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§Note and Discussion§

The Role of Consent in Locke's Theory of State

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Abstract

John Locke's theory of state is heavily constructed around his doctrine of consent. The doctrine indeed signifies a critical moment in the development of liberal and democratic theories in the history of political thought. Nevertheless, the doctrine has provoked various controversies and raises doubts on whether Locke's early and later positions are reconcilable. This paper joins the scholarly debate through investigating the role of consent in Locke's theory of state. It rejects the ahistorical readings of the doctrine that deliberation and voluntary intention constitute the necessary condition of consent. It also opposes the view that the doctrine of consent offers a moral ground for Locke's argument on the legitimacy of government, nor does the doctrine directly makes the case for political obligation. Instead, I argue that the doctrine of consent normatively proclaims the essential value of liberty in Locke's theory of state while historically it was employed as a response to England's political reality. Locke's articulation of the doctrine also reveals his life-long concern about the peril of anarchy. Thus, consent should be understood as a dynamic process of recognising the necessity of government while acknowledging the people's resolution to be free.

Keywords: Locke, consent, liberty, anarchy, theory of state.

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1. Consent and the Formation of Political Society
2. Consent, Freedom and the Rule of Law
3. The Natural and the Political
4. Consent in the *Two Treatises of Government*
5. Conclusion

While it is commonly agreed that the doctrine of consent is indispensable to John Locke's political philosophy, the doctrine is also notoriously controversial. Most of the debates arise from the content of tacit and express consent. Paul Russell has rightly pointed out that one of the causes of the controversies pertains to the misunderstanding of how property-ownership is connected to the doctrine of consent.[1] As John Dunn indicates, the doctrine *per se* has been wrongly criticised on the psychological dimension. These critiques misinterpret the purpose of the doctrine to be offering a mental bond between the governors and the governed, on which the government is established. It therefore becomes a weakness of *Two Treatises of Government*, for it does not propose a plan for organising an ideal form of government. Dunn refutes this claim by defining the nature of the doctrine: "It is a theory of how individuals become subject to political obligations and how legitimate political societies can arise."[2]

Dunn's definition of the consent theory encapsulates the crux of the scholarly debate, namely, the issues of governmental legitimacy and political obligation. Locke's response to the two relevant objections in chapter eight of

1 Paul Russell, "Locke on Express and Tacit Consent," *Political Theory* 14, no. 2 (May 1986, California), p. 291.

2 John Dunn, "Consent in the Political Theory of John Locke," in *Political Obligation in Its Historical Context* (Cambridge: Cambridge University Press, 1980), pp. 29-30.

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the *Second Treatise* remains problematic.[3] Locke found he might be challenged for lack of historical evidence to show people having assembled to make a social contract, or expressing consent to their governments. Furthermore, since people were *de facto* born under their government, they could not freely establish and subject themselves to another one. (pp. 344-349) Accordingly, Locke's readers were likely to infer that most of the governments were illegitimate and therefore, that his contractual theory was invalid.[4] Locke responded to these challenges with the concept of tacit consent, but it did not fit into the whole doctrine of consent quite well. This has brought up more questions asking why it was necessary to have express consent, what sorts of gestures count as tacit consent, and how consent defines membership of a society.[5] These kinds of queries share a common ground which brings us to the fundamental question: how does Locke justify the legitimacy of government and political obligation through his doctrine of consent?

Most studies examining Locke's consent theory scrutinise the content of express and tacit consent on both theoretical and semantic grounds. This approach often makes scholars disagree about the circumstances in which express consent occurs and the extent to which tacit consent binds people.[6]

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3 John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1994), pp. 333-334. Page numbers hereafter cited in the text.

4 Cf. G. A. Cohen, "Hume's Critique of Locke on Contract," in *Lectures on the History of Moral and Political Philosophy*, ed. Jonathan Wolff (Princeton: Princeton University Press, 2014), pp. 120-137; Alexander Broadie, *Agreeable Connexions: Scottish Enlightenment Links with France* (Edinburgh: John Donald, 2012), ch. 6.

5 G. A. den Hartogh, "Express Consent and Full Membership in Locke," *Political Studies* 38, no. 1 (March 1990, Oxford), pp. 105-115; Ellen Meiksins Wood, "Locke against Democracy: Consent, Representation and Suffrage in the Two Treatises," *History of Political Thought* 13, no. 4 (December 1992, Exeter), pp. 657-689.

6 Russell, "Locke on Express and Tacit Consent," p. 295; Julian H. Franklin, "Allegiance and Jurisdiction in Locke's Doctrine of Tacit Consent," *Political Theory* 24, no. 3 (August 1996,

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However, these studies tend to interpret the meaning of consent anachronistically. That is, they take for granted that deliberation and voluntary intentions (in the contemporary sense) are the basic conditions of consent, which results in the doctrine's *prima facie* inconsistency. On account of this, Dunn attempts to do justice to Locke through textual and contextual analysis of the language of consent. He suggests that the degree of willingness is sufficient to Locke's use of consent, that is, the absence of coercion constitutes the condition for consent.[7] But Simmons rejects this interpretation, viewing Dunn's contextual approach not necessarily helpful as it generalises Locke's consent theory as a whole.[8] In light of this, recent studies reveal some analytical turns. Some of them abandon the explanatory pattern of express and tacit consent and create their own classifications such as contractual and legislative consent.[9] Some of them highlight the moral duty that consent entails to make sense of political obligation.[10] Despite their novelty, these studies somehow fragment

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California), pp. 407-422; John G. Bennett, "A Note on Locke's Theory of Tacit Consent," *The Philosophical Review* 88, no. 2 (April 1979, New York), pp. 224-234; Ian Hampsher-Monk, "Tacit Concept of Consent in Locke's *Two Treatises of Government*," *Journal of the History of Ideas* 40, no. 1 (January-March 1979, Pennsylvania), pp. 135-139; A. John Simmons, "Tacit Consent and Political Obligation," *Philosophy and Public Affairs* 5, no. 3 (April 1976, Princeton), p. 276.

7 Dunn, "Consent in the Political Theory of John Locke," p. 36. Martin Seliger stands for a similar position, as he suggests that the absence of "dissent" should suffice for the circumstances of consent. See Martin Seliger, *The Liberal Politics of John Locke* (New York: Praeger, 1968), pp. 160 ff.

8 A. John Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton: Princeton University Press, 1993), pp. 210-216; "Tacit Consent and Political Obligation," p. 276.

9 Alex Tuckness, *Locke and the Legislative Point of View: Toleration, Contested Principles, and Law* (Princeton: Princeton University Press, 2002), ch. 3.

10 Franklin's conclusion opens up the possibility of this reading; see Franklin, "Allegiance and Jurisdiction in Locke's Doctrine of Tacit Consent," p. 422. Michael Davis hazards to suggest

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the unity of Locke's political thought in *Two Treatise of Government*. They tend to marginalise other auxiliary ideas, including property and freedom, which Locke had adopted to complete a coherent argument for his theory of state.

I argue in this paper that the doctrine of consent constitutes the foundation of Locke's theory of state by virtue of its interaction with the pivotal ideas of property, freedom and the rule of law. I begin with Locke's view on the formation of political society, which signifies the relationship between consent and the preservation of property. Subsequently, I demonstrate that the substantial role of consent is to guarantee the liberty of the people after they join a political society. The final two sections look into recent scholarly debates to demonstrate how theological and non-theological readings of Locke may influence the role of consent in his political theory. My position is that we should move on from the competition between the two readings by turning our focus to a more historical account. The last section hence wants to show how the consent theory makes Locke's liberal political philosophy possible in the course of composing the *Two Treatises of Government* and some potential worries it may cause.

1. Consent and the Formation of Political Society[11]

It is important to recognise that the main purpose of consent is not obligation. Rather, it is the preservation of property, which results in a people's

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that we take the doctrine to be a proposal of civic virtue; see Michael Davis, "Locke on Consent: *Two Treatises* as Practical Ethics," *The Philosophical Quarterly* 64, no. 248 (July 2012, Oxford), pp. 464-485.

11 In this section, I shall go through chapters seven and eight of the *Second Treatise*, where Locke discussed the "origin" and "beginning" of political society respectively. Hence, by "formation," I mean the process of leaving the state of nature and establishing a functioning political society.

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willingness to join a political society. Otherwise there is no reason for them to yield their natural "Equality, Liberty, and Executive Power." (p. 353) As Locke put it:

> Man being born, as has been proved, with a Title to perfect Freedom, and an uncontrouled enjoyment of all the Rights and Priviledges of the Law of Nature, equally with any other Man,…hath by Nature a Power, not only to preserve his Property, that is, his Life, Liberty and Estate, against the Injuries and Attempts of other Man. (p. 323)[12]

Locke's main concern is the "safety and security" of one's property. (p. 329) Political obligation, then, is the reciprocal result of joining a political society. Unlike Hobbes, Locke did not consider the state of nature to be a state of war, nor the people's lives "solitary, poore, nasty, brutish, and short."[13] This gives Locke all the more reason to centre his theory of state on the doctrine of consent. Because if people had been living autonomously and satisfactorily in the state of nature, why should they abandon some of their "privileges" voluntarily? Consent makes this move reasonable, for it is a way of self-preservation that meets the criteria of natural law. Now the problem is: what do people mean by "consent"?

Let us consider two kinds of interpretation. Hartogh claims that the controversies surrounding express and tacit consent are caused by a misunderstanding of consent as "the origin of legitimate government" endorsed by the populace. Instead, consent is "the origin of political obligation to a legitimate government" endorsed by the individuals. He continues, arguing that consent amounts to promise-making which signifies the individual's

12 If not specified, all the spellings, italics and capitalisations in the quotations are Locke's.

13 Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1992), pp. 88-89.

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"undertaking of an obligation."[14] It is the manifestation of responsibility that consolidates the element of trust in consent. These are rather plausible arguments but they ignore the role of natural law. Hartogh's argument can be complemented by Tuckness' argument, which posits that natural law confines the content of consent. The very act of consent, therefore, reflects the people's "belief about what the fundamental law of nature requires" rather than their move to start a contract.[15] Hartogh and Tuckness have encapsulated the foundations of Locke's doctrine, but both have missed the point on how people proceed from self-preservation to consent. There is a tension between these ideas that demands further elaboration, that is, the means of self-preservation are necessarily self-oriented (if not entirely selfish) whereas consent establishes social relations.

Consent, therefore, has two functions: first, it lays the foundation of government. Second, as Locke claims, "the *beginning of Politick Society* depends upon the consent of the Individuals." (p. 337) Property as the object of self-preservation motivates people to enter into a political society for their security. In Locke's theory of state, the idea of property comes in prior to and even weighs more than obligation. He granted property a supreme status which was guaranteed by the doctrine of consent. Even "the *Supream Power cannot take* from any Man any part of his *Property* without his own consent." (p. 360) Cohen has pointed out that introducing social contract at this point enables Locke to justify the existence of private property while legitimising governmental power.[16] The tension between self-preservation and the social relation laid by consent is dissolved when a contract based on consent is made.

14 Hartogh, "Express Consent and Full Membership in Locke," p. 105.

15 Tuckness, *Locke and the Legislative Point of View*, p. 76.

16 G. A. Cohen, "Locke on Property and Obligation," in *Lectures on the History of Moral and Political Philosophy*, p. 104.

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It amounts to yielding one's rights and transferring some individual power to a collective body, which can be seen as an alteration of self-ownership. Locke made it clear that "every Man has a *Property* in his own *Person*. This no Body has any Right to but himself" and whatever he earns by his own labour also becomes his property. (pp. 287-288) Moreover, what urges one to labour is dictated by natural law for his own preservation. Locke's argument here has the premises that God "has given the Earth…to Mankind in common" and that men would "make use of it to the best advantage of Life, and convenience" rationally. (p. 286) It is also because of this rationality that Locke trusted man to not consume more than his need. (p. 292) Hence, self-ownership would by no means collapse into the selfishness that results in ill competitions among people, as Hobbes assumed in the state of nature.

Having said that, whether property or obligation weights more remains highly controversial. This has to do with two main-stream scholarly approaches, namely, the political and the theological readings of Locke, which I shall come to in the third section of this paper. Briefly speaking, for those who subscribe to the theological reading, including Dunn and James Tully, obligation comes priori to and indeed weights more than property, as it is derived from the divine law. In other words, Locke's theory of property is established upon the belief that all the individuals have their duties to God.[17] Such a view may legitimise the reason for Locke to associate the idea of self-ownership with God through the law of nature.[18] Locke was seen as a dangerous thinker, for the meaning of

17 See, for example, James Tully, *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 2009), pp. 131-154; James Tully, "Property, Self-Government and Consent," *Canadian Journal of Political Science* 28, no. 1 (March 1995, Vancouver), pp. 105-132.

18 Cohen sees this in the other way around. He argues that Locke, in contrast to Hobbes, believed there were still certain "dispositions" that guided people in the state of nature. Cohen takes this "a matter of obligations" and the Lockean people are said to perform what the law

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self-ownership implies self-autonomy. His antagonists took this as a denial of God's authority and Locke's endorsement of individualism. For instance, Charles Leslie attacked Locke for mistaking the source of authority as having ascended from the individual to God.[19] Leslie famously summed up Locke's thought in the phrase "I alone am king of ME,"[20] which is a misunderstanding of Locke's idea of self-ownership. In fact, Locke attributed God to the activities concerning self-preservation, for God "gave it [the world] to the use of the Industrious and Rational, and Labour was to be his Title to it." (p. 291)[21] The state of nature, therefore, could not be the state of war, for God's workmanship was for the benefit and conveniences of people's lives. Furthermore, Locke believed that God would want men to improve themselves, which is why he granted men reason to make their own judgements. (p. 291) Reason, then, was that law of nature. (p. 271)

Yet, the theological reading does not seem to explain the fact that Locke did place property on the highest rank – even "the *Supream Power*" has no right to dominate it. (p. 360) This alarms the scholars who support the political, if not entirely secularised, reading of Locke that their opponents have marginalised

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of nature dictates them to preserve themselves. Thus, the law of nature is "substantially consistent with self-ownership." Cohen's interpretation indeed makes sense but does not help respond to the attack on Locke which I indicate in this paragraph. See Cohen, "Locke on Property and Obligation," p. 107.

19 Charles Leslie, *The Finishing Stroke. Being a Vindication of the Patriarchal Scheme of Government* (London, 1711), p. 87. As in Timothy Stanton, "Locke and the Fable of Liberalism," *The Historical Journal* 61, no. 3 (September 2018, Cambridge), p. 612.

20 Charles Leslie, *The Rehearsal*, no. 14, I, in *A View of the Time, Their Principles and Practices,* 5 volumes (London, 1750), p. 86. As in Stanton, "Locke and the Fable of Liberalism," p. 613.

21 As Dunn rightly observes that the duties and responsibilities of men "are owed in the first place to God," among which self-preservation is the most important one. See Dunn, "Consent in the Political Theory of John Locke," p. 32.

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the place of consent in Locke's theory of state. We shall see in the third section that the political reading enables them to develop a more sophisticated view on how the consent doctrine becomes the pivot between Locke's authoritarian and liberal positions. Nevertheless, I do not wish to cause the impression that my paper aims at arguing for a sharp antithesis between the theological and political readings. It is crucial to remember that Locke lived in an age where religion was deeply rooted in every aspect of life. In light of this, pursuing a pure theological or political reading cannot be of much aid to understand his thought. Instead, Locke's intention of appealing to God when it comes to self-ownership and the cause of political society might be worthier of inquiry.[22] At any rate, Locke's use of natural law in the *Two Treatises* suggests that theological elements indeed play an essential role in the dynamics of establishing a political society.

The "benefit and conveniences of life" (p. 286) and the desire for "enjoyment of their [people's] Properties in Peace and Safety" are the reasons why people consent to submit to the collective body of political society. (pp. 271, 355) The law of nature provides the natural cause of this process, that is, an inclination for people to assemble. As Locke indicated,

> God having made Man such a Creature, that, in his own Judgement, it was not good for him to be alone, put him under strong Obligations of Necessity, Convenience, and Inclination to drive him into Society, as

22 This is of course beyond the scope of this paper; however, I think Locke's epistemology can give us some clue. Locke argued that the fundamental nature of things (in our case here, that includes the self, the society and the mind that perceives them) was unfathomable for human beings. It was also unclear how far could moral ideas (which were the ingredients of judgment) carry them in terms of demonstrative reasoning. Yet, the soundest knowledge one could hold was the existence of God. God thus became the most reliable source for human beings to understand the external world. See John Locke, *An Essay concerning Human Understanding*, ed. P. H. Nidditch (Oxford: Clarendon Press, 1975), pp. 548-554; Locke's argument of the existence of God, see pp. 619-630.

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> well as fitted him with Understanding and Language to continue and enjoy it. (p. 318)

How do people "enjoy" living in a political society where they have yielded some of the natural rights? People are nevertheless willing to do so because of their sociable inclination and the uncertainty and inconvenience of the state of nature. (pp. 326, 334) More importantly, consent preserves their will so that they can not only be protected but also enjoy social life. (p. 331)

Protection comes from the political power that people yield to the government. Locke defined political power to be "a Right of making Laws with Penalties…for the Regulating and Preserving of Property, and of employing the force of the Community, in the Execution of such Laws…" (p. 268) This power was in the hands of the individuals in the state of nature, but now they delegate it to the government so that it has the power to punish offenders. (p. 324) The voluntary authorisation enables Locke to acknowledge that the beginnings of political society and "any lawful Government in the World" all arise from consent. (pp. 330-333)

Political obligation only comes in after the individual consents to submit himself to a united political body. Locke asserted that "thus every Man, by consenting with others to make one Body Politick under one Government, puts himself under an Obligation to every one of that Society, to submit to the determination of the majority, and to be conclude by it." (p. 332) In other words, the individual now has agreed with a compact and he is responsible for keeping his promise to the majority. (p. 332) For the Government's part, it can only demand obedience from the people who have "freely consented to it," otherwise the people still retain the liberty "to chuse their Government and Governors." (pp. 335, 394) As we can see, Locke's contract theory proceeds in two phases: the individuals first bind themselves to a community and subsequently authorise a government. This is why Locke made the distinction

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between society and government in paragraph 211. (p. 406)[23] Government, therefore, possesses no independent rights except the power entrusted by the people. (p. 412)[24] Locke could thereby justify the right of resistance,[25] as it is government that can dissolve, not society.

2. Consent, Freedom and the Rule of Law

When Locke claimed that people have the right to *freely* consent to the government they like, several doubts arose. As I have shown at the beginning of this paper, scholars have been questioning the contents and forms of express and tacit consent. In terms of the freedom of consent, scholars find the binding force of express consent to contradict Locke's intention for the doctrine. That is to say, once a person has expressed verbal consent to subject themselves to the laws of government, he acquires full membership of the society, which bans his freedom of emigration. In that case, who are supposed to undertake express consent and what are the positive engagements for the members of society?[26]

23 Cohen, "Locke on Property and Obligation," p. 112.

24 Cohen, "Locke on Property and Obligation," p. 113.

25 Seliger, *The Liberal Politics of John Locke*, pp. 297-300. Seliger prefers the term "popular" consent, which gives him the liberty to push from the right of "resistance" to "revolt" that Locke defended. Seliger generally describes collective power as "majority" consent, which is useful for analysing the mechanism of people's trust of their government. However, Dunn has reminded us that it is an error "to suppose that majority-consent is the only form of decision-procedure" that Locke accepted. See Dunn, "Consent in the Political Theory of John Locke," p. 38.

26 Hampsher-Monk considers the role of consent, in this sense, to be identifying "who *are* the citizens of a regime". From the historical perspective, Wood asserts that Locke's consent theory "breaks the connection which the Levellers had established between the obligation to obey government and the right of consent in the form of the franchise". Davis takes the right of Parliamentary franchise to be the substantial positive engagement. Hartogh indicates that

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Although it is not my intention to solve these problems by clarifying the nature of express and tacit consent, the scholarly debates help us think about the role of consent from two perspectives: freedom and the rule of law.

The role of consent in preserving freedom is guaranteed by the rule of law. As Dunn proposes, consent "has to be understood primarily as a legal fact about the divine order of nature."[27] It is a legal fact because legislation is the means to the end of protecting people's property rights. It overcomes the inconvenience in the state of nature by regulating individual power. (p. 412) Hence, the legislature must be the most vital institution in Locke's theory of state. While Locke called the legislative power the "Supream Power" of the commonwealth, he also cautiously prevented laws from becoming a coercive power enforced on people, otherwise the legislation would betray their intention of joining a political society. Coercion can be avoided by confining the extent of legislative power. First, people must give their consent and its contents must not transgress what the natural law dictates.[28] Second, governmental power and acts must be predicated on the public good. (pp. 268, 353)[29] In other words, public good defines the contents of laws and what the government can do to enforce the law. (pp. 355-363) As Locke claimed, once a person "authorizes the Society, or which is all one, the Legislative thereof to make Laws for him as the publick good of the Society shall require." (p. 325) Consent in political society thus becomes a continuous process as long as the legislature functions. What people

express consent provided access to the public office during the Glorious Revolution. See Hampsher-Monk, "Tacit Concept of Consent in Locke's *Two Treatises of Government*," p. 137; Wood, "Locke against Democracy," p. 665; Davis, "Locke on Consent: *Two Treatises* as Practical Ethics," p. 482; Hartogh, "Express Consent and Full Membership in Locke," p. 109.

27 Dunn, "Consent in the Political Theory of John Locke," p. 32.

28 Dunn indicates that this is the context of Locke's consent theory in which he always respected the suicide taboo. See Dunn, "Consent in the Political Theory of John Locke," p. 33.

29 Cf. Tuckness, *Locke and the Legislative Point of View*, p. 61.

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consent to is the decision-making procedure, including the choosing of their representatives and governors.[30]

Freedom is preserved as the government is regulated by the consent of the people. In other words, consent is the insurance of freedom as it is a mechanism for people to authorise their power to the government.[31] Being able to consent to any government signifies that the consenter is in a state of freedom. According to Locke,

> [t]he Liberty of Man, in Society, is to be under no other Legislative Power, but that established, by consent, in the Common-wealth, not under the Dominion of any Will, or Restraint of any Law, but what the Legislative shall enact, according to the Trust put in it. (p. 283)

What distinguishes the liberty described above from natural liberty is that apart from natural law, the laws which restrain people now come from their consent. Natural liberty, as Locke defines it, is "to be free from any Superior Power on Earth, and not to be under the Will or Legislative Authority of Man, but to have only the Law of Nature for his Rule." (p. 283) This view lies the prototypical foundation for Locke's concept of liberty as non-domination. Given that consent entails the fact that the individuals have authorised the government to rule, both natural law and governmental legislation are now the sources of constraint. But it is necessary to have the binding force of laws, as Locke claims that "*the end of Law* is not to abolish or restrain, but *to preserve and enlarge Freedom…, where there is no Law, there is no Freedom*." (p. 306) The willingness of the public affirms the maintenance of liberty while their trust of the government constitutes the source of its power. The people's authorisation encompasses transferring their own will into the law-making process. Under the

30 Dunn, "Consent in the Political Theory of John Locke," pp. 38n, 43.

31 Seliger phrases this slightly differently as "the function of freedom," but the notion here is identical. See Seliger, *The Liberal Politics of John Locke*, p. 163.

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circumstances, the restraints cannot be seen as subjection to an arbitrary will of others. Instead, the liberty Locke wishes to be preserved "under Government" is the freedom for people "to have standing a Rule to live by, common to every one of that Society, and made by the Legislative Power erected in it." As the people themselves are the source of laws, there cannot be an "Arbitrary Will of another Man" to dominate them. (p. 283)

Consent as the insurance of freedom is therefore significant in Locke's theory of state, as to be free from arbitrary power is necessary for self-preservation. Again, it is guided by natural law, and thus forbids people from enslaving themselves to others. (p. 284) This is why Locke approved of the right of resistance when a government betrays the people's trust for the ruler's arbitrary will. (pp. 408-412) Curiously enough, Locke's articulation of consent as the source of laws seems to have made two types of laws entwined. That is, if consent is meant for preserving liberty, both the natural law where God's will is embedded and the laws promulgated by secular governments are required. This in a way makes sense if we accept Dunn's opinion that the context of consent is a divine order. But if people's actions concerning the establishment of political society are all driven by divine causes since they are dominated by natural law, how did Locke arrive at the position that the church must be separated from the state and religion from politics?[32] Does this also imply that natural law ceases to function when a government is established by consent as people are now bound by their political obligation? To understand how these two types of laws coordinate, if not confront, with the social contract, we need to look into Locke's arrangement of "the natural" and "the political" in his theory of state.

32 John Locke, *A Letter concerning Toleration and Other Writings*, ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), p. 12.

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3. The Natural and the Political

Hume famously argued against the view that contractual theory was the source of political obligation, as there was no historical evidence to prove the existence of any sort of original contract. More importantly, nor could contractual theorists assure that people would continuously keep their promises after consent was made. "You find yourself embarrassed when it is asked, *Why we are bound to keep our word?*" Hume claimed, "Nor can you give any answer but what would, immediately, without any circuit, have accounted for our obligation to allegiance." As people were born under the established government, they were bound to obey "*because the society could not otherwise subsist*."[33] Considering that Hume deliberately eliminated religious elements in his political theory and philosophy, it is quite understandable for Hume to post such a challenge. That is to say, one way for contractual theorists like Locke to respond Hume's doubt on people's moral capacity of keeping their promises is that people will keep their word as long as they act according to natural law, which encouraged them to embody God's will. People will follow their government's rule to sustain the society as natural law suggests that this best preserves their persons and properties granted by their creator. (pp. 274-275) In other words, it may well be the case that although Locke's doctrine leads to the conclusion of separating the Church and the state, his theory of state has a strong theological bearing.

33 David Hume, *Essays Moral, Political and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1987), p. 481. Hume's emphasis. Although it is commonly viewed that Hume was targeting at Locke, Timothy Stanton has questioned the accuracy of Hume's critique. That is, Hume may well be misled by Charles Leslie's version of Locke's doctrine. Leslie was one of Locke's enemies, known for attacking Locke to be "a rebel against God and against government who wished to invert the entire order that God had appointed." Timothy Stanton, "Authority and Freedom in the Interpretation of Locke's Political Theory," *Political Theory* 39, no. 1 (February 2011, California), pp. 10-11.

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Despite that Dunn has powerfully argued "there is no such category in Locke's political theory as authority which is both intrinsically human and legitimate,"[34] recent studies have resumed the debate over "the natural" and "the political" in Locke's political thought. Commentators disagree upon whether Locke attempted to reconcile the two seemingly contradictory elements since they observe a significant turn in the trajectory of his intellectual development. The early Locke seemed to be more authoritarian and less likely to endorse the religious freedom advocated in his later writings. The early Locke was reportedly to speak for the government to impose political authority upon the people for the sake of civil peace. He was also said to have relatively little grasp of natural law theories and unlikely to develop a doctrine of consent given that he regarded "divine commission" to be the source of governmental legitimacy.[35] The later Locke, known as the father of liberalism and offering the intellectual foundation for the American Founding, seems to have transformed in the course of serving the first Earl of Shaftesbury in 1667, where he needed to develop a more liberal way of conceiving politics to meet his new master's stance.[36]

Nevertheless, it has been argued that the authoritarian Locke and the liberal Locke are reconcilable. As we have seen earlier in this paper, Locke argued that the individual has the right of self-preservation and "No body can give more Power than he has himself; and he that cannot take away his own Life, cannot give another power over it." (p. 284) The legitimacy of this right

34 John Dunn, *The Political Thought of John Locke* (Cambridge: Cambridge University Press, 1969), p. 127.

35 Stanton, "Authority and Freedom in the Interpretation of Locke's Political Theory," p. 15.

36 John William Tate, "Locke, Toleration and Natural Law: A Reassessment," *European Journal of Political Theory* 16, no. 1 (January 2017, California), pp. 109, 114; Paul Bou-Habib, "Locke, Natural Law and Civil Peace: Reply to Tate," *European Journal of Political Theory* 16, no.1 (January 2017, California), p. 123.

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comes from precisely the fact that Locke acknowledged the ownership of the creator, namely, God upon human beings. (pp. 270-271) One cannot submit himself to any (earthly) arbitrary power as all his possession meanwhile belongs God; likewise, one has no right to dominate others neither. Natural liberty is the precondition for the individual to sustain the self-preservation. It is therefore crucial to recognise the theological background in Locke's political theory. The fact that human behaviours are driven by divine cause enables scholars to argue that the antithesis between authority and liberty does not even exist in Locke's view, which dissolves the self-contradiction between the early Locke and the later Locke.[37]

But if people can only subject to the divine power, wherefore can they abandon their natural liberty by giving consent to the rule of government? The transition from the natural to the political became possible when Locke introduced the notion of natural law into his theory of state.[38] People are able to reach a consensus on the allegiance to government under natural law. Natural law is intelligible to people via their capacity of natural reason;[39] it dictates them not only to preserve themselves but also the rights of others. In other words, natural law constitutes the rationale for people to perform their duties to God, and establish a political society that best helps them to carry out this task. (pp. 269-276)[40] But this does not mean that natural law has unanimous contents to all the people. Confrontations arise when people conceive natural law

37 Stanton, "Authority and Freedom in the Interpretation of Locke's Political Theory," pp. 18-19.

38 Bou-Habib, "Locke, Natural Law and Civil Peace: Reply to Tate," pp. 123-125.

39 Tate, "Locke, Toleration and Natural Law: A Reassessment," p. 111.

40 Cf. Paul Bou-Habib, "Locke's *Tracts* and the Anarchy of the Religious Conscience," *European Journal of Political Theory* 14, no. 1 (January 2015, California), p. 14; Stanton, "Authority and Freedom in the Interpretation of Locke's Political Theory," p. 20.

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differently. Locke's solutions, again, signify the turn in his early and later writings. Take the issue of religious liberty as an example, it could be argued that the early Locke sought to establish a theory of sovereign authority to impose the way of performing religious worship upon people for the sake of public order.[41] It is a plausible line of argument if we accept Locke's view that God would want "order, society and government among men."[42] Yet, this seems to largely contradict to his later writings on toleration.[43] On account of this, another attempt to reconcile the early Locke and the later Locke has been made recently, which argues that the conception of natural law is the substantial normative instrument in Locke's political thought to accommodate authority with liberty. Surely people have the liberty to perform religious actions as they think proper and they must do so via following their conscience. The authorities, whether a sovereign power or a government, are meant to assist people to fulfil the duty. They should not worry that different ways of conceiving natural law would lead to public disorder since people would not transgress the contents of natural law. That is, natural law *per se* has set the boundary for human actions and excluded those which might disturb civil peace. It helps Locke "to set bounds to the exercise of political authority."[44] This way of interpreting Locke's conception of natural law implies that Locke held a positive view towards human nature: people should not be regulated by the laws imposed by the magistrates, and it is meaningless to antagonise liberty and authority. Rather, the aim of government should be orienting people

41 Robert Kraynak, "John Locke: From Absolutism to Toleration," *American Political Science Review* 74 (September 1980, Washington DC), pp. 53-69.

42 John Locke, "Second Tract on Government (c. 1662)," in *John Locke: Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), p. 71.

43 John Locke, "An Essay on Toleration (1667)," in *John Locke: Political Essays*, pp. 134-159.

44 Bou-Habib, "Locke's *Tracts* and the Anarchy of the Religious Conscience," pp. 15-16.

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towards the direction of flourishing via exercising their natural reason.

The argument that Locke has "reconstructed his political philosophy in natural law"[45] to coordinate liberty and authority has raised some doubts: if natural law has the capacity of guiding the transition from the natural to the political, then is the consent theory really necessary for Locke's theory of state as a whole? Also, implying the government's positive role in human flourishing somehow has made Locke an Aristotelian theorist. That is to say, this might contain the peril of misconstruing Locke's purpose of centring liberty as non-domination in his theory of state rather than liberty sustained by some form of civic activism (or, in Pocock's word, *vita activa*).[46] The first doubt has been challenged while the second requires further elaboration elsewhere (which is certainly beyond the scope of this paper). It has been argued that Locke had no intention to "subordinate" his political philosophy "to theological imperatives, centred on natural law."[47] As we have seen earlier, Locke was aware that people may have various interpretations of natural law; likewise, "every Church is Orthodox to itself; to others, Erroneous or Heretical. Whatsoever any Church believes, it believes to be true; and the contrary thereunto it pronounces to be Error." In this case, although natural law is said to have excluded the human actions that could transgress itself, the ways of conceiving natural law could still generate confrontations. Therefore, as long as political authority is founded upon divine causes, "No Peace and Security, no not so much as common Friendship, can ever be established or preserved amongst Men."[48] Despite that natural law ordained by God dictates people to establish a political society and

45 Bou-Habib, "Locke's *Tracts* and the Anarchy of the Religious Conscience," p. 16.

46 J. G. A. Pocock, *The Machiavellian Moment* (Princeton: Princeton University Press, 1975), pp. 49ff.

47 Tate, "Locke, Toleration and Natural Law: A Reassessment," p. 109.

48 Locke, *A Letter concerning Toleration and Other Writings*, pp. 21, 23.

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government, only by extracting religious elements from politics could the state be well maintained.[49]

Locke made three attempts in his later writings to separate God from political affairs. Without the mediating force of natural law to urge people fulfilling their duties to God, the alternative source of political obligation is "commensurate interests," meaning the preservation of property.[50] The purpose of government is to preserve "civil interests," namely, "Life, Liberty, Health, and Indolency of Body, and the Possession of outward things, such as Money, Lands, Houses, Furniture and the like." It is the "Civil Magistrate" that must be held accountable for their security, as the people have authorised him the political power. Locke thus defined the state as "a Society of Men constituted only for the procuring, preserving, and advancing of their own *Civil Interests*."[51] Locke's second attempt is to stress that "legislative authority is not exercised for theological motives."[52] Locke claimed there is an absolute boundary between the church and the state which is "fixed and immovable." This is, again, to secure the people's rights: "No man…can deprive another man, that is not of his Church and Faith, either of Liberty, or of any part of his Worldly Goods, upon the account of that difference which is between them in Religion."[53] Locke's third attempt is to set the limits for "civil debate, negotiation, and agreement." By this Locke meant to avoid disputation over the issue of "true religion", as this kind of topic made toleration impossible. It has been observed that Locke was likely to develop this view from his debate with Jonas Proast,[54] who

49 John William Tate, "Locke, God, and Civil Society: Response to Stanton," *Political Theory* 40, no.2 (April 2012, California), p. 223.

50 Tate, "Locke, God, and Civil Society: Response to Stanton," p. 224.

51 Locke, *A Letter concerning Toleration and Other Writings*, p. 12.

52 Tate, "Locke, God, and Civil Society: Response to Stanton," p. 225.

53 Locke, *A Letter concerning Toleration and Other Writings*, p. 24.

54 Tate, "Locke, God, and Civil Society: Response to Stanton," pp. 225, 226.

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claimed that since compulsory force may not alter people's religious beliefs, indirect compulsions exercised by the church and the state could more effectively achieve the "evangelising effort."[55] Locke worried that such a view could provoke civil strife by way of sabotaging religious toleration in society. Hence, although it is crucial to maintain the liberty of expression in a diversified society, issues that could fundamentally destroy the bond of civil association could not be made negotiable. The argument which reduces the importance of natural law suggests that the domination of natural law ceases when the transition from the natural to the political is completed, but it serves more of an auxiliary instrument to authorise earthly power to rule, rather than the normative source to reconcile liberty and authority. After a political authority is founded, the substantial problem then becomes how to retain liberty while obeying to the government. Locke's solution is, as we have examined in the second section, resorting to the consent theory. It is consent, rather than natural law, that serves as the normative source to reconcile liberty and authority. On this account, the degree of liberty which the individuals can enjoy in political society is predicated on "practical political negotiation between competing parties."[56]

4. Consent in the Two Treatises of Government

The scholarly debate over the early Locke and the later Locke reveals the complexities surrounding the issue of the natural and the political. Those who maintain that Locke's political theory should be read with theological bearing centre natural law in their argument, which in a way response to the problem of

55 Mark Goldie, Notes on the Texts, in Locke, *A Letter concerning Toleration and Other Writings*, p. xxxiii; Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* (Cambridge: Cambridge University Press, 2002), p. 210.

56 Tate, "Locke, Toleration and Natural Law: A Reassessment," pp. 116, 118.

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promise-keeping raised by anti-contractual theorists. Nevertheless, they do not seem to have given a satisfactory answer to their antagonists, who argue that Locke wanted to eliminate religious elements from his political theory. There is indeed some truth in both sides. But what if both of them have misconstrued Locke's intention? That is, neither to reconcile liberty and authority nor to separate theology from politics was the top priority on Locke agenda. Instead, Locke intended to counter Sir Robert Filmer's absolute theory of sovereignty with a (relatively) liberal theory of state in the *Two Treatises of Government*. The presumption might blur the line between the authoritarian Locke and the liberal Locke, and shed some light on the consistency in his intellectual development as a whole.

What haunted Locke has always been the scenario of *anarchy*. The early Locke was accused of being authoritarian for "he was against the anarchy of religious conscience," which reportedly was "a constant in his thinking on religious freedom."[57] As we have seen in the previous section, Locke held that the government may lawfully regulate religious actions such as the ways of worshipping God. This was actually a counterargument to Edward Bagshaw, Locke's fellow student at Oxford, who claimed that the government had no right to impose any law on religious ceremonies for people may retain their liberty of conscience and duty of sincere worship.[58] The substantial problem in Locke's view was that Bagshaw did not specify the criteria of judging "sincere worship," which could significantly reduce the binding force of laws. (p. 15) As a result, people could easily refuse to yield the individual authority in the face of the allegiance to government.

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57 Bou-Habib, "Locke's *Tracts* and the Anarchy of the Religious Conscience," p. 16.

58 Edward Bagshaw, *The Great Question concerning Things Indifferent in Religious Worship, Briefly Stated, and Tendred to the Consideration of All Sober and Impartiall Men* (London, 1660), esp. pp. 4-6.

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On the other hand, the later Locke came to worry about the implication of political anarchy resulted from Filmer's theory and his rejoinder. We see by the end of the previous section, liberty under political authority can be a matter of "practical political negotiation," which in a way shows Locke's further thoughts on his rejoinder to Bagshaw. That is to say, Locke was trying to find a way to make people accept the imposition of laws while retaining their liberty of judgement. Meanwhile, this liberty of judgement needed to be restricted within the discernible realm rather than be dominated by some kind of mysterious divine power. To avoid the latter, Locke confirmed that the subject for people to obey was the political authority, namely, the government they established by consent.

This view then became a solid ground for Locke to argue against Filmer and his followers. (p. 202) Filmer elaborated on a natural line of transferring absolute power from God to Adam and to secular kings; thus men were all born into slavery, since their subjection to the kings was identical to that of sons to fathers.[59] Conversely, Locke denied that political authority derived from the natural as it had no legitimacy without the consent of the people. A regime erected without practical political negotiation could be regarded as usurpation which arbitrarily terminated people's natural liberty.[60] The main problem of Filmer's argument, in Locke's opinion, was that even though people may exercise their liberty of judgement, they were still unable to discern the source of political authority since it was conferred by "divine institution." (p. 234) Consequently, all the kings' authority was "questionable" and "thus invites

59 Robert Filmer, *Patriarcha and Other Writings*, ed. Johann P. Sommerville (Cambridge: Cambridge University Press, 1991), pp. 5-12; cf. Locke, *Two Treatises of Government*, p. 144.

60 James A. Harris, "Treatises of Government and Treatises of Anarchy: Locke versus Filmer Revisited," *Locke Studies* 19 (January 2020, Ontario), p. 5; cf. Locke, *Two Treatises of Government*, pp. 200-201, 251.

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subversion and disorder."[61] This may, in some aforementioned commentators' view, attest the peril of taking natural law to be the normative instrument to reconcile liberty and authority.

Filmer's defence of the natural power of kings generated such a fatal consequence since he did not concern about how the kings were empowered. In fact, he rejected all the possible ways of legitimising political authority: kings could not be chosen by either the people or the parliament; he did not even confirm that kings could only be chosen by God.[62] Filmer claimed that it makes no difference "which way kings come by their power, whether by election, donation, succession or by any other means, for it is still the manner of government by supreme power that makes them properly kings, and not the means of obtaining their crowns." What matters is that the king is "a supreme father" who possesses "the only right and natural authority" which is ordained "by the secret will of God."[63] This may trigger a series of dissolution of the mechanics in a political society in Locke's view. If the legitimacy of a regime is untraceable, it can hardly be the source of laws. If usurpation can be justified, "there would be no distinction between Pirates and Lawful Princes." (p. 203) The absolute power of kings can "unsettle and destroy all the Lawful Governments in the World, and to Establish in their room Disorder, Tyranny, and Usurpation." (p. 194)

Locke therefore sought to establish a contractual theory to specify the subject of political obligation, which should render the legitimacy of government fathomable. More importantly, the clarity in this line should be able

61 Harris, "Treatises of Government and Treatises of Anarchy," p. 11.

62 Filmer, *Patriarcha and Other Writings*, pp. 21-22, 53-55. Harris defines Filmer's notion of natural power to be twofold: "negatively, that it is not given by the people or by any human being; positively, that it is given by God." See Harris, "Treatises of Government and Treatises of Anarchy," p. 10.

63 Filmer, *Patriarcha and Other Writings*, pp. 44, 11.

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to avoid the possible consequence of political anarchy deduced from Filmer's theory. Locke asserted that to avoid "perpetual Disorder and Mischief, Tumult, Sedition and Rebellion,…[we] must of necessary find out another rise of Government, another Original of Political Power, and another way of designing and knowing the Persons that have it then what *Sir Robert F.* hath taught us." (p. 268)[64] Hence there we have the theory of state where consent plays a pivotal role in preserving people's property, liberty and judgement on political affairs.

Although the *Second Treatise* has often been viewed as a political theory of liberty, equality and limited government, Locke's constant concern for anarchy arises when it comes to the right of resistance. That is, Locke shares "Filmer's—and Hobbes's—anxiety about the practical consequences of the writing and publishing of political philosophy."[65] Wilfully calling for the right of resistance to alter the government is one of the worst consequences. Locke's consent theory suggests people have the liberty to judge when the government has failed to fulfil their commission. The government is said to have lost the political authority as it disappoints people's trust and they have the right to act against it. But to judge when exactly people can react against it and what count as an arbitrary intrusion is unclear. Locke told us that "the People have no other remedy in this, as in all other cases where they have no Judge on Earth, but to appeal to Heaven." (p. 379) There are two ways of interpreting this statement. First, those who maintain that Locke's political theory has theological bearing argue that when the earthly political authority ceases, the cooperation between divine authority and civil liberty begins, which is why God "*alone*…is the Judge of the Right [of resistance]." (p. 427) In other words, people should suspend their judgement of when and what they can react against the (earthly)

64 Locke's emphasis.

65 Harris, "Treatises of Government and Treatises of Anarchy," p. 15.

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authority to defend their liberty. "Pending that judgement" means "that God's authority underwrote freedom and government alike and reconciled the one to the other."[66]

The second interpretation is that Locke was worried about the scenario that individualistic judgement could easily become an excuse of rebellion rather than collective resistance for the common good. This is to say consent theory has no room for any justification for rebellion, as Locke was concerned about the contents of his political philosophy may encourage political instability when wrongly conceived by the public. Indeed, Locke may well be implying to suspend the judgement of the timing and contents of resistance; what they are entitled to judge is "whether they have a just Cause to make their Appeal to Heaven."[67] Moreover, such kind of judgement should be exercised collectively. As Locke defined, lawful resistance entails the ruler to entering "a State of War with his *People*." (p. 402)[68] Locke deemed it very rare for an individual to resist the ruler and such an action could barely be contagious to others. It is thus unlikely for "a few oppressed Men to *disturb the Government*, where the *Body of the People* do not think themselves concerned in it, as for a raving mad Man, or heady Male-content to overturn a well-settled State; the People being as little apt to follow the one, as the other." (p. 404)

It has been observed that "Locke was uncomfortable with the idea of a right to resist on the part of individuals," although he did not deny such a right. (p. 404) The reason is that Locke has confirmed the individual's right of self-preservation but was concerned about "what subjects would do with the right of resistance lay in his reticence when it came to the concept of

66 Stanton, "Authority and Freedom in the Interpretation of Locke's Political Theory," p. 22.

67 Harris, "Treatises of Government and Treatises of Anarchy," pp. 5, 23.

68 My emphasis.

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sovereignty itself."[69] Having crashed Filmer's theory of absolute sovereignty in the *First Treatise*, Locke had little interest in developing his own theory of sovereignty. As the subtitle of the book suggests, the *Second Treatise* is "an Essay concerning The True Origin, Extent, and End of Civil-Government." (p. 135) Locke also made his intention clear in the preface: he wants to "establish the Throne of our Great Restorer, Our present King William; to make good his Title, in the Consent of the People." (p. 137)[70] The "Consent of the People" is

69 Harris, "Treatises of Government and Treatises of Anarchy," p. 20.

70 I appreciate one of the anonymous reviewers suggests that I should associate the Exclusion Controversy (1679-1681) with Locke's concern over anarchy. However, I hesitate to do so since I have some doubts about the puzzle in Peter Laslett's interpretation. Laslett indeed considered the *Two Treatises* "an Exclusion Tract, not a Revolution Pamphlet" ("Introduction," in Locke, *Two Treatises of Government*, p. 61). It was thus not an *ex post facto* justification of the post-1688 political order. But, in the meantime, we can hardly ignore Locke's own statement in the preface, which did attempt to speak for the new regime. Perhaps the more baffling issue is that, as Laslett indicated in the introduction, Locke actively supported Shaftesbury's leadership during the Exclusion Bill campaign; yet, it was rather strange "that the parliamentary issues of the Exclusion Controversy have not been noticed in the constitutional discussion in the *Second Treatise*." ("Introduction," pp. 31, 54) Given that Locke's concern over anarchy began as early as his acquaintance with Shaftesbury in Oxford in the 1660s, and that Shaftesbury had a long-lasting influence on Locke's political thinking, Locke's silence on the Exclusion Controversy in the *Two Treatise* makes no sense at all. This is all the more conspicuous if we accept the view that Locke intended to rebut Filmer and the anarchical consequence resulted from his absolute theory. As Laslett observed, Locke was writing in the political milieu where the Tories "scored a notable propaganda victory" by republishing Filmer to campaign against Shaftesbury and the Whig Exclusionists. ("Introduction," p. 51) It seems to me this was the chance for Locke to simultaneously defeat Filmer and defend Shaftesbury through raising the issue of anarchy. But his silence in the *Two Treatises* makes one wonder whether Locke genuinely believed the Whig causes, or he deemed the issue of anarchy irrelevant to the Exclusion Controversy. We can hardly solve these problems without more evidence come to light.

Nonetheless, recent studies propose a revisionist view on Laslett's interpretation by arguing that "the *Two Treatises* is an Engagement, not an Exclusion, Tract." As Harris

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of vital importance since it is the people's "Resolution to preserve" the "love of their Just and Natural Rights" that "saved the Nation" from "the very brink of Slavery." (p. 137)

In light of this, the question of how to maintain a liberal commonwealth becomes the priority on Locke's agenda. Establishing an alternative theory of popular sovereignty bears the peril that people may misconstrue liberty as the power to do whatever pleased them. (p. 306) Instead, the individual is not himself a sovereign to every matter in his life. The liberty he has, from this regard, is the freedom to choose "what Government he will put himself under; what Body Politik he will unite himself to." (p. 347) These are what the individual gets by giving his consent to become a member of political society. All the members should thenceforth "act as one Body, and so be one distinct Commonwealth." (p. 406) By acting collectively, the body of people will not collapse into a state of anarchy and will be able to establish a new government to preserve their safety, when a government is dissolved. This is because the people united as "one coherent living Body…is the Soul that gives Form, Life, and Unity to the Commonwealth," which has only one Will for "the Essence and Union of the Society." (p.407)[71] This explains why Locke distinguished the dissolution of government from that of society by the end of the *Second*

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indicates, Laslett's interpretation cannot explain why Locke published the *First Treatise*, intended as a polemic to Filmer's absolute theory, together with the *Second Treatise*. To solve this, reading the *Two Treatises* "in the context of the debate about the oath of allegiance to William and Mary" would be more appropriate. See Harris, "Treatises of Government and Treatises of Anarchy," pp. 25-27.

71 Harris rightly indicates that "The Lockean people are not the Rousseauian people." The collective will of the Lockean people "needs to accommodate itself to God's will, in the form of the law of nature, before it can be said to make through its representatives binding laws that demand the obedience of subjects. When the government is dissolved and power returns to the people, the people are not free to do absolutely anything they might want to do." See Harris, "Treatises of Government and Treatises of Anarchy," p. 21.

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Treatise. Locke indeed began by defending the liberty, property and other natural rights of the individuals. Yet, he closed the *Second Treatise* by emphasising the essence of his political theory pertains to the collective acts and judgement of the people, which shows his attempt to prevent the possibility that some individuals might misconstrue his liberal political philosophy. Political anarchy may well be the worst consequence.

Conclusion

The substantial role of consent is to lay the foundation of Locke's liberal theory of state while questioning the necessity of natural law in Locke's overall political theory. Locke's theory of state is liberal since consent enables people to retain their sovereignty indirectly through political representation. In this case, their political life is constructed around their own will. But this does not mean Locke intended to develop a theory of popular sovereignty, as he was cautious about the implication of his theory may have on his contemporaries. By submitting their consent, people are able to join a society, united as a body politic and authorise a government. It is essential for people to deliberate as a collective body, for it would keep the society intact if the government is dissolved due to external or internal disturbance.

Locke's doctrine of consent is comprised of two phases, namely, the stage of transition from the state of nature to political society, and the subsequent stage whereby a government monopolises political power. In the first stage, consent is closely knit with people's desire to preserve their property. Locke has enumerated the inviolable property rights which political society is able to protect. He also acknowledged that God has bestowed reason upon people so that they can judge the best method of self-preservation. Consent's role of legitimising a government comes in the second stage. People feel the need to

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oblige to their government because of its protection and what they can consent to is regulated by the law of nature.[72] As for the government, its legislation and the extent of its power are governed by the public good. Consent "inside political societies is both the mode in which individuals acquire their political obligations and the institutional precondition for each man to feel reasonable security in his own possessions."[73]

Consent also functions as a sign of freedom. When a person is not subject to other's arbitrary will and has genuine freedom of choice, the validity of his consent stands. The rule of law is the strongest means of preserving liberty. It is therefore crucial for legislation to include the public will. Overall, the role of consent demonstrates itself as the essential value of Locke's theory of state. It also shows two competing lines in Locke's political thought as a whole, namely, the natural and the political. Recent studies have been debating over whether the two lines are reconcilable through arguing for or turning down the theological implication in Locke's political theory. It has been suggested that the normative instrument of such reconciliation can be either Locke's conception of natural law or social contract. Both sides of scholars identify Locke's intellectual career to have two phases, namely, the early (authoritarian) Locke and the later (liberal) Locke. The way they understand it is that the early

72 We should be careful not to confuse this with the utilitarian-based allegiance endorsed by Hume. The Lockean legitimacy is not built on the public sentiments of the approval-worthiness of a government (as Dunn has rejected the view of consent as a psychological affirmation), nor does the consent occur after the utility of government being tested. That is, the Lockean people anticipate the advantages of living under a government and their consent legitimises it. Conversely, the Humean legitimacy may not even require the consent in advance, as the allegiance naturally develops while people are benefited from their government. Cf. David Hume, *A Treatise of Human Nature,* ed. David Fate Norton and Mary J. Norton (Oxford: Oxford University Press, 2007), pp. 347-351; Dennis Rasmussen, *The Pragmatic Enlightenment* (Cambridge: Cambridge University Press, 2014), pp. 108-109.

73 Dunn, "Consent in the Political Theory of John Locke," p. 45.

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Locke prioritised order than other political values, which he would endorse in his later writings, as natural law dictated people to fulfil God's will; nevertheless, the later Locke concerned the preservation of liberty the most and came to believe that public order could be maintained by toleration.

As this paper suggests, the third way of conceiving the seeming contradiction in Locke's intellectual development is to look into Locke's intention of centring the consent theory in his theory of state. Examinations of the *Two Treatises* demonstrate Locke's main concern was the state of anarchy. His substantial task was to crash Filmer's theory and justify King William's succession of the British throne. It is therefore unnecessary to distinguish the natural and the political deliberately; rather, both are crucial auxiliaries for Locke to establish his argument. More importantly, consent theory enables Locke to underscore the essence of his theory, namely, the people as a collective body for political judgement and action. Consent serves as the mediator among social members to achieve such collectivity. Locke's theory of state as a whole is less individualistic than it is conventionally seen; instead, it reveals Locke's ideal and concern for the power of political thought.

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§研究討論§

同意論於洛克國家理論中的角色

曾怡嘉*

提　要

同意論是洛克建構其國家理論的重要基礎。同意論的確立，標誌出政治思想史上自由與民主理論發展的關鍵時刻，然而該學說長久以來引發諸多學術論辯，且使人質疑洛克的早晚期立場是否相容。本文考察洛克的國家理論中「同意」此一概念所扮演的角色，以此參與當前的學術爭論。本文反對一些具有反歷史傾向的詮釋，即政治審議與自願性意圖構成人們表示同意的基本條件。本文亦駁斥如某些學者所言，同意論為洛克統治正當性的論證提供了一個道德基礎，抑或同意論直接合理化人們的政治義務等觀點。本文將論證，同意論就規範性而言，彰顯了自由是洛克國家理論中最重要的政治價值；就歷史而言，則是回應英格蘭當時政治現實的利器；洛克的表述方式亦揭示了他畢生所擔憂之課題——無政府狀態的危險。因此同意應被視作一項動態的過程，其中人們認可政府統治之必要，同時亦讓統治者承認人們欲維持自由之決心。

關鍵詞：洛克　同意　自由　無政府狀態　國家理論

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