

# Locke and the Nature of Political Authority

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**Abstract:** This paper aims to illuminate the ongoing significance of Locke’s political philosophy. It argues that the legitimacy of political authority lies, according to Locke, in the extent to which it collaborates with individuals so as to allow them to be themselves more effectively, and in its answerability to the consent such individuals should thereby give it. The first section discusses how the free will inevitably asserts its authority; the second shows the inevitability of the will’s incorporation of authority as a kind of prosthesis, which in turn transforms the operation of the will; and the third treats the issue of consent, arguing that Locke is less interested in explicit acts of consent than in the norm of consent, in answerability to which structures of authority should be shaped so as to honor the beings whose capacity to consent is definitive for them.

The world of ordinary experience is pervaded by authoritative mechanisms of organization and regulation, such that anything we do is already contextualized by these mechanisms. Even the most basic choices we make and actions we undertake reflect the structured terms of this world; how we use the sidewalk, interact with the server at a restaurant, dress ourselves, and make plans for the future reflects our status as “insiders” to an already meaningful and organized world of experience. We do not encounter this reality of organization and regulation simply in the form of external imposition—as, for instance, in an encounter with the police or in study of a driver’s education manual; rather, it is already implicated in our basic understanding of ourselves, the lives of those around us, and the nature of reality.

Within such a situation, the question of legitimacy and how it is to be measured arises, which means that the question of legitimacy is not asked or answered from a position external to and unaffected by this world and its laws, regulations, and structures of power and decision making. Are the mechanisms of authority and regulation under which we already live, and in relation to which we could hardly be indifferent judges, legitimate? What standards would allow us to measure such legitimacy more or less accurately, given that these standards are also always internally implicated in the already established terms of this reality? Finally, what is the appropriate

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attitude to take toward these mechanisms of authority and regulation, given our ongoing involvement with and formation by them?

Attitudes toward such mechanisms of authority and their legitimacy lie somewhere between two extremes. The first extreme involves taking given mechanisms of authority as absolute, allowing them to perform our agency for us, in a sense, following their lead without reflection as a child might follow her parents; this is to construe their legitimacy as unquestionable and one's own agency as incompetent. The second extreme is to take these mechanisms of authority as despotic forces to be opposed; this would be to construe their legitimacy as impossible and one's own agency in relation to them as independently competent. In both cases—the “paternalistic” and the “despotic” versions of authority—what is implied is an opposition between ourselves and that which is authoritative: either we construe a given authoritative body as despotic over an “innocent victim,” or we construe ourselves as criminal, flawed, or childlike in relation to what is ultimately reasonable.

There is a middle position between these extremes, however, which is to experience and understand one's relation with a given authority to be cooperative and mutually enabling; this attitude would be accompanied by an understanding of ourselves as independent individuals whose capacities are constituted and bolstered by external agents and systems. According to this understanding, a given authoritative body would be understood as the occasion through which individuals could more successfully be themselves, finding their capacities to pursue good, enact freedom, and interact with the world of things and other people developed and empowered; conversely, this authoritative body would be given opportunities for revision and transformation by being accountable to creative individuals who have developed the capacity to take up the world responsibly.

It is this collaborative kind of relationship that John Locke envisions with his characterization of political authority in *Two Treatises of Government*. His basic position is that the authoritative mechanisms that organize human social life, such as law and government, can and should be extensions of ourselves, the media by which we can be ourselves and pursue what concerns us: “law, in its true notion, is not so much the limitation, as the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under that law. . . . The end of Law is not to abolish or restrain, but to preserve and enlarge freedom.”<sup>1</sup> It is in manifesting their answerability to our powers of consent that these authoritative mechanisms manifest their legitimacy, showing themselves to be neither despotic

<sup>1</sup>John Locke, *Two Treatises of Government and Letter concerning Toleration*, ed. Ian Shapiro (New Haven: Yale University Press, 2003), 123–24, §57. Henceforth all references to the *Two Treatises*, with both page and section numbers, will be given in the body of the paper.

nor paternalistic. If they are oriented by the priority of preserving and enlarging the freedom of the individuals whom they govern, then, inasmuch as we individuals are committed to that freedom, we are in fact implicitly committed to them and their authority over us is essentially noncoercive; hence, they are the kind of authoritative body to which we would *in principle* consent.

The extent to which such mechanisms or authoritative bodies are in fact oriented by the priority of collaboration, however, is not simply evident on their surface, and it is easy for them to appear as despotical or paternalistic. Locke's aim in *Two Treatises of Government* is to distinguish political, paternal, and despotical authority and to oppose the kind of perception that would see individuals and systems of political authority as at odds. His goal is to cultivate enhanced practices of perception such that we are able to see the presence of our own freedom and consent in external institutions of political authority shaped in certain ways, from the point of view of living already within them—for, as he says, “we seldom find any number of men [living] any time together in [the state of nature]” (155, §127). He shows that political authority can effectively be committed to free human beings, transforming the shape of their existence in ways that they cannot but will; in such a context, to prioritize the individual is to prioritize the external structures that empower it to develop as such.

This paper will argue that Locke's philosophy effectively develops in its readers the capacity to see more clearly the nature and existence of authority and of consent. The first section will show how the authority of the free human being inevitably asserts itself as something that must be answered to, and the second section will show the inevitability of its incorporation of political authority as a kind of “prosthetic” aid. The third and focal section will discuss the main criterion determining the legitimacy of political authority, that of consent, and it will show that the nature of consent's operation, like that of legitimate authority, is only perceptible through careful analysis, since it can be operative even when not explicitly given. With Locke, I aim to reveal the dynamic, human reality that exists implicitly in the objective structures of authority—the way in which reality carries signs or traces of consent, of the dynamic force of human freedom, of the centrality of human agency, of their collaboration with reasoning beings. I will analyze Locke's careful piecing apart of the integrated relationship of freedom and the existing structures of political reality so as to develop a vision of the collaboration of authority and consent.

Overall, I take myself to be developing a Lockean account of how the legitimacy of a given structure of political authority can be judged and measured when we are always already inside it, cultivated by it and beholden to its terms—when we exist in a “time of records” in relation to which government is always already antecedent, “ignorant,” as Locke says, of its own birth and infancy (143–44, §101). As Hanna Pitkin writes, what requires an accounting is the fact that we “are both superior to and subject to all our obligations”—the fact that “men are in some sense above or outside the institutions of their

society” and “can measure and judge these institutions,” but that they “are also part of and subject to their society, bound by its norms and authorities.”<sup>2</sup> I call this “a Lockean account” rather than “Locke’s account” because of the different context in which his philosophy now resonates: while he was writing in opposition to hereditary monarchy, we are reading in the context of a political history that has explicitly acknowledged the priority of the self-determining, consenting individual. Our political reality has already taken itself to answer, at least in principle, to his introduction of the priority of the consenting individual, which means that to adequately recognize his powerful insights requires that we discern how they might be accommodated to a different context than that in which they were inaugurated.<sup>3</sup>

## I. The Foundation of Authority

Locke’s concern in the *Two Treatises* is to find a basis for political authority, “the great question which in all ages has disturbed mankind, and brought on them the greatest part of those mischiefs which have ruined cities, depopulated countries, and disordered the peace of the world” (66, §106). This question is not, as he says, “whether there be power in the world, nor whence it came, but who should have it” (66, §106).<sup>4</sup> He begins his pursuit by rejecting Sir Robert Filmer’s theses concerning the source of political authority: that “all government is absolute monarchy” (8, §2) because “men are not naturally free” (9, §6) and, further, that political authority stems from parental authority and Adam is the first “parent,” whose absolute authority extends to all of his descendants. Let us briefly explore the two aspects of this thesis, that political authority is grounded in nature and in the will of God, in order to better see Locke’s alternative foundation—namely, the free human being itself.

Asserting that authority is grounded in the natural subordination of children to their fathers (9, §6) and that it is divinely authorized, Filmer argues that Adam and all his descendants are the legitimate bearers of political authority. Against Filmer, Locke argues that nature does not contain within it a naturally occurring authority or sign pointing to what is authoritative,

<sup>2</sup>Hanna Pitkin, “Obligation and Consent—II,” *American Political Science Review* 60, no. 1 (March 1966): 49.

<sup>3</sup>Locke’s text has a “genuinely philosophic significance, transcending the proximate circumstances of [its] production,” to borrow Myers’s phrase, but to absorb that significance requires discerning how it might relate to our contexts and to the conceptions of human social reality that have developed in the meantime (Peter C. Myers, *Our Only Star and Compass: Locke and the Struggle for Political Rationality* [Lanham, MD: Rowman and Littlefield, 1998], 15–16).

<sup>4</sup>Locke identifies the question as not empirical or historical but moral. See Richard Ashcraft, “Locke’s State of Nature: Historical Fact or Moral Fiction?,” *American Political Science Review* 62, no. 3 (September 1968): 898–915.

and that the contents of God's will are likewise not displayed to us: "When any such declaration of God's intention is produced, it will be our duty to believe God intends it so; but till that be done, our author must show us some better warrant, before we shall be obliged to receive him as the authentic revealer of God's intentions" (98, §166). Any attempt to identify something as naturally authoritative or as divinely given invokes human will and judgment, and thus the human being irrevocably posits its own interpretation as authoritative, inserting the mediating power of judgment between itself and the authority it seeks to obey. The immediacy of the claim to authority of nature or God cannot be defended without falling into contradiction.<sup>5</sup>

With this idea of the inevitable mediation of human interpretation, we have the basis of Locke's alternative answer to the question of the ground of political authority. That is, the interpretive power that inserts itself between any purported authority and obedience to that authority is the undeniable, impulsive self-assertion of the human being that manifests itself to anyone "who will but consult" her own reason (102, §6). We cannot help conceiving of ourselves, at least in a basic way, as authoritative; the reality of our own agency forces itself upon us. Indeed, this is the significance of the "state of nature," the theoretical context Locke posits so as to be able to discern that which attests immediately and undeniably to its own authority. As Michael Zuckert writes, the "state of nature is a consequence of the structure of the human self. . . . [It] is preeminently a moral condition or a moral description of the situation God and nature leave human beings in, a situation of 'no superior on earth.'"<sup>6</sup> The "natural liberty of man" is simply what is involved in being an "I," and to reject it is to deceive oneself; it is the condition of

<sup>5</sup>As Ruth W. Grant writes, "man's natural sociality and family structure do not imply political authority. . . . The fact that men are born into preexisting social and political groups does not mean that they have a preexisting duty to obey the authorities within those groups" (Grant, "Locke's Political Anthropology and Lockean Individualism," *Journal of Politics* 50, no. 1 [February 1988]: 50).

<sup>6</sup>Michael P. Zuckert, *Launching Liberalism: On Lockean Political Philosophy* (Lawrence: University Press of Kansas, 2002), 6–7. John Dunn, similarly, calls it "a jurial structure, never a moral inventory of an existing historical situation" (Dunn, *The Political Thought of John Locke* [Cambridge: Cambridge University Press, 1968], 113). Ross J. Corbett calls it "a *mythos* containing a *logos*" concerning a "juridical relationship" (Corbett, *The Lockean Commonwealth* [Albany: State University of New York Press, 2009], 121). A. John Simmons writes that "in Locke the primary point of the state of nature is . . . to describe a certain *moral* condition of man" (Simmons, "'Denisons' and 'Aliens': Locke's Problem of Political Consent," *Social Theory and Practice* 24, no. 2 [Summer 1998]: 463). The notions of natural right and the state of nature are conceptually quite simple, involving a basic truth about what it is to be a human individual—that one cannot evade one's freedom. For a discussion of the different approaches to the idea of a "state of nature," see Daniel Eggers, "Does Status Matter? The Contradictions in Locke's Account of the State of Nature," *Archiv für Geschichte der Philosophie* 95, no. 1 (2013): 87–105.

necessary self-reference, necessary self-assertion, that accompanies the existence of any human being.<sup>7</sup>

Thus, while it *may* be the case, for instance, that the divine will is ultimately authoritative, the human being inevitably finds itself in the position of acknowledging or consenting to that authority; similarly, the human being has to will its own obedience to whatever it interprets the “will of nature” to be. It simply cannot answer to other things without invoking itself. Even though we always function in the context of a given authority, we also effectively and inevitably put ourselves in a position prior to this authority, so to speak, and without our acquiescence this authority cannot function; thus this priority must be acknowledged. While political authority always effectively exists, it must always also be able to account for its status as “created,” so to speak, in relation to the human being that is always capable of “creating” it, even though it can chronologically precede that human being.

This immediately free human being is only the starting point of Locke’s analysis, however, and the real significance of Locke’s account lies in his delineation of a political infrastructure that can uphold the claims of individual authority.<sup>8</sup> Indeed, although Locke is often taken simply to be asserting the primacy of the individual, his account is better understood as akin in structure to the arguments of Fichte and Hegel, who begin explicitly with the immediate claim to freedom made by the individual will, and then discern from the inadequacies of that immediate claim its necessary supplementation.<sup>9</sup> What Locke shows is that the freedom of the individual, while the starting

<sup>7</sup>There are, of course, other irreducible aspects of the existence of human beings. As Zuckert notes, Locke accepts “many of the claims of our contemporary communitarians about the social rootedness of humanity. He varies from them chiefly in reading differently the structure of the self and taking more seriously the problem of authority that follows therefrom” (Zuckert, *Launching Liberalism*, 7).

<sup>8</sup>As Peter C. Myers argues, “Locke’s account of the state of nature begins with a resolution or analysis of political society into its simple constituents,” but continues by investigating not just them but “their characteristic courses of development within particular environmental conditions” (Myers, *Star and Compass*, 108). There is a difference between the “theoretical individualism that reveals the native self,” on the one hand, and “the ordinary historical development of that self in response to the promptings of its natural condition,” on the other (*ibid.*). Zuckert similarly observes that Locke does not begin by calling attention to his ultimate destination in Michael Zuckert, *Natural Rights and the New Republicanism* (Princeton: Princeton University Press, 1994), 248.

<sup>9</sup>See G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991); and J. G. Fichte, *Foundations of Natural Right*, trans. Michael Baur (Cambridge: Cambridge University Press, 2000). Rather than being at odds with these later philosophical resources, Locke’s philosophy importantly prefigures them, and they provide the linguistic and philosophical resources with which this “prefiguration” can be discerned. Andrzej Rapaczynski argues that in “tying autonomy to the process of appropriation and production, Locke, like Hegel and Marx . . . , made autonomy into a dynamic and nonformalistic

point, needs to be supported, expanded, developed, and empowered by an infrastructure that in turn *transforms the nature and operation of that very individual in its freedom*.<sup>10</sup> While the free being inevitably and appropriately asserts its authority, how best to respond to and sustain this immediate claim, by means of a structured social world, is the question that engages most of Locke's efforts in the *Second Treatise*.<sup>11</sup> In other words, *to leave the human being to accomplish on its own the enactment of its own free reality is to fail to take its authority seriously*; to answer to its authority requires the addition of "external" agents and forces. While the political agents and forces that participate in the enactment of that being's reality could be oppressive restrictions that ignore its claim to authority, they could also be conditions that honor and enable it, and to be able to discern between these two possibilities requires careful perception. In the second section of this paper, I will explore Locke's discussion of the shape that such enabling conditions should take in order to be considered legitimately authorized by the free human being.

## II. The Body of Freedom: Property, Recognition, and Agreement

The scaffolding of the free human being, the external dimensions of its reality, is perceptible through a simple observation of its self-enactment. In acting, we will certain objects, ends, and conditions in the world, which means that our satisfaction relies on activity in a world and in relation to the things of that world. This fact immediately brings to light several interrelated elements of the scaffolding of freedom. First, the free being needs external things and space—in other words, it needs property; it enacts itself only through activity *on* and *with* things and *in* a specific part of the world. Second, because these external things or property have many sides, not merely the sides they show

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concept related to the daily pursuits of modern human beings" (Rapaczynski, *Nature and Politics* [Ithaca: Cornell University Press, 1987], 124).

<sup>10</sup>This developmental account of human individuals is supported by other writings by Locke: for instance, where he associates the highest form of freedom of "the intellectual nature" (i.e., of human beings) with the development of the capacity to suspend desire and subject our possible actions to "a fair examination" (Locke, *An Essay concerning Human Understanding* [Oxford: Clarendon, 1975], 47) or with the development of the capacity to be determined by what is good (ibid., 46), or where he associates freedom with the development of the capacity to follow reason alone (Locke, *Some Thoughts concerning Education* [Mineola: Dover, 2007], 33). Care for ourselves and for this capacity in us is "the necessary foundation of our liberty" (Locke, *Essay*, 51).

<sup>11</sup>Grant suggests that "the opposite of Locke's political individualism, however, is not community, but . . . the idea that there is a natural or divinely ordained hierarchy among [people]. Lockean individualism therefore is not incompatible with the recognition of the importance of communal ties, family associations, and social norms" (Grant, "Locke's Political Anthropology," 43).

to us—that is, because they exist in a world in which others also exist—the self-enactment of the free being implicates other free beings.<sup>12</sup> Thus, willfully to appropriate a worldly reality is implicitly to rely on the basic agreement of others that such appropriation is acceptable. Third, this basic agreement itself relies on yet another condition: we could not acquire the agreement of others if they could not acquire it from us and if it were not possible to confirm that agreement as stable over time. Here law and its agents enter, as the eradication in principle of the rule of self-interest in favor of the rule of impartiality, and as the confirmation of agreement over time. To be supported, then, the human being requires three conditions: external things, recognition from others, and the confirmation of enduring agreement through legal and organizational terms. Let us explore each of these in more detail.

### A. *Freedom as Property*

The free being is not manifest simply as *being*, but as *activity*: human identities are formed and performed out in the world, in making, consuming, and interacting with external reality. If being free requires access to things and to a space in which to be active, then freedom requires property: “the condition of human life, which requires labour and materials to work on, necessarily introduces private possession” (114, §35). In identifying the intrinsic connection between freedom and property, Locke is not defending the desire to have many things or the idea that individuals are essentially self-interested; property is simply *included* in the notion of human identity, for there would be no human existence without appropriation.<sup>13</sup> Again, we are simply identifying, in Zuckert’s terms, “the structure of the human self.”<sup>14</sup> Property is as intimate to us as our “person” is; it is the fundamental way in which personhood is enacted and the fundamental means through which personhood is developed

<sup>12</sup>Raymond Polin writes that “the characteristic of that equal power of freedom between men is that it does not manifest itself in society *in foro interno*, but that it presents external forms, it affects the existence of the others. . . . Property (as Hegel later explicitly explained) is the external manifestation of freedom . . . its very concrete existence for others” (Polin, “John Locke’s Conception of Freedom,” in *John Locke: Problems and Perspectives*, ed. John W. Yolton [Cambridge: Cambridge University Press, 1985], 6).

<sup>13</sup>Rapaczynski argues that “labor appropriates nature and makes it a ‘part’ of man because it ‘spiritualizes’ the objects and makes them into an objective extension of the human person” (Rapaczynski, *Nature and Politics*, 189). Appropriation “differs from mere use and consumption” insofar as it is a “higher function . . . in terms of which humanity is defined” (*ibid.*, 189–90). Myers, similarly, argues that “the particular action of appropriating represents the employment and manifestation of one’s freedom to create or enlarge a visible, tangible, more-or-less enduring domain. Thus the Lockean political ethic, with the property right as its centerpiece, is far less ‘bourgeois’ or spiritless than some critics suppose” (Myers, *Star and Compass*, 193).

<sup>14</sup>Zuckert, *Launching Liberalism*, 7.



beyond its simple, original self-enclosure. Further, while appropriation of what could belong to others may infringe upon their access to it, what might be common is of little value without this proprietary division: “the common is of no use” without “the taking any part of what is common, and removing it out of the state nature leaves it in” (112, §28).

Money, further, is an extension of this basic demand for property. If property is required by human activity, money allows for the development and refinement of human activity and hence of freedom. With the relationships of exchange that money introduces, we are freed from the constant concern to answer to the demands of survival and from the need to seek out that small portion of people who want the specific thing we have and have the specific thing we need. But, as Locke shows, money also has negative aspects in relation to freedom. First, it introduces a new kind of value; with money “the desire of having more than man needed” is created, which “altered the intrinsic value of things, which depends only on their usefulness to the life of man” (115, §37). The introduction of this second kind of value—extrinsic or “exchange-value,” to use Marx’s term—has the capacity to impede the satisfaction of the first kind of value—intrinsic or “use-value.” Second, Locke says that “the same rule of propriety, viz. that every man should have as much as he could make use of, would still hold in the world . . . had not the invention of money . . . introduced (by consent) larger possessions, and a right to them” (115, §36). The invention of money brings about a condition in which some people have more than they can use and others less, which, while not simply problematic, does have problematic aspects with regard to freedom. As Locke says, while “there are still great tracts of ground to be found . . . this can scarce happen amongst that part of mankind that have consented to the use of money” (119, §45). The invention of money brings about a situation in which everything can become privately owned, which presents a potential challenge to free movement and to access to the conditions of one’s existence and development.

These accounts of property and money, however ambivalent some of their aspects may be, respond to the necessarily thingly, spatial, and temporal nature of freedom; they are the mechanisms by which it is made actual. Through property and money, human activity can develop in specific, complex, and enduring ways. But property and money also limit freedom, insofar as individual appropriation has broad, extra-individual consequences. We are introduced by property and money, therefore, to the reality of an intersubjective domain—the world of recognition—and its specific nature and demands, which have consequences for the way in which money and property operate and are allowed to operate.<sup>15</sup>

<sup>15</sup>C. B. Macpherson suspects that Locke puts little restraint on the acquisition of property, but the analysis here could be used to show that political limitation of acquisition could be consistent with Locke’s account (Macpherson, *The Political Theory of*

## *B. Freedom as Recognition*

This discussion has so far given us the basic starting point of the liberal politics of modernity: the freedom of the individual and her necessary access to the external world. Upon the assertion of this first condition of freedom, however, there arises a second, which I will call the condition of “recognition.”<sup>16</sup> The idea here is that in order to exercise freedom effectively, we need the allowance of other people, their acknowledgment of our claims to the resources and domain of free activity. This second condition is more implicit than explicit in Locke’s philosophy, though it emerges in his discussion of the “promises and compacts men may make with one another . . . the promises and bargains for truck, &c. between the two men in the desert island” (106, §14) and also in the idea that the enjoyment of one’s freedom is uncertain when it is “constantly exposed to the invasion of others” (154, §123). The simple idea at work in the notion of “recognition” is the fact that my exercise of freedom in the domain of things relies on other people’s acknowledgment of me as an individual who has a legitimate claim to that domain and to those things. When one interacts with or lays claim to something, one limits its availability to others, and hence one relies on their acknowledgment of one’s limitation of their freedom, on their recognition that one’s self-assertion in relation to a particular thing is a legitimate refusal of their agency in relation to it. That which one appropriates for the sake of activity—property—is effectively a line that says “no” to the free activity of another, and one can effectively constrain others only if they have said “yes” to this refusal: property is possible only through our mutual acknowledgment of each other as free beings who can apportion common resources. Inasmuch as property is a condition of free selfhood, our mutual recognition of or consent to the authority of each other is required for the enactment of free selfhood.<sup>17</sup> The privacy of

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*Possessive Individualism* [Oxford: Oxford University Press, 1962], 194–262). Locke observes that “in governments, the laws regulate the right of property, and the possession of land is determined by positive constitutions” (§50, 121). James Tully argues that the spirit of the natural law is defeated by the introduction of money, and entrance into political society redresses this defeat (Tully, *A Discourse on Property: John Locke and His Adversaries* [Cambridge: Cambridge University Press, 1980]).

<sup>16</sup>In using the term “recognition,” I am intentionally alluding to the political philosophies of Fichte and Hegel, who argue that free activity relies for its existence on others acknowledging the individual as free and as entitled to a domain in which to enact itself. I take Fichte and Hegel to be developing a way of thinking the basic elements of which were already available in Locke. See G. W. F. Hegel, “Independence and Dependence of Self-Consciousness,” in *Phenomenology of Spirit*, trans. A. V. Miller (Oxford: Oxford University Press, 1977); and J. G. Fichte, *Foundations*, §§3–4.

<sup>17</sup>Others also say yes to us by developing the capacity for freedom in us when we are children. This form of recognition also enables the person to be free, but it is

property and hence the real existence of free individuality are thus *results*, rather than preconditions, of recognition, which entails that they are in principle social phenomena.<sup>18</sup> The inconstancy, uncertainty, and unpredictability of this mutual recognition, however, are the occasion for the development of the system of enduring agreement, the third condition upon which freedom relies.

### C. *Freedom as Enduring Agreement*

The phenomenon of recognition typically does not remain simply a matter of individually negotiated agreement at work in every encounter; rather, it becomes institutionalized in a system designed to allow it to abide. The difference between the state of war and being “in society” is the possibility of security and stability *over time*. In society people “are equally on both sides subjected to the fair determination of the law; because then there lies open the remedy of appeal for the past injury, and to prevent future harm” (108, §20). To live under law is to live in regard to the will and the recognition of others *as though they were constant, certain, and predictable*, to be free from subjection to “the inconstant, uncertain, unknown, arbitrary will of another man” (110, §22), which makes such law “not so much the limitation, as the direction of a free and intelligent agent to his proper interest” (123, §57). Further, because “self-love will make men partial to themselves and their friends” (105, §13), no single individual can be the source of confirmation of that agreement, but together they must establish a *shareable* source of confirmation of mutual agreement that does not serve any particular private interest.

Here, finally, we arrive at the notion of political authority: that which exists as the form of our enduring agreement. As the body of the will and the form of enduring agreement, this political authority or power is distinct from various other kinds of power—paternal and despotic—that Locke identifies in chapter 15 of the *Second Treatise*. To discern the nature of authority as enduring agreement and that attitude toward authority that is appropriate to relatively independent beings, let us explore these different forms in turn.

Paternal power, appropriate to children, is required by nature, Locke says; humans enter the world requiring guidance, which cannot simply take

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recognition more particularly of the child’s *potential* to be a free being. See especially *Second Treatise*, §§52–76.

<sup>18</sup>Jay Lampert makes a similar argument, using Locke, Fichte, and Hegel to show that “the more thoroughly property works its way through the social structure, the more the categories of property have to be overcome in other forms of social relations” (Lampert, “Locke, Fichte, and Hegel on the Right to Property,” in *Hegel and the Tradition*, ed. Michael Baur and John Russon [Toronto: University of Toronto Press, 1997], 41–42).

direction from their ideas about how they should be guided, although it is oriented by the goal of developing in them the capacity for self-direction.<sup>19</sup> While “we are born free, as we are born rational,” we do not “have actually the exercise of either: age, that brings one, brings with it the other too” (125, §61). Paternal power is exercised for the sake of the *preparation* of the human being for free, self-governing life and for participation in a system of enduring agreement. Human beings rely for their development on the *promulgation* of the “law of reason,” and the duty of parents is to enact this promulgation: “to inform the mind, and govern the actions of their [children’s] yet ignorant nonage, till reason shall take its place” (124, §58). Paternal power is ultimately oriented by the ideal of collaboration without itself appearing to be collaborative, until such self-direction comes to fruition.

Despotical power, however, which is appropriate to aggressors, is called for by violation of the terms of enduring agreement, or by those actions on the part of a person that manifest her unwillingness to live in a state of peace with others and to acknowledge her reliance on them for her own independent existence. Despotical power is exercised over a human being who is in some way opposed to the conditions of freedom—property, recognition, and enduring agreement. It is “the effect only of forfeiture,” of the action a person undertakes to put “himself into the state of war with another,” renouncing both “reason, which God hath given to the rule betwixt man and man,” and “the common bond whereby human kind is united into one fellowship and society” (177, §172).

Political power, finally, is importantly different in principle from the power appropriate to children and to “forfeitters.” It is exercised in relation to people who have a developed sense both of their own agency and of its reliance on that of others, and is exercised legitimately only on the basis of consent, *after* people have developed a sense of their own agency and *until* they forfeit their privileged relation to authority. It is the expression and sustenance of enduring agreement in the actual world, exercised over people who are in some sense fundamentally capable, for they have developed out of dependence and into an independence that is responsible in relation to others. It operates on the basis of a certain *respect* for this capability, which it expresses in acknowledging the significance of consent: this power “has its original only from compact and agreement, and the mutual consent of those who make up the community” (177, §171). Though it may seem to be an “intruder” into our constitution as individuals, it is one that should be welcomed, because of its “respect” for human agency and because through it we can more effectively be ourselves.

Just as we can wrongly construe legitimate political authority as despotical or paternalistic by failing to understand the necessary conditions for the

<sup>19</sup>As Ashcraft writes, “the moral state of Lockean man is one of capabilities. . . . All men . . . possess the capacity to be” rational and free (Ashcraft, “Locke’s State of Nature,” 908).

realization of our freedom, so also can we misconstrue consent, conceiving of it as something that exists only when it makes an undiluted and unmediated appearance. As Locke says, “we seldom find any number of men [living] any time together in this state [of nature]” (155, §127), which means that we seldom witness or experience the act of “agreeing with other men to join and unite into a community . . . consent[ing] to make one community or government” (142, §95). Locke therefore describes how we might perceive consent where it is not immediately evident or directly given; let us now explore the way in which consent leaves such traces.

### III. The Body of Consent: History, Property, and the Form of Government

Locke writes that “men being, as has been said, by nature all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community” (141–42, §95). A number of people consent “to make one community or government,” and thereby do they become incorporated, “wherein the majority have a right to act and conclude the rest” (142, §95). That majority in turn, with “the whole power of the community naturally in them,” places the legislative power in some person or body of people (157, §132); a body “can have a power to make laws” only by “the consent of the society” (158, §134). That to which one consents is the formation of a body politic and the decision made by the majority of that body with regard to the placement of legislative power in a person or persons. While legislative power is thereby exercisable over consenting individuals, it does not extend to that to which they could not consent in principle, such as enslavement or the appropriation of their property. Thus, by consenting to unite with others into one body politic, each individual lends his will to a power that legislates for him and governs on his behalf; this power acts on the authority that the majority has accorded it. A given political authority is legitimate if its exercise of power reflects the individual’s *own* agency, even when this authority effectively *restrains* this agency.

Locke’s discussion of consent, however, gives rise to a dilemma. In principle, as he argues, to value consent is to recognize something real and ineradicable—the creative, self-determining, and self-assertive power of the individual human being. In practice, however, the very attempt to honor this priority seems to result in its denial, and this in at least two ways.<sup>20</sup>

<sup>20</sup>Corbett nicely captures this tension when he observes that “the lack of any natural hierarchy among human beings means government can arise only by consent, yet the authority that can be created in this way is not equal to the challenges of government” (Corbett, *Lockean Commonwealth*, 21).

First, political authority is already powerful over us prior to our consenting to it, for we are born into societies that are already structured in certain ways, such that we are formed without consenting to that formation. Second, we are capable of being unreasonable, to the extent that we are capable of giving our consent to forms of government that themselves would disregard consent.<sup>21</sup> In both cases, we can see that to require that a political community have its authority depend directly on consent that is given *explicitly* would be to undermine the possibility of freedom: in the first case because established government could not function, and in the second case because government would be destroyed. If we are to discern the real weight of Locke's notion of consent, then, we require a more nuanced interpretation of what is involved in consent than simply explicit avowal.

If an unequivocal reliance upon the ultimacy of explicit avowal can undermine the ideal of consent, then the solution might lie in determining, as Locke writes, "what ought to be looked upon as tacit consent, and how far it binds, *i.e.* how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all" (152, §119).<sup>22</sup> At any given time, there will be people in a society who have not yet explicitly consented to the authority of its government, or people who would consent to what would effectively be a totalitarian government. In these cases, explicit consent would be either inoperative or dysfunctional. A commitment to consent can accommodate these realities by privileging the *principle* over the *practice*, the *norm* over the *act*,<sup>23</sup> such that

<sup>21</sup>As Peter Josephson remarks, we would hardly want to form a society with or be beholden to irrational people. Uniting in a body politic functions well if consent itself is reasoned, and thus prudent politics oriented to the development of reasonable individuals plays a role in the construction and development of societies (Josephson, *The Great Art of Government: Locke's Use of Consent* [Lawrence: University Press of Kansas, 2002], 10). Similarly, Nathan Tarcov argues that "consent as the source of political duties must be rational; it must be to such conditions as a free and rational creature would consent to. Where such conditions do not exist, no apparent formal or empirical consent is valid as constituting obligations" (Tarcov, *Locke's Education for Liberty* [Chicago: University of Chicago Press, 1984], 7). Gillian Brown writes that "consent usually appears in affiliation with knowledge and experience: as in the tandem concepts of informed consent and the age of consent. Consent would seem to become representative of agency only in conjunction with will and knowledge that the self does not invariably possess" (Gillian Brown, *The Consent of the Governed* [Cambridge, MA: Harvard University Press, 2001], 18).

<sup>22</sup>On the other hand, "nobody doubts but an express consent of any man entering into any society, makes him a perfect member of that society, a subject of that government" (152, §119).

<sup>23</sup>This distinction is alluded to in the work of some commentators, such as Josephson, who observes that "understanding how Locke combines principle with practice or necessity is the single greatest difficulty in understanding his political theory comprehensively. Locke attempts to resolve these difficulties . . . through a

a legitimate government need not accept explicit acts of consent that are precipitate, wrongful, or self-subordinating, and it need not wait upon the explicit avowal of the free persons it governs; here consent would be tacit or “hypothetical,” to use Hanna Pitkin’s term, yet oriented toward the production of consent and of consenting individuals.<sup>24</sup> Such an interpretation of consent is expressed, for example, in the insistence upon the *transparency* of law, such that the terms of and rationale for the law are available *if* the individual looks for them, and in the development of a social and educational environment that would aid individuals in developing their capacity for freedom and consent.<sup>25</sup> A legitimate form of political authority would

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medium which is both right and prudent. That medium is consent itself. In Locke’s hands consent becomes an instrument by which reason or prudence may construct and shape the life of the public” (Josephson, *Great Art*, 3).

<sup>24</sup>The new “Lockean doctrine,” as Pitkin argues, may be “regarded as a new interpretation of consent theory, what we may call the doctrine of *hypothetical* consent. . . . Legitimate government is government which *deserves* consent.” Further, “traditional consent theory is defective, for it directs such a man’s attention to the wrong place. It teaches him to look at himself (for his own consent) or at the people around him (for theirs), rather than at the merits of government” (Pitkin, “Obligation and Consent—II,” 40). It is important to add here that the “merits of government” should include facilitation of the capacity of people to consent *in fact* or actually, or to withhold consent and criticize the structures that cultivate them as such. That is, “hypothetical consent” should also be oriented toward the goal of “actual consent.” Josephson makes this addition to Pitkin’s account, arguing that “Locke’s treatment of consent is not meant to be taken merely hypothetically”; rather, Locke is “serious about building an effective republican democracy” in which “representative government reinforces the habit of consent to the rule of law itself” (Josephson, *Great Art*, 16). I side here with those scholars of Locke, such as Pitkin, Grant, Dunn, Myers, Tarcov, Josephson, and Martin Seliger, who do not think that empirical acts of consent are actually required in order to legitimate government, but who view consent either as an ideal that a given politically authoritative body can reflect in its very structure (e.g., Pitkin) and/or as a goal at which such a body aims (e.g., Josephson). Other scholars, such as Simmons, Julian Franklin, Paul Russell, Willmoore Kendall, John Plamenatz, and Frank Snare, believe that legitimate government for Locke requires that consent be performed at some determinate point by individual members of society.

<sup>25</sup>Myers argues that “the delicate task of Locke’s political philosophy is to . . . [secure] the indispensable condition of government by the rational consent of the governed by promoting the broad promulgation of this moderated, popularized reason” (Myers, *Star and Compass*, 25). He holds that “the possibility of liberal government is ultimately contingent upon the performance of the morally formative institutions of civil society” (*ibid.*, 180). Josephson argues that the coercive and educative work of the executive is “bound by a concern for consent,” and that “Locke’s project of education is explicitly directed at developing the capacity for rational consent” (Josephson, *Great Art*, 231). People must “be educated to consent to what is just and reasonable . . . persuaded to accept rules” (*ibid.*, 277).

reflect its prioritization of the free consent of its constituents in the very structures and principles of its operation.

Locke himself does not sort out these paradoxes of consent exhaustively,<sup>26</sup> but two avenues he does take suggest that he is alive to this issue of consent in principle as opposed to consent in practice. First, he devotes a significant portion of the *Second Treatise* to identifying the various ways in which societies can be structured so as to reflect the fact that consent is a priority, principle, or norm, without mentioning any actual granting of consent in this context. Second, he gives his own demonstration of how political structures can reflect the presence of consent and how we can perceive and uncover its tacit operation by showing how historical forms of political rule were implicitly predicated on consent. Let us treat that demonstration first, so as to develop the capacity to see consent where it is not explicit, and to see how Locke shows consent being registered as a priority in the very structures of political life. Second, we will track Locke's demonstration of signs of consent in the operation of existing structures of modern political reality: that of legislative power, law, executive power, property, and conscience.

Locke's discussion of the different forms of political rule he observes at work in history demonstrates how to "read" existing political forms for the ways in which they reflect the presence of consent, and is intended to show "that all peaceful beginnings of government have been laid in the consent of the people" (150, §112). In the various forms of rule he observes—paternal, monarchical, and legislative—we see continuous testaments against subordination and different modes of expression of the presence of consent; as Grant remarks, "the requirements of consent can be adequately met by very different actions in different historical circumstances."<sup>27</sup> With this genealogy, Locke effectively shows that consent can be operative even in governments that appear to modern perception to be premised on unfair subordination. Let us explore these various forms.

Locke asserts that it is reasonable to think that people would consent to a paternal form of rule, since it is reasonable to think that the father would cater to their interests and work for their good:

it is obvious to conceive how easy it was . . . for the father of the family to become the prince of it; he had been a ruler from the beginning of the infancy of his children. . . . But . . . *this was not by any paternal right, but*

<sup>26</sup>It is common for commentators to complain about Locke's lack of clarity with regard to the issue of consent. Dunn, for instance, identifies "an indubitable lacuna" here (Dunn, *Political Thought*, 134); Simmons develops an account of consent that he thinks "a consent theorist such as Locke *should* embrace" (Simmons, "Denisons' and Aliens," 167); Josephson asserts that "Locke deliberately makes the difference between the two kinds of consent [viz., explicit and tacit] obscure" (Josephson, *Great Art*, 156).

<sup>27</sup>Grant, "Locke's Political Anthropology," 52.



*only by the consent of the children. . . . They had been accustomed in their childhood to follow his direction, and to refer their little differences to him; and when they were men, who fitter to rule them? . . . Where could they have a fitter umpire than he, by whose care they had every one been sustained and brought up, and who had a tenderness for them all? (131–32, §§ 74–75, my italics)*

Locke's point here is that fathers had power by consent, not for the reason of having, for instance, a "natural right" or a "divine calling."

Similarly, political authority based on a kind of military model in which leaders "are little more than generals of their armies" (147, §108) is also a testament to consent, according to Locke. The danger threatening societies that had grown beyond the family network but not yet into the modern nation-state was danger from *without*, not within, and the main priority of political power was to engage effectively with such outside threats. In such societies, Locke argues, people would *choose* a leader who would be strong and effective in protecting them against other rival states and powers:

Monarchy being simple, and most obvious to men, whom neither experience had instructed in forms of government, nor the ambition or insolence of empire had taught to beware of the encroachments of prerogative . . . it was not at all strange that they should not much trouble themselves to think of methods of restraining any exorbitancies of those to whom they had given the authority over them, and of balancing the power of government, by placing several parts of it in different hands. . . . Therefore it is no wonder they put themselves into such a frame of government, as was . . . best suited to their present state and condition, which stood more in need of defence against foreign invasions and injuries, than of multiplicity of laws. (146–47, §107)

Again, the structure of this form of political authority testifies implicitly to the significance of consent, which we would recognize if we attended carefully to the specific historical conditions at work in this kind of society.

In a modern context, however, in which threats from outside cease to be urgent and threats from the governing powers begin to make themselves manifest, and in which self-governance becomes a possibility because basic needs have been met, a different political demand comes to the fore: the demand that political conditions be arranged such that people can more effectively deal with each other and pursue their own variegated interests. With the emergence of these priorities we see the emergence of the modern nation-state, in which individual rights and liberties are protected. In this context, the older model of powerful and unrestrained governing power could threaten individual interest rather than preserve it:

when ambition and luxury . . . would retain and increase the power, without doing the business for which it was given; and, aided by flattery, taught princes to have distinct and separate interests from their people; men found it necessary to examine more carefully the original and

rights and government, and to find out ways to restrain the exorbitancies, and prevent the abuses of that power, which they having intrusted in another's hands only for their own good, they found was made use of to hurt them. (149, §111)

In this modern context as well, government takes the shape it does based on the demands of its constituents, not simply on its own terms, thus attesting implicitly to its *answerability* to the consent of its constituents.

The basic point to be noticed here is that consent is operative in *all* of these cases, or again, as Locke says, "that all peaceful beginnings of government have been laid in the consent of the people" (149–50, §112). While modern citizens may believe consent to be operative only in modern, liberal, democratic contexts, that perception is based on too little appreciation of the specific political accomplishments that lie behind the formation of modern states. Locke's historical argument shows us, rather, that to look for consent we must look at *the structure of government in relation to socioeconomic and geopolitical conditions*. Let us now turn from history to principle, identifying how specific governmental structures can manifest their answerability in principle to consenting individuals even when consent is not explicitly given. I aim to show here how his detailed description of the shape that political reality should take has consent as its cornerstone,<sup>28</sup> such that he is effectively demonstrating how to answer to the priority of consent in the very structures of political authority.<sup>29</sup>

The first way in which the structure of a political society carries a trace of the operation of consent can be seen in the very existence of the legislative power. Locke marks the transition to the modern rule of law in the following: While the people may, "by a tacit consent," give chief rule to "some one good and excellent man," when time "had brought in successors of another stamp," they would not be safe until "the legislature was placed in collective bodies of men, call them senate, parliament, or what you please" (140–41, §94). For fear of absolute rulers "made licentious by impunity" (140, §93), the people form a legislative power that is itself beholden to the law. This constitution of the legislative is "the original and supreme act of the society, antecedent to all positive laws in it, and depending wholly on the people" (170, §157), and

<sup>28</sup>John Zvesper claims that "Locke's argument in his *Treatises on Government* is that his suggested political arrangements are not merely advisable, but that they are the only ones to which it is naturally possible for me to consent" (Zvesper, "The Utility of Consent in John Locke's Political Philosophy," *Political Studies* 21 [1984]: 60).

<sup>29</sup>Here I take myself partly to be answering to Josephson by aiming to produce "a comprehensive work which details the development of Locke's teaching of consent through the *Second Treatise*" (Josephson, *Great Art*, 8), which he claims has been lacking in scholarship that pursues a "hypothetical" approach to the issue of consent. This is a matter of discerning Locke's thoughts "concerning the cultural and political conditions most favorable to the cultivation of an ethic of rational self-government" (Myers, *Star and Compass*, 26).

“without this the law could not have that which is absolutely necessary to its being a law, the consent of the society” (158, §134).<sup>30</sup>

Other aspects of the operation of the legislature, such as the specific limits within which it operates, also testify to its basis in consent. Locke asserts that legitimate political power could never be “absolutely arbitrary over the lives and fortunes of the people” (159–60, §135), for its power ends at that action to which people would not consent. Similarly, it cannot take property from persons without their consent, “for the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires, that the people should have property” (161, §138). Further, Locke argues that people would surely depart from the state of being subject to arbitrary and unknown decrees, and would thereby manifest their refusal of consent (160, §136); thus the transparent character of laws also registers the significance of consent: to be able to consent to something, a person must know what it is. Finally, the fact that a legitimate legislative power does not have power on its own authority but by the consent of the people is made manifest in its incapacity to “transfer the power of making laws to any other hands” (163, §141), in its subjection to the laws it makes (164, §143), and in its susceptibility to removal when the people “find the legislative act contrary to the trust reposed in them,” whereupon power will once again “devolve into the hands of those that gave it” (166, §149). If the legislative power operates according to these kinds of constraints, it shows *itself* to be answerable to the priority of consent, even if it has not explicitly received it. What is significant here is the nature of the structure that is built to house those individuals whose capacity to consent is definitive of them, not merely the individual act of consenting; legislative power can reflect its answerability to consent in the very specific ways in which it operates.<sup>31</sup>

A second, similar structure in which an implicit testament to consent is visible is in the nature of law and the shape that it takes. What the rule of law is intended to do in principle is disallow the rule of specific individuals in the shared political domain and thus facilitate the freedom of all. If all

<sup>30</sup>Lee Ward claims that by “arguing that societal choice regarding the location of the ‘Power of making Laws’ determines the form of government, Locke firmly establishes the efficient cause of government in the consent of the majority in society. . . . When Locke identifies the ‘Constitution of the Legislative’ as the ‘first and fundamental Act of Society,’ he is referring to the active principle of constituent power, which involves the consent of the majority of society” (Ward, “Locke on Executive Power and Liberal Constitutionalism,” *Canadian Journal of Political Science* 38, no. 3 [September 2005]: 727).

<sup>31</sup>Here I differ from John Dunn, who argues that Locke’s “is a theory of how individuals become subject to political obligations and how legitimate political societies can arise. It is not in any sense whatsoever a theory of how government should be organized” (Dunn, “Consent in the Political Theory of John Locke,” *Historical Journal* 10, no. 2 [January 1967], 154).

give up the possibility that their own self-interest could rule, then they produce a domain in which their mutual development and pursuit of self-interest are possible. In principle, reasonable people would seek to avoid rule by the arbitrary self-interest of another and hence would consent to the rule of law. Further, a system of law also reflects consent if no law requires that we abandon the goal of self-preservation (160, §135), because no reasonable person could consent to such a law. The fact that law is interpreted by judges for application to particular situations is another sign of the significance of consent, for those who only exist in the context of singular situations and according to the terms of singular insight would not consent to a system of law that would be incapable of taking into consideration that singularity. Communicated here again is law's fair responsiveness to individual situations, a responsiveness to which reasonable people would consent.

The third aspect of governmental structure in which we see a sign of consent is in the nature of the executive power's operation. The executive power carries out the original act of consent; it empowers and enforces it.<sup>32</sup> The fact that laws actually function in everyday situations is a testament to the significance of consent: if the people has allotted authority to the legislature, then it wills that authority to be effective, and hence it wills the execution of legislative decrees in ordinary situations. Further, the executive power may not hinder "the meeting and acting of the legislative," since that would be to hinder the consummation of the original act of the people" (168–69, §155). Finally, the executive power has the privilege of prerogative, of acting "according to discretion for the public good, without the prescription of the law, and sometimes even against it" (172, §160); because "the law can by no means provide for" everything (171, §159), this invocation of prerogative is also worthy of consent. Because a certain measure of uncertainty and unpredictability can never be eradicated, the law can be falsely certain and thus unjust, and prerogative is its necessary supplement.<sup>33</sup> Since no law can govern it in turn, however, it relies directly on consent; the people have the right to oppose it when it is used for harm. Thus Locke's presentation of the specific characteristics and restrictions of the operation of executive power also shows them to be a testament to consent.<sup>34</sup>

<sup>32</sup>Josephson argues that the work of the executive "quietly inculcate[s] reasonable customs of self-government" so as to develop "citizens who are at once civil and self-reliant," and shows thereby that it is "bound by a concern for consent" (Josephson, *Great Art*, 231).

<sup>33</sup>Corbett argues that political society must be adequate to its purposes, and if it is not then no rational creature can be presumed to have consented to it. Because legislative power is not adequate to the ends of government, then no rational creature can be presumed to have consented to a government that lacks a body with prerogative power (Corbett, *Lockean Commonwealth*, 82).

<sup>34</sup>Ward argues that "the executive's authority to act contrary to the will of the people, expressed through their representatives, reflects a form of consent to

The existence of property, which the above governmental structures make possible, is a fourth aspect of the structure of modern political worlds that manifests the existence of consent; in fact, it is the only sign of tacit consent that Locke explicitly identifies as such:

every man, that hath any possessions, or enjoyment of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and, in effect, it reaches as far as the very being of any one within the territories of that government. (153, §119)

Property is a sign of the existence of free activity, of the agreement of others, and of an authority that backs our enduring agreement; it is, in other words, a sign that a compact—involving persons and political authority—is being kept. In having property (which includes simple appropriation of a domain of activity, such as a “highway”), an individual consents to the rules of the body that ensure that property’s stability because she is in principle indebted to this broadly governed order in her very ability to possess and use property without interruption.

Finally, the fifth place in which we see the ultimacy of consent is the preservation of the possibility of an “appeal to heaven” when no other remedy to unjust rule is available, which Locke calls “conscience” (192, §209):

though the people cannot be judge . . . yet they have, by a law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth, viz. to judge whether they have just cause to make their appeal to heaven. —And this judgment they cannot part with, it being out of a man’s power so to submit himself to another, as to give him a liberty to destroy him. (175, §168)

There is historical evidence of the activity of this authority of conscience—as Locke observes, nothing will stop people who are “generally ill-treated” from easing “themselves of a burden that sits heavy upon them” (199, §224)—but it is also impossible in principle to deny its existence. As discussed above, a human, authoritative body can never be guaranteed to be infallible but stands ever before the court of human judgment, which makes it necessary to maintain the possibility of conscientious resistance.<sup>35</sup> If it is acknowledged

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constitutional government that is more fundamental than the authority of legislative institutions” (Ward, “Locke on Executive Power,” 736).

<sup>35</sup>Robert A. Goldwin discusses the way in which a government can structure itself so as to be responsive to the authority of consent and conscience in “Locke’s State of Nature in Political Society,” *Western Political Quarterly* 29, no. 1 (March 1976): 126–35; see esp. 134–35.

politically that the right of conscience or the “appeal to heaven” ultimately exists as a possibility, then the legitimacy of political authority shows itself to rest implicitly on consent.

In sum, all of these aspects of the structure and exercise of political authority display signs of the dynamic operation of the principle or norm of consent; Locke has effectively described how structures and systems would have to be constructed in order to answer to the free character of consenting individuals, and thus defers the demand for explicit avowal. He reveals to us the dynamic presence of human agency and freedom underlying what can seem to be inert, objective reality, and indirectly shows us how to find the presence of consent in our own political reality. Locke’s account is not of the explicit, individual act of consent but of the structures built to house those individuals whose capacity to consent is central to them, and their production of that capacity to consent. His concern lies in elucidating how governing structures can legitimately demand consent in principle by being shaped so as to honor the free being who has this capacity.

#### IV. Conclusion

I have traced a route through the basic framework of Locke’s political philosophy so as to reveal the developmental complexity of his analyses of authority and consent: legitimate authority is essentially a collaboration with human individuals in relation to which the attitudes of child and criminal are inappropriate, and the priority of consent is registered not simply through individual expressions of consent but through the structures in which free individuals are housed and the goal of those structures in relation to those individuals. Although Locke’s account of these phenomena begins with the irreducible claim to authority of the individual person, it moves from her to the structures that house and empower her, and thus concludes in a revision of the original account of her nature: authority and consent are incomprehensible on the basis of an abstractly individualist account of the human being, but require the capacity to see the way in which human individuality and agency are a function of institutions, structures, and basic forms of human interaction. Locke’s philosophy requires its readers to develop their ability to see the dynamic force of human freedom already at work in the given structures of political reality, no matter how inert these structures may appear. According to this vision, Locke is the initiator of an original kind of political thinking that seeks to illuminate how the newly won idea of individual freedom is integrally linked to the structures of social and political reality.