subjects of this same sovereign.⁴⁹ This gives Lockean rights (and concomitant obligations) a firm grounding even before the rise of human political life. It also means that these rights, while strict in forbidding the interference of others, do not give us *carte blanche* to act as we will. We are forbidden from harming ourselves—or even of wantonly destroying animals or inanimate objects, since these, too, derive their dignity from being part of God's creation.

For Hobbes, rights have no ultimate moral justification, and are in a fundamental sense an obstacle to the establishment of peaceful political society. For Locke, rights have real normative weight as the obverse side of real duties that are commanded to us by the

⁴⁷ See ch. 1 of this dissertation.

⁴⁸ Not unlike the cosmopolis ruled by the highest god in Scipio's Dream.

⁴⁹ Since we are also social creatures—and not naturally asocial as Hobbes has us—we may have also considerably more substantial relationships with each other as well.

highest law. Not only does this make our entrance into political society easier to explain for Locke (as it avoids the Hobbesian problem with covenant-keeping), but more importantly, it means that any just political society will have to accommodate itself to rights by making them the central focus of the regime.⁵⁰ This, it seems to me, is the essence of the liberal innovation in early modernity, which Locke draws from Ciceronian premises, even if Cicero and his heirs up until Locke did not draw it themselves.⁵¹

5.5 Property

Before we move on to see how Locke's liberal political vision reflects this innovation, it is important to consider one peculiar right among those Locke finds natural: property. As we have already seen, Locke and Cicero share a great deal, but thematically, their concern for property and its relationship to the ends of political life may be the most obvious and striking of their commonalities. Both face the same theoretical conundrum. Both assume that, as Cicero puts it: "no property is originally private by nature" (*De officiis* I.21). In Locke's words, God "has given the earth to men in common" (II 26). Yet, both not only accept the natural justice of holding private property,

⁵⁰ It may seem as though Hobbes' commonwealth is also structured and fundamentally constrained by the right to life. After all, we form such commonwealths solely for the protection of our lives. Yet, Hobbes' sovereign is not constrained in this way. Because the social contract takes place only between the subjects and not between the subjects and the sovereign, the sovereign is not bound, and can therefore kill any of its subjects (although the subjects may resist such attempts) or commit any other offense against them, because justice is only ever what the sovereign decrees.

⁵¹ It is certainly one of the defining Lockean features of the new American regime.

but both go so far as to conclude that the protection of property is a primary goal of political society. In Cicero's words, "political communities and commonwealths were established particularly so that people could hold on to their property, true: nature first guided human beings to congregate, but it was in hope of protecting their possessions that they sought the protection of cities" (*De officiis* II.73). In noticeably similar terms, Locke writes: "the great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of their property" (II 124).⁵²

Thus, both Cicero and Locke begin from the same premise and arrive at the same somewhat counterintuitive conclusion. As discussed in chapter 2, Cicero never presents a single unified argument to account for either the *just* development of private property or why its protection is such a priority for a just society. Locke does. Although he depends on elements of Ciceronian logic throughout, he nevertheless offers a far more systematic account that achieves a major theoretical objective of Cicero's political thought, which Cicero himself never quite managed.

I explore at length Cicero's discussion of property in chapter 2, but it is worth revisiting briefly what Nussbaum finds so problematic about Cicero's account, since it is precisely this difficulty that Locke in an innovative manner attempts to solve. Cicero

⁵² Locke offers there a capacious definition of property that includes all of a person's natural rights to life and liberty, as well. But, at other points, he emphasizes the importance of actual physical property in the creation of political societies.

uses the Stoic analogy of the theater: “just as, though the theatre is a public place, yet it is correct to say that the particular seat a man has taken belongs to him, so in the state or in the universe, though these are common to all, no principle of justice militates against the possession of private property” (*De finibus* III.67).⁵³ But, this appealing analogy glosses over important facts: that in reality not everyone seems to have a “seat,” and that some of those “seats” were acquired unjustly. Cicero’s account of the origins of property in *De officiis* seems to recognize these features, but presents them without comment or acknowledgement that they pose a normative problem. There, Cicero lists among the original ways in which property was acquired both settlement in vacant land and conquest (*De officiis* 1.21). As I argued in chapter 1, Cicero’s apparent unconcern with these problems can be explained once we recognize that Cicero’s interest lies in the role property plays in facilitating justice within existing societies. Yet, if we subscribe to the notion that anything held justly must also have been acquired justly, Cicero’s position is open to Nussbaum’s critique that property originating in conquest and property originating in peaceful settlement “look morally different” and there is no reason to expect that “there is any close relationship between existing distributions and the property rights justice would assign” (Nussbaum 2000, 182)

⁵³ This analogy did not originate with Cicero, despite the fact that Grotius, Pufendorf, and others attribute it to him. Garnsey points out that the tendency to treat Cicero as the originator of this image is so pervasive that it even affects contemporary scholars, such as Waldron (Garnsey 2007, 113).

Locke's account of the origins of property is one of the most famous aspects of his political thought, and has been covered extensively by other scholars.⁵⁴ It is not my intent to add anything substantially new to the content of that scholarship. The purpose here is to show how Locke begins from Cicero's principles and reaches Cicero's conclusion by a new route—yet a route that depends on a number of Ciceronian insights. Locke accepts the view of Cicero (and Grotius and Pufendorf) that the world originally belonged to humanity in common. Locke explicitly rejects the Grotius-Pufendorf solution, that there must have been some tacit agreement among human kind to allow the divvying up of the earth.⁵⁵ If such a universal agreement were necessary from the start, mankind would have starved (II 28). Instead, Locke argues that the principle of self-ownership (or self-usufruct, as God is truly our owner) is sufficient to explain just appropriation from the original commons. Since we already have property in ourselves, the mere act of mixing that property with something previously unowned makes it ours. Locke admits some initial limitations to this right: our duties to avoid waste and to refrain from disadvantaging anyone else (by leaving "as much and as good" for others). These limitations, however, flow from the first insights of natural law: that the earth is the property of God, who has given it to all humanity in common (so we

⁵⁴ Including but by no means limited to: (Dunn 1982), (Macpherson 2011), (Garnsey 2007), (Zuckert 1994), (Grant 1987), (Tully 1980), and (Waldron 2002).

⁵⁵ See chapter 4 of this dissertation. See also (Garnsey 2007, 142–43).

must not harm it by wasting its fruits), and that all other humans are likewise subjects of God (so we must respect their interests as well).

The intuitive logic of Locke's argument relies on a view of the world which Cicero regularly emphasized. As I discuss in chapter 1, Cicero interprets the natural world as simultaneously bountiful and barren. On one hand, the entire earth exists for human benefit and consumption, and much that is useful can be extracted from it (*De legibus* 1.25). On the other hand, while other animals naturally acquire with relative ease all their basic necessities of life, we humans "supply ourselves with food barely—or not even barely—with great labor" (*De finibus* II.111). The earth is perhaps best described as *potentially* abundant, and can be made *actually* abundant only through the application of human reason and industry.

Locke expresses a similar view when he argues that uncultivated land produces one-tenth or even one-hundredth of what could be produced once it is cultivated by human industry (II 40). Our reason provides us with this ability to make land far more productive: "God gave the world to men in common... he gave it to the use of the industrious and the rational... not to the fancy or covetousness of the quarrelsome and contentious" (II 34). The multiplying effect of human labor on the productivity of land helps Locke once again reconcile individual self-interest with our duty to preserve our fellows. Locke explains:

he who appropriates land to himself by his labor, does not lessen, but increase the common stock of mankind: for the provisions serving to the

support of human life, produced by one acre of enclosed and cultivated land, are (to speak much with compass) ten times more than those which are yeiled by an acres of land... lying waste in common. And therefore he that encloses [ten acres] may truly be said to give ninety acres to mankind (II 37)

By applying our reason and industry to serve ourselves, we have in fact created a surplus that benefits the rest of humanity. In this way the collective ownership right of humanity over the world is not destroyed by individual appropriation, it is enhanced. The introduction of money by the tacit consent of all allows individuals to acquire and produce far more than they need without violating the prohibition on waste, and only intensifies the effect of this dynamic. Producers thus become benefactors of the community.

The classical republican tradition is often viewed as essentially opposed to commerce.⁵⁶ As a result, Cicero might not appear as a likely source for Locke's view that increasing wealth is a component of our duty.⁵⁷ Yet, Locke's own papers suggest otherwise. Marshall points to one of the earlier references Locke makes to Cicero in his notes, taken from book II of *De officiis*, "which declared that it was 'a duty to make money, but only by honourable means, and a duty to save and increase it by care and thrift'" (Marshall 1994, 300).⁵⁸ Strauss points out that Locke's illustration of the benefits of

⁵⁶ Machiavelli's claim that arms acquire gold better than gold can acquire arms (*Discourses* II.10.1) undoubtedly looms large in this interpretation.

⁵⁷ But, as noted in chapter 2, Cicero in fact approves of commercial life, as long as it is carried out on a sufficiently large scale.

⁵⁸ Cf. *De officiis* II.87, where Cicero goes on to refer readers to his own translation of Xenophon's *Oeconomicus*, which details how best to increase one's (agricultural) property.

rationally directed labor and cooperation (from loaves of bread to ships, irrigation, buildings, trade, etc.) resemble strongly Cicero's list of all the benefits of human cooperation in *De officiis*.⁵⁹

Locke goes on to expand his understanding of property to include all of a person's natural rights: "his property, that is, his life, liberty, and estate" (II 87). In bringing the ideas of property and rights closer together and in describing rights as something a person *owns*, Locke makes explicit and memorable something already present in the Ciceronian tradition. As we saw in the previous chapter, Grotius and Pufendorf write of rights as something an individual possesses. In chapter 2, we saw that Cicero's concept of rights also entails a sense of ownership, such that the rights citizens claim as part of the commonwealth are in a sense ownership rights. However, Locke's language concerning rights in the *Second Treatise* places a new emphasis on this aspect. This emphasis comes at the expense of the other sense in which the Ciceronian tradition construes rights: as the manifestations of justly structured relationships. This is why Pufendorf denies that rights exist in the state of nature, because rights only make sense in relationships with other people. We see from his *Questions* that Locke himself largely agrees with this view of rights, deriving them from the natural law and from our insight that we and others are all connected as subjects of God. In other words, for Locke too rights make no sense except in relation to others. But this facet or grounding of

⁵⁹ Cf (Strauss 1953, 237 n.110) Compare sections 40-44 of the *Second Treatise* to *De officiis* II.12-14.

rights is far less evident in (although, again, completely compatible with and in fact the grounds for) Locke's treatment of them in the *Second Treatise*, where they are introduced largely without the theoretical grounding provided in the *Questions*.⁶⁰ Since the legacy of Locke's political philosophy is derived almost entirely from the *Second Treatise* and since the *Questions* were not rediscovered until the mid-20th Century, the rights-as-possession aspect of Locke's theory came to dominate among those who followed him at the expense of rights-as-just-relations.⁶¹ In the concluding chapter of this dissertation, I hope to illustrate what conceptual difficulties in thinking about rights might be overcome if we recover what was lost in the latter formulation.

5.5 Natural Law and Limited Government

Having explored Cicero's importance in shaping the pre-political and super-political aspects of Locke's theory, it now remains to see how Locke's theory of government reflects those elements. From his deduction that no man has any superior by nature, Locke easily arrives at the conclusion that government is not natural. In this he agrees not only with Hobbes, but with the Ciceronian tradition as well (*Pro Sestio*, 42). Given all of their rights in the state of nature, it might at first be unclear why people would want to form political society.

⁶⁰ A still more extreme version of this same dynamic can be found in Robert Nozick's opening lines of *Anarchy, State and Utopia*, where Nozick (himself an avowed Lockean) simply presents individual rights-as-possession as an unexamined starting assumption (Nozick 1974).

⁶¹ C.B. Macpherson's (Macpherson 2011) critique of Locke's "possessive individualism" is perhaps the most famous expression of the view that takes this element of Locke's thought to be both central and deeply problematic.

Locke explains that the state of nature is no idyll. People in it are not in the state of blissful ignorance that would characterize Rousseau's state of nature. It is characterized by "inconveniences" arising largely from the right of each individual to be the executor of the law of nature. Cicero recognizes that human beings feel far more strongly slighted against themselves than against others, making us poor judges in our own cases (*De officiis* I.30). From this feature of our psychology, Locke imagines humans in the state of nature will be prone to overreact, to over punish those who have injured them even when they want to merely give an equal return for an injury they have suffered and as a result to find themselves locked into cycles of revenge in the state of nature, as each individual avenges himself as he sees fit (II 7). These dynamics, coupled with the chaos caused by a few individuals who disregard the law of nature entirely (and are like beasts in human form), mean that the state of nature will suffer from ineradicable violence. Locke nevertheless insists against Hobbes that the state of nature is not a state of war (II 19). Most people live at least roughly according to the law of nature: "men living together according to reason, without a common superior on earth, with the authority to judge between them" is the state of nature (II 19).⁶² Yet, the state of war constantly breaks out, also impeding the acquisition of property and the comfortable life most seek.

⁶² Note that humanity's natural sociability is evident here. People in the state of nature are not—as Hobbes would have it—"solitary." They live together, but without an authority over them.

In this, Locke's state of nature resembles neither that of Hobbes nor Rousseau so much as that of Cicero. Cicero describes the situation as follows:

For who of you... does not know that the nature of things has been such, that once, before there was any natural or civil law established, men wandered in a haphazard way over the land, holding just that property which they could either seize or keep by their own personal strength and vigor, by means of wounds and blood? Those men, therefore, who appeared to be most outstanding for virtue and wisdom... recognized the character of humanity's capacity for instruction and of their natural disposition, brought the formerly scattered men together, taking them from their old savage way of life and bringing them to justice and mildness of manners. Then came those associations devised for the good of man, called 'commonwealths.' (*Pro Sestio* 42).

Like Locke's, Cicero's state of nature is not the hell Hobbes imagines. But, it is extremely "inconvenient," and it lacks those comforts that come with human settlement and large-scale coordinated activity.

As a result, people find it far better to live under a common superior. Thus, they contract to form a commonwealth, and Locke arrives at the Ciceronian conclusion that we form political communities in order to preserve our property.⁶³ The consent of each individual is required for the newly established commonwealth to have any authority over them. It may seem that the centrality of consent places Locke firmly in line with Hobbes' new contractualist vision of politics. But, instead Locke is in fact developing an idea drawing on the Ciceronian tradition. Grotius and Pufendorf had concluded that some kind of consent was necessary to forming political society (see ch.3, p.17). Cicero's

⁶³ Whereas Cicero credits unnamed but outstanding individuals with seeing the benefits of political society, Locke's foundation takes place more democratically.

own definition of a commonwealth includes the element of a people “united in agreement about justice.” Whereas Hobbes accepts that the “consent” to the contract can be achieved by force, Locke follows Grotius and Pufendorf in requiring that the consent be given freely. More importantly, for Locke and Cicero, the agreement must be about true justice (i.e., the law of nature), which exists independently. This differs sharply from Hobbes’ account, where justice comes into being only with the commands of the newly created sovereign and is determined by the content of those commands.⁶⁴ This far more substantive idea of consent also provides the basis for Locke’s very un-Hobbesian theory of revolution.

On the terms of the contract, Locke once again departs widely from Hobbes. The parties to Hobbes’ contract forfeit all of the rights except one—their final right to self-preservation. In contrast, Locke’s individuals only surrender one right: the right to be executors of the law of nature, the right to judge offenses and punish wrongdoers for themselves. Thus: “all private judgment of every particular member being excluded, the community comes to be umpire, by settled standing rules, indifference, and the same to all parties” (II 87).⁶⁵ Government, as a result, is firmly limited in its power, as the people still retain most of their rights.

⁶⁴ See ch.1 of this dissertation, and compare to *Leviathan* 13-15.

⁶⁵ Elsewhere, Locke also grants that the individual gives up some of his natural liberty, but by no means all of it; only “so far forth as the preservation of himself and the rest of society shall require” (II 128).

Part of this gulf between Hobbes and Locke might be derived from their differing views on human sociability. If, as Hobbes asserts, human beings are naturally asocial and unavoidably in the grip of their tendency to pride, aggression, and other destructive passions, then it makes sense that the only way people can live together is under extreme constraint, of the sort provided by Hobbes' "mortall god" (*Leviathan*, 17). But, for Locke, human beings are naturally social, they want to live together and cooperate. Therefore, far less coercion would likely be needed to facilitate living together in security.

Still, at times, Locke's language leaves the impression that the power of government of the new commonwealth is nearly as unlimited as that of Hobbes' leviathan. Locke writes that "every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of the society to submit to the determination of the majority and to be concluded by it" (II 150). But, Locke clarifies that the amount of natural liberty that we give up here is only so much as is necessary for achieving the legitimate ends of the society: "he is to part also with *as much of his natural liberty*, in providing for himself, *as the good, prosperity, and safety of the society shall require*" (II 130, emphasis added). The "liberty of man in society" is still to live under these just laws and otherwise to dispose of himself and his possessions as he sees fit (II 22). Here we find the normative element of Locke's theory of limited government. Locke brings to its conclusion a train of thought running through

Cicero and his heirs in Grotius and Pufendorf, opposed equally by Machiavelli and English republicans as well as Hobbesian absolutists: that legitimate government has fixed limitations on its just powers. According to Locke, we cannot transfer to another person or group any right that we do not hold ourselves. We cannot therefore give any government the kind of unlimited power we ourselves lacked in the state of nature.

Locke thereby rules out absolute monarchy as a legitimate form of government (II 90). In giving any person absolute domination over myself, I am granting someone the right to kill me, which I have not myself. Like the English republicans, Locke accepts the dichotomy of liberty and slavery, and accepts that the latter is characterized by domination, the presence of absolute and arbitrary power (II 23). At the same time, Locke shows how the distinction between republican and liberal freedom alleged by Pettit is incoherent. Locke rejects the legitimacy of domination as much as any republican, but he sees that domination as evil precisely because it empowers the dominator to violate the (negative) rights of those subject to him. Our liberty to dispose of ourselves is never secure under conditions of domination. Pettit argues that liberalism's ideal of freedom is compatible with the idea of a benevolent absolute master. According to him, liberal freedom is achieved as long as the master does not make use of his power to interfere with his subject. But, such a counterfactual would make no sense to Locke. According to him, anyone who would try to get me into his absolute power must not have my interests at heart.

More compelling is the suggestion that Locke's contract places the property of all at the disposal of the community. James Tully points out that Locke insists that when one consents to the social contract, one "submits to the community, those possessions, which he has, or shall acquire" (II 120). Locke continues: "it would be a direct Contradiction, for any one, to enter into Society with others for the securing and regulating of Property: and yet to suppose his Land, whose Property is to be regulated by the Laws of the Society, should be exempt from the Jurisdiction of that Government" (II 120). From this Tully concludes that the distribution of property is now entirely conventional.⁶⁶

But this view would be difficult to square with Locke's view expressed even in the quote cited by Tully that we form governments in part to secure our property. It seems far less contradictory for Locke to view government's relationship to property in the same light as government's relationship to the freedom of its citizens. It has power over those things necessary to achieve its just ends or to execute the law of nature. That would give government the right to adjudicate in any disputes over property, to punish offenders, and compensate victims through the seizure of property, and to satisfy the duty under natural law that we preserve others commensurate with our own self-preservation. Locke in fact demonstrates that this alternative view is correct when he

⁶⁶ See: (Tully 1980, 165). Tully views this as a kind of coming full circle of Locke's theory of acquisition, whereby we are free to acquire private property as long as 'enough and as good' are left for others, yet when we come together and land becomes scarce, our rights conflict and all property reverts to communal ownership.

explicitly denies government absolute authority in matters of property. In dealing with wrongdoers, Locke writes that magistrates have the right to punish or—when the good of society calls for it—refrain from punishing lawbreakers. But the same magistrate “yet cannot remit the satisfaction due to any private man for the damage he has received” (II 11). Since the right to reparation remains with the victims, they are entitled to demand compensation, and the agent of the government has no right to refuse them that, regardless of the benefits to society that might be had from forbearance. As is the case with an individual’s liberty, the government is the unbiased “umpire,” but it is firmly constrained by the law of nature, and by those rights not yielded up to it in the social contract. Property rights are now subject to regulation, but they are not conventional nor are they totally elastic.⁶⁷

The fact that the law of nature demands that we preserve the lives of others when there is no threat to our own would seem to give the government some limited right of redistribution. Locke by no means construes this right in the state of nature to be anything like a right to equal property, or even to comfortable living. But, there is no reason to believe that we are relieved of our duty to keep others from extreme privation by joining society. Locke does not address this issue directly in the *Second Treatise*, but

⁶⁷ Straumann argues that the taking of property would be arbitrary, and thus in violation of Locke’s conception of the legitimate forms of power (Straumann 2016, 318–19).

his *Essay on the Poor Law*, which endorses a very limited welfare (or we might call it “workfare”) scheme, seems to follow logically from the premises found here.⁶⁸

Locke’s position on taxes likewise illustrates the natural limitations of government. Like Cicero, Locke accepts the theoretical principle that a wide variety of forms of government could satisfy the requirements of a legitimate commonwealth, even simple monarchy (II 74).⁶⁹ But, for any large or complex society, the only good practical form of government will be mixed. Governments of large territories require taxes to maintain themselves in a way that a king of a small clan would not. Yet, Locke denies that all legitimate governments have the right to tax their people. Only those governments that can gain consent from their citizens either directly or through some body of representatives may take their property to support themselves:

governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent, i.e., the consent of the majority, giving it either by themselves, or their representatives chosen by them: for if any one shall claim a power to lay and levy taxes on the people, by his own authority, and without such consent of the people, he thereby invades the fundamental law of property, and subverts the end of government: for what property have I in that, which another may by right take, when he pleases, to himself? (II 140)

Locke goes on to insist that mixed government ought to contain three elements.

Although the branches he identifies do not correspond perfectly to those later enshrined

⁶⁸ In “Venditio” as well, Locke outlines the responsibility we have in society to keep others from starving.

⁶⁹ Like Cicero, Locke assumes that simple monarchies were the first forms of government.

in the American constitution, the separation of powers serves the same function: to protect by institutions the constraints on government that already exist by the law of nature. In other words, the separation of powers works to ensure that the theoretical normative limits on government are also actual practical limits. Locke distinguishes the legislative, executive, and federative powers of government (II 143-145). The first is the supreme power, emanating directly from the people. If the legislative power is held by a body of representatives, rather than the people themselves, it is delegated to the former by the latter as a "trust." In this way, Locke remains faithful to the Ciceronian tradition of locating ultimate sovereignty in the people. But, it places Locke opposite most of his contemporary Whigs, who located supreme authority in the Parliament. Moreover, the representatives may not exempt themselves from the laws that they make. Thus, a separate executive power must exist which ensures that the makers of law must also live under it. Here Locke again deviates from both Hobbes and the Machiavellian republican tradition, neither of which accepts that the makers of law should be limited by it. Finally, Locke identifies the federative power, which allows the government to marshal the resources of the state for the common defense (which Locke grants naturally also belongs with the holder of the executive office).

This arrangement, while not as developed a conception of constitutionalism as would later be elaborated by the American Founders, nevertheless reveals that Locke shares with Cicero a commitment to divided government. Here again we see how Locke

provides a more authentically Ciceronian synthesis of the English republican and new natural law traditions. With the former, Locke opposes arbitrary authority, and with the latter, he envisions politics limited by universal moral standards. Following Cicero, he proposes a solution endorsed by neither to ensure that those normative aims are reflected in the realities of government: division of powers.⁷⁰ While not quite Cicero's "blending of rights" (*De legibus* 3.28), Locke envisions a government where the separation of powers ensures that our rights are protected against "arbitrary power," which is at bottom always a form of slavery. As Straumann writes: "given human frailty and the temptation to 'grasp at Power' and to 'act contrary to the end of Society and of Government,' the various powers have to be limited by law and separated, that is they themselves have to be subject to a constitutional framework (Straumann 2016, 318)."⁷¹

Locke's recognition of the imperfection of any humanly arranged government leads him to present forcefully one final safeguard for our natural rights, the extra-constitutional right of revolution. Like Cicero, Locke understands tyranny not as particular to monarchical government (II 201). Rather, tyranny arises whenever "the power, that is put in any hands for the government of the people, and the preservation of their properties, is applied to other ends, and made use of to impoverish, harass, or subdue them to the arbitrary and irregular commands" (II 201). Thus, governments of

⁷⁰ As noted above, English republicanism's conflicts with the crown had driven its leading proponents to argue for Parliament's absolute and undivided authority.

⁷¹ Thus, Straumann identifies Locke as following a Ciceronian tradition of constitutionalism.

the few or the many may also be tyrannical when they abandon the rule of law.

“Wherever law ends, tyranny begins” (II 202). Neal Wood connects Locke’s doctrine of revolution with Cicero’s arguments for tyrannicide (N. Wood 1988, 192).⁷² Locke’s proposal for the division of powers is meant to thwart the development of tyranny, by ensuring the existence of a separate power that compels the lawmakers to obey the laws they enact. But the human tendency to “grasp at Power” and the contingencies arising from unpredictable political developments mean that we can never be sure that even a well-established government will not degenerate into tyranny.

In such an event, we have a natural right to rebel grounded in the fact that it is only our consent that makes any government legitimate. Actually, according to Locke, those truly guilty of rebellion are those responsible for the government’s violation of the “trust” placed in it by the governed. Since our natural right to our life is unalienable, and since the arbitrariness of tyranny threatens that right just as all arbitrary power does, we have a right and duty to resist. In this, Locke builds upon one of the few common doctrinal points present in both the new natural law theorists and the English republican tradition. Unlike the latter, Locke does not justify revolution as a means to recover historical privileges. Unlike the former, Locke does not then layer over the right

⁷² For Wood, this connection is lamentable. He sees both Cicero and Locke as mere apologists for landed ruling aristocracies, who invent imaginary distinctions to legitimate resistance to popular reformers, while prohibiting outbursts of violence from the truly oppressed classes. Although such a view may be demanded by a Marxist interpretation of both thinkers, certainly neither presented his own thought in such a way. For Locke and Cicero, all members of society benefit from the regularities of life brought about by the stand rules of law. In violating those rules, the tyrant wrongs rich and poor alike.

of resistance so many conditions and caveats as to make it a near practical impossibility (Tuck 1982, 79).

Of course, Locke's Ciceronian theory of natural law places a high value on the preservation of human society. As a result, he makes it clear that his theory is not intended to justify constant eruptions of violence from the dissatisfied (II 228). The right to resist lies in all of us as individuals, but the occasional wrong against a particular member of society does not energize the mass to revolt. Locke's emphasis on humanity's natural sociality and even natural conservatism leads him to believe that most will bear a considerable amount of evil from their government before rising against it (II 223).⁷³ It would take "a long train of abuses, prevarications, and artifices, all tending the same way" subjecting the people to constant and unjust depredation to prompt a general revolt. When the people do rise, it is in fact as a defense of human society against governors whose actions place themselves outside of it, becoming the animals in human guise who are liable—according to both Cicero and Locke—to be destroyed as threatening beasts.

5.6 Conclusion: Liberalism Out of Cicero's Republicanism

A loyal subject of William and Mary, Locke's political philosophy never approaches republicanism in Skinner's nominal sense of anti-monarchism. The

⁷³ Although, at times, Locke appears to lament the fact that human beings are quite so stolid.

American Founders would accomplish that final task as they developed a far more sophisticated constitutional doctrine to protect the rights than Locke had elaborated. Nevertheless, Locke represents the penultimate (and by far the most significant) step in the development of the liberal republicanism that would come to greater perfection in the American Founding. He had reestablished the link between the negative rights of individuals and the idea of a self-governing political community. Machiavelli's critique had prompted a division among followers of Cicero. A universal moral framework for politics no longer seemed compatible with political freedom; and it appeared necessary to both English republicans and the new natural law theorists alike to choose between the two. Drawing faithfully but creatively from Cicero, Locke illustrates that the Machiavellian choice is a false one. Human freedom and a moral basis for politics are in fact inextricably linked.

From the forgoing analysis, we can see how deeply indebted Locke's project is to Cicero, and how much clearer certain ambiguities in Locke's thought become once we are aware of this relationship. Not only did Locke bring together the two opposed traditions of English republicanism and new natural law that were themselves in different respects indebted to Cicero, but Locke himself achieved their synthesis by returning to their common origin. At the core of Locke's political philosophy is a doctrine of natural law that is essentially drawn from Cicero. This natural law provides a standard outside of historical contingency to evaluate politics and to limit the just

powers of government. Developing a concept of rights in line with Cicero's, Locke innovates by imagining these rights existing in our pre-political state and placing them at the center of the proper ends of government. Locke embraces an understanding of freedom that encompasses non-interference with the life or property of others, but recognizes that such a freedom is completely incompatible with a situation of domination. In this way, Locke follows Cicero in rejecting the very liberal-republican dichotomy proposed by Pettit, Pocock, and others. Locke's similarities with Cicero on the importance of property, the value of human society and cooperation, mixed government, tyranny, and the right of revolution flow largely from this initial connection. In the same way that we might describe Aquinas as Aristotle made Christian, I think it would be equally fair to see Locke as Cicero made modern.

It is not accidental that one of the early modern thinkers most engaged with Cicero's thought elaborates a comprehensive account of just government, for which the primary end is to secure the rights of the individual against harm and interference. Locke draws out the latent liberal elements of Cicero's theory of duties to build his system of rights. In this way, Cicero provides much of the logic that guides Locke's political thought as well as the central normative and practical concerns that motivate it. Locke integrates elements of Christian monotheism and modern epistemology and science with Cicero's political philosophy. But, in this synthesis the underlying moral-political concerns remain largely the same. In the next chapter, we will conclude by

examining how the American Founders built upon this Lockean system to construct liberal republican constitutions. But the theoretical work in describing a framework for connecting the concepts of rights, property, and just government had already been laid out in Locke's reception and adaptation of Cicero.

[In Cicero's letters and orations] we see the true character of the times and the passions of all the actors on the stage . . . Cicero had the most capacity and the most constant as well as the wisest and most persevering attachment to the republic. Almost fifty years ago I read Middleton's Life of this man... change the names and every anecdote will be applicable to us.

—John Adams to Benjamin Rush

Chapter 6: An American *Res Publica*

When the delegates at the Second Continental Congress voted to adopt the Declaration of Independence and to “dissolve the political bands” that had connected them with their mother country, they were deeply self-conscious that they were doing something profoundly novel. Both at the commencement of the revolution and again during the crafting of the Constitution of 1787, many of the leading founders waxed almost poetically on the newness of the American enterprise. As John Adams describes it:

a period, when the greatest philosophers and lawgivers of antiquity would have wished to live...of circumstances without example, has afforded to thirteen colonies, at once, an opportunity of beginning government anew from the foundation and building as they choose. How few of the human race have ever had any opportunity of choosing a system of government for themselves and their children! (Letter to John Penn)

In 1782, they would choose for the Great Seal of the United States the motto: *novus ordo seclorum* (a new order for the ages). Madison likewise writes that it is the “glory of the people of America” that they “accomplished a revolution which has no parallel in the

annals of human society” (*Fed* 14). Yet, there was a simultaneous tendency among many of these same individuals to emphasize that what they were attempting was perfectly in keeping with commonly accepted—even ancient—views. For instance, Thomas Jefferson writes that his draft of the Declaration was based on the recognized authority of “Aristotle, Cicero, Locke, Sidney, &c.” (Letter to Henry Lee).

How could the Founders see themselves simultaneously as a radical break from and as loyal adherents to an ancient orthodoxy? In part, this apparent paradox disappears if we recognize that the Americans saw themselves as innovating very little in the area of political philosophy—in discerning the nature of justice, determining the role of the state, etc.⁷⁴ But, to actually, self-consciously attempt to construct a government *de novo* on the basis of these principles? The Founders could see no precedent for that. In this concluding chapter, I explore briefly how a conception of political life first articulated by Cicero breaks decisively out of the realm of theory and is made real in the American Founding. In doing so, we will also see the ways in which the practical difficulty of bringing theory to bear on reality prompts the Americans to make some theoretical innovations of their own in the area of constitutionalism.

By illustrating the way in which the American founding can be seen as a culmination of the Ciceronian tradition—issuing in authentically liberal republicanism—

⁷⁴ Although, they saw themselves as contributing something new in a few areas, such as the possible territorial size of republics.

I intend this chapter also to intervene in the great debate over the nature of the American founding that has been a central point of contention between the neo-republican camp and its critics. The failure to see the influence—direct and indirect— of Cicero on the Founding generation has prevented scholars from seeing the underlying unity and continuity of what took place between 1776 and 1787.

I therefore begin this chapter by first briefly surveying some of the major strands of scholarship on the American Founding, especially by those who look to it as the decisive point in the relationship between liberalism and republicanism. From there, I turn to the Founders themselves, and show the widespread acceptance of the Ciceronian tradition's conception of a commonwealth, the role of justice, rights, natural law, and the organization of political powers. We will also see how the practical problem of establishing a state on these principles leads the Americans to make their own contribution to this tradition as they engage in constitution-making. Finally, I will step back from the historical orientation of this dissertation to suggest what we might understand about our political situation now that we see the role Cicero has played in shaping it.

6.1 The Place of the Founding in the Republicanism-Liberalism Debate

In addition to being an event of great historical importance to understanding American political thought and life, the American Founding occupies a central place in

the great debate over the relationship between liberalism and republicanism.⁷⁵ This scholarly focus might seem odd given that this period produced few philosophical works of the first order.⁷⁶ But, the importance of the American Founding to this discourse makes sense once we recognize this event as a time when political life was organized in a self-conscious attempt to bring theory into practice. Thus there is a special probative value for claims about the relationship between liberalism and republicanism as traditions (or families of ideals and concepts) when we can see how they relate in fact rather than merely on paper. Moreover, since the American Founding issued in a written Constitution, whatever settlement that was achieved in this moment shapes the present in a more direct way than any purely intellectual movement. We live in a country whose fundamental political arrangements and institutions (and, to at least some extent: values) are determined by the decisions and documents that came out of this period. As a result, our views about the possible contemporary relevance of this liberal or republican divide depend at least in part on our evaluation of what took place in the last decades of the 18th Century in America.

⁷⁵ For the purposes of brevity, I use the terms “Founding” and “Founders” to refer to the period stretching from the War of Independence through to the ratification of the Constitution of 1787 and the figures involved in both. I do not deny that we may speak of them as “two foundings” (Lim 2014), and there will be times when it is important to distinguish between the Revolutionary period and the ratification of the Constitution. But, I will argue that there is far greater unity to the two moments than is suggested by scholars such as Elvin Lim and Gordon Wood, and that it is not essential to *always* distinguish between the two, especially given that many (although, by no means all) of the actual individuals involved were the same.

⁷⁶ *The Federalist Papers* and John Adams’ *Defence of the Constitutions* are undisputedly the best products of this period, but they are rarely placed in the same category as Aristotle’s *Politics*, Machiavelli’s *Prince*, or Locke’s *Second Treatise* in terms of originality or philosophical depth, even by those who specialize in studying them.

In this light, it is then hardly surprising that the American Founding would feature as the central point for many of the great scholarly works that make up both the historical and conceptual elements of the liberalism-republicanism discourse. There is, of course, a nearly endless amount of scholarly literature on other theoretical aspects of the Founding as well. In this chapter, I focus on the most important of those that are connected to the liberalism-republicanism debate (and often, by extension, to the ancients-moderns debate).

First, let us consider the works of the three important scholars who all broadly fit into the contemporary republican (or neo-Roman/civic humanism) camp: Gordon Wood, Bernard Bailyn, and J.G.A. Pocock. Each has had a powerful role in shaping the contemporary views of the American Founding. All three were influenced by one another's work, yet they all also offered slightly different interpretations of what took place.⁷⁷

Chronologically first is Bailyn's *Ideological Origins of the American Revolution*. Bailyn did not believe that the Americans were "motivated" by the abstract arguments of philosophers and constitutional theorists (Bailyn 1992, 11). However, he did believe that the American intellectual world was shaped by a number of different traditions of discourse. Bailyn identifies five such traditions: classical political thought, Puritanism

⁷⁷ The following discussion is indebted to Zuckert's helpful exploration of the relationship between these three.

(and Protestantism more broadly), English common law, Locke and other Enlightenment philosophers, and the English opposition tradition (including both English republicans and their intellectual heirs among the Whigs, such as John Trenchard and Thomas Gordon).

According to Bailyn, by far the dominant of these traditions for Americans was the English opposition tradition, the vessel of English republican thought. Although Bailyn seems to acknowledge the ubiquity of Locke and admits that he is “cited often with precision on points of political theory” (Bailyn 1992, 28), he takes Locke’s role to be far secondary to the tradition of English republicanism. The true formative role belongs to English republicanism. Bailyn assigns a particularly important role to Algernon Sidney’s *Discourses on Government* and the series of essays by Trenchard and Gordon, “Cato’s Letters” (Bailyn 1992, 34–35).

As for the classics, Bailyn acknowledges that they were “everywhere in the literature of the revolution, but are everywhere illustrative, not determinative of thought” (Bailyn 1992, 26). Bailyn suggests that Americans’ classical learning was very broad and rhetorically useful to call upon for authority in political arguments, but also essentially shallow. Bailyn notes one exception to this general superficiality of learning: “their detailed knowledge and engaged interest covered only one era and one small group of writers.” “What gripped their minds, what they knew in detail” was the period surrounding the end of the Roman republic. According to Bailyn, “they had at hand and

needed only, Plutarch, Livy, and above all Cicero, Sallust and Tacitus”(Bailyn 1992, 25). Yet, despite acknowledging the importance of at least these writers to the Founders, he continues to insist that the classics were “not the source of political and social beliefs”(Bailyn 1992, 26). Below, I will suggest a possible reason for Bailyn’s decision to ignore the significance of his own evidence about the role of at least some classical ideas to the Americans’ political understanding. But, for the moment, the central relevant element is that Bailyn identified English republicanism (or “Opposition thought”), classical thought, and Lockeanism as separate intellectual traditions for the American Founders; the influence of each group existing in uneasy tension with the others. Bailyn makes no claims about the eventual triumph of one strand to the exclusion of the others, but he does take English republicanism to be the predominant force that drove the American Revolution.

Following on Bailyn’s treatment, Wood sharpened the distinction between the Lockean-liberal and Whig-republican strains identified by the former. Wood’s depiction of the Founding is stark in its portrayal of a showdown between the traditions of liberalism and republicanism. For Wood, there were essentially two founding moments, the first in 1776 with the Declaration of Independence and the second in 1787 with the ratification of the new Constitution. This idea of two foundings would be further elaborated by Lim. For Wood and Lim, the second founding was essentially a betrayal of the first.

Wood improves on Bailyn's treatment somewhat by seeing the connection between classical Roman republicanism and the modern expressions of English republicans. But, like Pocock (and, to a certain extent, Skinner), Wood lumps together as part of one great republican tradition Aristotle, Cicero, Machiavelli, Montesquieu, and the English Whigs. Moreover, it is on the implicit basis of this indiscriminate combination that Wood distinguishes far more sharply than Bailyn this republican tradition from Lockean liberalism (Wood 1969; 29, 50). Whereas Bailyn had discussed "overlaps" between Locke and the republican sources (without, however, taking the next step and recognizing their fundamental connection), Wood saw totally incompatible alternatives.⁷⁸

For Wood, classical republicanism promoted an idea of liberty that was entirely public, identical to "participation by the people in government" (G. S. Wood 1998, 61). Such a vision of liberty required the total commitment of citizens to sacrifice their own private interests to the public good. Wood writes that "ideally, republicanism obliterated the individual" (G. S. Wood 1998, 24).⁷⁹ Wood sees this idea as the initial impetus to the American Revolution. The developments leading to the ratification of the

⁷⁸ Compare (Bailyn 1992, 34).

⁷⁹ In this, Wood's view of republicanism seems to be shaped by Montesquieu's judgment of the classical republics, which he wrote were animated by a painful, self-forgetting virtue (Montesquieu 2009; bk4, ch5). Although Hannah Arendt wrote before the contemporary debate over liberalism and republicanism at the Founding had truly erupted, she too believed "it was a question of whether the new government was to constitute a realm of its own for the 'public happiness' of its citizens, or whether it had been devised solely to serve and ensure their pursuit of private happiness more effectively than had the old regime" (Arendt 2006, 133).

Constitution were another revolution entirely—a modern liberal one that “shattered the classical Whig world of 1776” and “marked the end of the classical conception of politics”(G. S. Wood 1998, 606). In establishing a government that protected rights and supported the individual pursuit of self-interest over Spartan commitment to the community, Americans had allowed Lockean liberalism to triumph over republicanism.

Pocock occupies a distinct third position in this group. Like Wood, Pocock sees a fundamental connection between classical republicanism and its more modern expression, characterizing all modern republican thought as essentially Machiavellian. Pocock also agrees with Wood in drawing a very sharp line between liberalism and republicanism. But, unlike Wood, Pocock simply finds no place at all for Locke in the story of the American Founding. Writing in the aptly titled essay “The Myth of John Locke and the Obsession with Liberalism,” Pocock rails against the “fiction of Locke.” He insists that an understanding of the political debates of the 18th Century “does not necessitate reference to Locke at all.” For Pocock, the American Founding was in a sense the last great gasp of Machiavellian republicanism, born in “the dread of modernity”.⁸⁰ Opposed to the modernizing changes of commercial life and its apparently corrupting influence on Britain, Pocock’s Americans sought to maintain their republican purity and virtue.

⁸⁰ As cited in (Zuckert 1994, 162), refer also to (Kramnick 1990, 167).

Thus, for Pocock (as for Bailyn) there is no essential rupture between the Revolution and the Constitution. In Bailyn's case, this is because both liberalism and republicanism were present in both cases.⁸¹ In Pocock's view, there was no break because there is no Lockean liberalism present at any point.

Although Bailyn, Wood, and Pocock disagree on several issues, all three are united in their view that Lockean liberalism is a) fundamentally distinct from the republican tradition, and b) is not the primary force that drove the American Revolution (and for Bailyn and Pocock at least, it never achieves supremacy). Against this argument, a number of scholars have emerged to vindicate the importance of Locke (and Lockean liberalism) to the American Founders, foremost among them are Ronald Hamowy, Steven Dworetz, Thomas Pangle, and Michael Zuckert. Hamowy (among others) has detailed the near hegemonic place Locke occupied among the Americans prior to the Revolution. His thought was "so commonplace that little if any intellectual dispute surrounded it" (Hamowy 1979).⁸² Zuckert even points to Bailyn's own account, noting the wealth of evidence for Locke's importance to the American Founders and rightly pointing out that Bailyn provides no convincing reason to support his claim that the Americans' knowledge and use of Locke was superficial (Zuckert 1994, 153).

⁸¹ See Bailyn's claim that the Constitution was the "fulfillment" of the Revolution (Bailyn 1992, 321)

⁸² See also: (Dunn 1982). For Dunn, Locke's importance to America emerges only later in the 18th Century, although Zuckert (1994, 23) notes that there is almost no evidence to support Dunn's claim that Locke was not a significant figure in the first half of the century.

For Zuckert, Pangle, and Hamowy, the American Founding was deeply Lockean. For them, this by no means entails that it was not republican. They reject the incompatible dichotomy advanced by Pocock and others. Pangle goes so far as to recognize that American republicanism is in an important respect anti-Machiavellian republicanism: “[the Founders] reject Machiavelli’s republicanism in the name of a more humane, liberal republicanism” (Pangle 1988, 52). Zuckert criticizes Bailyn, Pocock, and Wood for postulating false “‘gog and magog’ battles between liberals and republicans— of which... the alleged ‘participants’ were quite unaware” (Zuckert 1994, 165).

But, Zuckert and Pangle go still further, and argue that this liberal republicanism of the Founders is a new synthesis. It may trace back to Locke, but not substantially further. Pangle writes that Locke and his American followers adopt “a profoundly *anti-*classical conception of human nature and politics... the rallying cries of the new republicanism are the Natural Equality and Rights of Men” (Pangle 1988, 35).⁸³ Zuckert concurs: “no genuine partisan of the old republicanism, such as Plato, Aristotle, or Livy, would say what James Madison said, very much in the spirit of Locke’s new ‘natural law’ teaching: ‘the protection... of the diversity in the faculties of men, from which the rights of property originate... is the first object of government’” (Zuckert 1994, 272).⁸⁴ For these scholars, Locke and the American Founding were the emergence of a completely

⁸³ Pangle singles out Locke’s state of nature as an idea especially incompatible with classical republicanism.

⁸⁴ It should be quite clear from the forgoing analysis that such a claim misses the significance of Cicero entirely. I will return to this issue below.

new orientation to political life that put the protection of rights and the self-interest of individuals at the center.

6.2 The Founding out of the Ciceronian Tradition

Pangle, Hamowy, and Zuckert provide a powerful and necessary rebuttal to the revisionist claim that Locke was not centrally important to the American Founders. Their arguments are supported by powerful evidence collected by others. By almost any test one might apply, Locke occupies the dominant place. H. Trevor Colbourn performed a survey of colonial libraries, which revealed that no political work appears as frequently in them as Locke's (Colbourn 1965, 200–232). Donald Lutz's analysis of citations found that "Locke, by a very wide margin, was the most frequently cited author in the American political writings" (Lutz 1988, ch.11). Dworetz points out that this outsized intellectual footprint only grows when we recognize that Locke's ideas were often echoed (sometimes verbatim) without attribution, and that Locke's *political* ideas were as likely to reach an American mind from the pulpit as from a political pamphlet (Dworetz 1990, 43–45).

The testimony of particularly important individuals likewise supports the claim of Locke's ubiquity. Zuckert relates that Thomas Jefferson was known to recommend Locke's *Treatises* "as a basic reading in politics to friends and relatives, as well as for the University of Virginia curriculum" (Zuckert 1994, 19). C. Bradley Thompson demonstrates that a young John Adams likewise drew a substantial part of his own self-

education from the work of Locke (Thompson 1998, 11–17). Similar evidence can be found concerning other leading figures, such as Madison (Madison and Meyers 1973, xx-xxiv) or Wilson (Wilson 2009, xxi).

Even many of the examples from the English republican/Whig/Opposition tradition held out by Bailyn, Wood, Pocock as the conveyors of allegedly anti-Lockean republicanism were themselves in fact deeply connected to Locke's ideas. In particular, these three scholars claim that the influence of Sidney's *Discourses* and Gordon and Trenchard's *Cato's Letters* were far more important. Their works also appear frequently in Americans' libraries (although less frequently than Locke's do).⁸⁵ But, Hamowy and Sullivan have already demonstrated that both of these figures share with Locke fundamental agreement about concepts like liberty and rights.⁸⁶ Thus, even the alleged alternatives to Locke are not really incompatible rivals—which is perhaps why Jefferson and Adams often listed Locke together with Sidney or “Cato” as champions of liberty.

But perhaps the most significant evidence for Locke's importance comes from the great documents that were the cornerstone of the political acts themselves. For instance, it is almost cliché to point out that the theoretical structure of the Declaration of Independence is overtly Lockean. Just as Locke does, it appeals to the “Laws of Nature and of Nature's God.” Like Locke, the Declaration asserts that the existence of this law

⁸⁵ See again (Colbourn 1965, 200–232).

⁸⁶ See (Sullivan 2006, chs. 6 and 7), (Hamowy 1990).

means that human beings (or men) are naturally free and equal. They possess “unalienable” rights to life and liberty — with the pursuit of happiness substituting for property. The purpose of government is to vindicate this law and the rights it entails. Legitimacy for such government derives from the consent of the governed. This consent is formally instantiated in the right to have all taxes approved by elected representatives. When government “becomes destructive” of its proper ends, the people are entitled to withdraw their consent; they retain an ultimate right of revolution against tyranny. And, it is on this final Lockean right that the American colonists base their justification for rebellion. The later Constitution likewise reflects these views. One of the chief debates between federalists and anti-federalist advocates was over whether the protection of Lockean rights under the new frame of government was sufficiently obvious and implicit in the structure of the whole, or whether it was necessary to explicitly articulate them.⁸⁷

If to draw out such obvious parallels between Locke’s expression and the founding documents strikes the reader as elementary or even insulting, I only offer it here to illustrate how baffling Pocock’s claims about “the fiction of John Locke” truly are. Hardly less perplexing is Wood’s insistence that a revolution that began with the Declaration could possibly have been betrayed by the infusion of Lockean liberalism at

⁸⁷ And, in choosing the latter course, the protection of that last Lockean right—to property—against arbitrary seizure by the state is made explicit. The Fifth Amendment echoes precisely Locke’s three great rights: life, liberty, and property.

the ratification of the Constitution. The fact that the individuals most responsible for crafting the Declaration—Jefferson and Adams—both heartily approved the Constitution only confirms that from the subjective standpoint of the actors involved, the “second Founding” was not a betrayal of the first.⁸⁸

For these reasons, we cannot but agree with the critique of Zuckert, Pangle, and others that the Founding was in fact shot through with Locke’s political philosophy. Locke’s logic undergirds both the Americans’ justifications for rebellion (the right of revolution) and the ideas for the government they sought to erect in place of British rule: a government based on representation, consent, and the division of powers—all organized to protect natural rights. Yet, in correcting the republican revisionist view of the Founding, these critics make a similar (if not so egregious) error. By characterizing Locke and the American Founders as breaking radically with the classical tradition—and in particular: classical republicanism—they accept too much the terms of the argument offered by their opponents. Just as Bailyn and Pocock ignore (or explain away) the constant American appeals to Locke, Pangle and others cannot account for the Americans’ obsession with classical Rome.⁸⁹

⁸⁸ Those anti-Federalists who did claim such a betrayal certainly did not rest their objections on the grounds that the Constitution was too Lockean. If anything, the threat its concentration of powers posed to natural rights meant it was not Lockean enough for them. The objections to the Constitution of Patrick Henry and Samuel Adams illustrate their concern that insufficient protections of rights were incorporated into its structure.

⁸⁹ In a kind of perverse evenhandedness, Bailyn counts American references to *both* Locke and the classics as largely insignificant, despite the enormous number of them that he himself uncovers.

These writers are correct to say, as Pangle does, that the ideas of the Founders were anti-*Machiavellian* (Pangle 1988, 52).⁹⁰ Although there is little evidence most Americans were even familiar with Machiavelli, it would be fair to say that their principles were incompatible with much of Machiavelli's teaching.⁹¹ The Founders' views of natural law—particularly their rejection of teleological ends and natural hierarchy—likewise provide compelling evidence that the Americans were not fundamentally Aristotelian.⁹² As for Plato, Adams and Jefferson were actively appalled by the lack of freedom in his *Republic*.⁹³ On the basis of these rejections, Zuckert and Pangle thus conclude that the American Founding is a break with classical republicanism precisely because of its Lockeanism. In short, they largely accept the Pocockian story about what classical republicanism is and its essentially irreconcilable relationship to liberalism.

The entire thrust of this dissertation is that such a story is incompatible with the reality of Cicero's importance in the development of liberalism. I will not here belabor the points made in the previous chapter. I will only summarize my argument that

⁹⁰ Strauss' *Thoughts on Machiavelli* likewise begins with the assertion that American was founded on anti-Machiavellian principles (Strauss 1995, 13).

⁹¹ One exception to this is John Adams, probably the most widely read of the Founders. He admired the clear insights of the Florentine, but he parts company with him precisely because his politics are not morally grounded. He was therefore happy to refer to the "machievellian dissimulation" of Massachusetts' British governor. He likewise warned that a failure to pay public officials would introduce "a universal system of Machievellian hypocrisy into popular elections" (Thompson 1998, 224; Bailyn 1992, 121–22).

⁹² Zuckert (1994) argues persuasively for the divergence between Locke and Aristotle.

⁹³ Bailyn relates that Adams was in fact so aghast to discover the actual details of Plato's City in Speech that he concluded the book must have been a satire (Bailyn 1992, 24–25).

Locke's liberalism is born out of Ciceronian thought. His natural law teaching, his conception of rights, his ideal of liberty, his understanding of justice, his defense of property, and his constitutionalism all point to an account of liberalism that arises from engagement with Cicero's classical republicanism. Thus, precisely because the American Founders were so Lockean, they were operating according to principles and assumptions that derive from Cicero's philosophy. In short, the Lockeanism of the American Founders was indeed incompatible with central features of Machiavelli's and Aristotle's thought. But, that does not make the Founding's ideals hostile to the particular version of classical republicanism we find in Cicero and in the tradition Cicero inspired in early modernity. In fact, they are derived from it.

Moreover, it turns out that Cicero is in fact a common link among nearly all of the other major thinkers often suggested as theoretical sources for Americans' ideals. Sidney's *Discourses* and *Cato's Letters*—the works pointed to by Pocock and Bailyn—evidence their authors' close familiarity with Cicero. As chapter 4 of this dissertation has demonstrated, Cicero also loomed large for their English republican predecessors—such as Nedham and Harrington, whom the Americans also cited often. Bailyn himself reports that American pamphlets regularly also appealed to Grotius and Pufendorf about the laws of nature (Bailyn 1992, 27). Some scholars, such as Garry Wills, have also pointed to the Scottish Enlightenment as a source of Americans' political ideas (Wills 2017). The importance of figures such as Francis Hutcheson, David Hume, and Adam

Smith to the Founding is hotly disputed.⁹⁴ Regardless, all three acknowledged important intellectual debts to Cicero. Hume, for instance wrote to a friend that he had Cicero's *De officiis* "in my Eye in all my reasonings." Nor did Hume think he was alone in his interest: "the fame of Cicero flourishes at present, while that of Aristotle is utterly decayed"(Hume and Greig 2011, 34). Smith copied nearly verbatim large passages of Cicero in his *Theory of Moral Sentiments*, including those in which he expressed his understanding of justice and propriety.⁹⁵

Finally, there is Montesquieu, whose *Spirit of the Laws* was often appealed to by Federalists and anti-Federalists alike as an authority on liberty, constitutionalism, republics, and the possibilities of freedom in territorially extensive commonwealths. Anne Cohler compellingly demonstrates the deference Americans gave Montesquieu on constitutional matters especially (Cohler 1988). For his part, Montesquieu was sufficiently moved by Cicero's thought that he wrote a "Discourse on Cicero." There he writes: "Cicero is, of all the ancients, the one who had the most personal merit, and whom I would prefer to resemble." He specifies that although Cicero deserves admiration for his rhetoric, his true genius lay in his philosophy: "he deserves the title of philosopher no less than Roman orator. One can even say that he has distinguished

⁹⁴ Hamowy provides a compelling refutation of Wills' particular theory that the Declaration of Independence was inspired by Hutcheson and not Locke (Hamowy 1979).

⁹⁵ See my "Cicero's Duties and Smith's Sentiments" (n.d.).

himself more in the Lyceum than on the platform: he is original in his books of philosophy, but he had many rivals in his eloquence” (Montesquieu and Fott 2002).⁹⁶

It would require perhaps another entire dissertation to fully explore the ways in which Sidney, Gordon, Trenchard, Hutcheson, Hume, Smith, and Montesquieu in their own manner adapted and responded to Cicero’s political philosophy. They are all in different ways connected to the emergence of the liberal republican doctrine that emerges in the 18th Century, and they all also were part of the intellectual world of ideas in which the American Founders were immersed. It must suffice for now simply to note that Cicero’s indirect influence carried forward through them as well as through Locke and the figures explored in chapter 4. Cicero is—as far as I can discern—the only classical common link who connects all of these figures. Although he provided little evidence for his claim, Neal Wood was essentially correct when he said that Cicero’s relationship to early modern thinkers was analogous to Aristotle’s relationship to Medieval scholastics. To try to approach the web of interrelated political ideas about justice, rights, liberty, and government in which the American Founding took place without recognizing the ubiquity of Ciceronian themes is to miss a massive part of the story.

⁹⁶ Thus, the view of later scholars such as Theodor Mommsen or Moses Finley that Cicero was unoriginal or “unphilosophical” (Finley 1983, 128) was not at all shared by the leading lights of the 18th Century. The lingering influence of Finley’s evaluation may also help to explain contemporary scholarship’s failure to see Cicero’s role in the great theoretical developments of this period.

Moreover, Cicero is not simply an indirect source of themes for the Founding generation. He was also regularly engaged in his own right. The educational curriculum in America featured Cicero prominently, such that Madison and Hamilton had to translate extensive passages from his works (among others) as part of the entrance exams to The College of New Jersey and King's College (later Princeton and Columbia). John Adams spent many nights of his youth obsessively memorizing Cicero's orations against Catiline (Bailyn 1992, 26). He would later write in the preface to this *Defence of the Constitutions* that "ages of the world have not produced a greater statesman and philosopher united in the same character" than Cicero (Adams 1971). According to Douglas Wilson, Jefferson also first encountered Cicero as a schoolboy, but he "continued to read his letters and discourses throughout his life. He admired him as a patriot, valued his opinions as a moral philosopher, and there is little doubt that he looked upon Cicero's life, with his love of study and aristocratic country life, as a model for his own." According to Jefferson, Cicero was "the father of eloquence and philosophy" (Jefferson and Wilson 1989, 159-161). James Wilson, both a signer of the Declaration and a major figure in the drafting of the Constitution, appealed again and again to Cicero as an authority.

Now, since the Founders did have a broad classical education, we might expect that Cicero would at least be among those they cited. This alone would not demonstrate that Cicero's thought was close to the center of the Founding project—although the

language of some of the endorsements above is suggestive. But, here we might recall that even Bailyn, who argues that Americans' engagement with their classical heritage was generally superficial, acknowledges one exception to this trend: the authors who wrote just before and after the collapse of the Roman Republic—particularly Tacitus, Sallust, and Cicero (Bailyn 1992, 24). Wood concurs, identifying the same authors as particularly important (G. S. Wood 1993, 100). But, perhaps the reason why Bailyn *and* the anti-revisionist critics like Pangle and Zuckert fail to see the special importance of Cicero lies in what Bailyn claims these Roman authors offered the Founding generation. According to Bailyn, these writers were fundamentally moved by the calamity of the lost Roman republic, and they were animated by an almost despairing nostalgia for the vigor and virtue of the imagined past:

They had hated and feared the trends of their own time, and in their writing had contrasted the present with a better past, which they endowed with qualities absent from their own, corrupt era. The earlier age had been full of virtue: simplicity, patriotism, integrity, a love of justice and of liberty...[For the colonists] the analogies to their own times were compelling. They saw their own provincial virtues—rustic and old-fashioned, sturdy and effective—challenged by the corruption at the center of power (Bailyn 1992, 26)

Thus, in Bailyn's account, Cicero, Tacitus, and Sallust gave the Americans an image and a vocabulary of simple honest virtue threatened by corrupt monarchism. For Wood, too, this is the "classical" element of the classical republican legacy present during the revolution and betrayed by the Constitutional ratification.

But Cicero is of course a different writer than Tacitus or Sallust (or Livy, for that matter). Not only were his works written during the period when the republic still stood (or during which there were at least vigorous armed attempts to revive it), but he is also not a historian; he is a political philosopher. True, Cicero too occasionally looked to the past as a time of greater virtue than the present, but he also offered—as we have seen—a great positive vision of republican politics, justice, and natural law. If the Founders drew substantially from this element of Cicero’s thought, it would be wrong to lump him in with the nostalgic Roman historians as having the same *type* of contribution to the Founders’ thought. Correcting this error would enable us to see what is truly “classical” about the republicanism—and liberalism—of the Founding. Their ideas of what a commonwealth is (and is for), the nature of justice and rights, the role of property and the significance of a mixed constitution all derive in large part from this Ciceronian tradition—that is to say: both through the indirect sources discussed above and throughout this dissertation and from Cicero’s own writings directly.

6.3 The Founding as the Culmination of the Ciceronian Tradition

I do not mean to suggest that all of the significant figures of the Founding saw themselves as participating in a tradition of which Cicero is the central figure, or that they all recognized that Cicero stood behind many of the ideas of Locke and others which formed the orthodoxy of the Revolution. But some of them did. Two of the most learned and philosophical of the Founders, John Adams and James Wilson, expressed

clearly how much the new American endeavor was indebted to Cicero directly. Moreover, at the same time, they saw the connection between Cicero and the Lockean liberalism that had become a kind of American political creed.

While considerations of space and time preclude me from exploring this dynamic in the thought of all the Founders, there are good reasons for concentrating on Wilson and Adams. For one thing, each was involved in both Founding “moments.” They were thus in a position to speak to ideas behind both the Revolution and the Constitution. Wilson was a signer of the Declaration of Independence and a significant figure in the drafting of the Constitution. He also went on to serve in Congress and on the Supreme Court. Adams was the by far the primary driving force behind the Second Continental Congress’s decision to declare independence, and he sat on the committee that drafted the Declaration. Although he was abroad serving as envoy for the newly free United States during the drafting of the Constitution, he was the primary author of the Massachusetts state Constitution. The latter was a model for many of the other state constitutions and one of the chief models for the US Constitution.⁹⁷ The drafters of the constitutions of North Carolina, Virginia, and New Jersey sought and generally followed his advice. Moreover, his *Defence of the Constitutions of the Americans* was almost certainly influential among the actual drafters of the Constitution (Thompson 1998; 40–41, 252–254), and he heartily supported the Constitution once it was published.

⁹⁷ Wood calls it the “most significant” of the state constitutions(G. S. Wood 1998, 568).

Moreover, even among such renowned peers, Wilson and Adams stood out for their erudition, and were acknowledged as authorities well-qualified to pronounce upon the theoretical underpinnings of the American Founding. Starting in 1790, as the newly created professor of law at the College of Philadelphia (later the University of Pennsylvania), Wilson delivered and later published a series of "Lectures on Law." In these lectures, Wilson intended to codify American law, and aspired to be "an American Blackstone" (Mark Hall in: Wilson 2009, 403-404). The augustness of his audience matched his aspirations; the lectures were attended by President Washington, Vice President Adams, and many members of the new Congress.

As for Adams, Benjamin Rush said that there was a consensus among the Founding generation that "Adams possessed more learning, probably, both ancient and modern, than any man who subscribed the Declaration of Independence" (as quoted in: Thompson 1998, xiii). Gordon Wood himself describes the *Defence of the Constitutions* as "the finest fruit of the American Enlightenment" (G. S. Wood 1998, 568). As mentioned above, many of the framers of state constitutions considered Adams the expert in their craft.

Of course, Wood also argues that Adams eventually fell out of step with the general views that came to dominate the ratification of the Constitution (G. S. Wood 1993, 592). Among some of the drafters, his work certainly prompted resistance and even accusations of wanting to import European institutions of monarchy and nobility.

Luke Mayville has demonstrated that much of this derived from a (sometimes deliberate) misconstrual of Adams' warnings about the dangers of oligarchy as advocacy for it (Mayville 2016). At any rate, many of Adams' contemporaries took it to be the best expression of the philosophical underpinnings of *both* the Revolution and the Constitution, agreeing with Arthur Lee's statement that it was "the Work of the greatest Genius that had ever been written in this Country".⁹⁸ That the *Defence* was a powerful expression of the ideas undergirding the Constitution is testified to also by enemies as well as friends. John Taylor took twenty years to write a massive (500-page) rebuttal of it. As Thompson points out, the very fact that Taylor did this showed that he considered Adams' *Defence* sufficiently influential to warrant a refutation two decades later. According to Taylor, his targets were simultaneously the *Defence* and *The Federalist Papers*, but that he considered the former more dangerous. The latter may have a more "elegant style," but the former was distinguished by its "erudition" (Thompson 1998, 255).

For these reasons, I believe it is fair to treat both Adams and Wilson as particularly sophisticated sources of the ideas and theories behind the Founding.

⁹⁸ See: Thompson (1998) for other testimonials to the essential accuracy of the *Defence* as an expression of American thought from Thomas Pinckney to Benjamin Franklin (252-253, 274). Moreover, Adams' reputation was still good enough to get him elected the first Vice President and Second President. It seems that much of the sense that Adams' ideas became passé during the Founding really depends on the fall of Adams' popularity in the election of 1800. But by then, the Founding itself had clearly been already accomplished, and the reasons for Adams' fall from grace then are—although beyond the scope of discussion here—at best loosely connected to his important ideas and contributions to the Founding itself.

Moreover, Wilson's "Lectures" and Adams' *Defence* differ in an important way from the source most frequently looked to on this subject: the *Federalist*. While the latter is an overtly polemical exercise to get ordinary voters to cast ballots for the new constitution, the former are aimed at a learned audience of scholars, statesmen, constitution-makers (or, in Adams case: also potential constitution-makers in Europe). Such an audience could be expected to appreciate the relationship of the new American endeavor to the tradition of political philosophy with which they were all familiar and would want to know the theoretical underpinnings of it.

So, let us begin at the decisive question: what is the nature of a republic? As I already mentioned, Adams preface to the *Defence* includes an appeal to the authority of Cicero as history's greatest "statesman and philosopher" (Adams 1971, preface). But, the extent of Adams reliance on Cicero for the full meaning of this concept is worth presenting in full:

The word *res*, everyone knows, signified in the Roman language wealth, riches, property...*res publica*, therefore was *publica res*, the wealth, riches or property of the people... *Res populi*, and the original meaning of the word republic could be no other than a government in which the property of the people predominated and governed...it signified a government, in which the property of the public, or people, and of every one of them, was secured and protected by law. This idea, indeed, implies liberty; because property cannot be secure unless the man be at liberty to acquire, use, or part with it, at his discretion, and unless he have his personal liberty of life and limb, motion and rest, for that purpose. It implies, moreover, that the property and liberty of all men, not merely of a majority, should be safe... as each citizen is part of the public... the

property, therefore of every man has a share in government... it is governed only by the law.⁹⁹

Here Adams shows that his understanding of the idea of a republic is strictly Ciceronian. Adams captures the sense that the term implies joint ownership of the citizenry over the regime, that they have a kind of property right in it, just as we saw Cicero does.¹⁰⁰ He shows also that such a regime exists in large part to protect the property of individual citizens, even against majoritarian tyranny. Finally, he follows Cicero in his way of conceiving the relationship of the liberty of the community to the liberty of individuals—that the former exists for the sake of and as a guard for the latter. Not virtue or the good life, but justice—understood as the protection of rights and property—is the ultimate goal the regime.

Wilson likewise depends on Cicero to explain this central concept of republicanism—the republic itself. He quotes from *De re publica* and goes on to describe “a body of free persons, united together for common benefit, to enjoy peaceably what is their own, and to do justice to others” (Wilson 2009, 635). For both Adams and Wilson, the rule of law is characteristic of republics, essential to their justness. The very epigraph of Wilson’s published version of the lectures shows his derivation of this from Cicero, drawn from *De legibus*: “*Lex fundamentum est libertatis, qua fruimur. Legum omnes servi sumus, ut liberi esse possimus*” [Law is the foundation of the liberty which we enjoy. Let us

⁹⁹ As quoted in (Thompson 1998, 190–91).

¹⁰⁰ See chapter 2 of this dissertation, as well as (Atkins 2013).

all be slaves of the law, that we might be free](Wilson 2009, 415; translation mine).

Adams writes that the hallmark of free government is the “rule of laws and not of men.”

A republic is where laws “are the only possible rule,” and he similarly cites Cicero’s *De re publica* as his authority (Adams 1971, preface).¹⁰¹

Moreover, this republic was not—as Machiavelli’s republic was—an amoral vehicle for collective selfishness. Our ethics and our politics are governed by natural law. Adams accepts that human beings are distinct because of their rationality and that they are naturally social (“gregarious”). According to him, we are rationally able to deduce the existence of a divine creator. From all of this, we can further deduce the fundamental laws of nature (“which is Reason”), which teach us first our obligation to care for our own preservation, and next our obligation for “promoting the good, as well as respecting the rights of mankind.” These rights are supported by naturally deducible rewards and punishments (Thompson 1998, 151-154). The rights of liberty, to resist tyranny, and to “the preservation not only of my person, my limbs and life, but of my property” derive from the law of nature (Thompson 1998, 47).

When he wrote the Massachusetts Constitution, Adams made the centrality of this idea clear by beginning with a Declaration of Rights, Article 1 of which reads: “All men are born free and equal, and have certain natural, essential, and unalienable rights;

¹⁰¹ For all of Adams’ and Wilson’s dependence on Cicero, *De re publica* at least was available to them only in fragments, a fact which Adams repeated lamented.

among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness” (Constitution of Massachusetts).¹⁰² Finally, Adams accepts the idea of a state of nature, which we leave to better secure these rights.

Adams’ reasoning is almost identical to Locke’s. Both see humans as rational, whose underlying selfishness is moderated by a natural sociality. Both describe natural law and its derivative natural rights in the same way, and conceive of just government as a way of upholding them. That Adams gets much of this directly from Locke is clear—he was effusive in his praise of him. But, as we saw in the last chapter, much of the crucial logical steps made by Locke appear only in the *Questions*, yet Adams follows Locke’s reasoning there as much as that available in the *Two Treatises* or the *Essay*. Moreover, Adams’ view of human equality—as an equality of moral obligation to natural law, and not equality of abilities or merit—is overtly Ciceronian.¹⁰³ It is unclear whether Adams independently made the same logical leaps, or whether he relied—as Locke himself did—on Cicero and the Ciceronian law teaching of Grotius and Pufendorf (whom he also studied well).

¹⁰² This right would only a few years later prove the basis of Massachusetts’ abolition of slavery.

¹⁰³ Mayville illustrates how Adams thus rejected absolutely Aristotle’s idea of natural slavery, while nevertheless equally rejecting the idea of general egalitarianism (Mayville 2016, 77–80).

For Wilson, however, there is no ambiguity. If anything, he appeals even more to Cicero directly than to Locke (or Grotius and Pufendorf) to explain the law of nature.

Here again, it is worth quoting at length to illustrate the point:

The law of nature is universal. For it is true, not only that all men are equally subject to the command of their Maker, but it is true also, that the law of nature... has an essential fitness for all mankind... This law, or right reason, as Cicero calls it, is thus beautifully described by that eloquent philosopher. "It is, indeed," says he, "a true law, conformable to nature, diffused among all men, unchangeable, eternal. By its commands, it calls men to their duty; by its prohibitions, it deters them from vice. To diminish, to alter, much more to abolish this law, is a vain attempt. Neither by the senate, nor by the people, can its powerful obligation be dissolved...It is the same eternal and immutable law, given at all times to all nations: for God, who is its author and promulgator, is always the sole master and sovereign of mankind" (Wilson 1989, 523)

Wilson thus takes wholesale from Cicero his conception of natural law, and uses the quotation from *De re publica* to emphasize both its support from our own self-interest and the divine sovereign's rewards and punishments. He appeals to Cicero again to support his understanding of God as the source of moral obligation, and his view that the rules of moral conduct can be demonstrated from first principles like mathematics (Wilson 2009, 508). Wilson also sees natural law as meant to guide man-made political laws, and its commands do not vary according to circumstance—it is universal and cosmopolitan.

Wilson further cites Cicero to derive from this natural law our right to preserve ourselves, our liberty, and our property (and those of others) (Wilson 2009, 1082–83).

Wilson follows Locke, but appeals to Cicero, in explaining that we leave the state of

nature to achieve the security offered by standing rules to defend our rights (Wilson 2009, 690). Wilson makes clear that he sees the Ciceronian origins of the Founder's apparent Lockeanism when he even cites Cicero in support of the famously Lockean doctrine that consent (at least tacit consent) is essential to the legitimacy of free government—that, in other words, the right of free exit is indispensable to liberty. He quotes from *Pro Balbo*: “The power of retaining and of renouncing our rights of citizenship, is the most stable foundation of our liberties” (Wilson 2009, 642).¹⁰⁴ Wilson's habit of using Cicero in this way (where it would seem far more intuitive to us to cite Locke) suggests that he may have grasped better than any of his contemporaries or any modern scholar the close relationship between Locke's natural law teaching and Cicero's.

Wilson and Adams both also look to Cicero to illustrate the special protections for property that ought to exist in a just regime. We already saw above that Adams drew heavily from Cicero's understanding of a *res publica* to argue that property was in fact the basis of the liberty found in a republic. He elaborates (rather hyperbolically) “the moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and

¹⁰⁴ Cf. Cicero's *Pro Balbo* 13.

tyranny commence”(Thompson 1998, 191).¹⁰⁵ As for Wilson, he tells a story remarkably similar to Locke’s account of the just origins of property:

while men were few, and supplies of every thing were abundant, it is probable that many things were possessed and used in common. With regard to the possession and use of some things, however, this could never be strictly the case. In the fruit plucked or gathered by one for his subsistence; in the spot which he occupied for his shelter...in the skin which he has obtained by his skill... he gains a high degree of exclusive right, and of this right he cannot be dispossessed without a proportioned degree of injustice.

But, after (and before) this discussion, which is nearly a paraphrase of Locke, Wilson does not even mention Locke; instead he quotes for support Cicero’s example of the theater!¹⁰⁶

To defend the property, liberty, and other rights of the just republican regime, the American Founders were nearly unanimous in their belief that mixed government and a division of powers were necessary. Adams, for instance, criticizes English republicans like Nedham for supporting absolute Parliamentary supremacy, arguing that simple forms of government degenerate easily into tyranny (Thompson 1998, 130). In the *Federalist*, Madison credits Montesquieu as the expositor of the fundamental truth that “that the legislative, executive, and judiciary departments ought to be separate and distinct”(#47). Straumann has suggested that Cicero stands behind this element of

¹⁰⁵ Like Zuckert and Pangle, Thompson believes that Adams’ concern for the rights of property marks his departure from the classical republican tradition (Thompson 1998, 197). But, the arguments of this dissertation illustrate why this is not the case once one recognizes Cicero’s significance.

¹⁰⁶ (Wilson 2009, 388) As I have noted previously, Cicero is not the true originator of the example, but Wilson (like nearly everyone else) attributes it to him.

Montesquieu's constitutionalism (Straumann 2016, 321). But, Adams and Wilson derive the principle from Cicero directly. In the preface of his *Defence*, when Adams first appeals to the authority of history's best "statesman and philosopher," he does so in citing the argument from *De re publica* that the best commonwealth contains a mixture of monarchy, aristocracy, and democracy in its constitution. Because of this, there should be both a mixture of these three elements in the regime, and a division of powers into different branches of government. As *Federalist* 51 explains, the checks and balances arising from this division would help prevent any one element of government or society from achieving a position to dominate the rest. Adams explores this same theme by updating the musical analogy in Cicero's story of the "blending" and "harmony" of the mixture of rights and powers outlined in *De re publica*:

[Cicero] was so far from apprehending "disputes" from a variety of orders, that he affirms it to be the firmest bond of justice, and the strongest anchor of safety to the community. As the treble, the tenor, and the bass exist in nature, they will be heard in the concert: if they are arranged by Handel, in a skilful composition, they produce rapture the most exquisite that harmony can excite; but if they are confused together without order, they will "Rend with tremendous sound your ears asunder." (Adams 1971, preface)

Not to be outdone by Adams in his poetic praise of Cicero's idea of a mixed constitution, Wilson writes that Rome was "adorned and enriched by the exquisite genius of Cicero, which like the touch of Midas, converts every object into gold... He composed a republic: and for the use of his republic, formed a system of laws. In this system, he expatiates on the wisdom and excellency of the Roman constitution" (Wilson

2009, 760). Wilson believed that Cicero was unique among the ancients in discovering this great idea of mixed government.¹⁰⁷ He says that the ancients imagined only simple governments or governments that could be reduced to one of these at bottom, despite superficial elements of the others. But, “Cicero, indeed, seems to have indulged a fond speculative opinion, that a governments formed of the three kinds, properly blended and tempered, would of all, be the best constituted. But this opinion was treated as visionary by his countrymen, and by Tacitus, one of the wisest of them”. Wilson thus takes Cicero to be the true discoverer of the modern principle of mixed government, and he suggests that the example of Great Britain moves in the direction of bringing Cicero’s vision into reality: “the example of Great Britain, however, has evinced that the sentiments of Cicero merited a very different opinion [from Tacitus]; and that, if they did not point to the highest degree of excellence, they pointed, at least, to substantial improvement” (Wilson 2009, 711).

Adams expresses a similar view, but specifies that the American Founding extends still further this idea. Referring to the same debate between Cicero and Tacitus over the practicality of Cicero’s system of mixed government, Adams writes:

If Cicero and Tacitus could revisit the earth, and learn that the English nation had reduced [Cicero’s] great idea to practice, and brought it nearly to perfection, by giving each division a power to defend itself by a negative; had found it the most solid and durable government, as well as

¹⁰⁷ Whether he is unaware of the versions of such a scheme presented by Aristotle and Polybius or if he believes that their versions lack something essential that Cicero’s possessed, I do not know.

the most free; had obtained, by means of it, a prosperity among civilized nations, in an enlightened age.

Adams notes that the colonies of America matured under this constitution, and in crafting their governments, have followed the lesson, predicting that “the institutions now made in America will never wear wholly out for thousands of years”(Adams 1971, preface). In short, for Adams and Wilson, the experiment of mixed government in England and still more in America have proved Tacitus’ skepticism wrong and have made Cicero’s “visionary” dream a reality.

This dream of mixed government was the primary bulwark of liberty for Adams. According to him, Americans have a “habitual, radical Sense of Liberty,” which consists both of freedom against unjust governmental coercion and the freedom of the community to make its own decisions undominated by an outside power. The proper mixture of powers in a constitution ensures that no group achieves that domination, averting threats to the liberties of the citizens. Those liberties are “not the grants of princes or parliaments but original rights, conditions of original contracts” (Thompson 1998, 54–55). In other words, Adams, like Locke and Cicero, conceives of the same relationship between the “republican” liberty of the community, and the liberal freedom of citizens. The former is necessary to secure the latter. But the former is bound and limited by the moral limitations of the law of nature not to violate the rights of individuals. Wilson again connects the lesson to Rome, saying that “while they enjoyed the blessing of liberty” under republican government, the Romans were secure in their “rights to property” and

“the rights of persons,” but that those were gradually lost once the domination of a single individual was achieved (Wilson 2009, 758).¹⁰⁸

This American agreement with Locke and Cicero about the relationship between the rights of individuals and free government might help us to understand why Wood might see the Constitution as a liberal coup against the republican ethos of the revolution. There is a necessarily chronological priority built into the two concepts, which Wood misses. If the Americans believed (and they did), that the British government had become corrupt and was threatening their freedom through their illegal (i.e., contrary to natural law) taxation and regulation of American lives and property, the first thing necessary is to establish a new political regime, justified according to the Lockean right of revolution. The conflict sparked by such a revolution required the patriotic willingness to sacrifice for the common good—the republican rhetoric of virtue that so occupies Wood. But, once the first task of establishing a new regime is complete, the next task would naturally be to order it better to protect the liberty of individuals that had been the entire purpose of

¹⁰⁸ As I said, I have chosen to focus on Wilson and Adams because they seem (roughly) representative of the views that ultimately prevail among the Founders of both “moments,” and because at the same time they were more attentive than most to the relationship those views had to their historical antecedents and underlying philosophical bases. Nevertheless, to illustrate how representative their ideas were, compare the foregoing to this short summary of Madison’s theoretical principles by Marvin Meyers: “God created men equal, free, and independent; obliged them by natural law to preserve themselves; and endowed them with reason and passions to realize their preservation. With reason, they should recognize the equal rights of others to life, liberty, and the pursuit of happiness...Thus the convention that establishes government and subjects citizens and magistrates alike to law. Thus, the constitution that defines the boundaries of legitimate power and reserves all else—belief especially—to individual choice. Thus the republican form of commonwealth that perpetuates the principle of consent in the regular workings of government”(Madison and Meyers 1973, xxiv).

the rebellion in the first place.¹⁰⁹ To then establish a constitution that featured rights centrally would not be a betrayal, but a fulfillment of the republican aspirations of the revolution.¹¹⁰

6.4 Writing the Res Publica

But, the idea of a constitution also posed a special problem for Americans, even if—as Adams, Wilson (and Hamilton and others) believed—Americans would be wise to follow the models of Rome and England in establishing a mixed government. What Cicero said of Rome, Burke would say of England, that its admirable constitution and distribution of powers emerged over the course of a long historical development. The Americans, however, needed new government right away.

Their teachers from Cicero to Locke assured them that they were right to resist tyranny and entitled to establish a new, just government. But, the devil is in the details. Locke attributed the right of resistance to tyranny to the people, who could withdraw their consent, abolish their current government, and establish a new one (II 211-243). The Declaration of Independence affirms this logic. But how are the people to establish a new government? Moreover, even if they do, how does one ensure that the new balance

¹⁰⁹ Adams' famous claim that "I must study Politicks and War that my sons may have liberty to study Mathematicks and Philosophy..." (Letter to Abigail Adams 1780) echoes this progressive sentiment about the lexical priorities of first establishing good government—for the sake of freedom for individuals to order their own lives.

¹¹⁰ In this, at least, I agree with Bailyn and Pocock against Wood, although for substantively different reasons.

of powers erected to protect liberty persists, instead of degenerating into domination and tyranny?

The fact that Americans could not simply sit back and wait for their regime to emerge out of a historical process necessitated some rethinking of what a constitution is. Bailyn illustrates how the prevailing understanding of a constitution in the Anglophone world prior to the Revolution implied a vague, all-encompassing notion of the laws, customs, morals, and powers that made up a discrete political community. Adams suggests that “the child of Independence was born” when in 1761 James Otis suggested that an act of Parliament could violate the “constitution” and that such an act would be “void” (as quoted in: Bailyn 1992, 176). There then began to emerge a sense that a “constitution” expressed certain first-order moral rules for a political community that somehow bound or limited the formal legislating and executive elements of government.¹¹¹ When the Americans finally declared their independence, their need for some new organizing principle for government expressed itself in the call for new “constitutions.”

Thompson relates how leading men of these colonies eagerly sought Adams’ advice on how to do this, his reputation for knowledge of ancient and modern political thought making him the nearest thing to an expert. So inundated was Adams with such

¹¹¹ See (Straumann 2016) for an argument that this idea long predates this period and traces back to Cicero himself.

requests, that he ultimately wrote and published *Thoughts on Government* to provide a general response to these pressing concerns. Thompson describes the situation:

Their [the other Founders'] ignorance was understandable. There were simply no examples in modern history of nations or states framing constitutions *de novo*. But Adams had reflected on the subject for some time... He began immediately to look 'into the Ancient and modern Confederacies for Examples.' The first and most important question for Adams was: 'How can the People Institute Governments?' (Thompson 1998, 40)

Following Locke, Adams believed that such new governments would have to depend on initial consent. But, for the people to formally consent, something concrete needed to be presented to them. Thus, Adams proposed that "Conventions of Representatives chosen by the People" be called to frame the new governments. As Thompson puts it, "John Adams was the first American to advocate having constitutions drafted and ratified by special conventions representing the consent of the people" (Thompson 1998, 40) But, Adams went further in ensuring that such new governments would be solidly grounded on the consent of the truly sovereign people. Once the plans for the new governments were drafted—with an aim to mix powers so that the natural rights of the people could be protected—they must be presented to the people for a vote, so that "the People may make Acceptance of it by their own Act" (Adams 1851, III 16). By the time of the 1787 Convention, Hamilton could testify that Adams' principles of constitution-making had become generally accepted, and would soon be put to a national test of world-historical significance:

It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force(*Fed 1*)

Both Bailyn and Wood rightly see this theoretical development as one of the greatest practical/theoretical contributions of the American Founding to modern political thinking: “it not only enabled the constitution to rest on an authority different from the legislature’s, but it actually seemed to have legitimized revolution”(G. S. Wood 1998, 342).¹¹² Wilson—referring as usual to Cicero’s authority—summarized the new American view of a constitution:

I mean that supreme law, made or ratified by those in whom the sovereign power of the state resides, which prescribes the manner, according to which ... the government should be instituted and administered. From this constitution the government derives its power: by this constitution the power of government must be directed and controlled. (Wilson 2009, 712)

Cicero’s code of primary laws outlined in *De legibus* does in many ways resemble this “new” understanding of a constitution.

As discussed above, Adams would (largely by himself) craft the state Constitution for Massachusetts (he would insist on calling it not a state but a “commonwealth”), with its unitary executive, bicameral legislature, independent judiciary, and declaration of rights. When Wilson, Madison, Hamilton and others would later draft the US Constitution, they followed almost precisely the procedures

¹¹² See also: (Bailyn 1992, 175–82)

laid down by Adams for the creation of the first state governments, keeping as well most of its salient features.

Other scholars have explored at length the debates, bargaining, and controversies that attended the drafting and ratification of the Constitution and the Bill of Rights. But there is little dispute that behind them both stood the following set of ideas that supporters and opponents alike largely agreed with: that there is a moral law prior to political life to which it ought to conform (natural law), that from this moral law human beings derive rights to their lives, liberty, and property, that governments rest on consent and ought to be constrained by this moral law to protect the freedom of their citizens, and that the best way to achieve such limitation on state power is the checks and balances of mixed government.

All of these are likewise central elements to the Ciceronian tradition, revived and extended by Locke. To this tradition, the Americans themselves contributed theoretical innovations in constitutionalism, reflecting the practical demands of the endeavor: that constitutions ought to be written, that they ought to express (or at least reflect) those highest moral commitments of the political community, and that they should be drafted by representatives of the people chosen for that purpose, and that they must finally be submitted to the people for approval.

Adams was not the only 18th Century figure to wish Cicero could see his political philosophy brought into reality. Montesquieu, Madison's "oracle" (*Fed* 47), expressed his

wish that Cicero had “come in an age more enlightened”(Montesquieu and Fott 2002, 734). When Adams and Wilson suggest that the American regime is a vindication of Cicero’s dream, they in a sense suggest that Montesquieu’s prayer has been answered. In the “Age of Enlightenment,” the American Founders established a government that realized the aspirations of a tradition of liberty that began with Cicero’s declaration of the foundations of a just *res publica*.

6.5 Concluding Thoughts

In the 19th Century, intellectual trends developed that rejected natural law as a basis for morality and more broadly began to disparage Roman political thought as insignificant. The lingering effects of these developments carried over into 20th Century scholarship, and have contributed to the obscuring of the important role Cicero played in shaping modern political thought. But, from the work of this dissertation, the philosophy of liberal republicanism which was made manifest in the American Founding should appear now in a new light. The Founding was not a great ideological proxy war between classical republicanism and atomistic liberalism. Neither the Founders themselves nor their most significant modern influences recognized a categorical distinction between liberalism and republicanism, properly understood. Nor was the Founding the moment when pre-modern politics finally lost out to a radically modern political philosophy which synthesized both liberalism and republicanism in a way that constituted a fundamental break with the old.

Rather, I suggest, the Founding was the culmination of a very old tradition of thinking about politics, a tradition inaugurated by Cicero. In the history of Western political thought characterized by all sorts of cross-currents and patterns of influence, I believe the coherence of this tradition as a particular, discrete group of thinkers is demonstrated both by the fact that these thinkers read and responded to one another and more importantly by their shared commitment to a family of ideas and values.

According to this tradition, political life is subordinate to a universal moral order. That order is upheld by a supreme deity, whose rationally deducible will can be distilled into a body of natural law. Such law is binding on us by virtue of rewards and punishments, but it is also in our rational human interest to follow it. Humans are both rational and social beings driven primarily by self-interest. Just relations between individuals are determined by the natural law, and these relationships can often be expressed in terms of rights and corresponding duties. Governments exist to better realize justice in the world, and as such are constrained by the moral order. In particular, governments ought to uphold and extend human freedom. For individuals, this freedom lies in their ability to order their own lives and property as they see fit. But, such freedom is only secure if all citizens have a meaningful say in or control over the government that rules them. Such control can only be stabilized in a mixed regime, wherein the powers of government have been finely balanced and “blended.”

This group of ideas, and the theory relating them to one another, was first articulated by Cicero. The coherence of this comprehensive view of political life was challenged by Machiavelli, who argued that healthy republican politics would stagnate if subjected to moral limitations. Machiavelli's challenge produced a disjunction, where the ideas Cicero believed belonged essentially together were viewed by many as opposed and incompatible. Many of the theoretical and historical misconceptions that afflict the contemporary scholarship on the relationship between liberalism and republicanism can be traced to the rupture Machiavelli produced and a fixation on the historical period in which that disjunction appeared most plausible. In particular, by too uncritically accepting Machiavelli as an exemplar rather than an aberration in the republican tradition begun by Cicero, scholars have seen republicanism and liberalism as alternatives—both conceptually and historically. But, in fact, the liberalism of Locke grew out of his engagement with Cicero. In doing so, Locke restored the theoretical connection between individual rights and collective self-government that Cicero originated. He innovates on Cicero's earlier formulation, but retains almost all of the basic logic of the original. Thus, Lockean liberalism emerges out of Ciceronian republicanism.

The American Founding brought the ideas of this tradition into practice. Such a project required practical innovations of their own in the area of constitution-making. And in this respect, was a kind of "new science of politics" (*Fed 9*). But, the basic

underlying ideals were not new. The writings of Adams and Wilson reveal an awareness by at least some of the leading Founders that their project was both less and more lofty than the creation of a whole political order *de novo*. Less: because the Founders were only the most recent members of a tradition of republicanism traces back to through Locke (and Montesquieu and others) to Cicero. More: because the Founders were doing what none of their predecessors could— they were actually constructing a real regime and not a theory. Recall Adams’ exuberant exclamation: “How few of the human race have ever had any opportunity of choosing a system of government for themselves and their children!” (Letter to Penn).

The famously immodest Cicero, in one of the speeches that would cost him his life, declared that “if my counsels had been followed, the Republic would be flourishing” (*Second Philippic*).¹¹³ He likely would not have been surprised then to find that the American republic flourished as it followed his “counsels.” We ourselves can therefore learn a great deal about the sources of our own political values by understanding the way in which this ancient statesman shaped both our political regime and our understanding of freedom.

I do not mean in this conclusion wholly to romanticize that influence. As I noted in previous chapters some of the negative elements of the Ciceronian tradition carried forward with the good. In chapter 2, we saw how Cicero’s natural law teaching could

¹¹³ As quoted by Montesquieu and translated by Fott: (Montesquieu and Fott 2002, 735).

provide a justification to a kind of crusading imperialism. A regime that sees itself as the embodiment of divinely ordered natural law might claim even an obligation to bring the fruits of that law to others by conquest. Much of the logic of American “manifest destiny” seems to reflect this theoretical dynamic. Likewise, Martha Nussbaum notes that *De officiis* was carried like a biblical text by British imperial officers when they went “visiting” the rest of the world (Nussbaum 2000, 179).

We might also lament the development by Locke and the Americans to downplay the theoretical underpinnings of rights in law and their connection to duties. Stripped of that grounding, rights in the 19th Century and beyond seem stuck in an untenable position. They appear either based on convention or calculations of utility – and thus often insecure and discardable on the same grounds. Or, they become a kind of metaphysical absolute: “rights as trumps”(Dworkin 1981),¹¹⁴ in which case they produce a kind of discursive impasse, where there seems to be no possible resolution for conflicts between rights.

It is beyond the scope of this dissertation to resolve such problems. But, we may find returning to the Ciceronian tradition provides some resources for working our way out of such conundrums. For instance, conceiving of rights as the structures of just relationships, as Cicero himself does, might offer a theoretically viable way to resolve

¹¹⁴ Dworkin himself defends this position on utilitarian grounds, too. But I find it the best way of expressing the ontological/Kantian version of rights defended as *a priori* absolutes.

the contemporary dilemma mentioned above. Regardless, I believe we stand a much better chance of making progress on such theoretical problems if we see where they come from and how the undesirable elements are connected to ideas we consider right, good, and essential.

By this dissertation I have tried to reorient our understanding of the historical relationship between liberalism and republicanism. Such a new understand should also give us insights into the conceptual and theoretical relationship between the two. At the core of Cicero's thought lies an aspiration for a truly moral politics, in which the freedom of the individual and the freedom of the community are mutually reinforcing. That such a vision could still inspire admiration and even an act of real political founding in 18th Century America testifies to its power. Because of this, Cicero deserves to be counted among the unseen Founders of the American republic. In that capacity, we ought to concede that Cicero finally earned—nearly two millennia late—the reward in heaven promised in the Dream of Scipio to those best of mortals who are “teachers and preservers of commonwealths” (*De re publica* 6.3).

References

- Adams, John. 1851. *The Works of John Adams, Second President of the United States: With a Life of the Author, Notes and Illustrations*. Little, Brown.
- — —. 1971. "Defense of the Constitutions of the United States." *The Works of John Adams*, vol.IV, 284.
- Arendt, Hannah. 1970. *On Violence*. Houghton Mifflin Harcourt.
- Arendt, Hannah, and Jonathan Schell. 2006. *On Revolution*. New York: Penguin Classics.
- Aristoteles, and Carnes Lord. 1984. *Aristotle The Politics*. publisher not identified.
- Aristotle. 2014. *Aristotle: Nicomachean Ethics*. Translated by Roger Crisp. 2 edition. New York: Cambridge University Press.
- Ashcraft, Richard. 1986. *Revolutionary Politics & Locke's Two Treatises of Government*. Princeton, N.J.: Princeton University Press,.
- Asmis, Elizabeth. 2004. "THE STATE AS A PARTNERSHIP: CICERO'S DEFINITION OF RES PUBLICA IN HIS WORK ON THE STATE." *History of Political Thought* 25 (4): 569–98.
- — —. 2008. "Cicero on Natural Law and the Laws of the State." *Classical Antiquity* 27 (1): 1–33.
- Atkins, Jed W. 2013. *Cicero on Politics and the Limits of Reason : The Republic and Laws*. Cambridge: Cambridge University Press.
<http://search.library.duke.edu/search?id=DUKE005937294>; Cover image (<http://proxy.lib.duke.edu/login?url=http://assets.cambridge.org/97811070/43589/cover/9781107043589.jpg>).
- Bailyn, Bernard. 1992. *The Ideological Origins of the American Revolution*. Harvard University Press.
- Balot, Ryan, and Stephen Trochimchuk. 2012. "The Many and the Few: On Machiavelli's 'Democratic Moment.'" *The Review of Politics* 74 (4): 559–88.
doi:10.1017/S0034670512000757.
- Barlow, Jackson. 2012. "Cicero on Property and the State" in *Cicero's Practical Philosophy*. Ed. Walter Nicgorski. University of Notre Dame Press.
- Barlow, J.J. 1999. "The Fox and the Lion: Machiavelli Replies to Cicero." *History of Political Thought* 20 (4): 627–45.
- Baron, Hans. 1938. *Cicero and the Roman Civic Spirit in the Middle Ages and the Early Renaissance*. Manchester University Press.
- Berlin, Isaiah, Henry Hardy, and Roger Hausheer. 2000. *The Proper Study of Mankind: An Anthology of Essays*. Macmillan.
- Buckle, Stephen. 1991. *Natural Law and the Theory of Property : Grotius to Hume*. Oxford: Clarendon Press ; Oxford University Press,.

- Caspar, Timothy W. 2011. *Recovering the Ancient View of Founding : A Commentary on Cicero's De Legibus*. Lanham, Md.: Lexington Books,.
- Cicero, Marcus Tullius. 1991. *Cicero: On Duties*. Cambridge University Press.
- Clarke, Michelle. 2014. "DOING VIOLENCE TO THE ROMAN IDEA OF LIBERTY? FREEDOM AS BODILY INTEGRITY IN ROMAN POLITICAL THOUGHT." *History of Political Thought* 35 (2): 211–33.
- Cohler, Anne M. 1988. *Montesquieu's Comparative Politics and the Spirit of American Constitutionalism*. Lawrence, Kan.: University Press of Kansas,.
- Cohler, Anne M., and Charles Louis de Secondat de Montesquieu. 2009. *The Spirit of the Laws*. Cambridge University Press.
- Colbourn, H. Trevor, and Va) Institute of Early American History and Culture (Williamsburg. 1965. *The Lamp of Experience; Whig History and the Intellectual Origins of the American Revolution*. Chapel Hill, Published for the Institute of Early American History and Culture at Williamsburg, Virginia, by the University of North Carolina Press [1965]
: Published for the Institute of Early American History and Culture at Williamsburg, Virginia, by the University of North Carolina Press.
- Colish, Marcia L. 1978. "Cicero's De Officiis and Machiavelli's Prince." *The Sixteenth Century Journal*, 81–93.
- — —. 1990. *The Stoic Tradition from Antiquity to the Early Middle Ages: Stoicism in Classical Latin Literature*. I. Vol. 1. Brill.
- Constant, Benjamin. 2016. "THE LIBERTY OF THE ANCIENTS COMPARED WITH THAT OF THE MODERNS." *Democracy: A Reader*, 108.
- Curran, Eleanor. 2013. "An Immodest Proposal: Hobbes Rather than Locke Provides a Forerunner for Modern Rights Theory." *Law and Philosophy* 32 (4): 515–38. doi:10.1007/s10982-012-9149-y.
- Donahue Jr, Charles. 2001. "Ius in the Subjective Sense in Roman Law: Reflections on Villey and Tierney." *A Ennio Cortese*, 506–35.
- Dunn, John. 1982. *The Political Thought of John Locke : An Historical Account of the Argument of the "Two Treatises of Government."* 1st paperback ed. Cambridge [Eng.]: Cambridge University Press,.
- Dworetz, Steven M., and publisher Duke University Press. 1990. *The Unvarnished Doctrine : Locke, Liberalism, and the American Revolution*. Durham: Duke University Press,.
- Dworkin, Ronald. 1981. "Rights as Trumps." *Arguing about the Law*, 335–44.
- Finley, M. I. 1983. *Politics in the Ancient World*. Cambridge University Press.
- Fott, David S. 2008. "How Machiavellian Is Cicero?" In *The Arts of Rule: Essays in Honor of Harvey Mansfield*, edited by Harvey Claflin Mansfield, Sharon R. Krause, and Mary Ann McGrail. Lexington Books.

- Frede, Dorothea. 1989. "Constitution and Citizenship: Peripatetic Influence on Cicero's Political Conceptions in the *De Re Publica*." *Cicero's Knowledge of the Peripatos*, 77–100.
- Garnsey, Peter. 2007. *Thinking about Property: From Antiquity to the Age of Revolution*. Vol. 90. Cambridge University Press.
- Grant, Ruth W. (Ruth Weissbourd). 1987. *John Locke's Liberalism*. Chicago: University of Chicago Press,.
- Greig, J. Y. T., ed. 2011. *The Letters of David Hume: Volume 1*. 1 edition. Oxford ; New York: Oxford University Press.
- Grotius, Hugo, Clement Barksdale, and William Elliott Butler. 2013. *The Illustrious Hugo Grotius of the Law of Warre and Peace : With Annotations, III. Parts. and Memorials of the Author's Life and Death*. Lawbook exchange edition. Clark, NJ: The Lawbook Exchange, Ltd.,.
- Hamilton, Alexander, James Madison, John Jay, and Robert A. Ferguson. 2006. *The Federalist*. New York: Barnes & Noble Classics.
- Hammersley, Rachel. 2013. "Rethinking the Political Thought of James Harrington: Royalism, Republicanism and Democracy." *History of European Ideas* 39 (3): 354–70. doi:10.1080/01916599.2012.703458.
- Hamowy, R. 1990. "Cato's Letters, John Locke, and the Republican Paradigm." *History of Political Thought; Exeter* 11 (2): 273.
- Hamowy, Ronald. 1979. "Jefferson and the Scottish Enlightenment: A Critique of Garry Wills's *Inventing America: Jefferson's Declaration of Independence*." *The William and Mary Quarterly* 36 (4): 503–23. doi:10.2307/1925181.
- Harrington, James, and J. G. A. (John Greville Agard) Pocock. 1977. *The Political Works of James Harrington*. Cambridge ; New York: Cambridge University Press,.
- Hawley, Michael C. 2016. "Individuality and Hierarchy in Cicero's *De Officiis*." *European Journal of Political Theory*, July, 1474885116657693. doi:10.1177/1474885116657693.
- Hobbes, Thomas. 1996. *Hobbes: Leviathan: Revised Student Edition*. Edited by Richard Tuck. 2nd Revised ed. edition. Cambridge ; New York: Cambridge University Press.
- Hobbes, Thomas, Thomas Hobbes, and G. A. J. (Graham Alan John) Rogers. 1994. *Human Nature, Or, The Fundamental Elements of Polity ; De Corpore Politico, Or, The Elements of Law*. Bristol, England: Thoemmes Press,.
- Hobbes, Thomas, and Richard Tuck. 1996. "Hobbes: *Leviathan: Revised Student Edition (Cambridge Texts in the History of Political Thought)* by."
- Hochstrasser, T. J. (Tim J.). 2000. *Natural Law Theories in the Early Enlightenment*. Cambridge, U.K. ; New York: Cambridge University Press,.

- Horwitz, Robert H., Diskin Clay, Jenny Strauss Clay, and John Locke. 1990. *John Locke : Questions Concerning the Law of Nature, with an Introduction, Text, and Translation*. Ithaca: Cornell University Press,.
- Hullung, Mark. 1983. *Citizen Machiavelli*. Princeton, N.J.: Princeton University Press,.
- Hume, David. 2011. *An Enquiry Concerning Human Understanding*. Simon & Brown.
- Jefferson, Thomas, and Douglas L. (Douglas Lawson) Wilson. 1989. *Jefferson's Literary Commonplace Book*. Princeton, N.J.: Princeton University Press,.
- Kramnick, Isaac. 1990. *Republicanism and Bourgeois Radicalism: Political Ideology in Late Eighteenth-Century England and America*. First Edition. Ithaca, N.Y: Cornell Univ Pr.
- Lim, Elvin T. 2014. *The Lovers' Quarrel: The Two Foundings and American Political Development*. 1 edition. Oxford ; New York: Oxford University Press.
- Locke, John, John R. Harrison, and Peter Laslett. 1971. *The Library of John Locke*. 2nd ed. Oxford, Clarendon Press, 1971.
: Clarendon Press,.
- Locke, John, and Peter Laslett. 1988. *Two Treatises of Government*. Student ed. Cambridge [Cambridgeshire] ; New York: Cambridge University Press,.
- Locke, John, and W. von (Wolfgang) Leyden. 1954. *Essays on the Law of Nature. The Latin Text, with a Translation, Introd. and Notes, Together with Transcripts of Locke's Shorthand in His Journal for 1676*. Oxford, Clarendon Press, 1954.
: Clarendon Press,.
- Locke, John, and P. H. Nidditch. 1991. *An Essay Concerning Human Understanding*. Oxford: Clarendon Press; Oxford University Press,.
- Locke, John, Jean S. Yolton, and John W. Yolton. 1989. *Some Thoughts Concerning Education*. Oxford: Clarendon Press ; Oxford University Press,.
- Lutz, Donald S. 1988. *The Origins of American Constitutionalism*. Baton Rouge: LSU Press.
- Machiavelli, Niccolo. 1998. *The Prince: Second Edition*. Translated by Harvey C. Mansfield. 2 edition. Chicago, Ill: University Of Chicago Press.
- MacIntyre, Alasdair. 2007. *After Virtue: A Study in Moral Theory, Third Edition*. 3rd edition. Notre Dame, Ind: University of Notre Dame Press.
- Macpherson, C. B. (Crawford Brough), and Frank Cunningham. 2011. *The Political Theory of Possessive Individualism : Hobbes to Locke*. [Wynford ed.]. Don Mills, Ont.: Oxford University Press,.
- Madison, James, and Marvin Meyers. 1973. *The Mind of the Founder: Sources of the Political Thought of James Madison*. Indianapolis, Bobbs-Merrill [1973]
: Bobbs-Merrill.
- Mansfield, Harvey C. 2001. *Machiavelli's New Modes and Orders: A Study of the Discourses on Livy*. University of Chicago Press.
- Mansfield, Harvey C., and Nathan Tarcov. 1998. "Discourses on Livy."

- Marquez, Xavier. 2012. "Between Urbs and Orbis: Cicero's Conception of the Political Community" in *Cicero's Practical Philosophy*. Ed. Walter Nicgorski. University of Notre Dame Press.
- Marshall, John. 1994. *John Locke : Resistance, Religion and Responsibility*. Cambridge ; New York: Cambridge University Press,.
- Mayville, Luke. 2016. *John Adams and the Fear of American Oligarchy*. Princeton: Princeton University Press,.
- McCarthy, Thomas. 2004. "Coming to Terms with Our Past, Part II On the Morality and Politics of Reparations for Slavery." *Political Theory* 32 (6): 750–72.
- McCormick, John P. 2011. *Machiavellian Democracy*. Cambridge University Press.
- Milton, John, John Milton, and William Poole. 2014. *Areopagitica and Other Writings*. London ; New York: Penguin Books,.
- Mitsis, Phillip. 2003. "Locke's Offices'." *Hellenistic and Early Modern Philosophy*. Cambridge, 45–61.
- Montesquieu, and David Fott. 2002. "Discourse on Cicero." *Political Theory* 30 (5): 733–37.
- Nedham, Marchamont, and David Womersley. 2011. *The Excellencie of a Free-State ; Or, The Right Constitution of a Commonwealth*. Indianapolis: Liberty Fund,.
- Nietzsche, Friedrich Wilhelm, and Walter Arnold Kaufmann. 1966. *Beyond Good and Evil: Prelude to a Philosophy of the Future/By Friedrich Nietzsche; Translated, with Commentary, by Walter Kaufmann*. Vintage Books.
- Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books,.
- Nussbaum, Martha C. 2000. "Symposium on Cosmopolitanism Duties of Justice, Duties of Material Aid: Cicero's Problematic Legacy." *Journal of Political Philosophy* 8 (2): 176–206.
- Pangle, Thomas L. 1988. *The Spirit of Modern Republicanism : The Moral Vision of the American Founders and the Philosophy of Locke*. Chicago: University of Chicago Press,.
- Pettit, Philip. 1997. *Republicanism: A Theory of Freedom and Government: A Theory of Freedom and Government*. Oxford University Press.
- Pettit, Philip, and others. 2013. "Two Republican Traditions." *Republican Democracy: Liberty Law and Politics*, 344.
- Plato. 1991. *The Republic of Plato: Second Edition*. Translated by Allan Bloom. 2 edition. New York: Basic Books.
- — —. 2017. *The Apology: A Socratic Dialogue*. Translated by Benjamin Jowett. CreateSpace Independent Publishing Platform.
- Plutarch. 1919. *Plutarch Lives, VII, Demosthenes and Cicero. Alexander and Caesar*. Translated by Bernadotte Perrin. Harvard University Press.
- Pocock, John Greville Agard. 2009. *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*. Princeton University Press.

- Pufendorf, Samuel. 1991. *Pufendorf: On the Duty of Man and Citizen according to Natural Law*. Edited by James Tully. Translated by Michael Silverthorne. Cambridge England ; New York: Cambridge University Press.
- — —. 1994. *The Political Writings of Samuel Pufendorf*. Edited by Craig L. Carr. Translated by Michael J. Seidler. 1 edition. New York: Oxford University Press.
- Rahe, Paul A. 2008. *Against Throne and Altar: Machiavelli and Political Theory Under the English Republic*. Cambridge University Press.
- Rahe, Paul Anthony. 2006. *Machiavelli's Liberal Republican Legacy*. New York: Cambridge University Press,.
- Rousseau, Jean-Jacques. 1997. *Rousseau: "The Social Contract" and Other Later Political Writings*. Edited by Victor Gourevitch. Unknown edition. Cambridge, U.K. ; New York, NY, USA: Cambridge University Press.
- Scott, James Brown. 2015. *The Classics of International Law: De Jure Naturae Et Gentium Dissertationes*. Forgotten Books.
- Scott, John T., and Vickie B. Sullivan. 1994. "Patricide and the Plot of The Prince: Cesare Borgia and Machiavelli's Italy." *American Political Science Review* 88 (4): 887–900.
- Shklar, Judith. 1989. "The Liberalism of Fear." *Political Liberalism: Variations on a Theme*, 149–166.
- Sidney, Algernon. 1805. *Discourses Concerning Government. To Which Is Added, a Short Account of the Author's Life, and a Copious Index*. Philadelphia: Printed and published by C.P. Wayne, for the Rev. M.L. Weems,.
- — —. 1996. *Discourses Concerning Government*. Edited by Thomas G. West. Revised edition edition. Indianapolis: Liberty Fund.
- Simmons, A. John (Alan John). 1992. *The Lockean Theory of Rights*. Princeton, N.J.: Princeton University Press,.
- Skinner, Quentin. 1998a. *Liberty before Liberalism*. Vol. 11. Cambridge Univ Press.
- — —. 1998b. *Liberty before Liberalism*. Cambridge ; New York: Cambridge University Press,.
- — —. 2002a. *Visions of Politics*. Vol. 2. Cambridge University Press.
- — —. 2002b. *Visions of Politics : Regarding Method*. 1st edition. Cambridge ; New York: Cambridge University Press.
- Smith, Preserved. 2015. *The Life and Letters of Martin Luther*. Palala Press.
- Spragens, Thomas A. 1973. *The Politics of Motion; the World of Thomas Hobbes*. [Lexington] University Press of Kentucky [1973]
: University Press of Kentucky.
- Straumann, Benjamin. 2016. *Crisis and Constitutionalism : Roman Political Thought from the Fall of the Republic to the Age of Revolution*. New York, NY: Oxford University Press,.

- Straumann, Benjamin, and Belinda Cooper. 2015. *Roman Law in the State of Nature : The Classical Foundations of Hugo Grotius' Natural Law*. Cambridge, United Kingdom: Cambridge University Press,.
- Strauss, Leo. 1953a. *Natural Right and History*. Chicago, University of Chicago Press [1953]
: University of Chicago Press.
- — —. 1953b. "Natural Right and History." Chicago and London: The University of Chicago Press.
- — —. 1989. "The Three Waves of Modernity." *An Introduction to Political Philosophy: Ten Essays by Leo Strauss*, 81–98.
- — —. 1995. *Thoughts on Machiavelli*. 1st US-1st Printing edition. Chicago: University Of Chicago Press.
- Strider, Robert Edward Lee, II. 2013. *Robert Greville, Lord Brooke*. Harvard University Press.
- Sullivan, Vickie B. 2006. *Machiavelli, Hobbes, and the Formation of a Liberal Republicanism in England*. Cambridge University Press.
- "Thomas Jefferson's Letter to Henry Lee, 1825 | Natural Law, Natural Rights, and American Constitutionalism." 2017. Accessed March 11. <http://www.nlnrac.org/american/declaration-of-independence/primary-source-documents/jefferson-to-lee>.
- Thompson, C. Bradley. 1998. *John Adams and the Spirit of Liberty*. Lawrence: University Press of Kansas,.
- Tuck, Richard. 1982. *Natural Rights Theories: Their Origin and Development*. Cambridge England; New York: Cambridge University Press.
- Tully, James. 1980. *A Discourse on Property : John Locke and His Adversaries*. Cambridge [Eng.] ; New York: Cambridge University Press,.
- Viroli, Maurizio. 2002. "Republicanism, Trans." Antony Shugar (New York: Hill and Wang, 2002) 6: 58.
- Waldron, Jeremy. 2002. *God, Locke, and Equality : Christian Foundations of John Locke's Political Thought*. Cambridge ; New York: Cambridge University Press,.
- Watson, Gerard. 1971. "'The Natural Law and Stoicism' in Problems in Stoicism. A.A. Long Ed."
- Wills, Garry. 2017. *Inventing America: Jefferson's Declaration of Independence*. 1st edition. Doubleday.
- Wilson, James. 2009. *Collected Works of James Wilson: In Two Volumes*. Indianapolis, IN: Liberty Fund Inc.
- Wirszubski, Chaim H. 1950. *Libertas as a Political Idea at Rome during the Late Republic and Early Principate*. Cambridge University Press.
- Wood, Gordon S. 1993. *The Radicalism of the American Revolution*. 1st Vintage Books ed. New York: Vintage Books,.

- — — . 1998. *The Creation of the American Republic, 1776-1787*. Unknown edition. Chapel Hill: University of North Carolina Press.
- Wood, Gordon S., and Va) Institute of Early American History and Culture (Williamsburg. 1969. *The Creation of the American Republic, 1776-1787*. Chapel Hill: Published for the Institute of Early American History and Culture at Williamsburg, Va., by the University of North Carolina Press,.
- Wood, Neal. 1988. *Cicero's Social and Political Thought*. Univ of California Press.
- Zuckert, Michael P. 1994. *Natural Rights and the New Republicanism*. Princeton, N.J.: Princeton University Press,.

Biography

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