Reason and History in Locke's *Second Treatise*

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If you have writ your annals true, 'tis there. …
Coriolanus

I

Power, in the *Essay Concerning Human Understanding*, is defined as an ability to 'do or forbear any particular Action, according to the determination or thought of the Mind,' which is always associated, then, with an agent.

> A man standing on a cliff, is at liberty to leap twenty yards downwards into the sea, not because he has a power to do the contrary action, which is to leap twenty yards upwards, for that he cannot do; but he is therefore free, because he has a power to leap or not to leap. But if a greater force than his, either holds him fast, or tumbles him down, he is no longer free in that case; because the doing or forbearance of that particular action is no longer in his power. He that is a close prisoner in a room twenty feet square, being at the north side of his chamber, is at liberty to walk twenty feet southward, because he can walk or not walk it; but is not, at the same time, at liberty to do the contrary, i.e. to walk twenty feet northward.[1]

Power is thus discerned partly in terms of resistance and implies the opposite of wishful thinking. Whether one has a particular power, then, is something to be confirmed or not by observation. When power is modified by the adjective,'political,' however, its inflection is radically altered. 'Political power, then,' Locke declares, in the *Second Treatise*, 'I take to be a right of making laws, with penalties of death, and consequently all less penalties for the regulating and preserving of property, and of employing the force of the community in the execution of such laws, and in the defence of the commonwealth from foreign injury, and all this only for the public good.' (3) As power *per se* might be circumscribed by stone

[1] *Essay* II, XXI, § 27.

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walls or the law of gravity, so *political* power also stands over against the idea of a particular resistance. Political power, however, has to be moral in character, in ways power in general need not (an authorization to act or not, as opposed to a physical or psychological capacity to act), so its moral force can only be measured against an obligation (or the lack of one) in the subjects to obey.

Politics, for Locke, was divided into two parts—the first, moral and theoretical, 'containing the original of societies and the rise and extent of political power, and the second, 'best learned by experience and history,' was practical and concerned with the art of government.[2] Similarly, his model of knowledge was in two parts. In his journal entry for 26 June 1681, when, according to Peter Laslett, he would have been engaged in writing the *Second Treatise*,[3] Locke reflected:

> There are two sorts of knowledge in the world, general and particular, founded upon two different principles: i.e. true ideas, and matter of fact, or history. Also general knowledge is founded only upon true ideas; and so far as we have these we are capable of demonstration, or certain knowledge.[4]

Locke considered inquiry undertaken in the practical mode, in pursuit of 'the knowledge of empirical correlations and analogies amongst contextual and historical social actions and states of affairs,' as one of his major interpreters has put it, to be 'epistemologically inferior.'[5] Locke's preference here for the rationalist mode (ironically, because Locke is not generally regarded as a rationalist given his insistence upon the ultimately sensory basis of all knowledge) stemmed not merely from its promise of greater certainty, but also because it had become associated for him, as it had for Plato,

[2] James Tully, *A Discourse on Property: John Locke and his Adversaries,* (Cambridge: Cambridge University Press, 1980), 28–9.

[3] John Locke, *Two Treatises of Government*, Peter Laslett (ed.) (Cambridge: Cambridge University Press (Student Edition), 1960, 1988), 45–66, 123–6.

[4] David Wootton, *Political Writings of John Locke* (New York: New American Library, 1993), 259. The conceptual polarity represented by 'certain knowledge' and 'matter of fact' pervades the verbal structure of Locke's note. On the side of certain knowledge, we find such characteristic terms as 'general, ideas, true, knowledge, demonstration, justice, goodness, law, happiness, moral, connection, agreement, mind, mathematics, settled ideas, and *aeternae veritates*.' Clustering conceptually around matters of fact, we discover 'opinion, fact, history, not true, confused, imperfect, belief, uncertain, lazy talking, various and unknown humours, prudence and probability.' (259–60).

[5] Tully, 33.

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with the rare and the excellent as contrasted with the common and the vulgar. Disdain for the merely practical is not far from an approbation of the impractical for its own sake.

> For the truths of mathematics and morality are certain, whether men make true mathematical figures, or suit their actions to the rules of morality or no. For that the three angles of a triangle are equal to two right ones, is infallibly true, whether there be any such figure as a triangle existing in the world or no. And it is true, that it is every man's duty to be just, whether there be any such thing as a just man in the world or no.[6]

Had Locke simply been moved, intellectually, say, to write about politics, he might well have attempted no more than to accommodate the underlying principles of an already widespread contractarianism within the margins of his overall philosophy.[7] However, in 1680, Tory ideologists posthumously published Sir Robert Filmer's *Patriarcha*, a central and influential statement of the absolutist political position. By choosing to express his political thought in the form of a critical response to Filmer, Locke was forced to present his consensual theory, as it were, through Filmer's considerably more historical perspectives. *Patriarcha* presented its main points—that political power had its origins in fatherhood, that no natural or any other right resided in the people, and that kings everywhere antedated law and other political institutions—largely in terms of Scriptural and English constitutional history.[8] Filmer flatly denied

[6] Wootton, 261.

[7] On the other hand, Locke's earliest political views were conservative, if not, in Laslett's words, 'traditionalist and authoritarian.' Laslett, *Two Treatises*, 19n. See Wolfgang Von Leyden, *John Locke, Essays on the Law of Nature* (Oxford: Oxford University Press, 1954) and Philip Abrams (ed.), *Two Tracts on Government* (Cambridge: Cambridge University Press, 1967).

[8] W. H. Greenleaf, *Order, Empiricism, and Politics* (Oxford: Oxford University Press, 1964), chapter 5 and 'Filmer's Patriarchal History,' *The Historical Journal* IX, 2 (1966), 157–71; Peter Laslett, 'Sir Robert Filmer: The Man versus the Whig Myth,' *William and Mary Quarterly* 5, 2 (1948), 523–46; and Gordon J. Schochet, *Patriarchalism in Political Thought* (New York: Basic Books, 1975), 115–58. The role of history in Filmer's theory is stressed by John Neville Figgis, *The Divine Right of Kings* (New York: Harper and Row, 1965, 1896), 154–60. The question whether Filmer's position can actually be described as 'historical' is asked critically by John Dunn, *The Political Thought of John Locke* (Cambridge: Cambridge University Press, 1969), *passim* and James Conniff, 'Reason and History in Early Whig Thought: the Case of Algernon Sidney,' *Journal of the History of Ideas* 43, 3 (1982), 397–416.

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that the fantasies of consensual theory had any historical credibility. In mocking tones, he demanded to know

> Was a general meeting of a whole kingdom ever known for the election of a prince? Is there any example of it ever found in the whole world? To conceit such a thing is to imagine little less than an impossibility, and so by consequence no one form of government or king was ever established according to this supposed law of nature. …[9]

Locke, then, was provoked to respond outside the comfortable precincts of his rationalist preferences. His various statements of purpose reveal the dual historical-rational nature of the challenge he had accepted.

> The great Question which in all Ages has disturbed Mankind, and brought on them the greatest part of those Mischiefs which have ruin'd Cities, depopulated Countries, and disordered the Peace of the World, has been, Not whether there be Power in the World, nor whence it came, but who should have it. (4)[10]

> [S]o that he that will not give just occasion to think that all government in the world is the product only of force and violence, and that men live together by no other rules but that of beasts, where the strongest carries it, and so lay a foundation for perpetual disorder and mischief, tumult, sedition, and rebellion (things that the followers of that hypothesis so loudly cry out against), must of necessity find out another rise of government, another original of political power, and another way of designing and knowing the persons that have it than what Sir Robert Filmer hath taught us. (1)

[9] II, § 6 And see, too, § 7 'I ask but one example out of the history of the whole world. Let the commonweal be but named where ever the multitude, or so much as the greatest part of it, consented either by voice or procuration to the election of a prince.'

[10] *First Treatise of Government* §§106, 81. See also, §122 'To settle Government in the World, and to lay Obligations to Obedience on any Mans Conscience, it is as necessary … to satisfie him, who has a right to this Power … For it is still to be remember'd, that the great Question is … what Persons have a right to be obeyed, and not whether there be a Power in the World, which is to be called *Paternal*, without knowing in whom it resides: for so it be a Power, *i.e.*, Right to Govern, it matters not, whether it be termed *Paternal,* or *Regal,* or *acquired;* whether you call it *Supreme Fatherhood*, or *Supreme Brotherhood*, will be all one provided we know who has it.'

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This meant that Locke had to meet Filmer, at least part of the time, on the more cluttered and less satisfying ground of history and matter of fact. This requirement put a strain on Locke's procedure; there was no naturally historical counterpart to his rationalist theory of consent. As a result, the theory was hard-pressed to open up to historical contingency; an unbridgeable gap opened, then, between logical or qualitative judgments, on the one hand, and historical or quantitative and empirical conclusions, on the other.

The ideas of nature, consent, and the hypothetical origins of political society are completely contained within a deductive framework (albeit one ultimately rooted in sense-perception).[11] Starting with the postulate that human existence presupposes a creator, Locke was able to work out, right across the text of the *Second Treatise*, the whole system of political reasoning that reaches 1) from the state of nature, liberty, equality, and self-preservation, 2) through the emergence of transgression, the state of war, and the right of everyone to enforce the law of nature and punish its violators, and 3) to the spontaneous collective recognition of the need for a more secure and unbiased umpirage and the eventual creation of political society in an act of mutual consenting.

The idea of an original contract is, ironically, inherently narrative in form.[12] Although tautological in essence, it nevertheless portrays events occurring in sequence. Thus, in response to Filmer's provocations, Locke felt compelled to demonstrate his thesis historically; logical rigor alone would not convince common sense that the claims of the consensual theory had been confirmed. Of course, the logical formalities of Locke's moral rationalism do not, strictly speaking, require historical backing. If all we want the theory to do (as John Dunn has argued)[13] is logically to legitimate particular political circumstances, then its actual historical footing is unimportant. But, Locke has actually gone farther than that, insisting in more than one place that the historical records we have of the

[11] See the very useful discussion of Locke's underlying assumptions and strategies in Philip Abrams's introductory essays to his edition of Locke's early tracts on the authority of the magistrate. John Locke, *Two Tracts on Government* (Cambridge: Cambridge University Press, 1967).

[12] 'There can be no account of things in terms of their origins that is not narrative,' says Carl Pletsch. From a point of view often very different from the one here pursued, Pletcsch offers some really wonderful observations on the tricks Locke plays with narrative, Filmer, and the critique of patriarchalism. 'Textual Politics,' 127–9, 128.

[13] John Dunn, *The Political Thought of John Locke*, esp. 96–147 and 165–86.

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beginnings of 'any polities in the world are all either plain instances of such a beginning, as I have mentioned, or at least have manifest footsteps of it.' (101)[14] In the end, the effort is, strictly speaking, a failure and the claims of the contractarian position find no historical validation.[15] In the process of trying to give his speculations an historical foothold, however, Locke is drawn into several tactical manoeuvres, which, as they unfold, contribute, significantly to the unique character of the text of the *Second Treatise*.[16]

[14] Number in parentheses refer to number paragraphs in the *Second Treatise*.

[15] '[T]o imagine such pactions and contracts between Kings and people,' Filmer wrote in his 'Directions for Obedience to Government in Dangerous or Doubtful Times,' as cannot be proved ever to have been made, or can ever be described or fancied, how it is possible for such contracts ever to have been, is a boldness to be wondered at.' Peter Laslett (ed.), *Patriarcha and Other Political Works of Sir Robert Filmer* (Oxford: Basil Blackwell, 1949), 231.

[16] This is an issue that has been discussed in the literature from different perspectives several times. At the risk of over generalizing, the prevailing tendency has been to try to reconcile the tensions in Locke's theory, interpreting his purposes or his terms to make everything fit logically together. Thus, he is either historical or not, or transcends the categories, or employs them in uniquely individual ways, and the like. The most important contribution are to be found in Hans Aarsleff, 'The State of Nature and the Nature of Man in Locke,' in *John Locke: Problems and Perspectives* (Oxford: Oxford University Press, 1969), 99–127; Richard Ashcraft, 'Locke's State of Nature: Historical Fact or Moral Fiction,' *American Political Science Review* 62,3 (1968), 898–915; William G. Batz, 'The Historical Anthropology of John Locke,' *Journal of the History of Ideas*, 35, 4 (1974), 633–70; John Dunn, 'Consent in the Political Theory of John Locke,' *The Historical Journal* X,2 (1967), 153–82 and *The Political Thought of John Locke,* 96–119; James Farr, 'The Way of Hypotheses: Locke on Method,' *Journal of the History of Ideas*, 48, 1 (1987), 51–72; Mark Glat, 'John Locke's Historical Sense,' *Review of Politics* 43, 1 (19181), 3–21; Govert den Hartogh, 'Made by Contrivance and the consent of Men: Abstract Principle and Historical Fact in Locke's Political Philosophy,' *Interpretation* 17, 2 (1989–90), 193–221; J. G. A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge: Cambridge University Press, 1957, 1987); David Resnick, 'Locke and the Rejection of the Ancient Constitution,' *Political Theory* 12, 2 (1984), 97–114; A. John Simmons, 'Locke's State of Nature,' *Political Theory* 17,3 (1989), 449–70; Gordon Schochet, 'The Family and the Origins of the State in Locke's Political Philosophy,' in Schochet, *Patriarchalism and Political Thought* (New York: Basic Books, 1975), 244–67; Carl Pletsch, 'Textual Politics in Locke's *Two Treatises of Government*,' in *Restoration,*

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This is an essay, then, on the phases of this unfolding in the text; the argument is roughly as follows. Repeated efforts at a direct historical substantiation of Locke's position fail in the early chapters of the *Second Treatise*. The most important of these various miscalculations concern the role of consent in his account of the origins of government, the tension between logical and historical evidence in describing the development of prerogative in the English monarchy, and the inescapable conclusion that conquest and not consent was the likely origin of most states. In these places, the momentum of Locke's rationalist argument for consent as the basis for any legitimate polity slows, hesitates, and changes direction. The general concept of wrongdoing, as it emerges from Locke's depiction of the state of nature, war, and slavery, later transforms itself into the basis of injustice and tyranny. These, in turn, work to generate a sort of secondary state of nature atop pre-existing government, in which a now historical people, by means of concrete acts of resistance and revolution, enact the hypotheses of the consensual theory in actual time and place. Thus, in a sense, Locke's idiosyncrasy as an Exclusion Whig writer (in his eschewing of the historical question)[17] forces him to adopt an exceptionally intense radicalism (embracing both political resistance and the deposing of the king).

II

From the outset, Locke promises that the consent so central to founding the state is, indeed, real. We are led to expect instances of such political foundings in consent. 'Moreover, I affirm,' Locke said

[17] Locke's failure to come to grips with the historical question remains a conundrum, according to J. G. A. Pocock, *The Ancient Constitution and the Feudal Law* , 187-190, 235–8. 345–9, and especially 354–61. Pocock goes so far as to wonder whether Locke was not the only major political intellectual of his age who did not care about history, while Mark Glat argues that Locke actually had a superior 'sense of history.' See 'John Locke's Historical Sense.'

Ideology, and Revolution: Papers Presented at the Folger Institute Seminar, 4 (1990), 105–47; Jeremy Waldron, 'John Locke: Social Contract Versus Political Anthropology,' *Review of Politics* 51,1 (1989), 3–28. A further penetrating inquiry which focuses, however, on Algernon Sidney rather than Locke, is James Conniff, 'Reason and History in Early Whig Thought,' *Journal of the History of Ideas* 43,3 (1982), 397–416. See, too, W. H. Greenleaf, *Order, Empiricism, and Politics*, chapters 1 and 9 and pp. 278–82.

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in concluding chapter 2, 'that all men are naturally in that state, and remain so, until by their own consents they make themselves members of some politic society.' (15) In chapter 7, Locke finally turns to the issue of the establishment of political society, although he first reiterates the logical model that begins again in the circumstances of nature—freedom, rights, equality, power, property, offences, and punishments, and so on into the necessity of political society, government, and laws. But, though the argument is stubbornly hypothetical still, the text here employs an animated, performative vocabulary in determining just how 'all private judgment of every particular Member' comes to be excluded, and how 'the Community comes to be Umpire.' Listen to the peppering of phrases used across Chapters 7 and 8 to describe the acts divesting us of our natural liberties: 'hath quitted; resign'd it up; united into one body; given up; so united…as to quit every one and to resign it to the publick; enter into; joyn himself to; authorizes; quitting…and…entering; divests himself; puts on the bonds; by consent of every individual made a *Community*; must be understood to give up all the power necessary for the end for which they unite into Society; consent…to unite and incorporate into such a Society.'[18] The reader is thus led to expect that an active, conscious, and fully realized public show of willingness to create political society had taken place somewhere at sometime. We are on the lookout for decidedly calculated, unconcealed, and intentional deeds.

Locke then turns to confront Filmer, whose views he thinly veils within an imagined objection, specifically, '[t]hat there are no instances to be found in story of a company of men, independent and equal one amongst another, that met together, and in this way began and set up a government.' (100) Locke, however, begins on an evasive backwards step.

> That it is not at all to be wondered that history gives us but a very little account of men that lived together in the state of Nature. The inconveniencies of that condition, and the love and want of society, no sooner brought any number of them together, but they presently united and incorporated if they designed to continue together. And if we may not suppose men ever to have been in the state of Nature, because we hear not much of them in such a state, we may as well suppose the armies of Salmanasser or Xerxes were never children, because we hear little of them till they were men and embodied in armies. Government is everywhere antecedent to records, and letters seldom come in amongst a people till a long

[18] *Second Treatise*, chapter 7 and 8 *passim*.

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> continuation of civil society has, by other more necessary arts, provided for their safety, ease, and plenty. And then they begin to look after the history of their founders, and search into their original when they have outlived the memory of it. (101)[19]

It is an argument undertaken in the full shadow of an admission that, of course, it cannot be sustained. He all but winks.

At the end of each equivocal session of twisting around in his contrived and stilted 'evidence' (the vague, general and unconvincing references to 'the *beginning* of *Rome* and *Venice,*' the assertion that 'in many parts of *America* there was no Government at all,' or the fragmentary allusion to 'those who went away from *Sparta* with *Palantus*), Locke calmly turns to such question-begging summations as these:

> And those that we have of the beginning of any polities in the world, excepting that of the Jews, where God Himself immediately interposed, and which favours not at all paternal dominion, are all either plain instances of such a beginning as I have mentioned, or at least have manifest footsteps of it. (101)

> … but be that as it will, these men, it is evident, were actually free; and whatever superiority some politicians now would place in any of them, they themselves claimed it not; but, by consent, were all equal, till, by the same consent, they set rulers over themselves. So that their politic societies all began from a voluntary union, and the mutual agreement of men freely acting in the choice of their governors and forms of government. (102)

> Thus I have given several examples out of history of people, free and in the state of Nature, that, being met together, incorporated and began a commonwealth. (103)[20]

[19] Algernon Sidney, in his *Discourses Concerning Government*, on the other hand, was based theoretically in historical conceptions and used historical arguments heavily to refute Filmer's claims. For interesting discussions of Sidney's role, see Caroline Robbins, 'Algernon Sidney's *Discourses Concerning Government*: Textbook for Revolution,' *William and Mary Quarterly* 4,3 (1947), 267–96 and Blair Worden, 'The Commonwealth Kidney of Algernon Sidney,' *Journal of British Studies* 24, 1 (1985), 1–40.

[20] James Daly states flatly that historical illustrations of the sort employed by Locke were in fact true according to 'the history known to educated men of the time.' He offers no evidence, however. See James Daly, *Sir Robert Filmer and English Political Thought* (Toronto: University of Toronto Press, 1979), 87 and note 11. According to W. H. Greenleaf, 'Locke said that there were examples from history and experience which substantiated his case more often than he actually quoted any.' *Order, Empiricism, and Politics*, p. 281.

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It is an incredible performance.[21] Just before the end, he defiantly capitulates on the whole question. 'And if the want of such instances be an argument to prove that government were not nor could not be so begun,' he remarks, 'I suppose the contenders for paternal empire were better let it alone than urge it against natural liberty; for if they can give so many instances out of history of governments begun upon paternal right, I think (though at best an argument from what has been to what should of right be, has no great force) one might, without any great danger, yield them the cause.' (103) Locke's argument that governments, in historical fact, have been generated by free consent in the state of nature fails miserably, even on a sympathetic reading. Yet, as if he thought he might simply hurry past the accumulating objections, he concludes the whole issue by splitting a hair.

> But, to conclude: reason being plain on our side that men are naturally free; and the examples of history showing that the governments of the world, that were begun in peace, had their beginning laid on that foundation, and were made by the consent of the people; there can be little room for doubt, either where the right is, or what has been the opinion or practice of mankind about the first erecting of governments.[22]

[21] The obvious weaknesses of Locke's argument in the *Second Treatise* have not been allowed truly to enter into our assessment of the work's credibility or importance, but this is a subject for a later effort. For now, see Theodore Redpath, 'John Locke and the Rhetoric of the Second Treatise,' in Hugh Sykes Davies and George Watson (eds), *The English Mind* (Cambridge: Cambridge University Press, 1964), 55–78. See, too, Greenleaf, *Order, Empiricism, and Politics*, chapter 13, 'Conclusion: Rationalism in Politics' and J. W. Allen, 'Sir Robert Filmer,' in F. J. C. Hearnshaw, *Social and Political Ideas of Some English Thinkers of the Augustan Age* (New York: Bartnes and Noble,Inc., 1923), 27–26. 'Either Locke had failed to understand Filmer,' Allen says, 'or he misrepresented him completely. . . I doubt whether Locke had even read Filmer's writings,' 27.

[22] Filmer's assertion of English liberty is the more historical, of course, assuring us that there is no necessary connection between the basis of royal authority and any lessening of that liberty.

'I am not to question or quarrel at the rights or liberties of this or any other nation; my task is chiefly to inquire from whom these first came, not to dispute what or how many these are, but whether they were derived from the laws of natural liberty or from the grace and bounty of princes. My desire and hope is that the people of England may and do enjoy as ample privileges as any nation under heaven; the greatest liberty in the

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The question of what, indeed, has been 'the opinion or practice of mankind' is not long in coming up, however, and even Locke's answer is not the rationalist consensual one we might expect, but an answer surprisingly like Filmer's.

> Thus, though looking back as far as records give us any account of peopling the world, and the history of nations, we commonly find the government to be in one hand, yet it destroys not that which I affirm—viz., that the beginning of politic society depends upon the consent of the individuals to join into and make one society, who, when they are thus incorporated, might set up what form of government they thought fit. (106)[23]

Thus, even Locke's own apocryphal history plainly supports the contention that, in the beginning, government was probably monarchy, and that it arose from the matrix of the family and the role of the protective father. Locke, in a sense, has to admit this; it was one feature of Filmer's position that was widely taken to be true. Besides this pressure, Locke, I believe, had another motive for conceding the general historical question so easily. He only seems to retreat, and has made these historical concessions only in the hope of being able to construe them later into arguments for his logico-ethical position. He thus hoped to lure patriarchalism within range

[23] Here is another similar passage: 'It is obvious to conceive how easy it was, in the first ages of the world, and in places still where the thinness of people gives families leave to separate into unpossessed quarters, and they have room to remove and plant themselves in yet vacant habitations, for the father of the family to become the prince of it.' (74) There is yet another similar and parallel argument later in chapter 8. Here, again, the tone is concessive: 'I will not deny that if we look back, as far as history will direct us, towards the original of commonwealths, we shall generally find them under the government and administration of one man. And I am also apt to believe that where a family was numerous enough to subsist by itself, and continued entire together, without mixing with others, as it often happens, where there is much land and few people, the government commonly began in the father.' (105) Peter Laslett calls attention to these passages, and characterizes them as Locke's 'considerable concession to patriarchalism.' He goes on to say, also, that they 'represent the direct influence on Locke of Filmer and traditional attitudes.' *Two Treatises of Government,* Peter Laslett (ed.) (Cambridge: Cambridge University Press, 1960, 1988), 316n.

world—if it be duly considered—is for a people to live under a monarch. It is the Magna Charta of this kingdom; all other shows or pretexts of liberty are but several degrees of slavery, and a liberty only to destroy liberty.' *Patriarcha*, I, §1.

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of the pincer movement of 'tacit consent.' The failure of this strategy marks the second stage in Locke's gradual abandonment of the idea that consent, strictly speaking, initiates government in the world.

A full discussion of the character of express and tacit consent is, of course, beyond the purposes of this paper. All that will be attempted here is to consider its role in Locke's design to transform the *de facto* ascendancy of fatherhood into the handiwork of the social contract. He can grant the point that history shows that the first princes were fathers of families, because it is not just the beginnings of government toward which he steers the argument, but the beginnings of 'political society,' which, in Locke's terms (technically speaking), is and only is any government created by consent. So, in all the claims that follow, the speculations about the presence of consent at the foundings of the governments of these father-princes, are either only tautologically true (those that were based on consent were those that were based on consent) and, therefore, without significance, or Locke must show that, to the extent that fathers of families were the first rulers of governments, those fathers ruled with the consent of the governed.[24]

Locke employs a variety of adverbial terms and phrases to smooth the way for his acknowledgment of the historical likelihood of the familial origins of government; the text is peppered with a multitude of modifiers of the historical action whereby fathers became kings: 'evident; thus, 'twas easie; likeliest; obvious; 'tis no wonder; 'twas natural; certain it is; how probable it is.'[25] The rhetorical strategy seems to be that if one can plausibly assume the historicity of such tender and loving fatherly authority (yielding

[24] In *Patriarcha,* Filmer is merciless on the question of 'silent acceptation,' as he calls it, whether in the form of 'proxy' or 'tacit consent.' XIII, §§ 1 , 2, and 3. 'From whence it follows,' he says, 'that every Prince that comes to a crown, either by succession, conquest orusurpation, may be said to be elected by the people. Which inference is too ridiculous. …' § 3 Locke's struggle to make tacit consent bear so much of the weight of his argument is remindful of Hobbes in *Leviathan*, where he says this: 'And whether he be of the congregation, or not; and whether his consent be asked, or not, he must either submit to their decrees, or be left in the condition of war he was in before; wherein he might without injustice be destroyed by any man whatsoever.' Thomas Hobbes, *Leviathan* (Oxford: Basil Blackwell, 1946), p. 115. For Hobbes it was really so that if one ought reasonably to have consented (one being reasonable, that is) then one can be assumed to have so consented. Locke comes very close to this in his effort to preserve consent as an element in the foundation of actual states.

[25] *Second Treatise*, chapter 5 *passim*.

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something of method to the opposition), one might then less obviously assume an accompanying and legitimizing consent (capitalizing on the concession).

The fatherly origins of government was an idea with broad public purchase[26] and, in Locke's own view, could be conceded without real harm to his argument, but the supplementary notion of consent called for some more concrete historical verification. Since there was insufficient direct evidence, Locke's immediate tactical manoeuvre was to so characterize the action of consent as to pass beneath historical scrutiny. The task could not be accomplished scrupulously, of course, so it became necessary to resort to hypothetical fictions of some sort. Tacit consent means no action at all, and still could, in certain circumstances, be taken as tantamount to a declaration of agreement and assent. To ask, in such cases, for empirical evidence of anything having taken place, would be the same as admitting that one had simply failed to understand the concept.

The predicates do all the work here. Within the safety and familiarity of the family, as Locke tells it, the government of the father 'seemed without any change barely to continue.' The father alone was allowed to exercise the executive power that everyone had from the law of nature to punish offenses, as the children themselves had no more than 'laid by the exercise of such a power'. Tacit consenting was 'almost natural,' he says, and 'scarce avoidable'. The children, though grown, simply 'made no distinction betwixt minority and full age'. Tacit consent was perhaps even difficult to discern at all, amounting to 'an insensible change' by which their submitting and their custom of obeying 'in effect made him the law-maker'. 'Everyone acquiesced,' he concludes concerning this account of the original of political society, 'till time seemed to have confirmed it, and settled a right of succession by prescription'.

'Thus we may see how probable it is, that people were naturally free', Locke says, at the end of these hypothetical conjectures, pretending (we can only suppose) that he had done more than just dream up hypothetical people and some questionable events, 'and by their own consent either submitted to the government of their father, or united together, out of different families to make a government….' (112) Here, a slightly different note has been introduced. They 'generally put the rule into one man's hands, and [chose] to be under the conduct of a single person', he admits, but, crucially 'without so much as by express conditions limiting or

[26] Gordon Schochet, 'Patriarchalism, Politics and Mass Attitudes in Stuart England,' *The Historical Journal* XII,3 (1969), 413–41.

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regulating his power, which they thought safe enough in his honesty and prudence'. (112)

This theory, failing to find substantiating historical instances of its central events, now postulate an additional crucial factor; not only was the originating father-prince's power consensual (albeit tacitly), but his children and others nevertheless held on to the right (did he mean also the ability?) subsequently even to redefine that power.

> But the golden age (though before vain ambition, and *amor sceleratus habendi*, evil concupiscence had corrupted men's minds into a mistake of true power and honour) had more virtue, and consequently better governors, as well as less vicious subjects; and there was then no stretching prerogative on the one side to oppress the people, nor, consequently, on the other, any dispute about privilege, to lessen or restrain the power of the magistrate; and so no contest betwixt rulers and people about governors or government. Yet, when ambition and luxury, in future ages, would retain and increase the power, without doing the business for which it was given, and aided by flattery, taught princes to have distinct and separate interests from their people, men found it necessary to examine more carefully the original and rights of government, and to find out ways to restrain the exorbitances and prevent the abuses of that power, which they having entrusted in another's hands, only for their own good, they found was made use of to hurt them. (111)

Now that, of course, was something very different (as we shall have occasion to appreciate in a later section) from what anyone would allow could be communicated in a tacit consent. An English audience in the 1680's would, 'very likely' indeed, be able to understand what he was talking about, and be able 'easily' to find an historical example of such 'restraint' in their own experience. So, you would expect that, when the discussion turned fully to the matter of 'prerogative',. we would learn historically about just how and when the English 'people' had put limitations on their ruler's discretionary powers.

III

Prerogative marks a third significant stage in the unfolding of Locke's argument. It represents a political power defined, not merely according to the demands of logic and the definitions of

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other terms, but only, finally, in the exercise. In fact, it might even be argued that prerogative is defined politically only *after* it has been exercised. The implications of this observation are significant. Here is a crucial element in the political power of the state which is not only circumscribed quite carefully by a logically-framed definition ('power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it'), but is also located, in principle, in a historical setting (however abstract) that invites at least some critically historical corroboration ('never is questioned' 'are seldom or never scrupulous,' 'will easily decide'). Locke's words suggest that prerogative, practically speaking, is sustained and regulated by the active acceptance of the people, and he is at pains to establish that, should these boundaries be violated, the will and action of those same people will be sufficient (a threat, a warning, a prediction?) to redefine and restore them.

When collectively surrendered, this power, by definition, transmutes into political power, as then exercised by authorities in a constituted political society; but it is even more clearly visible at the core of prerogative, where individual discretion (in the ruler, to do what he judges necessary) and the individual conscience (in the subject, who must judge whether the actions conform to the good of the people) potentially collide. At bottom, the range and intent of prerogative is always necessarily an historical question (especially as the king's power might be contested by a recalcitrant Commons).

> But when mistake or flattery prevailed with weak princes, to make use of this power for private ends of their own and not for the public good, the people were fain, by express laws, to get prerogative determined in those points wherein they found disadvantage from it, and declared limitations of prerogative in those cases which they and their ancestors had left in the utmost latitude to the wisdom of those princes who made no other but a right use of it—that is, for the good of their people. (162)

This does not mean at all that the people have always had the political capacity successfully to do this. Locke observes ironically that, while it was the people's right to determine the extent of prerogative, that prerogative in England had actually been largest and 'most dangerous to the liberties of their people' when it was exercised by exactly the best and most trusted kings. Nevertheless, whenever the people have suspected its abuse, prerogative has been, as it were, recalled, and redefined.

This assertion directly and historically contradicts Filmer's argument in *Patriarcha*, which had denied, via a long list of legal

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opinions, statutes, and judgments from English constitutional history, that the people had ever restrained the royal prerogative or that they ever would have had a right to do so.[27] The little evidence that Locke is able to provide in support of his 'historical' argument that prerogative was, in fact, circumscribed by the people, was all contained in but two paragraphs inserted into the midst of more lengthy 'logical' arguments deduced from his definition of prerogative. Moreover, he provides no concrete instances, strictly speaking, no 'evidence' of any sort.

When we examine these odd and overly broad references to prerogative in 'the history of England', we find that, as was the case in his previous 'historical' claims about consent in the state of nature, the 'history' is conjectural, conceptual, and, most importantly, obviously contrived to fit the predetermined logico-ethical case. His first historical paragraph represents what can only be called a political fable.

> And therefore he that will look into the history of England will find that prerogative was always largest in the hands of our wisest and best princes, because the people observing the whole tendency of their actions to be the public good, or if any human frailty or mistake (for princes are but men, made as others) appeared in some small declinations from that end, yet it was visible the main of their conduct tended to nothing but the care of the public. The people, therefore, finding reason to be satisfied with these princes, whenever they acted without, or contrary to the letter of the law, acquiesced in what they did, and without the least complaint, let them enlarge their prerogative as they pleased, judging rightly that they did nothing herein to the prejudice of their laws, since they acted conformably to the foundation and end of all laws—the public good. (165)

We can make little of it, however, because the critical referents are missing, and in the indeterminacy that results, the reader is free to

[27] It is seldom remarked in the interpretative literature on the *Second Treatise* that Locke's criticism often distorts the emphases in Filmer's texts, ignoring what Filmer actually says and the arguments by which he seeks to support those statements. See James Daly, *Sir Robert Filmer and English Political Thought*, especially chapters 2 and 3 on the role of Filmer's theory of sovereignty and his focus on the Book of Genesis and the story of Adam and his heirs. See Allen, 'Sir Robert Filmer,' (above) and Figgis, *Divine Right* (152–69) for the countrary view that it was, in fact, exactly his failure to depend on Scripture in the older way that weakned Filmer's argument.

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imagine whatever examples will corroborate the allegation Locke is making. It is *faux* history, logic dressed up in declarative sentences in the indicative mood, but depicting only generic and unnamed agents in no particular time or place. If it is history at all, it is history in principle, in theory.

The second historical paragraph, rather than offering a corrective in the form of greater historicity—some names, places, or actual events, for example—actually pushes the discussion farther along the curve of irony. Continuing the discussion of those kings in whose actions the people acquiesced and whose prerogative they allowed to be enlarged 'as they pleased', Locke refers to them as 'God-like princes', joking that perhaps they might even have 'some title to arbitrary power by that argument that would prove absolute monarchy the best government, as that which God himself governs the universe by, because such kings partake of His wisdom and goodness.' (166) The explanation then shifts back, as if to recapture the idea that the English people might, at some time or other, have forced redefinition of the Royal prerogative.

> For when their successors, managing the government with different thoughts, would draw the actions of those good rulers into precedent and make them the standard of their prerogative—as if what had been done only for the good of the people was a right in them to do for the harm of the people, if they so pleased—it has often occasioned contest, and sometimes public disorders, before the people could recover their original right and get that to be declared not to be prerogative which truly was never so. … (166)

But, here, exactly where the sense and syntax fairly demand the names and the places and the dates, Locke slyly shifts the ground again, and returns us to the purely axiomatic redundancy of his hypotheses.

> … since it is impossible anybody in the society should ever have a right to do the people harm, though it be very possible and reasonable that the people should not go about to set any bounds to the prerogative of those kings or rulers who themselves transgressed not the bounds of the public good. For prerogative is nothing but the power of doing public good without a rule. (166)

We can now better see Locke's deteriorating strategy. He more or less freely acknowledges that such historical and factual evidence as does exist confirms political origins other than those specified in the theory of consent. This admission is no sooner made, however, than he asserts the contrary, that the moral theory of political origins is

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the only one that counts. He directs us to look beneath the inferior appearances signified in such matters of fact to find the underlying and more theoretically compelling moral reality. It is only a stratagem, however, as that logical actuality is always only an element in a hypothetical structure where the political dimension to which it is ascribed is imaginary, an invention of the very theory it is meant to support. Was there no historical proof that anyone ever so consented? he asks. Does history record nothing of such foundings, as reason would require? Then, we need look no further (because looking is unnecessary anyway, founding being a thing that does not, strictly speaking, exist or happen) than the fiction of tacit consent, which, of course, can even be found under the surfaces of conquest, behind the raised sword, there in the unspoken but tacit covenanting of the captive. But, Filmer had already been to this place in the argument and left his opinion of tacit consent.

> Lastly, if the silent acceptation of a governor by part of the people be an argument of their concurring in the election of him, by the same reason the tacit assent of the whole commonwealth may be maintained; from whence it follows that every prince that comes to a crown, either by succession, conquest, or usurpation, may be said to be elected by the people, which inference is too ridiculous; for in such cases the people are so far from the liberty of specification that they want even that of contradiction.[28]

According to Locke's strictly ethical perspective, no one loses their rights and liberties by being conquered in war unless they themselves have, by their own aggressiveness, forfeited those same lives and liberty and become 'liable to be destroyed by him he uses force against.' (181) Chapter 16, 'Of Conquest,' the fourth stage in Locke's struggle with history, consists mainly of a systematic catalogue of circumstances one could imagine obtaining between a conqueror and the conquered, analysed in these terms; as, for example, when the conquered were the aggressors, or not; when they were the descendants and rightful inheritors of those who were aggressors, or not; whether they were subjects of rulers who were the aggressors and whether the subjects had authorized or consented to the aggression, and so on. The rights of the innocent conquered are defiantly affirmed despite the utterly contrary tendencies historical reality might (and is admitted to) reveal outside his hypothetical musings.

[28] *Patriarcha*, II, §7. I am working at the moment on an essay entitled 'Filmer on Locke,' which explores the ironic relation between the *Second Treatise* and *Patriarcha*.

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'[T]hough conquest may well be the historical origin of many, or even most, political societies,' reads John Dunn's summary of Locke's view, 'it cannot be the basis of the *legitimacy* of any. … For the régime of a conqueror to acquire legitimacy, it required the voluntary and formally conveyed acceptance of its subjects, a general consent. And a general submission is not the same as a general consent.'[29] I quote Dunn's explanation here because his further statement of the nature of the conditions Locke imposes on conquest (a statement not likely to be construed as unsympathetic) helps to focus the argument. 'Only free mutual agreement on a set of common rules can terminate the state of war between a conqueror and those whom he has conquered,' Dunn continues, 'But there are no clear criteria for what behaviour is necessary to constitute this free mutual agreement.'[30] Dunn thinks Locke's formal chapter on conquest was meant 'as the insulation of any possible historical interpretation of this event [the Norman Conquest] against the risk of its having damaging theoretical consequences,'[31] but he stresses this because he wants to limit consent to its 'role as a formal component of the logical structure of the argument, not as a practical criterion of its applicability in particular cases.'[32] I do not think this view sufficiently takes into account Locke's sense of the vulnerability of his own argument.

Conquest flatly contradicts Locke's contention that states have their origins in the consent of the people; on the one hand, conquest is undeniably the event to which many governments trace their beginnings, while, on the other, it is entirely a matter of force and violence.

> Though governments can originally have no other rise than that before mentioned, nor polities be founded on anything but the consent of the people, yet such have been the disorders ambition has filled the world with, that in the noise of war, which makes so great a part of the history of mankind, this consent is little taken notice of; and, therefore, many have mistaken the force of arms for the consent of the people, and reckon conquest as one of the originals of government. (175)

Prerogative had presented the problem that its dependence on the will of the people could not be historically demonstrated. Locke's analysis could not get beyond the moral declaration. 'But conquest

[29] Dunn, *The Political Thought of John Locke*, 145.
[30] Ibid. 146.
[31] Ibid. 144.
[32] Ibid. 143.

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is as far from setting up any government,' he wrote, 'as demolishing a house is from building a new one in the place. Indeed, it often makes way for a new frame of a commonwealth by destroying the former; but, without the consent of the people, can never erect a new one.' (175) The historical beginning of government in families was a problem that Locke solved by finding traces of consent at the foundings. Conquest was there in the agreed facts of history, however, staring Locke down. With conquest, Locke's strategy of trying (and failing) to expropriate anomalies to the demands of his theory was abandoned.

> This I doubt not, but at first sight will seem a strange doctrine, it being so quite contrary to the practice of the world; there being nothing more familiar in speaking of the dominion of countries, than to say such an one conquered it; as if conquest, without any more ado, conveyed a right of possession. But when we consider that the practice of the strong and powerful, how universal soever it may be, is seldom the rule of right, however it be one part of the subjection of the conquered not to argue against the conditions cut out to them by the conquering swords. (180)

The principle of resistance (which Filmer himself conceded both was a sometimes fact of English political history and could, interpreted as the mysterious will of God, serves as the basis of patriarchally legitimate authority)[33] arising in hints and promises scattered in the early chapters, playing a role in regard to prerogative, emerges strategically by way of translating conquest origins into legitimacy. Either conquest is ultimately confirmed in consent or the conquered retain the right and predisposition to cast off their yoke. Locke's argument remains, however, relentlessly theoretical and moral, insisting that consent and only consent can make a legitimate government. As if he meant also to forestall the conclusion that he might not be well-acquainted with the ways of the world, the fact of the ubiquity of conquest is never denied. Conquerors, he acknowledges, 'seldom trouble themselves to make the distinction [between those who had offended and those who had not], but they willingly permit the confusion of war to sweep all

[33] See, in particular, 'Directions for Obedience to Government in Dangerous or Doubtful Times,' in Johann P. Sommerville, *Filmer: Patriarcha and Other Writings* (Cambridge' Cambridge University Press, 1991), 281–6.

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together ….' (179)[34] Locke's only answer to this universally acknowledged truth of history is to insist again on a hypothetically moral distinction. '[B]ut yet this alters not the right,' he says, 'for the conqueror's power over the lives of the conquered being only because they have used force to do or maintain an injustice, he can have that power only over those who have concurred in that force; all the rest are innocent. . . .' (179)

The central question is whether the obligation to obey can here derive from a merely tacit consent, and what will be allowed to constitute it.[35] Dunn, as we have seen, rightly characterizes Locke's position on how legitimacy can arise out of conquest as requiring an especially stringent notion of consent. Romantically, the descendants of the conquered retain an eternal right to struggle against their oppressor until they win or are granted the right government of their free choice. These are Locke's exact words:

> For the first conqueror never having had a title to the land of that country, the people, who are the descendants of, or claim under those who were forced to submit to the yoke of a government by constraint, have always a right to shake it off, and free themselves from the usurpation or tyranny the sword hath brought in upon them, till their rulers put them under such a frame of government as *they willingly and of choice consent to* … which they can never be supposed to do, till either they are put *in a full state of liberty to choose their government* and governors, or at least till they have such standing laws to which they have, by themselves or their representatives, *given their free consent*. … (192, emphasis added)

My point here is not to pretend to refute Locke. I am only concerned to notice how, in the discussion of conquest, he has again strained his own argument in the effort to push an uncomfortable

[34] During the Albigensian Crusade, when Montfort's Crusaders laid siege to the Languedoc city of Béziers in 1209, the city was pillaged and burned. The Papal Legate, Arnaud, was asked how they were to tell the faithful Roman Catholics from the heretic Cathars. He told the Crusaders: 'Kill them all. God will recognize his own!'

[35] The main problem with tacit consent, of course, is that the person said to be so consenting in that fashion may, as far as we may know, not realize it. This means that tacit consent can only be (and, of course, always is) used to determine the obligations undertaken by—others. One cites the presence of a tacit consent when one intends to compel someone else to obey or to fulfill their obligations. It can never be a subjective fact about a felt obligation *per se*. It is manifest entirely in non-action; it is always hypothetical.

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historical reality into the background. Consider the logical stretching, for example, in this bit of phrasing from his discussion of the property rights of those descendants (even of those who had been aggressors in an unjust war against the law of nature) who 'had a government forced upon them against their free consents [and who] retain the right to the possession of their ancestors, though they consent not freely to the government whose hard conditions were by force imposed on the possessors of that country.' (192) His inelegance here stems from his recognition of the pressure history constantly exerts, in a thoroughly political environment, on discourse that would prefer to remain logically (even if uselessly) pure.

> The conqueror, it is true, usually by the force he has over them, compels them, with a sword at their breasts, to stoop to his conditions, and submit to such a government as he pleases to afford them; but the inquiry is, what right he has to do so? If it be said they submit by their own consent, then this allows their own consent to be necessary to give the conqueror a title to rule over them. It remains only to be considered whether promises, extorted by force, without right, can be thought consent, and how far they bind. (186)

Small comfort, I would have thought, to defeated populations everywhere.

IV

The reader cannot help but be of two minds at this point in the text, divided between the practical or historical view that looks no further than the facts of government, on the one side, and a logico-ethical view that, with equal certainty, rejects all political foundations that are not based in popular consent, on the other. The way in which Locke has structured the closing stages of the *Second Treatise* suggests that he realized this and actually sought a way out. He had not satisfactorily overcome the nagging question whether any part of his theory had historical sanction. The general concern of the text from chapters 7 to 17 had been to develop a logical account of the origins and evolution of the structure of government and of the distribution of powers within it. With chapters 18 and 19, the text turns abruptly to face political pathology in the specific form of tyranny and its consequences. The result is to amplify the presence of two interconnected ideas that had grown out of the state of nature and had previously appeared here and there on the

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margins of the text; 1) the threatened or actual use of unjust force by 'those who are in power,' and, 2) the right, in subjects, of 'resisting illegal force, used against them.'

The fundamental concepts from the early sections of the *Second Treatise* metamorphose into the key political terms of the later sections. The right to execute the law of nature, pushed through the alembic of the social contract, becomes the basis of political power; the right to destroy the aggressor becomes the right to resist a tyrannical government; and the liberty to consent to the creation of political society becomes, once tyranny has been successfully resisted, the basis for the creation of a new one. The anonymous and abstract actors from the initial state of nature are replaced by the images of society and government (primitively, at first, and then with greater scope and complexity). The unjust use of force in the state of nature turns into a catalogue of several forms and degrees of political excess. These transformations are important for understanding Locke's strategy because through them we discern the state of nature coexistent and coextensive with historical government. The state of nature and the state of war pass beyond the status of merely hypothetical settings, useful for deducing the ideas of liberty, equality, self-preservation, and the law of nature, and become social-psychological categories for assessing the effects of political tyranny and predicting reactions to such tyranny.

When the situation arises that the people 'perceive that any man, in what station soever, is out of the bounds of the civil society … and that they have no appeal on earth against any harm they may receive from him,' (94) beyond mere logic and right, 'they are *apt to think* themselves in the state of nature…and *to take care* as soon as they can' to restore the security of civil society. (94, emphasis added) Using the past tense to reinforce his point and suggest, perhaps, an actual historical event, the people, Locke says, '*found* it necessary *to examine* more carefully the original and rights of government; and *to find* out ways to *restrain* the exorbitances; and *prevent* the abuses of that power … they *found* was made use of to hurt them.' (111, emphasis added)

Political oppression yields an entirely new scenario in which revolution appears in the role previously occupied by the idea of 'every man … consenting with others to make one body politics under one government.' (97) It is as if the other 'rise of government' and that other 'original of political power,' in pursuit of which the *Second Treatise* had set out, could now be seen to take place in two distinct stages. In the first, putatively, men in general consent in principle to create political society (or, as likely and of

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equal importance, they are drawn into one by their natural affection for their father or they are beaten into submission by a conqueror). This is theoretical and hypothetical, in the former, and apocryphal or historical, in the latter. In the second stage, corruption having disfigured that original innocent foundation or made the more worldly ones unbearable, men wake up, look around, find themselves betrayed by their own illusions, and then take practical, political, and violent steps to tear down the government under which they live (and whose origins in force or sentiment, of course, are long forgotten) and create another.

> But when mistake or flattery prevailed with weak princes, to make use of this power for private ends of their own and not for the public good, the people were fain, by express laws, to get prerogative determined in those points wherein they found disadvantage from it, and declared limitations of prerogative in those cases which they and their ancestors had left in the utmost latitude to the wisdom of those princes who made no other but a right use of itself, that is, for the good of their people. (162)

Here, I submit, the idea of consent is entirely believable.

By the time we have come to the explanation of conquest in chapter 16, emphasis on the moral force of consent in the hypothetical creation of legitimate government has been mostly replaced by this prediction that abused populations will rise up, overthrow their oppressors, and create governments to their liking. Conquest can never result in power other than despotical power, and that is politically legitimate only in the rarest of circumstances. Nearly all governments, therefore, whose origins derive from conquest, sit uncomfortably atop resentful and unjustly oppressed peoples. Nevertheless, because conquest remains historically the most common origin of states, we should not be surprised when Locke's treatment of it repeatedly directs our attention to the spectre of resistance, dissolution of government, and the relocation of political power. He returns to this issue of the overthrow of government eight times in his discussion of conquest (as well as once more in the sequel, chapter 17, 'Of Usurpation'. And usurpation was a sort of 'domestic conquest,' as Locke terms it'), setting the stage for the admonitory analysis of tyranny and revolution to come in the last two chapters.

We might summarize our progress to this point by saying that, on Locke's own (reluctant) admission, history and the *de facto* origins of government contradict the hypothesis that political societies have actually originated in the mutual consent of free individuals in the

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state of nature. The consensual theory is, strictly speaking, a logical formula, and, as Kenneth Burke has reminded us, nothing really happens in 'the nontemporal, nonhistorical forms of logic, [a] logic being ideally all done before you begin.'[36] Ironically, however, Locke's logico-ethical model of the origins of government operates as a theory of genesis, and is, therefore, inherently historical; its grammatical structure is temporal or narrational in form, and its crucial elements are events which are imagined to happen, as it were, one after the other. A certain amount of theoretical wavering would be possible here, and we might imagine that Locke treated the consensual model as a sort of archetype, from which the origins of actual states approach or recede. But, Locke's dogmatic moral insistence that states formed in any other way have no legitimacy has put the issue logically far beyond the reach of any historical corroboration; the more insistently its purely logical or moral status is proclaimed, the less one can call up any conventional evidence in its defense. In the final analysis, the concepts associated with the state of nature—liberty, equality, acquisitiveness, self-preservation, reason, or even degeneracy—however much he may try to make them sound like easily recognizable character traits, serve in the theory only as the axiomatic elements supporting the hypothetical, idealistic, and ineffectual censure of political regimes. Locke had embarked with the strong but eventually insupportable affirmation that governments have been and need to be formed by the consent of the people, only to end up with the very much weaker objection that governments not so generated must, all other considerations notwithstanding, be considered illegitimate.

The form of government most energetically and frequently excluded from the status of political society, that is, legitimate government, is absolute monarchy, 'which by some men is counted he only government in the world, is indeed inconsistent with civil society, and so can be no form of civil government at all.' (90, 226) 'Civil government,' mentioned here, seems to be an attempt to avoid some of the practical illogicality of his definitional rigor. The term occurs in only one other passage in the *Second Treatise* (apart from its place as an afterthought on the title page)[37] and finds no separate theoretical explication anywhere in the text. It is not any-

[36] Kenneth Burke, *The Philosophy of Literary Form* (Baton Rouge, LA: Louisiana State University Press, 1941), 99,100.

[37] Laslett, Peter, 'Further Observations on Locke's *Two Treatises of Government*, *1690*,' with Fredson Bowers and Johan Gerritsen. *Transactions of the Cambridge Bibliographical Society*, II, 1, 1954. See also the notes in Laslett's edition of *Two Treatises*, p.266.

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where explicitly equated with political (or 'civil') society, nor is it clearly identical with government *per se*, although it carries the implications of the one into the precincts of the other, suggesting, perhaps, a kind of blurred middle ground overlapping the purely legitimate and the purely illegitimate. In any event, absolute monarchy fails all of Locke's moral tests, even, surprisingly, when its 'subjects have an appeal to the law, and judges to decide any controversies, and restrain any violence that may happen betwixt the subjects themselves, one amongst the other.' (93, 163) Locke doubts the genuineness of any such arrangements, remarking cynically that

> [T]his is no more, than what every man who loves his own power, profit, or greatness, may, and naturally must do, keep those animals from hurting or destroying one another who labour and drudge only for his pleasure and advantage, and so are taken care of, not our of any love the master has for them, but love of himself, and the profit they bring him. (93)[38]

'[T]is not every compact that puts an end to the state of nature among men,' (14) Locke argues, so even a government that provides a common and legal appeal (against everyone except the government itself) might not be so far from the state of nature after all. We can recall that Locke wrote at the beginning, 'Every offence that can be committed in the state of nature may in the state of nature be also punished, equally, and as far forth as it may, in a commonwealth.' (12) But, some even more telling parallels concern the authority that natural law retains even where there are governments.

> All of the powers that government comes to exercise are but the collective natural powers of its subjects, resigned up to the government. The obligations of the law of Nature cease not in society, but only in many cases are drawn closer, and have, by human laws, known penalties annexed to them to enforce their observation. Thus the law of Nature stands as an eternal rule to all men, legislators as well as others. The rules that they make for other men's actions must, as well as their own and other men's actions, be conformable to the law of Nature- i.e., to the will of God, of which that is a declaration, and the fundamental law of

[38] Filmer had embraced this Machiavellian idea without any irony. 'Therefore, if not out of affection to his people, yet out of natural love to himself, every tyrant desires to preserve the lives and protect the goods of his subjects, which cannot be done but by justice, and if it be not done, the prince's loss is the greatest.' *Patriarcha* II, 16.

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> Nature being the preservation of mankind, no human sanction can be good or valid against it. (135)[39]

There is, of course, no denying that there exist many forms of government in the world which are perfectly calm, peaceful, and secure, although, on Locke's terms, their subjects could not be said to be 'perpetually and indispensably obliged to be and remain unalterably a subject to it' (121), or 'subjects or members of that commonwealth' (122) unless they had formally consented to them. These, of course, are the very historical governments that hindered Locke's effort to make good the claims of his wholly logical theory of political origins. There are even governments, Locke acknowledges, under which the majority may be perfectly embraced by the willing safety of political society, while some morally aggrieved minority suffers what can only be described as tyranny.

> [B]ut if the unlawful acts done by the magistrate, be maintained (by the power he has got), and the remedy, which is due by law, be by the same power obstructed; yet the right of resisting, even in such manifest acts of tyranny, will not suddenly, or on slight occasions, disturb the government. For if it reach no farther than some private men's cases, though they have a right to defend themselves, and to recover by force, what by unlawful force is taken from them; yet the right to do so will not easily engage them in a contest, wherein they are sure to perish; it being as impossible for one or 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 madman, or heady malcontent to overturn a well-settled state; the people being as little apt to follow the one as the other. (208)

The key transforming condition seems, at this point, to be a matter of numbers.

> But if either these illegal acts have extended to the majority of the people; or if the mischief and oppression has light only on some few, but in such cases, as the precedent, and consequences seem to threaten all, and they are persuaded in their consciences, that their laws, and with them, their estates, liberties, and lives are in danger, and perhaps their religion too, how they will be hindered from resisting illegal force, used against them, I cannot tell. (209)

[39] '[S]o that laws human must be made according to the general laws of Nature, and without contradiction to any positive law of Scripture, otherwise they are ill made.' Hooker, Eccl. Pol. iii. 9. As cited by Locke.

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Perhaps such governments, then, as opposed to *political societies*, are the likeliest breeding ground of tyranny and revolution, although it is also the case that were the governors of any rightful political society to attempt 'the exercise of power beyond right, which nobody can have a right to,' they dissolve that government, and also return the people to the state of nature. Should they continue, however, to exercise power and control over the population, we can hardly refuse to call it government at all. Perhaps we can call what results either from such origins as conquest or from a legitimate political society gone bad, 'bare' government,' *the political form of the state of nature*. Not only are subjects then freed of any deeply moral (because expressly consensual) obligation to an allegiance to such a *de facto* arrangement, but such an inferior kind of government can easily become the site of resistance and revolution, where an already politically experienced people can take advantage of its natural liberty (which tyranny had revealed, re-established and underscored) and re-consent together, as it were, to join and unite into a real government and community, a (new) *political society*. [40]

[40] I am reminded of the only somewhat similar but interesting observations by T. H. Green:

> 'It is true that there is no greater difficulty about supposing it to be exercised [an act of the majority] in the dissolution than in the establishment of a government, indeed not so much but the act of first establishing a government is thrown back into an indefinite past. It may easily be taken for granted without inquiry into the conditions of its possibility. On the other hand, as the act of legitimately dissolving a government or superseding one by another has to be imagined as taking place in the present, the inquiry into the conditions of its possibility cannot well be avoided. If we have once assumed with Hobbes and Locke that the authority of government is derived from a covenant of all with all—either directly or mediately by a subsequent act in which the covenanted society delegates its powers to a representative or representatives—it will follow that a like act is required to cancel it, and the difficulties of conceiving such an act under the conditions of the present are so great, that Hobbes' view of the original act by which any Government was established as irrevocable has much to say for itself. If the authority of any government its claim on our obedience—is held to be derived not from an original, or from any, covenant but from the function which it serves in maintaining those conditions of freedom which are conditions of the moral life, then no act of the people in revocation of a prior act need be reckoned necessary to justify its dissolution.' *Lectures on the Principles of Political Obligation* (London: Longmans, Green and Co., 1941), §62.

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The state of nature and the state of society may never logically be the same thing, of course, but, factually speaking, the state of nature (defined by the absence of both an impartial law and an umpire) may readily be circumscribed within the sphere of an ongoing government.[41] Any governmental actions whose effects are to deprive the people of the benefits of political society return them, in effect, to the state of nature, regardless whether the power of the government can for a time still force obedience. A people may rightfully topple and replace such a government (212), but what is, for present purposes, the more interesting point is how, at the moment, the state of nature exists alongside the structures of government. Far differently than could ever have happened in the speculative emptiness of the original conceptual state of nature, a new awareness that they are without 'an authority to appeal to [and] are still in the state of nature' (90) can take shape among a population *already fully conscious of itself as a political people existing in history*. Whatever consenting by which they might now create government will, undoubtedly, take place historically.[42] Self-consciously insubordinate in their response to a sustained experience of unjust force being used against them, and 'universally [of] a persuasion, grounded upon manifest evidence, that designs are carrying on against their liberties,' (230) they cannot then reach even a minimal and passive acceptance of their situation, *except that they patently consent (or acquiesce) in some form or other*. Any action occurring at that point takes place fully in history, and in English history, at that.

References to the English legal and political system had appeared here and there in the early portions of the *Second Treatise*; they seemed random and without special significance. As the text unfolds, however, and we come upon the topics of the constitutional definition and distribution of powers in chapters 13, 14, and 15 and the gradual changeover to political pathologies in the discussion of conquest, usurpation, tyranny, and political dissolution in the last four chapters, English political and legal allusions and illustrations

[41] See Robert A. Goldwin, 'Locke's State of Nature in Political Society,' *The Western Political Quarterly* 29, 1 (1976), 126–35 and Gordon Schochet, 'Radical Politics and Ashcraft's Treatise on Locke,' *Journal of the History of Ideas Journal of the History of Ideas* 50,3 (1989), 502–3.

[42] This is similar to but different from John Dunn's idea that Locke made a distinction between consent as the condition from which political society emerged and consent as an ever-renewing action by which its legitimacy was continuously sustained. See John Dunn, 'Consent in the Political Theory of John Locke,' *The Historical Journal* X, 2 (1967), 153–82 and *The Political Thought of John Locke*.

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abound. In chapter 13, 14, and 15, we find several abstract but unmistakable references to English law—criminal and constitutional. At the end of chapter 13 and throughout chapter 14, the question of prerogative is supported by examples—factual and ironic—from English political experience. He mentions the Norman Conquest, but only to deny its role as a source from which any English government could claim its power. Chapter 16 is also crowded with further references to English legal practice. The density of English examples increases as we move into the last two chapters. Locke turns strategically, following Filmer and Hooker, and cites the authority of King James I for several paragraphs on the nature of tyranny in chapter 18, which includes several references to the sanctity of the person of the King in English law. The English constitution occupies a large part of chapter 19, on the dissolution of government, in connection with all the constitutional possibilities there that could possibly go wrong. Absolutist legal and political authorities, especially Barclay, are cited at length. And, finally, he considers the objection that,

> [t]o this, perhaps, it will be said that the people being ignorant and always discontented, to lay the foundation of government in the unsteady opinion and uncertain humour of the people, is to expose it to certain ruin; and no government will be able long to subsist if the people may set up a new legislative whenever they take offence at the old one. (223)

His answer is either sardonic or soothing (I can never tell for certain), but it is certainly aimed rhetorically at an English audience. 'To this I answer, quite the contrary,' he says.

> People are not so easily got out of their old forms as some are apt to suggest. This slowness and aversion in the people to quit their old constitutions has in the many revolutions [that] have been seen in this kingdom, in this and former ages, still kept us to, or after some interval of fruitless attempts, still brought us back again to, our old legislative of king, lords and commons; and whatever provocations have made the crown be taken from some of our princes' heads, they never carried the people so far as to place it in another line.' (223)

This is historical argument verging on a kind of empirical sociology.

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The king, and body of the nation, have since so thoroughly confuted his hypothesis that, I suppose, nobody hereafter will have either the confidence to appear against our common safety, and be again an advocate for slavery; or the weakness to be deceived with contradictions dressed up in a popular style, and well turned periods.[43]

Historical example and logical discourse come together in the theoretical and practical actions of revolution. The overthrow of James II and the ascension of William II by means of the Convention parliament of 1689 were undeniably historical acts undertaken 'in the consent of the people.'[44] The conclusion of Locke's struggle to find a way of overcoming the historicist objection to the consensual hypothesis was there from the very outset, so to speak, in the revolutionary intentions of the Exclusion Whigs. From there, it is a short distance to the general idea that, of all existing governments, only those with historical origins in revolution can now meet the conditions of consensual legitimacy.

Consider the alternatives. Conquest, for example, establishes nothing. In fact, none of the historically familiar governments in the world has any authentic and remembered origins at all. 'Government,' Locke has reminded us, 'is everywhere antecedent to records.' (101) In this connection, the whole idea of a spontaneous generation of political society out of some hypothetical state of nature now also seems highly implausible. Because, of course, there never was any state of nature, and the 'estate all men are naturally in,' is that they live within the jurisdiction of government.

We can recall that, when Locke early on confronted the question whether the state of nature had ever existed, his own careless and impatient examples—rulers in their foreign relations, men on desert islands or in American forests, and an indecisive quotation from Hooker about obligations that apply 'even as they are Men, and although they have never any settled fellowship' (14, 15)—made him sound defensive and cautious. It was as if he resented the very question, but resented even more that he was obliged at least to affect an answer. And the same was true when he let his hand be forced in the matter of the objection that no historical instances of covenanting in the state of nature could be discovered. Here, again, his answers were contrived and equivocal. The adult soldiers of Xerxes, societal forgetfulness about its origins, the idea that the state

[43] *Two Treatises of Government* 'Preface.'
[44] Ibid.

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of nature lasted so short an instant its passing was unnoticed, and some oblique references to Greece and Peru were all the proofs he could muster. He was still sounding annoyed to have had to rummage in the scant evidence.

Fully engaged in the defense of revolution in his last chapter, however, Locke shows no trace of hesitation, contrivance, or any lack of things to say. Proof was everywhere plentiful and obvious, both to Locke and to his contemporaries. More importantly, however, the hypothetical conditions he had been describing as 'the state of nature' were now encompassed by this larger, revolutionary situation. As a result, every elemental dimension found historical expression. Consent (and, importantly, the withdrawing of it), liberty, the state of war, and all the rest, were plain facts, there for all to see.

Here at the end, he again allows an eager objection to come forward—'But 'twill be said, this hypothesis lays a ferment for frequent rebellion.' (224) Listen now, to the confidence of his response, the ring of unquestioned truthfulness, and how assuredly he locates it all in the practical world.

> [N]o more than any other hypothesis. For when the people are made miserable, and find themselves exposed to the ill usage of arbitrary power, cry up their governors as much as you will for sons of Jupiter, let them be sacred and divine, descended or authorised from Heaven; give them out for whom or what you please, the same will happen. The people generally ill treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. They will wish and seek for the opportunity, which in the change, weakness, and accidents of human affairs, seldom delays long to offer itself. He must have lived but a little while in the world, who has not seen examples of this in his time; and he must have read very little who cannot produce examples of it in all sorts of governments in the world. (224)

Psychologically and politically, Locke fully expects a widespread acceptance of that judgment. History's corroboration goes almost without saying, so completely and harmoniously has the theory of the *Second Treatise* been configured to fit what everyone will freely acknowledge to be the facts of a vital and common history.

But, there is also generosity in this newly integrated theory. The demands that popular consent will make are not excessive or strident. 'Great mistakes in the ruling part,' Locke says (as if to suggest that this historical consent is always an ongoing process, you

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see, it is truly timeless), 'many wrong and inconvenient laws, and all the slips of human frailty will be borne by the people, without mutiny or murmur.' (225) It is up to the ruler, he had already advised, 'if he really means the good of his people. . .to make them feel it.' (209) The alternative, should that trust be violated, will clearly reveal the practical role of the people and their political capability, which alone make historical sense out of the hypothesis of consent.

> But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under, and see whither they are going, it is not to be wondered that they should then rouse themselves, and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected, and without which, ancient names and specious forms are so far from being better, that they are much worse than the state of Nature or pure anarchy; the inconveniencies being all as great and as near, but the remedy farther off and more difficult. (225)

Robert Filmer meant to trace by 'manifest footsteps' the historical movements of his principle of paternal government.[45] Locke himself insisted that whatever records we have of the origins of 'any politie in the world' are either plain instances of this beginning in consent 'or at least have manifest footsteps of it.' (101) I think we might end here and just say that, by the same token, the only legitimate governments in history will, by Locke's standards, turn out to have the 'manifest footsteps' of revolution in them.

Liberty gained, strictly speaking, is always liberty regained.[46]

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[45] *Patriarcha, I,* 7.

[46] '*Ursprung is das Ziel,*' J. Hillis Miller cites Walter Benjamin citing Karl Kraus. See Miller's brilliant and useful essay, 'Narrative and History,' *ELH*, 41,3 (Autumn, 1974), 455–73, 472 n.19.

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