

Citizenship and Consent in Locke's *Second Treatise*

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Abstract: John Locke's *Second Treatise of Government* describes the first principles of liberal society and statecraft. Based on his account of the pre-political state of nature, and the constraints of paternal (or parental) power, Locke asserts the basis of legitimate political authority in liberal society is the express consent of the people. I argue that, despite Locke's monumental influence on modern liberal society, his account regarding the relation between rational consent and citizenship has become neglected and unevenly applied in established states. Consequently the move from child to adult involves the inheritance of citizenship as an immaterial kind of property, only tacitly consented to as a logical end to parental authority. I conclude that this attitude toward consent and citizenship in modern liberal society diminishes civic virtue and identity, and that taking seriously Locke's role of consent in legitimating political authority requires a different approach.

In his *Second Treatise of Government*,¹ John Locke describes the principles of liberal political society, characterized by the voluntary and unanimous agreement of its subjects to give up a portion of their natural liberty and invest it in the government of their choosing. The *Second Treatise* has left an indelible mark on the structure and philosophy of liberal society, particularly with respect to the securing of property and the legitimating authority of popular consent. Locke's insistence that consent by the people is the indispensable hallmark of a just polity is praiseworthy. However, while Locke makes express consent an essential part of political membership, people born in modern liberal society today often acquire citizenship as an inheritance which we only tacitly consent to. I argue that this model contradicts Locke, and risks undermining the legitimacy of liberal society, thereby diminishing civic virtue. Although Locke provides an account of the legitimate means for both creating and dissolving a government, I show that his concept of the state of nature conflates theoretical and practical lines of reasoning. Moreover, Locke omits any serious consideration of how an established polity secures the consent of new citizens born within its borders, thereby maintaining its legitimacy. This paper scrutinizes this omission in the *Second Treatise* by considering (1) Locke's state of nature, (2) his thoughts on family education, and (3) the role of rational consent in the transition from childhood to citizenship. Taking Locke's account of family life as proto-political rather than pre-political, I explain inherited political membership for those born and raised in established liberal democracies as a logical extension of tacit consent to parental power. I conclude that (4) this reflects a poor application of Lockean liberalism which diminishes the legitimacy of citizenship, and suggest that taking seriously Locke's role of consent in legitimating political authority requires a different approach.

I

Locke's theoretical framework rests heavily on his account of the pre-political state of nature, which is characterized by absolute freedom of equality, insofar as every individual's power is subject

1 John Locke, *Two Treatises of Government*, ed. Thomas Hollis (London: A. Millar et al., 1764). Accessed online: <http://oll.libertyfund.org/titles/222>. Hereafter referred to simply as *Second Treatise* for brevity.

only to their own authority. Locke identifies the natural law that governs the state of nature as reason, which dictates that “no one ought to harm another in his life, health, liberty, or possessions.”² Such absolute freedom leads to strife when individuals, each a judge in their own right, come into conflict and act unjustly due to partiality and ignorance. This demonstrates that, while Locke makes reason the cornerstone of individual freedom, moral action, and consensual political association, he also admits that there is always a risk that individuals will not act rationally.³ Locke claims that all people are born into the state of nature, and only escape it when they voluntarily and collectively enter into political society, which remedies the deficiencies of the state of nature.⁴ The state of nature is simultaneously treated as an illustrative thought experiment and a historical account of the emergence of political society, evidenced by Locke's references to pre-colonial societies in America, the history of which Locke was familiar with. For Locke then, at least in some sense, the state of nature was a historical fact and not merely a logical construct meant to illustrate the principles of liberalism.⁵

While Locke's state of nature provides a useful analytic for evaluating concepts like natural rights, their retention or forfeiture in entering political society, and the legitimate grounds of civic disobedience, it only complicates the problem of consenting to political membership in established states. Locke's account of parental power and family life, I will argue, contradicts the claim that we are all born in the state of nature. Therefore the idea that a state begins “where-ever any number of men, in the state of nature, enter into society to make one people, one body politic, under one supreme government,”⁶ is a conceptual fiction. Today, in a world covered in political societies, no group of mature human beings ever finds itself so thoroughly in the state of nature that they can found a polity

2 Locke, *Two Treatises*, 98.

3 David Foster, “Taming the Father: John Locke's Critique of Patriarchal Fatherhood”, *The Review of Politics*, Vol. 56, No. 4 (Autumn, 1994): 662.

4 Locke, *Two Treatises*, 97-101.

5 William G. Batz, “The Historical Anthropology of John Locke”, *Journal of the History of Ideas*, Vol. 35, No. 4 (1974): 663-666.

6 Locke, *Two Treatises*, 132.

without abandoning another. In this sense citizenship obtains only “when any one joins himself to, and incorporates with any government already made.”⁷ The question then is what kind of consent is involved in joining a political society, and what are the necessary conditions for that consent to be legitimate, which is better understood in light of Locke's account of family life and education.

II

Despite his claim to absolute equality of freedom in the state of nature, Locke admits that children are an exception, being under the power of their parents until they mature into sufficiently rational agents. For Locke, political power is permanent and can punish transgressions by any means including death, whereas parental power is temporary and has no jurisdiction over a child's life or property,⁸ but it entails an unavoidable duty: “The nourishment and education of their children is a charge so incumbent on parents for their children's good, that nothing can absolve them from taking care of it.”⁹ Locke adds that if the parents should be unable to fulfill this obligation, the state takes on the responsibility itself, for the benefit of the society. While it is clear that Locke considers it essential to care for and educate children to a state of maturity before they can assume full political membership, what such maturity consists in remains ambiguous. Locke's only qualification is that a child comes of age when they can be said to possess reason, which is available to all but those who, due to mental impairment,¹⁰ are incapable of reason, and therefore cannot enjoy civic liberty, making them permanent wards of the state.¹¹

There is a tension here that runs throughout Locke's work, between the belief that all human beings are naturally capable of a kind of reason that is fundamental to moral and civic virtue, and the contrary notion that a significant number of people are incapable of such a degree of reason, and are

⁷ *Ibid*, 132.

⁸ Foster, “Taming the Father”, 645-648

⁹ Locke, *Two Treatises*, 123-124.

¹⁰ Foster, “Taming the Father”, 645-648

¹¹ Locke, *Two Treatises*, 118-121.

therefore precluded from the exercise of such virtues. Steven Forde suggests this is an important tension to grapple with because, “[t]o the extent that Locke is an architect of our society and our conception of justice, it matters a great deal whether his system has easily accessible foundations, and whether [...] its health depends on those foundations being widely grasped.”¹² I agree with Forde that intelligible familiarity with a society's founding principles is important to the health of said society, and that Locke saw this as a necessary part of liberalism, without which consent would not be meaningful. Therefore, for Locke's schema to succeed, at minimum it must be the case that a significant majority of people, properly educated, are naturally capable of the mature reason which makes civic virtue and full political membership by consent possible. The question then is what this proper education consists in, and how it is delivered. Despite separating the means and ends of familial and political association, Locke attributes to childhood a propaedeutic education that provides the necessary conditions for rational consent to political membership. However, it may not be reasonable to ask all families, or even a majority, to be able to furnish this education for their children,¹³ which helps explain Locke's endorsement of public schools.

Luigi Bradizza suggests that Locke's pedagogical proposals in other works support his project in the *Second Treatise*: “The power of consent requires rationality, and therefore education. But people are not equally educated. Locke's discussion of education in the *Second Treatise* indicates that a higher level of education results in a greater understanding of right and wrong, and therefore a greater moral accountability among the better educated.” In other writings Locke repeats the endorsement he makes in the *Second Treatise* of state-run education, in order to mitigate the problem of an uneducated lower class. This may provide a viable strategy for nurturing the reason necessary to consent to citizenship in an established democratic state,¹⁴ so long as this state education includes moral and political

12 Steven Forde, “What Does Locke Expect Us to Know?”, *The Review of Politics*, Vol. 68, No. 2 (Spring, 2006): 233.

13 Jacqueline L. Pfeffer, “The Family in John Locke's Political Thought”, *Polity*, Vol. 33, No. 4 (Summer, 2001): 597-602.

14 Luigi Bradizza, “Elite Education and the Viability of a Lockean Society”, *The Review of Politics*, Vol. 70, No. 4 (Fall, 2008): 564-567.

instruction. Bradizza expresses a similar concern when he adds, “But could an adult be so poorly educated that he is no longer rational enough to offer his consent to political arrangements?”¹⁵ This deficient education is plainly seen today in modern liberal democracies where statistics show that people have a dismal familiarity with the political system,¹⁶ public education provides minimal instruction in civics if any,¹⁷ civic participation is mediocre, and there is no explicit transition wherein children expressly consent to take up membership in the polity of their parents. This ignorance undermines the legitimating authority of consent, and by that same token diminishes the civic virtue and engagement of the electorate.

III

If children born in liberal democracies never give express consent to join the polity of their parents, there must be another way to explain their acquisition of citizenship. According to Locke everyone is born with a right to individual liberty, and a right to inheritance of their parents' property.¹⁸ While he admits it may be an easy conclusion to draw, he denies that children inherit citizenship from their parents. The freedom attained at the age of reason necessarily involves the free choice of political association with the state of one's choosing. However, by leaving the polity of their parents, a child will necessarily forfeit any claims to inheriting land situated within the borders of that state. In this way children could be said to expressly consent to inherit citizenship from their parents, but this is a condition to securing the property which would otherwise be forfeit, not an obligation imposed by parental power. Locke is adamant that parental and political power are fundamentally separate, distinguished by their respective means and ends, yet in his discussion of parental power, he suggests it would be easy for fathers in pre-political societies to assume the role of monarch, turning parental

15 Bradizza, “Elite Education”, 565.

16 The Canadian Press, “Survey suggests Canadian ignorant of government system”, *CBC News*, Dec 14, 2008, <http://www.cbc.ca/news/canada/survey-suggests-canadians-ignorant-of-government-system-1.751002>

17 Nathan Tidridge, “Why Ontario shouldn't ditch high school civics classes”, *Maclean's*, November 1, 2016, <http://www.macleans.ca/news/canada/ontario-ditch-civics-classes-mistake/>

18 Locke, *Two Treatises*, 177.

power into political power, insofar as it would seem a natural continuation of authority either expressly or tacitly consented to by his 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?”¹⁹

Although Locke concedes that political association may have naturally arisen out of family power structures in its earliest form, he nevertheless maintains that what really characterizes the shift from a family to a political society is consent of the people, rather than the authority of the parents. This part of Locke's argument further supports his claim that no child can be obliged to take up membership in the political society of their parents, because everyone has the freedom to consent to the political authority of their choice.²⁰ However, Locke's account of the family also shows that his state of nature is not an appropriate explanation for the consent given by children joining the polity of their parents. It is inescapable that the family has always preceded any other form of authority, and while the state of nature is a viable theoretical framework for analyzing the distribution of authority and equity in society, it does not provide us with a realistic and practicable picture of what constitutes the beginnings of political membership in an established state. Therefore I claim that, in the context of established liberal democracies, the family represents a proto-political state, rather than a pre-political one, insofar as the structure of parental authority, as Locke has suggested, easily lends itself to political association, so much so that it is impossible to escape its influence. We therefore never enter political society from a pre-political state, but rather are informed by a proto-political childhood that provides us with a rudimentary understanding of authority, consent, and governance as we are under the power of parents, who are in turn under the power of the state. This proto-political upbringing facilitates the current practice of tacitly consenting to the inheritance of citizenship as a logical end to childhood in modern liberal democracies.

¹⁹ *Ibid*, 125-127.

²⁰ Foster, “Taming the Father”, 652-653.

Locke emphasizes that the basis of legitimacy for political society is the rational consent of its members when he writes “it is not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic.”²¹ With this logic Locke rebuts monarchism and advances the case for liberalism. However, even though Locke thereby allows legitimate grounds for revolution,²² it is unclear how individuals should evaluate what those grounds are. By the same token, it is unclear how one ought to evaluate the grounds for joining a polity. It is not enough to ask whether one has consented, we must also consider the type of consent and the reasons that consent was given. If only the fact of consent were considered, we would find ourselves in a society where no interrogation of the legitimacy of government would be meaningfully possible. Therefore, meaningful consent requires that the individual be able to rationally evaluate the legitimacy of the government and the extent of their civic obligations, in order to determine that their reasons for consenting are good ones. This, however, raises the question of whether individuals can make these evaluations at all—further explaining why civic education is so important to political membership—and whether this evaluation can be acted upon if one chooses to withhold consent.²³

By invoking the idea of a real state of nature in the Americas, Locke makes the liberty to withhold consent and remain in the state of nature appear practicable. However, when there is no unoccupied territory available to be claimed by a new society, this liberty becomes revoked by circumstance. If there are no means to quit the polity one is born in, and no place to quit to, giving or withholding consent to membership is meaningless. On these grounds, Jimmy Klausen suggests two conditions for the full exercise of natural liberty: (1) there must be accessible and uninhabited territory available to non-consenters, and (2) it must be possible to withhold consent and settle a new colony in

21 Locke, *Two Treatises*, 101.

22 *Ibid*, 152-156.

23 Robert C. Grady II, “Obligation, Consent, and Locke's Right to Revolution: 'Who is to Judge?'”, *Canadian Journal of Political Science*, Vol.9, No. 2 (Jun., 1976): 277-281.

the uninhabited territory.²⁴ While Locke may have genuinely believed these conditions were widely met, today it seems obvious that no such possibility exists for non-consenters, diminishing the legitimating authority of express consent in the first place.

Locke's account of express consent is straightforward: it is simply a voluntary declaration of one's will to join a political association. The greater issue is clearly defining the boundaries of tacit consent.²⁵ With respect to obedience to the law, Locke's view of tacit consent is broad: "I say, that 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."²⁶ Locke is more concerned with property in this passage, namely land, which is permanently annexed to the state upon taking up membership. He makes clear that citizens who choose to quit society must sell or divest themselves of their property before they can legitimately abandon their membership.²⁷ Property is not the present concern, but Locke's account provides some useful context. What is important for now is that tacit consent, which "reaches as far as the very being of any one within the territories of that government,"²⁸ obligates one to observe political authority, but not to take on political membership, which begins only when express consent is given.²⁹ Therefore, according to Locke, political membership acquired without express consent is illegitimate.

IV

Perhaps Locke was simply wrong that citizenship could not be legitimate without express consent. The question that hinges on Locke's account is whether or not parents or birthplace can entail membership to political society on the part of the child. Locke remains ambiguous on this question, and

24 Jimmy Casas Klausen, "Room Enough: America, Natural Liberty, and Consent in Locke's *Second Treatise*", *The Journal of Politics*, Vol. 69, No. 3 (Aug., 2007): 760-762.

25 Paul Russell, "Locke on Express and Tacit Consent: Misinterpretations and Inconsistencies", *Political Theory*, Vol. 14, No. 2 (May, 1986): 292-295.

26 Locke, *Two Treatises*, 146.

27 *Ibid*, 146-147.

28 *Ibid*, 146.

29 Russell, "Locke on Express and Tacit Consent", 296-298.

it may be the case that he simply took for granted that one's birthplace entailed tacit consent to both membership and obedience to the political society in which one was born,³⁰ but this is purely speculative, and his account of the child-parent relationship in the *Second Treatise* explicitly portrays the child as a naturally free agent capable of making a rational decision as to which political society he should commit himself to upon reaching adulthood, despite his place of birth or the political association of his parents. The problem in Locke's account, Klausen points out, is that this natural freedom has a positive aspect, and a negative one which he largely neglects. People born outside of political society have the positive freedom to consent to political membership, while people born inside of political society conversely have—or ought to have—the negative freedom to reject political membership.³¹ On this reading of Locke, by virtue of their existing within a political society, children tacitly consent to obey its laws, and must take extra steps, express consent, in order to become a full member of that society,³² whereas in practice, membership is given with only tacit consent.

Ayelet Shachar and Ran Hirschl have made an interesting case for treating citizenship as property within the context of inheritance law as a means to improve opportunity inequality around the world.³³ While my concern is very different, Shachar and Hirschl provide a useful distinction between narrow and broad concepts of property that relates to the problem of inheriting citizenship. As they point out, property in the broad sense is not the thing itself, but the relation we have to the thing. For example, today we extend the concept of property beyond concrete objects to include intangible things like intellectual property. In law, this requires careful consideration of the relations between the subject and the thing defined as property. A parallel can be drawn here insofar as similar rules govern the relation between subject and property, as those which govern the relation between subject and

30 Iain W. Hampsher-Monk, "Tacit Concept of Consent in Locke's Two Treatises of Government: A Note on Citizens, Travellers, and Patriarchalism", *Journal of the History of Ideas*, Vol. 40, No. 1 (Jan. - Mar., 1979) 135-139.

31 Klausen, "Room Enough", 762-763.

32 Klausen, "Room Enough", 767.

33 Ayelet Shachar, Ran Hirschl, "Citizenship as Inherited Property," *Political Theory*, Vol. 35, No. 3 (Jun., 2007): 253-287.

citizenship. The state governs ownership and access to property according to inherent subject-object relations, in a similar way that it governs ownership and access to the benefits of political membership according to the subject's birthplace. In this sense citizenship is a complex kind of property that exists by virtue of a community, but is held on the individual level, and confers benefits upon the inheritor.

This broad sense of property maps on to our general practices regarding citizenship.³⁴ In modern liberal democracies like Canada, when someone comes from outside the state, they must give express consent to acquire political membership in order to enjoy its benefits, reflective of Locke's theory. When someone is born within the state, those benefits are immediately ensured by virtue of birthplace and heritage. Once that child reaches the age of majority—to say nothing of the age of reason—they inherit full membership, with all the rights that entails, but this happens without any express consent, and without any viable alternative, contrary to Locke. In a sense then, citizenship is a kind of inherited property, but with no real state of nature to return to, there is no meaningful option to exercise the negative aspect of natural liberty, that is, to reject membership. One can forfeit membership of one polity in order to consent to another, but there is no explicit rite of passage where this liberty is made salient to the prospective citizen. Therefore we tacitly consent to political obligation so long as we remain within the polity of our birth, and then tacitly consent again to political membership once we leave the jurisdiction of our parents. Express consent therefore no longer plays a meaningful role for those born in established states when taking on political membership. Instead, citizenship becomes a logical end to childhood, wherein the legitimacy of the child's tacit consent to parental authority is seen as extended or transferred to the political authority of the state.

I have attempted to show that (1) the state of nature is an inadequate conceptual framework for evaluating the transition from childhood to citizenship in those born within an established liberal polity, (2) that in practice we are born under parental authority and transition into political membership, and

34 Shachar, Hirschl, "Citizenship as Inherited Property," 259-265.

(3) this transition, to be legitimately consensual, must be informed by a good education. Moreover, (4) Locke takes express consent as essential to political membership, but contrary to Locke, today it is the case that parental authority provides a model of authority which children logically extend to the political sphere by tacitly consenting to the inheritance of political membership. With the above in mind, and given that today there is no actual state of nature for those who withhold consent to return to, I suggest that to take Locke's consent theory seriously in established liberal democracies would require four things: (1) a reasonable alternative to political membership for non-consenters, such as permanent residency status rather than citizenship, (2) a massive expansion of civic education in public schools, including citizenship tests that demonstrate a would-be citizen's capacity for reason, (3) a rite of passage wherein the child expressly consents to subject themselves to the polity of their birth, and (4) an explicit recognition in a society's laws and culture of the proto-political nature of the family, and of citizenship as a kind of property inherited in the fullest sense upon giving express consent. Altogether, these suggestions could strengthen the legitimacy of established liberal democracies, and empower citizens with a greater capacity for autonomy and civic virtue.

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