Consent theory has provided us with a more intuitively appealing account of political obligation than any other tradition in modern political theory. At least since Locke’s impassioned defense of the natural freedom of men born into non-natural states, the doctrine of personal consent has dominated both ordinary and philosophical thinking on the subject of our political bonds. The heart of this doctrine is the claim that no man is obligated to support or comply with any political power unless he has personally consented to its authority over him; the classic formulation of the doctrine appears in Locke’s *Second Treatise of Government*. There is no denying the attractiveness of the doctrine of personal consent (and of the parallel thesis that no government is legitimate which governs without the consent of the governed). It has greatly influenced the political institutions of many modern states. But neither can we ignore the manifold difficulties inherent in a consent theory approach to the problem of political obligation, which have been well known since Hume’s attack on the social contract,¹ nor the puzzling obscurity of accounts of tacit consent from Locke down to the present.

In this essay I shall first give a brief explanation of what we mean when we say that a man has “consented” and “tacitly consented” to

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¹. David Hume, “Of the Original Contract.”
something. Second, I shall analyze Locke's consent theory and challenge a recent interpretation of it which calls into question Locke's status as a genuine consent theorist. Finally, by drawing attention to important distinctions between two senses of "consent" and between two sorts of acts generally taken to be consensual in character, I shall point both to the defects of a tacit consent theory and to the primary confusions which permeate most contemporary discussions of tacit consent.

I

What does it mean to say that a man has "given his consent" to something or someone? In Locke's discussion in his Second Treatise, we can distinguish (although Locke himself does not) three sorts of acts which for him count as acts of consent. First, there are promises; second, there are written contracts; and third, there are acts of consent which are essentially authorizations of the actions of others. My own inclination is to say that of the three, only the third sort of act is a genuine act of consent. But there are certainly good reasons for grouping the three together; all are deliberate, voluntary acts whose understood purpose is to change the structure of rights of the parties involved and to generate obligations on the "consenters." In addition, there is a perfectly natural and acceptable sense of the word "consent" which is virtually synonymous with "promise"; thus, when we say that Mr. Smiley has graciously consented to speak at the award dinner, "consented" means here precisely "promised" or "agreed."

My discussion of consent, however, will treat this sense as a secondary one; we will be interested here in a kind of consent that differs from a promise in a number of ways. First, consent in the strict sense (as Plamenatz notes)² is always given to the actions of other persons. Thus, I may consent to my daughter's marriage, to be governed by the decisions of the majority, to my friend's handling my financial affairs. Promises, on the other hand, cannot be made except in special circumstances, concerning how another person will act. Further, while both promises and consent generate special rights and obligations, the

emphases in the two cases are different. The primary purpose of a promise is to undertake an obligation; the special rights which arise for the promisee are in a sense secondary. In giving consent to another's actions, however, our primary purpose is to authorize those actions and, in so doing, create for or accord to another a special right to act; the obligation generated on the consenter not to interfere with the exercise of this right takes, in this case, the secondary role.

Now I do not wish to appear to be making too much of this distinction. I call attention to it only because, in the discussion to follow, a number of problems arise which concern consent in this strict sense, but not promising; these problems revolve around the "intentionality" of consent and have caused considerable confusion for political theorists. So while my conclusions concerning the suitability of consent as a ground for political obligation will apply as well to promising or contracting, I will hereafter be considering primarily consent in the strict sense, in an effort to approach these confusions as painlessly as possible. When I speak of consenting, then, I mean the consenter's according to another a special right to act within areas where only the consenter is normally free to act. This is accomplished through a suitable expression of the consenter's intention to enter such a transaction, and involves the assuming of a special obligation not to interfere with the exercise of the right accorded.3

As with promising, of course, I may give my consent by any number of means. Words, gestures, and lack of response are all suitable methods in appropriate contexts. I propose not to dwell here on the contextual and procedural conditions necessary for consenting; insofar as these conditions can be specified at all, they are similar to those for promising (which have received considerable attention elsewhere).4 Rather, I wish to emphasize only two general conditions, which will figure in later discussion. First, consent must be given intentionally and (perhaps this is redundant) knowingly; as with promising, one can consent insincerely, but not unintentionally. Second, consent must be given voluntarily. It is not possible to be precise about this

condition, but there are at least obvious cases on either side of a fuzzy line; "consent" which is given under the direct threat of serious physical violence is, for instance, not really consent according to this condition.

Before turning to tacit consent, I want to mention one recent interpretation of the condition of voluntariness which makes a mistake of particular importance to a consent theory account of political obligation. John Rawls, in *A Theory of Justice*, maintains that "acquiescence in, or even consent to, clearly unjust institutions does not give rise to obligations," and that "obligatory ties presuppose just institutions." Rawls defends this initially plausible position as follows: "It is generally agreed that extorted promises are void ab initio. But similarly, unjust social arrangements are themselves a kind of extortion, even violence, and consent to them does not bind." This argument seems to me to be a good illustration of the dangers of metaphor. That unjust institutions perpetrate "violence" on innocents does not necessarily have anything to do with the conditions under which one consents, which are at issue here. Extorted promises fail to bind because they are not made voluntarily in the appropriate sense; but the injustice of an institution need not affect the voluntariness of one's consent to it. Supposing only that the unjust institution doesn't happen to be doing violence to *me*, I can freely consent to its authority.

To see this, we need only consider that a parallel argument would seem to commit Rawls to the position that a promise to an unscrupulous villain does not bind; but this, of course, is absurd. A man's bad moral character cannot, by itself, free us from commitments we make to him. A promise to aid him in his villainy, of course, would not bind us. But here it is the content of the promise, not the character of the promisee, which prevents the generation of an obligation. And these suggestions about villainous men seem to hold as well for "villainous" institutions. We can, however, appreciate the sentiments that might support Rawls' claim, for surely we ought not to support intolerably unjust institutions. But it seems more natural to allow that we can sometimes succeed in obligating ourselves both by promises to villains and by consent to "autocratic and arbitrary forms of government" (to

6. Ibid., p. 343.
borrow Rawls' phrase). In addition, however, we have a clear duty both to help confound villainy and to fight injustice. Thus, it will be a matter for decision in individual cases whether, for example, the harm done by supporting an unjust institution and our duty to fight injustice outweigh any obligation we may have to respect its authority (deriving from our consent to it). I maintain, then, that it is at least possible for a person to bind himself to an unjust institution through a deliberate act of consent. (Note that this position does not, however, involve moving to the opposite and objectionable extreme of suggesting that all acts of consent are sufficient to generate obligations.)

II

Since the earliest consent theories, it has been recognized that "express consent" is not a suitably general ground for political obligation. The paucity of express consenters is painfully apparent; most of us have never been faced with a situation where express consent to a government's authority was even appropriate, let alone actually performed such an act. And while I think that most of us agree that express consent is a ground of political obligation, the real battleground for consent theory is generally admitted to be the notion of tacit consent. It is on this leg that consent theory must lean most heavily if it is to succeed.

Thomas Hobbes noted that "signs of contract are either express or by inference," but he was not very clear about this distinction. Discussions of tacit consent since that time have generally added only confusions to Hobbes' lack of clarity. Certainly Locke's discussion of tacit consent has puzzled many political philosophers by stretching the notion of consent far beyond the breaking point. But we must not be led by these confusions to believe that there is no such thing as tacit consent; on the contrary, genuine instances of tacit consent, at least in nonpolitical contexts, are relatively frequent.

Consider: Chairman Jones stands at the close of the company's

7. Here I distinguish between "duties" and "obligations." Following Hart and Rawls, I call "obligations" those moral requirements generated by the performance of some voluntary act; "duties," on the other hand, are moral requirements we have which are not dependent on such a performance.

board meeting and announces, "There will be a meeting of the board at which attendance will be mandatory next Tuesday at 8:00, rather than at our usual Thursday time. Any objections?" The board members remain silent. In remaining silent and inactive, they have all tacitly consented to the chairman's proposal to make a schedule change (assuming, of course, that none of the members is asleep or has failed to hear). As a result, they have given the chairman the right (which he does not normally have) to reschedule the meeting, and they have undertaken the obligation to attend at the new time.

Now this example should allow us to elaborate more constructively on the conditions necessary for tacit consent. First, consent here is not called "tacit" because it has a different sort of significance than express consent or because it binds less completely (as Locke seems to have thought). Consent is called tacit when it is given by remaining silent and inactive; it is not express or explicit, it is not directly and distinctly expressed by action; rather, it is expressed by the failure to do certain things. Nonetheless, tacit consent is given or expressed. Silence after a call for objections can be just as much an expression of consent as shouting "aye" after a call for ayes and nayes. Calling consent tacit, then, points only to the special mode of its expression.

But under what conditions can silence be taken as a sign of consent? At least three spring quickly to mind. The situation must be such that it is perfectly clear that consent is appropriate and that the individual is aware of this. This includes the requirement that the potential consenter be awake and aware of what is happening. (1) There must be a definite period of reasonable duration when objections or expressions of dissent are invited or clearly appropriate, and the acceptable means of expressing this dissent must be understood by or made known to the potential consenter. (3) The point at which expressions of dissent are no longer allowable must be made clear in some way to the potential consenter.

Now our example of the board meeting meets these three conditions, although the period of time specified in condition (3) is fairly informally and loosely set. In addition, of course, the example seems

to meet the more general conditions for the possibility of consent of any sort. But while in most circumstances these conditions are, I think, sufficient, I want to suggest two additional conditions which will be important to the political applications of a theory of tacit consent. (4) The means acceptable for indicating dissent must be reasonable and reasonably easily performed. (5) The consequences of dissent cannot be extremely detrimental to the potential consenter. The violation of either (4) or (5) will mean that silence cannot be taken as a sign of consent, even though the other conditions for consent and tacit consent be satisfied.

We can easily imagine situations which would fail to satisfy our new conditions (4) and (5). For instance, if Chairman Jones had said, "Anyone with an objection to my proposal will kindly so indicate by lopping off his arm at the elbow," both conditions would be violated, as they would be if dissent could only be expressed by resignation and the forfeit of company benefits. Less dramatically, perhaps, condition (4) alone would be violated if board meeting traditions demanded that dissent could only be indicated by turning a perfect back handspring. And if the invariable consequence of objecting at a board meeting was dismissal and imprisonment (Chairman Jones happens also to be the local magistrate), our condition (5) would not be satisfied. In any of these cases, silence cannot be taken as a sign of consent.

As with the previous conditions, it is not possible to draw lines clearly here; but if, say, the obstacles to consent were only the board members' nervousness about talking to Chairman Jones, or the fear that he might not give them a lift to the train station after the meeting, the situation obviously would not violate conditions (4) and (5). The specification of these two conditions is important in understanding why continued residence in a state cannot be taken as a sign of consent to its government's authority. Some have believed that if a choice between consenting through residence and dissenting through emigration were offered to each citizen, continued residence would be a sign of tacit consent.10 However, the nature and consequences of the

10. For instance, Socrates in Plato's Crito, and more recently, Joseph Tussman in Obligation and the Body Politic (New York, 1960). Others, most notably
means of expressing dissent, namely emigration, seem to be far too severe to satisfy our conditions (4) and (5).

I have no doubt, of course, that the expression "tacit consent" is sometimes used in ways that do not conform to the account sketched above; my intention was not primarily to catalogue all of the ordinary uses of the expression. Rather, I have tried to present what seems to me to be the only ordinary notion of tacit consent that can be useful to the consent theorist. This account stresses particularly the intentionality of even tacit consent; only if tacit consent is treated, as I have treated it here, as a deliberate undertaking can the real force of consent theory be preserved. For consent theory's account of political obligation is appealing only if consent remains a clear ground of obligation, and if the method of consent protects the individual from becoming politically bound unknowingly or against his will. It seems clear that these essential features of a consent theory cannot be preserved if we allow that tacit consent can be given unintentionally.

III

Now that we have a reasonably clear notion of tacit consent as a tool, we can approach Locke's account of tacit consent somewhat more confidently. His famous discussion of tacit consent begins as follows:

The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds, i.e., how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all.11

It seems that tacit consent need not really be expressed in the strict sense at all for Locke; tacit consent can be understood or inferred by the observer, quite independent of the consenter's intentions or awareness that he is consenting. This is borne out by Locke's answer to his question:

And to this I say that every man, that hath any possession, or enjoyment, of any part of the dominions of any government, doth thereby

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give his tacit consent, and is as far forth obliged to obedience to the laws of that government.\textsuperscript{12}

I have already suggested that tacit consent should not be taken by the consent theorist to be an “unexpressed” consent; calling consent tacit on my account specifies its mode of expression, not its lack of expression. But this is not the only thing which makes Locke’s account of consent seem suspicious. For Locke, owning land in the state, lodging in a house in the state, traveling on a highway in the state, all are ways in which one gives his consent; in fact, signs of consent go “as far as the very being of any one within the territories of that government.”\textsuperscript{13} It is important to understand that Locke is not just saying that these are ways in which one might give his consent without putting it into words; that, of course, would be quite unobjectionable since nearly any act, given suitable background conditions including the right sorts of conventions, can be one whereby a man expresses his consent. Locke is saying that, in modern states at least, these acts necessarily constitute the giving of tacit consent. In other words, such acts are always signs of consent, regardless of the intentions of the actor or his special circumstances.

It is easy to see that this sort of “consent” violates (within modern states) nearly all of the general conditions necessary for an act to be an act of giving consent, tacit or otherwise. Most importantly, of course, Locke’s suggestion that binding consent can be given unintentionally is a patent absurdity. The weakness of Locke’s notion of consent has even led some to question Locke’s traditionally accepted status as a consent theorist (indeed, as the classic consent theorist). The most interesting feature of Hanna Pitkin’s “Obligation and Consent” is precisely such a questioning of Locke’s devotion to personal consent as the ground of political obligation. I want to summarize her argument briefly, since analyzing it will lead us, I think, to a consideration of one of the fundamental confusions about tacit consent that has plagued discussions of this topic.

In widening his definition of consent so as “to make it almost unrecognizable,” Pitkin argues, Locke seems to make a citizen’s consent virtually automatic. “Why,” she asks, “all the stress on consent if it is

\textsuperscript{12} Ibid.

\textsuperscript{13} Ibid.
to include everything we do?" Among other things, this forces us to conclude that residence within the territory of the worst sort of tyranny would constitute consent to it, which conclusion seems far indeed from Locke’s intentions. But Locke holds that we cannot become bound to such a government even if we try. How then can he reconcile this position with his claim that residence always constitutes consent? Pitkin answers that Locke intends tacit consent to be understood as a special consent given only to “the terms of the original contract which the founders of the commonwealth made.” In this manner, residing in or using roads within the territories of a government that is tyrannical or is otherwise acting ultra vires does not constitute tacit consent to the rule of that government; only when the government acts within its assigned limits do these acts constitute consent.

Now, regardless of the merits of this argument as an exercise in Locke scholarship, the conclusion Pitkin draws is an interesting one. She maintains that, insofar as consent is virtually automatic in Locke, Locke did not really take personal consent seriously as a ground of political obligation. Rather, she interprets Locke as holding that “you are obligated to obey because of certain characteristics of the government—that it is acting within the bounds of a trusteeship based on an original contract.” Further, since she reads Locke as holding that “the terms of the original contract are . . . self-evident truths,” Locke can be understood as claiming that our obligations in fact arise from the government’s conformity to the only possible terms of a not necessarily actual (that is, possibly hypothetical) contract.

The interesting aspect of this conclusion is the way in which it ties Locke to two contemporary methods for approaching these political problems. First, it brings Locke closer to what is often called a theory of “hypothetical contract,” whereby the quality of government is determined in reference to the limits which would be placed on it by rational and self-interested original contractors. This sort of theory has its

17. Ibid., p. 996.
most mature formulation in John Rawls' *A Theory of Justice*. Second, Pitkin makes Locke appear more like contemporary writers who de-emphasize individuals' histories in a theory of political obligation to stress instead the quality of the government as the source from which our political obligations arise.

This reading of Locke is obviously inconsistent with the radical individualism and voluntarism so evident throughout the *Second Treatise*; but my belief that Pitkin's reading is mistaken is based on more than a desire to preserve intact the Lockean spirit. I think that the oddity of Pitkin's interpretation can be explained by pointing to a single mistake which she makes in understanding Locke's position. The mistake is made when Pitkin concludes that the obligation to obey the government must derive from the quality of the government in question. This conclusion is essentially drawn from two sound premises: first, residence for Locke always constitutes consent; and second, for Locke we are bound to obey good governments but not bad ones. Pitkin concludes that consent must be essentially irrelevant to our political bonds in Locke's theory, for it seems inconsistent to hold all of the following. (1) By residing within their territories, we give our consent even to bad governments. (2) We are not obligated to bad governments. (3) Consent is the ground of political obligation. To preserve consistency in Locke, Pitkin sacrifices (3); but she seems to ignore the possibility that consent might be only a necessary, rather than a sufficient, condition for the generation of political obligations. Let me clarify this observation by again describing a parallel case involving promises.

I make two promises to a friend—one to help him commit murder most foul, the other to give him half my yearly income. Now it is usually maintained, and it is certainly my belief, that while both promises are real promises, the latter obligates me while the former does not. But following reasoning similar to Pitkin's, we ought to conclude from this that the obligation I am under to keep this latter promise arises solely from the morally commendable (or at least not morally prohibited) quality of the promised act. But this conclusion would be false. The obligation arises solely from my having promised; the moral quality of the act merely *prevents* one of the promises (the one to commit murder) from obligating me. But in no way is the
morally acceptable quality of the other promised act the ground of my obligation to perform it.

Similarly, we might hold that consent to the authority of a tyrannical government does not bind one, just as a promise to act immorally does not bind one. And while I have suggested earlier that I think that consent to a tyranny can sometimes bind one, Locke's position, I maintain, is exactly that described above. Locke holds that our consent only binds us when it is given to good governments; but consent is still the sole ground of the obligation. The quality of the government is, for Locke, merely a feature relevant to the binding force of the consent. This he makes quite clear, I think, in Chapter IV:

For a man, not having the power over his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another . . .

Here Locke asserts that while a man may consent to an arbitrary government's rule, he is never bound to that government, for becoming so bound would involve disposing of rights which he has no power to dispose of. This is the core of a doctrine of inalienable rights, and it suggests to me that Locke's doctrine of personal consent can with perfect consistency be joined to the claims that residence in any state constitutes consent and that we are only bound to good governments. All that is needed is the additional premise that consent is not always sufficient to obligate. In overlooking Locke's use of this premise, Pitkin has been led to misinterpret Locke's account of political obligation, emphasizing the quality of the government over the consensual act.

I do not, of course, deny that Locke sometimes appears to make consent sufficient for obligation. In § 119, for instance, he says that "an express consent, of any man, entering into any society, makes him a perfect member of that society, a subject of that government." I suggest, however, that we understand him here to be thinking specifically of good governments, or, at worst, to be suffering from momentary carelessness. For when he begins seriously to consider tyrannical and arbitrary forms of government later in the Second Treatise, Locke

frequently repeats his claim that we cannot bind ourselves to such governments by any means, compact included, 19 although we can certainly consent to such governments. Consent in Locke, then, cannot be sufficient always to generate obligations.

My suggestion is that we can believe Locke when he asserts that he holds personal consent to be the sole ground of political obligation. His claims on this point seem to be consistent, if perhaps mistaken. Still, one cannot help but be suspicious, as Pitkin certainly was, of a consent theory in which consent seems to fade into whatever is necessary to obligate everyone living under a good government. And these suspicions may again lead us to believe that Locke was really only half-hearted in his insistence on personal consent as the source of our political bonds.

I would like to suggest, however, that these suspicions can be allayed somewhat by understanding Locke as having become muddled about a distinction that has been similarly missed by many political theorists down to the present day. That distinction is between acts which are "signs of consent" and acts which "imply consent." In calling an act a "sign of consent," I mean that because of the context in which the act was performed, including the appropriate conventions (linguistic or otherwise), the act counts as an expression of the actor's intention to consent; thus, all genuine consensual acts are the givings of "signs of consent." But in saying that an act "implies consent," we mean neither that the actor intended to consent nor that the act would normally be taken as an attempt to consent. There are three ways in which an act might be said to "imply consent" in the sense I have in mind.

(1) An act may be such that it leads us to conclude that the actor was in an appropriate frame of mind to, or had attitudes which would lead him to, consent if suitable conditions arose. This conclusion may be expressed by the conditional: if he had been asked to (or if an appropriate situation had otherwise arisen), he would have consented.

(2) An act may be such that it "commits" the actor to consenting. By this I mean that the act would be pointless or hopelessly stupid unless the actor was fully prepared to consent; the act commits the actor "rationally" to giving his consent. Thus, for example, discours-

19. Ibid., §§ 135, 137, 149, 164, 171, 172.
ing at great length on how a man would be an idiot not to consent to
be governed by the government would, under normal circumstances,
imply consent to be so governed, in sense (2)—as well, perhaps, as
in sense (1).

(3) An act may be such that it binds the actor morally to the
same performance to which he would be bound if he had in fact con-
sented. I may do something which is not itself an act of consent, but
which nonetheless binds me as if I had consented; after performing
the act, it would be wrong (ceteris paribus) for me not to do those
things which my actual consent would have bound me to do. Consider
a simple case such as joining a game of baseball. Many writers have
held that while in joining the game I may do nothing which could be
construed as giving my consent (tacit or otherwise) to be governed
by the umpire's decisions, nonetheless, by participating in the activity,
I may become bound to be so governed, just as I would be if I had in
fact consented. The analysis of the ground of this moral bond, how-
ever, would appeal to something other than the performance of a
deliberate undertaking, focusing instead on, for example, the receipt
of benefits from or the taking advantage of some established scheme.

All of these three are types of acts which I will say "imply consent,"
though none of them is normally a "sign of consent." Each is closely
related to genuine consent in some way without in fact being consent.
I believe that in his peculiar notion of tacit consent Locke has actually,
but unknowingly, developed a notion of acts which may very well
"imply consent" in sense (3). Tacit consent is for Locke, remember,
a consent which is not expressed but which is given rather in the per-
formance of certain acts; in particular, Locke specifies the "enjoy-
ments" of certain benefits granted by the state as being the sorts of
acts in which we are interested. These "enjoyments" are seen by Locke
to "imply consent" in the sense that it would be morally wrong for us
to accept these enjoyments while refusing to accept the government's
authority. When we enjoy public highways, owning land, and police
protection, our "acts of enjoyment," though not expressions of our
consent, nonetheless are thought by Locke to "imply" our consent by
binding us to obedience as if we had in fact consented.

Now this may seem at first a very implausible position, for it
appears to make the generation of very important obligations hang
on the performance of very unimportant "acts of enjoyment," such as traveling on public highways. But at least this much can be said in Locke's defense—he was clearly aware that the various enjoyments he mentions do not come packaged separately. When one owns land or travels the highways in a state, one does not just enjoy those simple benefits; more importantly, one enjoys the benefits of the rule of law, police protection, protection by the armed forces, and so on. Because these benefits are unavoidable for anyone within the government's effective domain, Locke recognizes that "the very being of any one within the territories" of the government will serve quite as well as any of the more specific "enjoyments" he mentions; one receives this important package of the benefits of government simply by being within "the parts whereof the force of its law extends." 

Thus, the political obligations of "tacit consenters" in Locke may not arise from such insignificant enjoyments as it might at first have seemed.

But my chief purpose here is to examine Locke's analysis of this ground of political obligation, and it is in this analysis that the most obvious problems arise. For in his dedication to personal consent as the sole ground of political obligation, Locke confusedly labels the enjoyments of the benefits of government as a special sort of consensual act—"tacit" consent. But we have seen that while Locke's "enjoyments" might "imply consent," and might therefore have "something to do with" personal consent, they are not "signs of consent." Such enjoyments are not normally deliberate undertakings; in trying to rob consent of its intentionality, Locke succeeds only in undermining the appeal of his own consent theory, with its dedication to the thesis that only through deliberate undertakings can we become politically bound.

My suggestion is that none of Locke's "consent-implying enjoyments" is in fact a genuine consensual act. In analyzing any obligations which might arise from such enjoyments, we do not appeal to a principle of consent; rather, such obligations would arise, if at all, because of considerations of fairness or gratitude. Locke's primary error, then, seems to lie in his confusion of consent with other grounds which may be sufficient to generate obligations, grounds which may at best be called "consent-implying."

20. Ibid., § 122.
But if Locke was confused about this distinction between "signs of consent" and "consent-implying" acts, he is certainly not alone. Political theorists have remained confused on the same point for the nearly three hundred years since Locke's ground-breaking confusion. Over and over it is claimed that voting in an election, running for political office, or applying for a passport are signs of consent to the political institutions of the state which bind the actor accordingly. Perhaps the best contemporary example of this confusion surfaces in the second edition of J. P. Plamenatz's Consent, Freedom, and Political Obligation. Plamenatz, after avoiding many of these confusions in the body of his book, observes in his apologetic "Postscript to the Second Edition" that certain acts "signify" consent without being simple "expressions" of consent. He is concerned particularly with voting:

If Smith were in fact elected, it would be odd to say of anyone who had voted for him that he did not consent to his holding office. . . . Where there is an established process of election to an office, then, provided the election is free, anyone who takes part in the process consents to the authority of whoever is elected to the office.21

And beyond just voting, people can be properly said to consent to a political system simply "by taking part in its processes."22

But if my account of consent has been correct, all of these observations must be mistaken. For while political participation may "imply consent" (or might under special arrangements be a sign of consent), it is not under current arrangements in most states a sign of consent. One may, and probably the average man does, register and vote with only minimal awareness that one is participating at all, and with no intention whatsoever of consenting to anything. Talk of consent in such situations can be no more than metaphorical.

It is easy to be misled, as Plamenatz probably was, by what I will call the "attitudinal" sense of "consent"; "consent" in this sense is merely an attitude of approval or dedication. And certainly it would be odd (though not inconceivable) if a man who ran for public office did not "consent" to the political system in this attitudinal sense, or if the man who voted for him did not "consent" to his holding office. Voting,

22. Ibid., p. 171.
after all, is at least in part a sign of approval. But this sense of "consent" is quite irrelevant to our present discussion, where we are concerned exclusively with consent in the "occurrence" sense, that is, with consent as an act which may generate obligations. An attitude of approval or dedication is completely irrelevant to the rights and obligations of the citizen who has it. When a man consents, he has consented and may be bound accordingly, regardless of how he feels about what he has consented to. It is my belief that confusions about this attitudinal-occurrence distinction, conjoined with similar failures to distinguish signs of consent from consent-implying acts, are responsible for most of the mistakes made in discussions of consent theory from Locke down to contemporary writers.

All of this has been leading to the conclusion that tacit consent must meet the same fate as express consent concerning its suitability as a general ground of political obligation. For it seems clear that very few of us have ever tacitly consented to the government's authority in the sense developed in this essay; the situations appropriate for such consent simply do not arise frequently. Without major alterations in modern political processes and conventions, consent theory's big gun turns out to be of woefully small calibre. While consent, be it tacit or express, may still be the firmest ground of political obligation (in that people who have consented probably have fewer doubts about their obligations than others), it must be admitted that in most modern states consent will only bind the smallest minority of citizens to obedience. Only attempts to expand the notion of tacit consent beyond proper limits will allow consent to appear to be a suitably general ground of political obligation.

And while we have admitted that Locke does attempt such an illegitimate expansion, we can, from another vantage point, see that Locke was not completely confused in this attempt. For Locke's unconscious transition to "consent-implying" acts as grounds of obligation includes the important (though unstated) recognition that deliberate undertakings, such as promises or consensual acts, may not be necessary for the generation of political obligations; other sorts of acts may serve as well, in spite of their not being genuine acts of consent. This recognition, however, cannot form a part of a consent theory, with its insistence on consent as the sole ground of political obligation.
But it is nonetheless an important insight. The "enjoyments" of benefits of government (which Locke mistakenly classifies as acts of tacit consent) may very well generate political obligations, as Locke believed; these obligations would not, however, fall under principles of fidelity or consent. There are, of course, other sorts of obligations than those generated by consent, and Locke seems to rely on them while, as a consent theorist, officially denying their existence. Thus, some of Locke's consent-implying enjoyments might in fact bind us to political communities under a "principle of fair play," as developed by Hart and Rawls,\(^\text{23}\) or they might be thought to bind us under a principle of gratitude, as Plamenatz at one point suggests,\(^\text{24}\) or under some other kind of principle of repayment. If so, then Locke's intuitions about obligation, and those of more recent consent theorists, may be essentially sound. Their mistakes may lie primarily in confusing obligation-generating acts with consensual acts,\(^\text{25}\) and in overlooking the fact that the consent-implying status of an act is substantially irrelevant to the obligation it generates. Consent theory, then, while it surely fails to give a suitably general account of our political obligations, seems to point the way toward other avenues of inquiry which may prove more rewarding.


\(^{24}\) Plamenatz, Consent, Freedom, and Political Obligation, p. 24.

\(^{25}\) As Hart suggests in "Are There Any Natural Rights?" p. 186.