Denisons, Aliens, and Citizens in Locke’s Second Treatise of Government

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DENISONS, ALIENS, AND CITIZENS IN LOCKE’S SECOND TREATISE OF GOVERNMENT

BRUNELLA CASALINI

This paper addresses one of the main difficulties raised by paragraphs 116–22 of the Second Treatise of Government, beginning with a question that is as simple as it is neglected: What was the juridical status of the denizen in Locke’s time? The word ‘denison’ (cf. II §122) in fact plays a key role in the interpretation of the text, and a correct understanding of its meaning in the juridical context of the seventeenth century may offer some new clues to the solution of the puzzles posed by the well known distinction between tacit and express consent.

The paper comprises three parts. In the first part, I will discuss the issues left unresolved in chapter eight of the Second Treatise, as well as the interpretations suggested by some Locke scholars. In the second, I will provide some historical background on the English conception of citizenship in the seventeenth century, particularly the differences between processes of naturalization and denization. In the third, I will return to the issue of consent, in the light of the juridical status of the denizen and Locke’s position in favour of general naturalization, as expressed in a manuscript dating from 1693.

I

Locke argues, against Filmer, that no one is born in a natural condition of slavery: men are born free and equal. Every form of legitimate political power requires consent; not ideal or hypothetical consent, as suggested by contemporary followers of Kant—most

1 J. Locke, Two Treatises of Government, ed. P. Laslett (Cambridge: CUP, 1997). Quotations are given page numbers from this edition.

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notably Rawls— but actual consent. Institutional justice, for Locke, is not enough to establish the citizen’s political obligation towards the state. Subjects are morally obliged to obey political power only if they have freely consented to the exercise of such power and only if it rules within the limits established by the compact upon which the civil society has been founded. In Locke’s theory, matters become particularly complicated when, at the end of chapter eight of the Second Treatise, the distinction between the two forms of consent—express and tacit—is advanced.

In paragraph 119, Locke writes:

No body doubts but an *express Consent*, of any Man, entering into any Society, makes him a perfect Member of that Society, a Subject of that Government. The difficulty is, what ought to be look’d 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. (347–8)

Express consent is given by oath, promise, or compact. It is only by means of an explicit declaration that one may obtain full citizenship, with the stipulation that he remain forever loyal to the state and never relinquish his membership therein:

he, that has once, by actual Agreement, and any *express* Declaration, given his *Consent* to be of any Commonweal, is perpetually and indubitably obliged to be and remain unalterably a Subject to it, and can never be again in the liberty of the State of Nature; unless by any Calamity, the Government, he

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2 According to Simmons, it is possible to identify in Locke’s discourse a distinction between ‘state justification’ and ‘state legitimacy’. Such a distinction is lost in the political philosophy of contemporary Kantians, in which the rational justification of the state appears sufficient to guarantee state legitimacy. See A. J. Simmons, ‘Justification and Legitimacy’, in his *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: CUP, 2001), 122–57.

was under, comes to be dissolved; or else by some publick Act cuts him off from being any longer a Member of it. (349)

Conversely, tacit consent is given by the mere fact of being present within the territory of a given state, whether as a resident and owner or simply as an alien visitor:

every Man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give his tacit Consent, and is as far forth obliged to Obedience to the Laws of that Government, during such Enjoyment, as any one under it; whether this his Possession be of Land, to him and his Heirs for ever, or a Lodging only for a Week; or whether it be barely travelling freely on the Highway; and in Effect, it reaches as far as the very being of any one within the Territories of that Government. (348)

One who has given only tacit consent is, at any given moment, free to leave the state, once he has alienated the estates he owns there, by sale or donation. Explicit and tacit consent are the same in terms of one’s obligation to obey the laws of the state, but differ in terms of duration and the rights and duties which they entail. Citizenship, for example, is contingent upon explicit consent, and entails certain fundamental rights, such as the right to vote, as well as a particular set of duties, such as the payment of taxes and service to the state in time of war.

What most disturbs Lockian critics in this context is the apparent equivalence between the status of ‘denizen’ (‘denison’ in Locke’s text) and that of ‘alien’. If ‘denizen’, as Simmons suggests, means ‘non alien, probably native-born residents’,⁴ the consequence of such equivalence would be that a part, probably a consistent part, of the population, despite having resided in the country since birth, would be treated as alien to the state; a condition that Locke, in paragraph 9 of the Second Treatise, describes as a kind of extension.

of natural law within civil society.\(^5\)

Macpherson sees in the distinction between tacit and express consent, clear proof of the link—posited in Locke’s political philosophy—between political power and property: only property owners can be citizens. The working class is thus denied the full rights of citizenship: ‘The right to rule (more accurately, the right to control any government) is given to the men of estate only: it is they who are given the decisive voice about taxation, without which no government can subsist’.\(^6\)

Macpherson’s interpretation, as has often been pointed out,\(^7\) is not supported by the text. In fact Locke asserts that the owner of land ‘has given only a tacit consent to the government’ (349) and nowhere does he affirm that to be an express consenting citizen one

\(^5\) ‘I doubt not but this will seem a very strange Doctrine to some Men: but before they condemn it, I desire them to resolve me, by what Right any Prince or State can put to death, or punish an Alien, for any Crime he commits in their Country. ’Tis certain their Laws by vertue of any Sanction they receive from the promulgated Will of the Legislative, reach not a Stranger. They speak not to him, nor if they did, is he bound to hearken to them. The Legislative Authority, by which they are in Force over the Subjects of that Common-wealth, hath no Power over him. Those who have the Supream Power of making laws in England, France or Holland, are to an Indian, but like the rest of the World, Men without Authority: And therefore if by the Law of Nature, every Man hath not a Power to punish Offences against it, as he soberly judges the Case to require, I see not how the Magistrates of any Community, can punish an Alien of another Country, since in reference to him, they can have no more Power, than what every Man naturally may have over another’ (Locke, Two Treatises, 272). The state’s monopoly over the exertion of force derives from the citizen’s renunciation—upon entering into civil society—of his own right to exert such force, accepting the state’s role as arbiter and judge in matters of justice. Locke maintains here that the state does not possess any power beyond that received from its citizens, and that it can exercise such power only by virtue of the compact wherein they voluntarily transferred all of the powers they had previously enjoyed, in the state of nature. See also paragraphs 129–31 of the Second Treatise.


must be a property owner, while he says that one may enjoy property rights within the territory of a state without being a member of that state or pledging one’s loyalty to its institutions—hence, without citizenship.

Without Macpherson’s class-conscious interpretation of Lockian citizenship, the comparison between the condition of denizen and that of foreigner appears embarrassing and unacceptable. According to Simmons and Franklin, considering that at the time, only a very small part of the population—generally those holding public office—were required to pledge allegiance to the state, the distinction between express and tacit consent suggests an elitist view of citizenship, whereby only the very few could become full citizens. A theory such as Locke’s, which asserts the primacy of morality over history, cannot be explained by means of historical context. Difficulties must be resolved on the basis of textual consistency and internal normativity. A survey of the juridical condition of the denizen in seventeenth-century England and an analysis of the debate surrounding naturalization may, however, offer some insight into the framework of local laws that prompted Locke to remark that: ‘Municipal Laws of Countries … are only so far right, as they are founded on the Law of Nature, by which they are to be regulated and interpreted’ (275).

II

It was only at the beginning of the seventeenth century, with the rise of inchoate nationalism and strengthened monarchical power, that England tried to address the boundaries of political belonging, from a juridical point of view, searching for a clear delimitation between

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the king’s subjects and foreigners. The history of English citizenship has been conditioned for almost two centuries by the opinion of Chief Justice Edward Coke, in *Calvin’s Case* (1608): the case of Robert Calvin, born in Scotland in 1605, under James VI of Scotland who, in 1603, also became James I of England. The union of the crowns under a single monarch raised a number of questions regarding the political identity of the king’s Scottish subjects. Did they have the same rights and privileges afforded by English law? Could they inherit land in England? The answer to these questions —whether on the basis of territorial or ethnic interpretations of belonging—had to be negative. In Calvin’s case, however, Chief Justice Coke declared that all subjects born under the king of England, in whatever part of his dominions, had the right to all the benefits of English law. Appealing to the law of nature and its primacy over local laws, Coke stated that the subject’s condition was determined by birth and the relationship of personal dependence naturally established between the newborn and the sovereign of the territory in which he was born. The subject’s dependence on the sovereign was thus determined not by the sovereign’s arbitrary will, nor by the subject’s express will, but by an objective, normative natural order, made apparent by means of the judge’s reasoning. Loyalty oaths, peculiar to the feudal tradition, according to Coke, should not be considered in terms of their volitional value, but only as a formal recognition of a natural relationship of loyalty. The theory of citizenship that emerged from Coke’s ruling met the political need to strengthen the bonds between Scotland and

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10 See *Calvin’s Case 7 Coke Report 1a, 77 ER 377*: <http://www.geocities.com/englishreports/77ER377.html>. Calvin’s case was tried ‘in the Exchequer Chamber before the Lord Chancellor and all of the judges of England. This case is celebrated, not only for the importance of the decision made, but also for the form of Lord Coke’s report. According to the custom of the time, he did not quote verbatim the opinions of the judges, but gave a digest of them in his own language’, R. W. Flournoy, ‘Dual Nationality and Election’, *The Yale Law Journal*, 30 (1921), 545–64, at 546–7.
England (fully united only with the Act of Union of 1707, which created the Kingdom of Great Britain). This theory of citizenship was not, however, without its inconsistencies. In theory, each individual was born the subject of a specific sovereign and remained so throughout his life. In practice, however, English law allowed foreigners to be naturalized by an act of Parliament, and gave the sovereign the prerogative to grant *denizenship* (a prerogative that Coke, as an advocate of the rights of Parliament as High Court of Justice and guardian of the rule of law against monarchy, did not accept).

Immigrant status imposed significant limitations: a foreigner could not own land in England, bequeath his estate to his legitimate heirs, or exercise political rights. There were however, as we have seen, two ways of changing one’s legal condition: naturalization by an act of Parliament, and denization. Naturalization afforded the naturalized citizen virtually the same rights as a citizen by birth (at least until the end of the eighteenth century, when new restrictions were introduced). The parliamentary process of naturalization was, however, costly, protracted, and uncertain.

Probably introduced in the Middle Ages, to attract foreign merchants and financiers, the status of the denizen differed from that of

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14 ‘In the British king’s various realms, naturalized subjects were treated by the parliament that had naturalized them as fully equal to native-born subjects. But this equal status was acknowledged to be a “fiction of law” that gained its legitimacy not from nature but from the consent of the king and the subjects concerned. It followed that there remained a distinction between natural and naturalized subjects: an alien who had been naturalized only by the Scottish parliament was, unlike Calvin, still an alien in England’, Smith, *Civic Ideals*, 47.
the naturalized citizen inasmuch as denizens could purchase land and send their sons to English schools and colleges. They did not, however, enjoy political rights or the right to entail their estates to their heirs. In 1681, following news of the persecution suffered by the Huguenots in France, Charles II granted religious refugees and their families the possibility of attaining denizen status, on condition that they agreed to remain as permanent residents of the state and, not infrequently, that they took an oath of loyalty as well.\footnote{See D. W. Cooper (ed.), \textit{Lists of Foreign Protestants and Aliens, Resident in England 1618–1688: From Returns in the State Paper Office} (Westminster, 1862) and L. Hunt Yungblut, \textit{Strangers Settled Here Amongst Us: Policies, Perceptions, and the Presence of Aliens in Elizabethan England} (New York, 1996),116.}

Locke, as we have seen, refers to the status of denizen in paragraph 122 of the Second Treatise. He had cause to do so on at least one other occasion, at the request of his friend Benjamin Furly, a Quaker merchant who had given him hospitality during his exile in Holland. In 1694, Furly wrote to Locke, requesting information concerning his sons, who—having been born outside England—were considered denizens, pending their naturalization. Furly asked his friend for legal information regarding the possibility that his sons might inherit his English estates. After having received Locke’s reply to his initial inquiry, Furly wrote, in a letter dated June 1694:

\begin{quote}
I see what you say of my children born out of England, And tho I have understood, that the children of marchants residing abroad, so born, are, in Law reputed natural English and capable of inheriting land, yet your Judgment in the Point, is of such weight with me, that I have, considering the Act
\end{quote}
of naturalisation did not pass this last Session, and perhaps never may, in this Parliament, resolved to sell all my land in England.16

Furly’s pessimism regarding the possibility that Parliament might pass such an act was entirely justified, in the light of the turn the struggle for general naturalization had taken. Locke himself took part in the debate, as witnessed by his manuscript, *For a Generall Naturalization*.17 Bills promoting the naturalization of a large number of people were introduced in England in 1679, 1689, 1690, at the end of 1693, and in 1697. These proposals enjoyed the support of the economists, such as William Petty and Josiah Child,18

16 *The Correspondence of John Locke*, ed. E. S. de Beer (8 vols., Oxford, 1976–89), v. 60, Benjamin Furly to Locke, 26 May/5 June 1694. In another letter (Benjamin Furly to Locke, 31 July/10 August 1694) Furly writes: ‘Dear Friend. Your most acceptable letter of the 19 June I had in its due time, and kindly thank you for consulting mr. Clark, and mr. Freke about my children; whom I find to be of opinion that they are tho born here Denizons, but not naturall English—to which you ad your own opinion that, as Denizons they are capable of inheriting, and that I have no more difficulty to make a good title to the Purchaser than if they had been born in England. But that you would further consult those Gentlemen upon what I propose, which I hope you have done. And I should be glad (contrary to my own opinion) to understand that you be confirmd in your opinion. And that such a conveyance may be made of that land at whitby that I have sold to Joseph Scarth, as may secure it to him and his heires for ever, from the heires of my late wife: which, if my children, as Denisons, cannot inherit as I have been informd that Denisons may purchase for a term of 99 years, but cannot inherit, nor transmit estates to their heires, but that all such lands, at expiration of 99 years go to the Crown, and that therein lyes the distinction betwixt Naturalisation, and Denization—whether my information be true or no, you will doubtless find upon further enquiry. But I say if my children be not natural English, and as Denizons cannot inherit, then my wives land goes to her heirs, that is, her 4 sisters—and their children: who, I am apt to think, are so Just, that they will sign any act or deed declaring that they have no right to the said Land’ (ibid. 94).


and were opposed by xenophobes, as well as those who feared for their own interests. Locke’s views on the matter are worth reading. They reveal not only the conviction (present already in the first draft of the Essay Concerning Toleration, written in 1667) that population policy and economic development are closely linked, but also a voluntary approach to national identity. ‘Naturalization’, Locke writes, ‘is the shortest and easiest way of increasing your people, which all wise governments have encouraged’.

Governments must encourage demographic development both by facilitating processes of naturalization and by means of policies that encourage citizens to have children and reward them for doing so, following the example of the Roman lex Papia Poppaea, cited here by Locke, who further addresses the subject in a number of journal entries, under the caption Atlantis (1676–9). Indeed, according to the mercantilist doctrine, it is the number of arms that governs the development of manufacture. As Locke stresses in his Two Treatises, the state’s prosperity must be measured not by the extension of its dominions, but by its populousness. Furthermore, the distinction between an English citizen and a foreigner, according to Locke, is not based upon ethnic or racial differences, so that it may be easily overcome by means of a naturalization process, that is, a voluntary pledge of allegiance. Besides, Locke maintains,


20 Locke, For a Generall Naturalization, 487.

21 Locke notes the fact that the Romans enacted legislation rewarding parents for having more children, such as the ius trium liberorum (ibid.).


23 Cf. Locke, Two Treatises, 164–5 and 169–70.
when they are once naturalized, how can it be said they eat the bread out of our people’s mouths? when they are then in interest as much as our own people as any the only odds is their language, which will be curd too in their Children, and they be as perfect Englishmen as those that have been here ever since William the Conquerers days and came over with him. For ’tis hardly to be doubted but that most of even pur Ancest<o>rs were Forainers.24

As Rabkin stresses, Locke’s vision of national citizenship has nothing mystical or immemorial about it: the process of nation building does not require a shared religion, or ethnic or racial homogeneity. What it does require is the people’s will to join together to defend their independence and their capacity to act in common. This goal is more easily achieved within a linguistic community.25 In this sense, Locke may be considered the forerunner of that civic and voluntary conception of nationhood that, according to Benedict Anderson, gained ascendancy in the late eighteenth century, with the collapse of the dynastic empires and the decline of the ‘sacred languages’ or ‘truth-languages’,26 such as Latin, identified with the great global communities of the past—in favour of the vernacular. Indeed Locke, in Some Thoughts Concerning Education, underscores the political advantages of promoting the improvement of the English language at the expense of Latin:27

To Write and Speak correctly gives a Grace, and gains a favourable Attention to what one has to say: And since ’tis English, that an English Gent. will have constant use of, that is the Language he should chiefly Cultivate, and wherein most care should be taken to polish and perfect his Stile. To speak or write better Latin than English, may make a Man be talk’d of, but he would find it more to his purpose to Express himself well in his own Tongue, that he uses

24 Locke, For a Generall Naturalization, 491.


27 This point is stressed by Rabkin, ‘Grotius, Vattel, and Locke’, 308, n. 20.
every moment, than to have the vain Commendation of others for a very insignificant quality.  

III

Now that we have examined some of the historical background, albeit in broad terms, let us return to chapter eight of the Second Treatise.

The reconstruction of the juridical differences between denization and naturalization suggests a different reading of paragraphs 116–22 of the Second Treatise: the denizen, as we have seen, is not a native born resident of England, but a foreigner who has received, *ex donacione regis*, special permission to work and reside on English soil, and to enjoy some form of *civitas minuto iure*.  

Keeping in mind that the focus of Locke’s discourse in paragraphs 116–22 is ideal and normative rather than historical, we must conclude that his goal was to outline a comparison between the citizen’s and the foreigner’s relationship with the state, considering the foreigner both as visiting alien and as legal resident. In keeping with the logic of natural law and its critical potential toward local laws, Locke asserts that the state must give ‘a local Protection and Homage’ to foreigners with whom it is not in a state of war. It cannot hinder their movement within its national territory or exercise its punitive powers in their regard, beyond the limits of the law of nature—that is, only in response to possible infringements of the law, applying reasonable measures congruent with the nature of the crime committed.

The state has no cause to discriminate against foreigners, nor

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30 Locke, *Two Treatises*, 349.
to hinder them from residing within its territory. If a foreigner does not seek naturalization and is not afforded the full rights of membership, the state cannot demand that he take a pledge of allegiance or renounce his right to emigrate—as in the time of Charles II, when denizens were asked to reside permanently in the state. The temporary visiting alien and the resident alien who is rendered free to choose whether to become a citizen or not, by means of easy access to naturalization, may abandon the state at any time, or even establish another state in *vacuis locis*. They need only alienate their estates in the territory of the state by ‘Donation, Sale or otherwise’ (ibid.).

Another element that Locke introduces in the context of citizenship is a condition we might term ‘cosmopolitan’, whereby a minor may choose his nationality upon coming of age.\(^{31}\)

‘Tis plain then, by the Practice of Governments themselves, as well as by the Law of right Reason, that *a Child is born a Subject of no Country or Government*. He is under his Fathers Tuition and Authority, till he come to Age of Discretion; and then he is a Free-man, at liberty what Government he will put himself under; what Body Politick he will unite himself to. (347)

Locke’s ideas of citizenship stand in sharp contrast not only to the common law conception of citizenship, which would prevail long after Chief Justice Coke’s ruling in Calvin’s case but, more generally, to the criteria of *ius soli* and *ius sanguinis* that dominate most modern juridical systems, and to the views of other, modern contractualists. Indeed, according to Locke, belonging to a state is not determined by the destiny of birth but is rather, a matter of individual choice, albeit one that is partially conditioned by the fact that the son may not inherit from the father unless he has chosen to

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\(^{31}\) On this point Locke seems to anticipate Kant. On Kant’s description of the child as *Weltburger*, see F. Di Donato, *Nei limiti della ragione. Il problema della famiglia in Kant* (Pisa, 2004), 185–94.
be a citizen of the same state.\textsuperscript{32}

According to Pufendorf and Tyrrell, as we are reminded by Franklin, once civil society has been established through a compact stipulated by the founding fathers’ explicit consent, there is no further need of an express act of consent. The descendants of the founding fathers are citizens by birth. Only public officials are required to take an oath of allegiance, and only they are hindered from abandoning the state. All other citizens, most notably the poor, are free to emigrate, so that they might have the opportunity to improve their condition.\textsuperscript{33} Locke, on the other hand, does not accept the idea that the will of the fathers might limit the choices of their future descendants. In his polemic against Filmer’s Adamic model,\textsuperscript{34} which stipulates that ‘What was given into Adam was given in his person to his posterity’,\textsuperscript{35} Locke rejects the idea that the sins of the fathers might be visited upon the sons (389–90), that the actions of a father might forfeit his child’s life and freedom (393), and more generally that one generation’s contract might bind future generations (345–6). Every individual chooses the state to which he wishes to belong, and expresses—in an explicit and deliberate way—his will to bind himself to that state. All differences between the condition of a child born to citizens and that of a foreigner

\textsuperscript{32} Locke, \textit{Two Treatises}, 346. ‘Commonwealths not permitting any part of their dominions to be dismembered, nor to be enjoyed by any but those of their Community, the Son cannot ordinarily enjoy the Possessions of his Father, but under the same terms his Father did; by becoming a Member of the Society: whereby he puts himself presently under the Government, he finds there established, as much as any other Subject of the Commonwealth’ (ibid.).

\textsuperscript{33} See J. Franklin, \textit{Allegiance and Jurisdiction in Locke’s Doctrine of Tacit Consent}, 414–15.

\textsuperscript{34} See I. Harris, \textit{The Mind of John Locke. A Study of Political Theory in its Intellectual Setting} (Cambridge, 1994), 238.

\textsuperscript{35} R. Filmer, \textit{The Anarchy of a Limited or Mixed Monarchy, or A succinct Examination of the Fundamentals of Monarchy, both in this and other Kingdoms, as well about the Right of Power in Kings, and of the Originall or Naturall Liberty of the People}, in id., \textit{Patriarcha and Other Writings}, ed. J. P. Sommerville (Cambridge, 2000), 138.

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disappear. On a theoretical level, however, we cannot exclude the possibility that someone might decide to reside within the territory of a state, without binding himself to it, thereby maintaining his complete freedom to emigrate.

Probably influenced by the importance ascribed to the formative experience of travel in Locke’s pedagogy, Rousseau lets Emile see the world before attaining maturity, so that he might decide upon a state to which to bind himself, and whether he wishes to leave his father's land. In Émile ou De l’éducation we read:

Or, après s’être considéré par ses rapports physiques avec les autres êtres, par ses rapports moraux avec les autres hommes, il lui reste à se considérer par ses rapports civils avec ses concitoyens. Il faut pour cela qu’il commence par étudier la nature du gouvernement en général, les diverses formes de gouvernement, et enfin le gouvernement particulier sous lequel il est né, pour savoir s’il lui convient d’y vivre; car, par un droit que rien ne peut abroger, chaque homme, en devenant majeur et maître de lui-même, devient maître aussi de renoncer au contrat par lequel il tient à la communauté, en quittant le pays dans lequel elle est établie. Ce n’est que par le séjour qu’il y fait après l’âge de raison qu’il est censé confirmer tacitement l’engagement qu’ont pris ses ancêtres. Il acquiert le droit de renoncer à sa patrie comme à la succession de son père; encore le lieu de la naissance étant un don de la nature, cède-t-on du sien en y renonçant. Par le droit rigoureux, chaque homme reste libre à ses risques en quelque lieu qu'il naisse, à moins qu’il ne se soumette volontairement aux lois pour acquérir le droit d’en être protégé.

Rousseau’s position here resembles that of Locke and stands in contrast to a long tradition of political thought that deemed travel abroad unsuitable for the education of subjects too young to have

36 See Locke, Some Thoughts Concerning Education, 262–5.


For Locke, it is only by express consent and a pledge of allegiance that we become citizens. By such an act of consent, we bind ourselves to the state in perpetuity, losing our status of citizen only should the state decide to deprive us of it or should the state itself dissolve due to some calamity. We may divorce and break up conjugal society,\footnote{\textit{Cf.} Locke, \textit{Two Treatises}, 321.} and we are guaranteed the freedom, at any given time, to leave the church into which we have entered voluntarily. The state, however, cannot tolerate \textit{ad interim} loyalty or multiple loyalties from its citizens. Everyone has a right to a nationality, but once a choice has been made, such a bond cannot be dissolved.

It is this aspect of Locke’s theory of membership (more consonant with his mercantilistic views than with his theory of individual rights) that we find unacceptable today; so much so, that some critics have chosen to ignore it, while others can hardly believe that Locke’s real intention was to deny citizens the right to emigrate and obtain a new nationality\footnote{Julian Franklin finds it difficult to believe that this was Locke’s real intention (see Franklin, \textit{Allegiance and Jurisdiction in Locke’s Doctrine of Tacit Consent}, 411), explaining that Locke is concerned only with the state’s territorial integrity here, and thus disregards the issue of populousness. Resnick seems to ignore the textual evidence (see Resnick, \textit{John Locke and the Problem of Naturalization}, 381). Indeed, he sees the distinction between tacit and express consent as half a step in the direction of recognizing the right to emigration.}—a right enshrined in article 13 of the \textit{Universal Declaration of Human Rights} of 1948,\footnote{See Whelan, \textit{Citizenship and the Right to Leave}, 636–53.} to which article 15 adds: ‘No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality’. The fact that Locke would not deny this right to subjects of a tyrannical state—for there can be no consent in a condition resembling that
degenerate state of nature which is the state of war\textsuperscript{42}—is not enough, however, to save Locke’s consistency. We thus observe the internal tension within Locke’s political philosophy, between premises of individualism and the need to guarantee the territorial integrity of the state by ensuring the lasting loyalty of its citizens. We should not, however, underestimate the importance of Locke’s theory in recasting the state, for Locke himself could not ignore the fact that, historically speaking, the origins of the state can be traced, not to acts of consent, but to conquest and usurpation. If the tran-sition from a state of nature to a civil society is perceived as a gradual one, a part of this slow process of civilization is the creation of an international society of territorial states,\textsuperscript{43} in which no state has any territorial designs on another.\textsuperscript{44} These states are conceived not as sovereign entities but as free, equal, and independent national commonwealths, exercising their right to self-determination. They may lawfully make war only for defensive ends. Indeed all the power that a state lawfully retains is conferred by the people, who

\textsuperscript{42} Locke, \textit{Two Treatises}, 326–7.


\textsuperscript{44} Locke, \textit{Two Treatises}, 299. According to Simmons, Locke is one of the few political thinkers to address seriously the territorial dimension of states. See A. J. Simmons, ‘On the Territorial Rights of States’, \textit{Philosophical Issues}, 11 (2001), 300–26.

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cannot give the government the right to start an aggressive war, having never possessed such a natural right themselves.\textsuperscript{45}

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