

ABSTRACT

Title of Dissertation: OVERLY-GREAT EXPECTATIONS: WHY POLITICAL VOLUNTARISM IS IMPOSSIBLE, WHY PHILOSOPHICAL ANARCHISM IS UNNECESSARY, AND WHY THAT'S NOT A PROBLEM

Jennifer Renee Runnels, Doctor of Philosophy, 2012

Directed by: Professor Christopher Morris, Department of Philosophy

John Locke argued that legitimate state authority is created when free individuals lend their personal power via consent to the state's governors. Modern Lockean A. John Simmons extends Locke's argument to conclude that, since this does not happen in the real world, philosophical anarchism must be accepted. I argue that classical consent cannot happen in the individual/state relationship. Its requirements can be met in some private relationships because of their special background conditions. The individual/state relationship, however, is not like private relationships, and the nature of the relationship keep classical consent's requirements from being fulfilled. First, state authority must extend over a very large set of issues, from the military and economics to education and

health care, in order to perform its functions of mutual protection and advancement.

Given the considerable number of state realms of power, coordinating the meaningful consent of thousands, millions, or billions of citizens is downright impossible. Second, classical consent theory requires that the consenter have an adequate understanding of what he is submitting to if that consent is to ground an authority exchange, but given the complexity of the state's constitution and its numerous realms of power, even the most intelligent person could not sufficiently comprehend the terms of the power exchange.

Third, the state's directives are fundamentally different from regular interpersonal directives; they are final, sovereign, apply over territory, and require compliance, which is contrary to the voluntaristic spirit. To counter Simmons's argument, I argue that a distinction must be made between object-level governance, what state agents do, and meta-political activity, a category of activities performed by individual citizens that create and maintain state authority. Through meta-political activities, citizens are able to indirectly add to the state's constitution, in ways congruent with their mental powers, practical abilities and nature as private citizens.

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by

Jennifer Renee Runnels

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Advisory Committee:

Professor Christopher Morris, Chair
Professor Samuel Kerstein
Professor Dan Moller
Professor Karol Soltan
Professor Ian Ward

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Chapter 1: Introduction

As I sit writing this today, the area in which I live is entering its most politically active season so far this decade: election season 2012. It's a bit overwhelming, really. Television ads supporting candidates and attacking others run constantly. The news outlets update watchers on the slightest details of the campaigns. The breadth of the elections ranges from the national level (candidates for president) to the most local level (the district's board of education). Not only is the election about picking candidates in races, but also deals with several state constitutional amendments and ballot referenda. While I have become well-informed about some of these issues and candidates, I have never even heard of others.

During this season, immersion in the political world is all but unavoidable. It seems like, if there is any time at all that an individual can be a direct part of the political process, this is probably that time. People can take part in campaigns, can advocate in support their favored issues, and can perform the seeming hallmark act of political involvement: they can vote. Each person eligible to vote can submit his or her ballot and have his or her choices added to the total from which a winner will be picked (usually based on a simple majority, but not always). Given the seeming intimacy between the individual and his state and its constitution, now seems to be an appropriate time to consider a central concern of political philosophy, that of consent.

While the topic of consent in political philosophy has been addressed by many excellent theorists and with a wide variety of approaches, this dissertation does not have the opportunity to cover such breadth. In fact, the contents of this dissertation are

surprisingly narrow: I will aim only to evaluate the argument from consent made by John Locke and his, I believe, best modern proponent, A. John Simmons. Briefly put, Locke argues that the state's government can rightly exercise political authority over individuals only when those individuals have consented to that authority. Continuing that line of thinking, Simmons argues that, since few, if any, individuals actually ever give consent to their state's authority, and since one can legitimately wield power over another only via his proper consent, all states past and present have been illegitimate wielders of authority over naturally free citizens. I will argue that, even though the Lockean argument is enormously appealing, and applicable in some authority-exchanging relationships, the dynamics of modern states make classical consent between the individual and the state impossible. It is not simply that the modern world makes the give and take of consent impractical to the point of impossible, but also that the nature of the individual/state relationship is such that classical consent cannot be given and is not a coherent method of evaluating the legitimacy of authority.

In Chapter 2, I trace the concept of political consent to its modern introduction in John Locke's *Second Treatise on Civil Government*. The second treatise begins, not by looking at the historical origins of political organization, but by giving what is in essence a moral argument. Locke asserts that man's natural condition is one of perfect equality and freedom, and that all human organization must respect this law of nature. It is sensible that we should want to live and work together to lessen our individual strains and make life more pleasant; furthermore, by living together, we can share the burden of protection of our persons and possessions. Since resources are finite and differences of

opinion are bound to occur, it is logical that we should want to create an impartial, third-party judge to oversee our disputes. From this we create civil society, where we as a group (through a freely-elected government) can create impartial laws and unbiased judges to uphold laws and maintain order. Even though we are seemingly under the power of other persons, this is only illusory, as the created government and its laws exist only because we lend our personal freedom to them in exchange for the benefits of civil society. If the body politic acts in ways that are contrary to our natural freedoms (through decisions made by majority rule), we are allowed to withdraw our consent and return to our natural condition.

Simmons argues that, if consent is to have any meaning or power at all, it must meet certain requirements. From Simmons's arguments, along with those of other consent theorists, I will argue that there are four requirements laid out by classical consent theorists. First, the consenter must intend that his consent transfers some of his authority over himself to another party. Second, the consent must be given free from coercion. Third, the consent must be given via an outward sign that both parties believe is sufficient to signify the transfer of power. Fourth, the consenter and consentee must be sufficiently knowledgeable about the terms and implications of the authority transfer. The four requirements work to guarantee that the value and power of the individual's authority over himself is properly transferred to its intended recipient, the state. Simmons rightly concludes that instances of this type of power-retaining consent from the individual to the state simply do not happen in the modern world. From this, Simmons says we are forced to make a choice: a) we can accept that persons can be subject to the power of another without their true consent and reject voluntarism, which

amounts to denying their natural freedom, or b) we can accept philosophical anarchism, the view that no state authority has had or will have legitimate authority over its citizens. Simmons chooses the latter, as he views the former as morally unacceptable. While I sympathize with Simmons's desire to avoid option a), I cannot help but wonder if there is more to the story than what he presents us with, if this truly is a simple a) or b) choice.

Chapter 3 will, in sympathy with Simmons's emphasis on freedom and equality, examine some real-world instances where consent is, I believe, the proper method of evaluating an authority exchange. In some economic exchanges and authority transfers between intimates, for instance, I agree that one party exerting power over another party is morally acceptable only if that second party has given his or her real consent. In these exchanges, the four basic requirements of classical consent theory that I outline in Chapter 2 are easily satisfied, but there are further background requirements, I believe, that are necessary for maintaining the voluntaristic spirit so essential to Simmons's position. For example, the two parties must truly free from one another before and after the exchange, and they must be the sole creators and arbiters of the rules of their interaction. The whole environment of the power exchange is rightly constructed so that the agents involved have the ability to give and receive true consent. The basic requirements of classical consent theory are useful only when they take place in a greater atmosphere of practical freedom, the basis of Simmons's argument.

Next, I argue that these important background requirements do not and cannot occur in the relationship between the individual and the modern state. The first way in which classical consent from the individual to the state is impossible concerns its practical impossibility, which I cover in Chapter 4. First, in private relationships, the

realms of authority are simple and finite, but in the political relationship, the realms of possible authority are more numerous and open-ended. In order to exist at all, states need to be able to issue laws and punish law-breakers, and deter would-be law-breakers, and do all of this over a large number of issues like public health and economic transactions. When coordinating the behaviors of thousands or millions of citizens, the realms of potential state authority become very complex and distant from the individual. Meaningful interaction between the individual and the state authority becomes impossible, a problem that is further compounded when locating the agent of the state (with which one would potentially interact). The basic requirements of classical consent theory demand that an individual's consent be an actual event between actual agents, but the makeup of the modern state (an entity embodied by a government and a set of ideas, sometimes encoded in a formal constitution, but not always) makes the proper recipient of consent difficult to identify. Furthermore, no methods of interaction between the individual and the state seem sufficient to transfer the consent of the individual, with all of its moral weight and background conditions. The impracticalities of individual/state consent become even more obvious when we acknowledge that modern states exercise power over territories, not individuals; since essentially all of the earth's surface is now claimed by some state, and since we are all born into association with some state, individuals enter into the political relationship already designated as 'subject' and remain 'subject' wherever they go. This is directly contrary to Simmons's voluntaristic argument that authority exchanges must be freely performed by two desiring parties.

In Chapter 5, I will make the argument that, beyond mere impracticality, individuals are unable to give true consent to their states because they are cognitively

unable to meet classical consent's robust mental requirements. In order for a person's consent to be meaningful and remain true to the voluntaristic spirit, he must understand what powers he is giving to another and what obligations he is taking on, to such a degree that he does not lose any of the natural freedom so central to the Lockean argument. It is my position that, since political authority may include so many realms of power and so many complex interactions, a person would have to have mental powers far beyond those of a typical individual. To be sufficiently knowledgeable about the political realm, an agent would have to know a vast amount of information, and would need to be able to manipulate and consider various aspects of that information. Not only do our brains seem naturally limited in informational and computational capacities, but our abilities to really understand things in our world are subject to enormous constraint imposed by time, attention, and motivation. There are only 24 hours in each day, and we must allocate our time and attention to a variety of tasks; if other things seem more important (and often, they do), spending too much time on understanding the political realm without any obviously direct benefit will be essentially impossible for the individual. If the complex cognitive demands of classical consent theory cannot be fulfilled, then any outward consent-like sign is voided, making classical consent impossible in the individual/state relationship.

In Chapter 6, I will argue that, even if we could overcome the practical and epistemic problems posed in the previous chapters, classical consent from the individual to his state is impossible because political authority is, by its very nature, not the kind of thing that is subject to consent. Rights can sometimes be rightly transferred from one person to another via consent, as I argue in Chapter 3, but this is possible only because

those rights belong to the individual to begin with. For instance, I can lend my doctor the right to have power over my body because that right is truly mine to lend. This is not the case with the individual/state relationship. The possible realms of state authority are just not located within individual rights. There is no time in the individual/state interaction that the individual is able to negotiate the terms of the relationship or consider not entering the relationship at all. Similarly, the world is so arranged that it is now impossible for an individual to not be a citizen of some state, which seems contrary to Simmons's voluntarism. Furthermore, as Locke himself argues, the purpose of state authority is to act as a final, independent arbiter and executor; the state's authority cannot truly be final and independent if citizens are able to make it hinge on their consent. Political authority is its own kind of authority, and political directives are issued with the purpose of being final reasons for action, with the ability to trump any personal motivations to disobey, and this is in direct opposition to the spirit of Simmons's voluntarism. Even if a person wanted to transfer some of his personal authority over to the state for the reasons that Locke describes, doing so is pointless because any power the state has cannot be located in the private rights of individuals.

Chapter 7 will be my attempt to salvage the spirit, the moral motivation, of classical consent theory while acknowledging that the world of modern states does not leave room for true political voluntarism. When given the option between rejecting consent as the only basis of legitimate authority and rejecting the idea that political authority can ever be legitimate, Simmons chooses the latter because the former seems morally unacceptable. While my goal is to argue that we do not have enough reason to maintain that consent is the only acceptable basis for legitimate authority, I still

sympathize with Simmons's loyalty to voluntarism. The reason that consent theory continues to appeal to so many is that it makes a priority of respecting individual equality and rationality, and of protecting the individual citizen from tyranny. My positive thesis aims to respect the spirit of voluntarism while recognizing that we cannot follow it to the letter in the individual/state relationship.

To continue the arguments made in Chapter 6, I will argue that as long as we view authority as a simple concept, the idea of political authority seems paradoxical. The very purpose of political authority is to solve problems in an objective and final manner. If political authority is the direct result of rerouting personal authority (making it dependent on personal authority), then it loses its finality and independence. The only way to resolve this seeming paradox is to recognize that the two types of authority are fundamentally different, even if they are somewhat related.

Political authority is created by citizens to solve the problems that personal authority cannot (adjudication of disputes, issuing objective laws, etc.) in the same way that the authority of a referee is the creation of game players for the purpose of ruling over games. They make the rules and do the judging, and we get to play the game. Hampton likens this to Tarski's object-language/meta-language distinction – there is an object-level authority (the government) that makes the laws and does the judging with finality, and there is a meta-level authority that both indirectly authorizes and follows the dictates of the object-level authority. At the level of states, governments are created and indirectly authorized by private citizens and their personal power. The dictates of governments are made to be final and different from private authority – to serve the cooperative coordination problems that arise from living together in a state. This created authority of

governments is designed to be different from the private moral authority of individual citizens.

The governing authority of states is created by citizens performing a variety of actions that give rise to a governing convention, the political atmosphere of a state, which issues a formal and informal rule of recognition that delineates the ways in which a government can operate. Private citizens perform a variety of politically-oriented actions which, when taken as a whole, create the political atmosphere and empower the government to rule. The two-tier approach to political authority is the correct one because it asserts the truth: the two realms of authority (personal and political) are fundamentally different in nature but are interrelated. This is an accurate reflection of modern states in the world as it is today. Political authority in modern states is not on loan from private citizens, but is instead a creation of private citizens.

I believe that the two-tier approach to governance strikes the right balance between Simmons's moral ideal of political voluntarism and the fact that modern political authority cannot be the result of a direct transference of rights from the individual to the state. There is no reason to believe that the only politically valuable act that a private citizen can perform is to give his or her consent. The meta-political activities I discuss in Chapter 7 are real things that real people can do in real states; they are the results of rational deliberation and personal choice. Shifting the focus from classical consent and its four stringent requirements, along with its background conditions, to meta-political activity maintains the spirit of voluntarism without succumbing to the obvious problems of consent theory.

Chapter 2: The Lockean Argument from Consent and the Move to Philosophical Anarchism

In many parts of the modern world, including the one in which I type this, the idea that all persons are equally valuable and deserving of equal treatment is taken as obvious and undeniable, and to question this truth is a great social sin, so it is easy to forget that this has not always been the case. In the scope of human history, freedom and equality are relatively new concepts, but they are now central to how we regard ourselves as individuals, at least in more western cultures. Moreover, the value of the individual is the centerpiece of modern political theory, and theorists focus as much (if not more) on individual rights as they do on individual duties and obligations. To deny the centrality of the individual and his rights seems tantamount to denying a fundamental Truth.

It is not my intent in this dissertation to deny the importance of the individual or the existence of rights. It is not my intent to deny that we humans are remarkable creatures with nearly miraculous cognitive abilities, or that our modern world of states is incredible. I do not want to argue that democratic political society is not a worthy goal or that we should accept unjust power when we see it. Rather, the purpose of this dissertation is to examine one philosopher's response to another philosopher's arguments regarding governments, rights, and consent.

I will begin this piece by looking at the political philosophy of John Locke, focusing on his argument that, because of the law of nature, all men are free and equal, and nothing can bind them to obey the power of another person except for their consenting to that power. Then, I will review the response of A. John Simmons to

Locke's arguments, as he concludes that if we stay true to the Lockean spirit of natural freedom and equality, then we are forced to conclude that no real government in the world today (or ever) has legitimate political authority because the citizens of those states do not consent government's exercise of power over them. I sympathize with Simmons's argument, with his devotion to voluntarism, but I will spend most of this dissertation arguing that his conclusion cannot be supported because *political* voluntarism is impossible.

I will start this chapter by placing Locke's arguments in the greater context in which he was writing: that of the Enlightenment. Locke's philosophy, including his political views, was a key part of a whole new way of thinking for western civilization. Its importance is even more brilliant when compared to the thousands of years of history from which it emerged.

Prior to the era of Enlightenment, which lasted from approximately the mid-1600s until the end of the 18th century, western scholarship emphasized hierarchy and pre-determined structure in many realms of study. Science placed the earth at the center of the cosmos according to the superiority of man and God. Religion focused on service and duty to God, faithful adherence to scripture, and the importance of the church as a necessary earthly power. Many social and political attitudes supported the rightful stratification of persons, from kings and lords down to the lowly serf, and many political theorists in particular sought to justify the use of power and force from the higher castes to the lower as a matter of divine right and natural order. As literacy and education

spread and a middle class came into being, though, the old ways of thinking were called into question and ultimately rejected. Knowledge of the natural world grew, and with it grew the importance of the knower.

Enlightenment philosophy and political theory entwined to advance the importance of individual rationality, freedom, and equality. Human reason, argued Enlightenment theorists, is sufficient for understanding the world around us, freeing us from the strict order of the old ways and allowing us humans to be the creators of our own existence. According to these thinkers, the faculty of rationality makes all men morally and practically equal, so it cannot be that one man is naturally the rightful lord of any other.¹ The only way to respect the equality of all persons is to center our actions on the protection of individual freedoms. Individuals are rationally capable of deciding what is in their best interests, and social and political philosophy ought to emphasize the importance of the individual.

Locke's Argument for Consent

It is through the lens of the Enlightenment that we ought to look at the political philosophy of John Locke, especially his *Second Treatise on Civil Government*. Locke's contributions to political philosophy were profound, and continue to serve as the basis of modern liberal philosophy. Writing in a time when English society was in upheaval because of revolution and torn political allegiances, and in response to Robert Filmer's *Patriarcha*, Locke's political work stands out in stark contrast to the nation's previously stalwart monarchism. If we approach the *Second Treatise* as an argument that builds

¹ Despite the progress of Enlightenment philosophy, these concepts of rationality, equality, and freedom typically applied only to men, and usually only men of European heritage.

upon itself, Locke is claiming that, before we can understand political power, “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,” we must look at the individual before he enters into political society.² In the state of nature, all persons are in a state of equality and possess the “perfect freedom to order their actions”³. No one person is the rightful master of any other, and individuals are subject only to the law of nature, whereby one man can exert force over another only when the latter has violated the law of nature. Every man in the state of nature has the right to put a murderer to death, both to punish him for violating the murdered person’s right to life and to serve as a cautionary example to other would-be murderers.

For Locke, the freedom that all men have is grounded in reason, “which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will.”⁴ As our capacity for rationality grows, so does our capacity for freedom and autonomy, but this does not imply that we are born as the rightful subject of any other individual. Our parents, whether by birth or by adoption, are only temporary guardians with temporary powers which they bring upon themselves. We should honor our parents and respect them and be grateful when they rear us well, but Locke argues that this in no way entails the duties of obedience or submission: “these two powers, political and paternal, are so perfectly distinct and separate, and built upon so

² Locke, John. The Second Treatise on Civil Government. Chapter I.3.

³ Ibid, Chapter II.4.

⁴ Ibid, Chapter VI.63.

different foundations, and given to so different ends, that every subject that is a father has as much a paternal power over his children as the prince has over his.”⁵ Furthermore, even though many political systems can trace their roots through history to lower-level fathers and elders, the rightful power of the subsequent rulers comes not from a natural right held by them as fathers but by the ruled sons choosing to continue to accept the rule of their fathers on a larger scale. After all, the fathers had already proven themselves to be good leaders and providers, so the transition from father/elder to ruler only seemed natural.

While individuals possess perfect freedom in the state of nature, we are unlikely to find many people who prefer to remain in that state because of its many dangers and inconveniences; working to make food, shelter, and other needs are difficult and time consuming, and protecting one’s property (including one’s own body) may draw away some of that valuable time and effort. Locke argues that, for as long as man has lived, he has preferred to live in groups to escape the dangers and inconveniences of solitary life. Furthermore, to attain a higher quality of life, man has divided and shared his efforts with others, like making food and building houses. Social life requires the regular sharing of personal power:

a free man makes himself a servant to another by selling him for a certain time the service he undertakes to do in exchange for wages he is to receive; and though this commonly puts him into the family of his master, and under the ordinary discipline thereof, yet it gives the master but a temporary power over him, and no greater than what is contained in the contract between them.⁶

⁵ Ibid, Chapter VI.71.

⁶ Ibid, Chapter VII.85.

Locke argues that, according to the law of nature, we may temporarily lend our powers over ourselves to others, and those others can exercise that power over us only because we have consented to them doing so.

Political society arises only when men quit their natural powers to protect their property and punish offenders and resign that personal power into the hands of the community:

And thus all private judgment of every particular member being excluded, the community comes to be umpire, and by understanding indifferent rules and men authorized by the community for their execution, decides all the differences that may happen between any members of that society concerning any matter of right, and punishes those offences which any member hath committed against the society with such penalties as the law has established.⁷

To receive the protection of his property (including his body) from the group, which can gather more force than any one person, man gives up his personal power to interpret and enforce the law of nature in favor of the creation of the society's executive, judicial, and legislative powers. The content of the commonwealth's laws cannot extend beyond the law of nature or any of the personal powers held by individuals in the state of nature.

The commonwealth comes into being when all individuals consent to form a community that will act as a single body, and the actions of that single body are determined by majority rule. Consenting to the creation of that body politic puts the individual under an obligation to submit to the will of the majority.

At the heart of Locke's argument in favor of giving up one's private powers to a government is the importance of property. Without the known, objective laws and

⁷ Ibid, Chapter VII.87.

authorized judges of the commonwealth, a person's property is no safer than it was in the state of nature. This is why the legislative and adjudicative powers of the society must be derived from the will of the majority – if those powers are not directly taken from the people, then they are in essence arbitrary and unknown, which is *worse* than the state of nature. An unknown power has the potential to unjustly take over an individual's property, his means of survival, and without the protection of one's property (including his body), a person is left utterly defenseless. It is true that we must give up some of our property, especially in the form of taxes, to the governing body so it can carry out its protective mission, but those taxes must be determined by the majority, to which one has the option of consenting.

Governments that do not adhere to the common good and that do not follow the majority will enter a state of war with their citizens. In a state of war, the only real way to combat unauthorized force is with more force, so citizens always maintain the right of a) altering the laws and government whenever the majority deems it necessary, and b) revolting and forming a new government altogether when the majority deems it necessary. Breaking the trust of the majority is breaking the law of nature and so makes the lawmakers deserving of punishment. To ensure that the legislators and executives are always in accord with the will of the majority, government agents need to meet regularly, constantly consult the citizens and adjust aspects of government like proportionate representation when needed. When governments overstep the bounds of the law of nature and the will of the majority, it essentially dissolves itself and loses all its authority.

As Locke noticed, most individuals are born into societies that already have governments in action, but this does not make one obligated to follow that government's

laws simply because of the accident of birth. Even if parents have consented to the rule of the commonwealth, it does not follow that their children inherit their parents' political obligations, "For his son, when a man, being altogether as free as the father, any act of the father can no more give away the liberty of the son than it can of anybody else."⁸ Furthermore, Locke argues that governments do not claim authority over children until they reach the age of reason, and they should not attempt to do so.⁹ Even if parents have a child while away from their own country, that child is not the subject of any country or government unless he consents to such once he reaches maturity.

Regarding what may count as a consenting act, Locke argues that owning property or enjoying the goods and services of a commonwealth count as acts of tacit consent to that society's authority. Whether travelling on a highway for a few hours or owning property to be handed down through one's heirs, enjoying the government's protection and promotion obliges one to obey that government's laws. When one sells his property or otherwise decides to no longer enjoy the state's goods and services, he is free to withdraw his consent and leave the country to either enter another commonwealth or any other association of persons; at this time he is released from his obligations to obey the government's authority.

Also, consent derived from force does not count as a true act of consent, "because whatsoever another gets from me by force, I still retain the right of, and he is obliged presently to restore."¹⁰ According to Locke, any obligation I may be a part of is regulated by the law of nature, which asserts that only my will can bind me. If somebody takes my

⁸ Ibid, Chapter VII.116.

⁹ I do not know if this was actually true during Locke's lifetime, but it is clearly not true now.

¹⁰ Ibid, Chapter XVI.186.

property without my authorization, he enters a state of war with me, and I am allowed to retaliate, and the same is true of one “steals” my consent by force. Even my own government is not allowed to assume my consent, which amounts to taking my consent without my willing it – rather, consent must always be properly given.

When a government’s authority is usurped, whether from without or within, and the citizens are disabled from erecting a new government of their own will, then any consent they might seem to give to the new (illegitimate) authority does not bind them to obey. Consent is valid and accords with the law of nature only if the person has a real option of withholding it. Tyrannical government that allows for no other options, “is rather mockery than relief, and men can never be secure from tyranny if there be no means to escape it till they are perfectly under it.”¹¹ If a person has no choice but to consent, then whatever consent he might give is not a true reflection of his will, as the law of nature demands, but rather a reflection of the enforcer’s will.

Define “Consent”.

Although John Locke’s political philosophy was important and in many ways groundbreaking, it is also sometimes difficult to defend. For instance, his central concept of the law of nature seems to rest on theological conditions that many may not accept; similarly, Locke’s notion of property can come across as queer, especially in the modern world. Therefore, inasmuch as this dissertation is focused at Locke’s argument from consent, it is even more focused on the work of A. John Simmons, a modern Lockean.

¹¹ Ibid, Chapter XIX.220.

Simmons's systematic approach to Locke's political philosophy yields much stronger, more supportable arguments than those made by Locke himself. In terms of writing alone, the clarity and detail provided by Simmons exceeds that of Locke. Most importantly, though, Simmons takes Locke's principles of consent and political voluntarism and follows them as far as logic allows, even if the conclusions may not be desirable. I will go further into Simmons's arguments in the next section, but at this point, his elucidation of key concepts related to political consent is necessary.

Before moving on to examine Simmons' arguments for political voluntarism and philosophical anarchism, I ought to explain the parameters in which Simmons and I understand the term "consent" because I believe that he renders the term much clearer and more concise than it is often used. The Lockean voluntaristic tradition treats consent as the deliberate undertaking of obligations and creation of rightful authority through a particular action. Locke and Simmons both seem to emphasize the usage of consent as a rights-transferring mechanism, even though the act of consent can have other consequences (the creation of an obligation, a show of approval, etc.), and for the purposes of this dissertation, I will maintain that emphasis. The classical consent tradition appears to assert that an act must meet four conditions if it is to count as a proper act of consent, such that it can create rights and obligations: the agent must have the proper intent, the act must be done voluntarily, the act must be accomplished via a sufficient sign, and the consenter must be sufficiently informed.¹²

¹² I only say "appears to" because I have not found any instances of all four requirements being asserted by one person at one time; rather, these requirements are piecemealed from Locke, Simmons, and other sources.

Proper Intent Simmons argues that “an individual cannot become obligated unless he intentionally performs an obligation-generating act with a clear understanding of its significance.”¹³ His emphasis on the proper intent requirement indicates the importance of a consenting act’s maintaining the natural freedom of the individual giving his consent. True consent is never an accident, never the product of misunderstanding; a truly free person’s power can only be shared with another because doing so is his will. If we are born naturally free, then except for those imposed by the law of nature, the only legitimate obligations we can acquire are self-imposed obligations. The proper intent requirement of classical consent theory makes consent stand out from other models of political authority and obligation. Hypothetical consent, for instance, may reflect what an idealized rational agent would do if given the opportunity, but this just seems to be an evaluation of the quality of the government; hypothetical consent ignores the importance of what real agents do in real situations. It is not enough that citizens should or would give their consent, but that they actually do give their consent. Although proper intent is only a mental state of the would-be consenter, one that is not easily measured, Simmons treats this requirement as essential to Lockean voluntarism.

Voluntariness Another requirement of classical consent, voluntariness, may seem to be repeating the proper intent condition, but its inclusion highlights that the agent’s consent not be forced or coerced. The Lockean tradition asserts that individual freedoms are fundamental to proper human existence as given by natural law (unless forfeited by breaking the law of nature and violating the rights of another person), and if a seeming

¹³Simmons, A. John. Moral Principles and Political Obligations. Pg. 64.

act of consent is coerced, then it is not an accurate reflection of the agent's will. No other agent is in a position to obligate us to obey the will of another, yet this is what forced consent does. The two types of forced consent usually focused upon by consent theorists and their detractors are coercion and the possibility of only bad alternatives. For the former, an act of consent that results from the threat of violence (or otherwise making the agent worse off than he was before) cancels any obligation he might assume. Even if only in the agent's mind, his options for not consenting are forcibly curtailed, so any "consent" given is not an accurate reflection of his will. For the latter, if the agent only has bad options to choose from (to be shot or walk the plank, for instance), some argue that whatever choice he makes, he does not assume an obligation because he was "forced" by the situation.

Simmons argues that "it is not possible to be very precise about this condition, but there are at least obvious cases on either side of a very fuzzy line; "consent" which is given under the direct threat of serious physical violence is, for instance, not really consent."¹⁴ Possible acts of consent have to be evaluated on an individual basis, but Simmons argues that, if we want to maintain the voluntariness of the Lockean tradition, then any so-called consent must not prey on the vulnerability of the individual. For instance, if citizens do not want to consent to enter political society and give up some of their individual freedoms, some argue that they can either emigrate to another state or simply remain in a state of nature. Simmons counters that, in most cases, continued residence cannot bind a citizen because both of the above options impose unfairly heavy burdens; remaining alone in a state of nature is practically impossible, and moving to

¹⁴ Ibid., pg. 77.

other territory is unduly costly in terms of time, money, and socialization. The consequences of not being a part of a society are simply too harsh to be voluntarily chosen, so the fact that a citizen stays in his home state may not be an accurate reflection of his desire to take on political obligations and legitimate political authority.

Appropriate and Sufficient Sign The third requirement of classical consent is that any act of consent must be an actual act performed by one individual and received by another for the purpose of entering into an authority relationship. The actions that count as signs of consent are conventional, depending on the circumstances in question, but the key to maintaining the voluntaristic spirit of Lockean consent is that both the giver and recipient know that the act in question is one that transfers authority and creates an obligation. For instance, a subtle nod in a quiet auction may be a sufficient sign of consent, but that same nod may not be sufficient when entering a legal contract.

Both Simmons and Leslie Green argue that, even though a sign's sufficiency is contextual and conventional, there must also be a fitness related to the importance of the obligation taken and power granted. When a potential patient is consenting to a doctor's performing surgery on him, for instance, the interests at stake are too important to be possibly determined by accident. A twitch of the head could easily be misinterpreted as a nod, and a patient's health and safety should not be subject to the possibility of such a misinterpretation; a signed form listing the details of the power transfer is a much more suitable sign of the patient's consent. The weightier the obligation taken on and the power granted, the less controversial and subjective the sign of consent should be.

Simmons also argues quite convincingly that a lack of action can count as a sufficient sign of consent in some circumstances. In his famous boardroom example, when the chairman asks for objections to holding the next meeting at 8:00, a member's not objecting properly counts as an act of tacit consent: the members are given ample opportunity to make their opinions known, so making no objection is an accurate reflection of their wills. When the agent is presented with a clear choice situation and chooses not to act, his tacit consent creates just as strong an obligation as any actively-given consent in a comparable situation.

Sufficient Understanding

The final requirement of classical consent theory is that the agents in questions sufficiently understand the content of the interaction – the consentor must know what rights he is transferring and what obligations he is taking on, and the consentee must be similarly aware of the parameters of the relationship. While no consent theorists claim that both sides be equally knowledgeable about the content (one does not have to be as well educated in medicine as his doctor in order to consent to the doctor's authority), the consentor must be knowledgeable enough to maintain the spirit of voluntarism. Unfortunately, this requirement is the least-covered in the literature on consent theory as it applies to political philosophy, so we cannot directly evaluate the arguments made by Locke or Simmons. However, a brief overview of the importance of informed consent shows that classical consent theory cannot be a coherent position for free people exchanging power and obligations without it.¹⁵

¹⁵ I use the "Informed Consent" entry in the Stanford Encyclopedia of Philosophy as an inspiration for this section. Eyal, Nir. <http://plato.stanford.edu/entries/informed-consent/>

By virtue of the law of nature, all persons are born free and equal, and they grow into rationality with time and experience, according to Locke. It is important that persons be able to choose what they believe to be the correct interpretations of the law of nature and use those interpretations to guide their decisions. When a decision is not sufficiently informed, it could be the case that the missing pertinent information would alter the agent's choice, so any obligation taken or authority given may be ill-founded. Sufficient understanding protects agents from those who might manipulate them or abuse their power; a well-meaning tyrant is still a tyrant. The saying that 'knowledge is power' must be supported by consent theorists. When a would-be consentor is ill-informed, especially if important information is withheld by the would-be consentee, the lack of information is itself a type of coercion. Any consent given is not assuredly an accurate reflection of the agent's rational choice, so it cannot be called voluntary.

Simmons' Edge of Anarchy

Simmons argues that, if we take Locke's arguments to heart and follow them to their logical conclusions, we are forced to conclude that citizens cannot have political obligations and states cannot have the right to rule. Classical consent theory holds enormous intuitive appeal, Simmons argues, and I must agree with him. He claims that "consent (voluntary alienation) is a convincing source of our political ties for both Locke and ourselves, because, more than any other, consent is a clear and uncontroversial ground of special obligation and right-transfer."¹⁶ True consent stands as a protector of

¹⁶Simmons, John. On the Edge of Anarchy. Pg. 73.

the individual from unauthorized force and allows citizens to resist when they are so forced. According to Simmons, it affirms the reality of the individual's natural right of self-government, and although no government can allow complete liberty, consent theory allows governments to come close to embracing the moral importance of individual choice.

The problem with Lockean consent theory, though, is not its intuitive appeal, argues Simmons, but its lack of realism. Since true consent, the kind that fulfills the four requirements above, is so rarely given and the posited alternatives fail to convey the spirit of true consent (more on this below), there are no real acts performed by citizens sufficient to legitimate state authority and obligate individuals to obey the state's directives. Simmons argues that a true Lockean must uphold voluntarism as essential; all persons are born with "natural freedom (i.e., moral freedom from political authority and the de jure authority of others)," and only voluntaristic political theory respects this natural freedom¹⁷. If the political relationship between the individual and state could be rendered voluntary and the acts of governments could truly be the result of a freely-given individual will, then citizens could have political obligations and de jure political authority could exist. However, since the world is currently arranged the way it is, Simmons argues, we are forced to accept philosophical anarchism, the position that citizens have no political obligations and states do not have the right to rule.

¹⁷ Ibid., pg. 260, footnote 93.

definitely includes all instances of clear and deliberate rights-transferring and obligation-taking like promising, contracting, and expressly consenting. However, when it comes to the individual/state relationship, very few individuals ever actively give up rights and take on obligations. Locke must have noticed this, and consent theorists since have also noticed it, so "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."¹⁸ In the *Second Treatise*, Locke seemed to imply that acts like purchasing land and the enjoyment of state services count as acts of tacit consent to the state, obligating persons to obey the state's laws as long as the individual continues owning the land and enjoying the services.

Simmons rightly concludes, though, that no plausible interpretation of tacit consent can include the very passive non-actions listed by Locke. For instance, there is no reason to believe that when a person purchases a parcel of land, he intends that that purchase proves his desire to enter into civil society, authorize the government's power over him, and obligate himself to obey the state's laws. Similarly, nothing about travelling along a highway or drinking clean water can be characterized as an attempt to enter into a consensual, authority-sharing relationship with the government.

If any act or lack thereof is to count as a sign of tacit consent, it must be done with the proper mental attitude: the intent to voluntarily give up one's personal powers to the state and the will to take on a political obligation to obey the law. To say that Locke simply casts too wide a net over a person's actions is charitable, because the argument

¹⁸ Simmons, *Moral Principles and Political Obligations*, pg. 79.

(unintentionally?) implies that all persons are obligated for all of their lives simply because they were born and raised in that state. The too-loose conception of tacit consent winds up undermining the very notion of voluntarism, argues Simmons, because so much of the passive residence and enjoyment of the state would obligate the individual without him ever having the right intent, which runs counter to the notion of natural freedom. If most of the ground of political obligation and state legitimacy rests upon the tacit consent of the governed, and if tacit consent cannot actually obligate citizens and authorize the state's use of power, then it follows for Simmons that few, if any, citizens are obligated to obey their governments, and no states have legitimate authority to rule. We are forced to accept philosophical anarchism.

The Failure of Majority Rule A further problem arises from Locke's dependence on majority rule, according to Simmons. Even if we could work around the failure of tacit consent to a point where all citizens really did meet the four requirements of classical consent, majority rule defeats the spirit of voluntarism. On the model that Locke presents, when individuals want to leave the state of nature, they give their voluntary consent to the new civil society; after that, if the government acts, it does so at the will of the majority of the citizens. Thus, the actions of the government are twice removed from the actions of the individual – the individual authorizes the majority and the majority authorizes the government.

Although Locke is correct that the government, if it is to move as a single body, can only move one direction, it is not obviously correct that the direction ought to be

decided upon by the majority of the citizenry. Majority rule is a useful decision-making convention, but it isn't the only one, and the fact that it is a prevailing convention does not imply that it is the best possible option. For instance, it could be the case that 51% of a population was in favor of doing x, but only mildly so, while the remaining 49% was strongly opposed to doing x. Even though there is a numerical majority in favor of x-ing, there might be much more force of will against x-ing. If this was the case, majority rule might be a less-valuable convention because the technical majority may be different from the majority of spirit.

For Simmons, the failure of Locke's majority rule argument seems to rest on a second, inexplicit act that chooses majority rule as the favored form of governance. After all, that is how all conventions are arrived upon – individuals happen to do the same thing enough, without formal binding, to the point that a large-enough percentage of the population does that thing. Conventions are unintentional features of groups, so there is no reason to believe that they are the products of consenting acts strong enough to bind citizens and legitimize governments. There is no reason to believe that majority rule is the result of a double act of consent by an individual citizen. If most citizens never perform an explicit act of consent to join civil society, then most citizens also never perform a second act of explicit consent to authorize majority rule. Therefore, philosophical anarchism must be accepted because the guiding principle behind a state's authority is not legitimate.

Thesis

Simmons concludes *On the Edge of Anarchy* by presenting the following dilemma: since pure political consent theory fails, a person motivated by the true spirit of Lockean voluntarism must either (a) reject explicit voluntarism as the basis of political obligation and state authority, or (b) accept the truth of philosophical anarchism, that few citizens have political obligations and no states have legitimate authority. For Simmons, (a) is not an acceptable option. He supports the claims that all persons are naturally free, that part of this natural freedom is the right not to be bound by any will other than our own, and that voluntarism is the only theory of obligation and legitimacy that adequately respects individual freedoms.

I believe that Simmons' preference for option (b) is understandable, as there are some situations where classical consent theory is appropriate for evaluating the legitimacy of authority-sharing relationships. Chapter 3 delves into some of the more subtle nuances as to why classical consent theory is consistent with voluntarism, beyond the four traditionally-given requirements. Examination of these further background requirements, along with the traditional requirements themselves, shows that while classical consent theory can be appropriately applied in some situations, it cannot make sense of the individual/state political relationship. Not only are there far more practical problems than Simmons acknowledges (Chapter 4), but citizens are also unable to meet the sufficient understanding requirement (Chapter 5). Furthermore, the political relationship is of a fundamentally different kind than those in which classical consent theory is appropriate, so expecting the political relationship to fit the voluntarist model is wrong-headed (Chapter 6). So, while Simmons' argument for rejecting option (a) is

understandable, doing so is incorrect, which makes philosophical anarchism unnecessary. Chapter 7 is devoted to an alternative way of approaching the individual/state relationship, one that properly deals with the practical, epistemic, and ontological problems of classical consent theory while attempting to maintain some of the original spirit of Lockean voluntarism.

Chapter 2: Robust Consent in Private Relationships

The Lockean argument that, if we are to respect the natural freedom and equality of individuals, voluntarism ought to be the basis of a government's rightful authority, is understandable. Similarly, Simmons's argument that all state authority is bound to be illegitimate because citizens rarely or never give consent, is also understandable, because citizens never really give this kind of consent to their states. As I will argue in this chapter, classical consent theory provides arguments that cohere with an intuitively appealing moral understanding of human independence because they respect and elevate human rationality and equality. However, as I will later argue, the Lockean wrongly try to extend classical consent theory's authorizing powers to an arena that they just do not belong: the individual/state relationship. Actual consent makes sense of authority exchanges in some instances, so it seems reasonable that one would want political authority to rest on such foundations, but these types of relationships are different in very important ways from the public relationship of the citizen and his state. To see why this is so, I will begin by looking at cases where classical consent theory does authorize authority exchanges while maintaining the personal power of the consenter, which I believe to be the moral undercurrent of classical consent theory.

The purpose of this chapter is to explore the finer points of *why* classical consent theory might be a correct yardstick in some power exchanges. I believe that these finer points are assumed in the classical consent theorist's arguments, and that these conditions must be present if the power exchange is to be legitimate. The requirements for the rightful transfer of authority listed in Chapter 2 are all necessary, but they only deal with

the most obvious requirements for properly giving and receiving an individual's personal power. The further underlying conditions that I discuss are, I believe, just as relevant as the obvious ones in legitimating authority exchanges. The fact that classical consent theorists only focus on the superficial requirements explains why they wrongly attempt to apply classical consent to the individual/state relationship and why some come to the conclusion that philosophical anarchy is justified.

4 Examples of Private Relationships

In order to distinguish the individual/state relationship from those relationships whose authority exchanges are legitimated by classical consent, I am calling the former public relationships and the latter, private relationships. The examples of private relationships that I use are boring; they involve normal people interacting in ordinary ways, in a non-political context. I have chosen these examples because they are as uncontroversial as possible; no matter what one's position on liberal natural rights or communitarian ethics is, these examples seem to be coherent and plausible relationships that happen in most of our lives. Power exchanges can be grand or minor, and whichever level they occur on, they shape our lives in profound ways. The first two private relationships are examples of intimate relationships, to use Onora O'Neill's phrase, where the agents are involved in long-standing amicable interaction. The second two private relationships are examples of private economic relationships, and the agents are engaged in impersonal, limited time exchanges. I understand that, given the world as it is now, all persons stand in a political relationship to one another as a matter of fact, but I

consider these relationships private in that we really don't specially reference that political relationship as establishing the grounds of the interaction.

The first relationship is that of good friends Heidi and Betsy. Right now, they want to go see a movie together. Since Heidi does not have a particular movie in mind, and Betsy, the film buff, always has great taste in movies, Heidi tells Betsy to pick the film they will see. Given Betsy's good track record in choosing movies, Heidi decides that she (Heidi) is likely to enjoy whatever Betsy picks, so she won't bother making her own choice. Good friend that she is, Betsy takes into account Heidi's dislike of horror films, and chooses the new alien-invasion blockbuster. The ladies purchase the tickets and go into the theatre.

Heidi's consenting to Betsy's choice of movie has met classical consent theory's basic requirements as well as its spirit. Heidi was not forced to see the new alien-invasion blockbuster. She could have changed her mind, withdrew her consent, after Betsy made the choice if she was afraid that the alien-invasion movie seemed too similar to a horror film for her comfort. Her ticket purchase was made knowingly, free from coercion, and through a clear sign *because* Betsy said that they should see *that* movie. Betsy's authority covers only Heidi's film-watching in this instance; Betsy cannot perform surgery on Heidi or force her to change her shoes if she (Betsy) did not like them. If Heidi quits her job and runs away with the circus, Betsy cannot stop her, and can only attempt to dissuade her. In the movie-watching scenario, Heidi obeys Betsy because doing so "provides...an instrumental justification for accepting another's

determinations as one's own: consenting [is] the best means to achieve an independently specifiable end,"¹⁹ her desire to watch a movie tonight.

Suppose that Heidi changed her mind after agreeing to see whichever movie Betsy chose. Has Heidi performed any wrong by refusing to obey and, if so, would Betsy be allowed to punish Betsy? Most persons would agree that Heidi might be somewhat wrong by withdrawing her agreement, as it could be the case that Betsy rearranged her plans for the evening because she and Heidi were going to go to that movie. This wrong, however, is fairly minor, more inconsiderate than immoral, and while Betsy may be angry and refuse to go to the movies with Heidi in the future, it seems wrong to conclude that Betsy could have a right to *punish* Heidi for her refusal to obey. Betsy cannot force Heidi to pay for any wasted time, and she cannot prevent Heidi from ever going to the movies again.

Another instance of an intimate consenting relationship would be that of husband and wife, Mike and Karen. Assuming their marriage is a typical Western one (not forced, arranged, or the result of a simple business transaction), Mike and Karen have consented to spend their lives together. They share finances, possessions, children, and their bodies (to certain extent), and they plan to do so for the rest of their lives.

Their arrangement covers a wide variety of transactions that are *prima facie* implicitly consensual, like when Karen buys groceries using their joint checking account. Suppose that their 30th wedding anniversary is coming up and Mike asks Karen to pick where they will go to celebrate, seeing as he chose the destination for their 25th

¹⁹Murphy, Mark C. "Surrender of Judgment and the Consent Theory of Political Authority." Pg. 127.

anniversary. Karen knows that Mike wants to go to Australia, but since she is horribly afraid of flying, she chooses Las Vegas because it is within driving distance and offers many exciting activities. Mike is disappointed with her choice, but he tries to enjoy himself. Even though he never said the words “I consent,” there is strong reason to believe that Mike has performed a consenting act, both by asking Karen to pick the destination and by driving to Las Vegas. He knew of her fear of flying and that she might not be willing to travel to Australia, yet he still gave her his consent with the intent of allowing her to pick their anniversary destination.

Despite the extent of their relationship and the fact that they go through many power-sharing acts on a regular basis, their consent to one another’s authority is not all-encompassing or irrevocable. One assaulting the other would still be wrong, even though marriage usually involves partners touching one another without getting explicit consent prior to each touch. If a couple decides to divorce, many of their prior implied consentings (shared money, for instance) are nullified.

What if, when Karen revealed Las Vegas as their destination, Mike gets upset and refuses to go? After all, he did want to go to Australia for their anniversary. Most of us would say that he would be acting wrongly by withdrawing his prior agreement. Mike would be cold and uncaring to expect his desire to visit Australia to be sufficient to override his wife’s absolute fear of flying. However, his poor character in this instance would not give Karen the right to punish him by locking him in a closet or forcing him to give her money – although a few nights on the couch might be called for.

My first example of a private economic relationship is the doctor and patient relationship. Billy wants to have a certain kind of minor, elective surgery, and he hears that Dr. Doug is the best surgeon to meet his needs. Billy meets with Dr. Doug and they discuss Billy's case, including the risks and benefits of having the surgery. Dr. Doug asks Billy, "Are you sure you want to go through with this surgery?" Billy says yes. Dr. Doug asks, "Should I go ahead and book an operating room for such and such a date at such and such a time?" Billy, again, says yes.

I believe that Billy, in this instance, has given his consent to Dr. Doug to perform the elective surgery. Billy's consent meets all of the obvious criteria of classical consent theory: he knowingly (after discussing and reading pamphlets, and perhaps some internet searching; see the section on informed consent in Chapter 2) gives his permission to Dr. Doug through a clear sign (saying yes and then, presumably, signing many, many forms), free of any coercion, with the intent of authorizing Dr. Doug to do the operation. Both sides know that their relationship begins and ends with Billy's medical needs; Dr. Doug will perform the operation and give any other related medical treatment, but he cannot rightfully demand lodging in Billy's home or have any control over Billy's love life. If Billy changes his mind at the last minute and decides to not have the surgery, Dr. Doug cannot force the procedure on him anyway.

Suppose that, despite Dr. Doug's orders to the contrary, Billy plays squash only days after his surgery and rips his stitches. Has Billy committed a moral wrong by refusing to follow Dr. Doug's orders? Most of us would say no, of course not. The only party harmed is Billy himself, even though Billy *ought* to obey Dr. Doug for his own good.

Since Billy is conscious and able to make informed decisions (as opposed to being unconscious and in the emergency room), Dr. Doug has no right to strap Billy to his bed at home and force him to remain inactive, nor may Dr. Doug destroy Billy's prized possessions as punishment. Their relationship is purely economic, and is not bound or defined by any intimate emotional investments. Billy pays Dr. Doug for his medical services, and not for legal advice.

A final private economic relationship to look at is that of an employee, Darren, and the various officials of the company he works for, Hi-Bek Precision Spring Company, Ltd. It is part of Darren's contract that he works forty hours per week in order to qualify for his medical and retirement benefits, and Darren would like to keep his benefits. Suppose that Darren has used up all of his sick leave and vacation time, but he decides to miss work to attend a week-long sporting event. Hi-Bek suspends his benefits because Darren's absence makes him only a part-time employee. When Darren goes to the emergency room because he is injured at the sporting event, his visit is not covered and he is forced to pay the full hospital bill out of pocket.

Although this relationship differs from the previous three because it is between an individual person and a group, the company, classical consent theory is still an appropriate lens to evaluate the authority transfer between Darren and Hi-Bek. Assuming that Darren was not coerced or misled into taking the position, Darren's signing his contract gave Hi-Bek authority over certain areas of Darren's life, including his wages and benefits. Even though Darren is a spring-maker and not a legal expert, he is intelligent enough to understand the details of his contract and the consequences of violating the terms.

If Darren and Hi-Bek’s consenting exchange meets classical consent theory’s conditions, as it seems to, then Darren did consent to having his benefits suspended, albeit indirectly and probably begrudgingly. Darren and Hi-Bek both understand²⁰ that their relationship only goes so far as the terms of the contract; Hi-Bek cannot force Darren to stop enjoying sports and Darren cannot force the spring manufacturer or its executives to re-carpet his house. When Darren refuses to follow the rules of his contract, Hi-Bek can only punish him according to the contract.

Pairing	Relationship	Subject of Authority Transfer
Heidi and Betsy	Best friends	Decision of what movie to watch tonight
Mike and Karen	Married couple	Decision of where to go on anniversary vacation
Billy and Dr. Doug	Patient and Doctor	Power over Billy’s body for elective surgery
Darren and Hi-Bek	Employee and Employer	Power over the payment of Darren’s medical benefits

Fulfilling Classical Consent Theory’s Stated Requirements

To show that classical consent theory is a good indicator of the rightful exchange of authority in some private relationships, such as the four I have just discussed, I want to

²⁰ A group, such as Hi-Bek, can have an “understanding” of something insofar as it is stipulated in the terms of the contract, the group’s constitution, and the executors of those rules. As I will discuss in Chapter 4, even if the information and the human understanding of it are diffused over many different individuals within a group, the coordination of those individuals can make that knowledge cohesive.

start by showing how those authority exchanges fulfill the theory's stated requirements as outlined in Chapter 2. I believe that classical consent theory's fitness as a measure of legitimacy – rightful authority – goes much deeper than these four criteria. Locke, Simmons, and many others are right to value classical consent because of these factors.

Freedom from Coercion None of the consenting acts described before were performed under coercion. While Mike and Darren were faced with difficult choices (Mike gave the decision-making power to his wife even though he knew it would probably entail not going to Australia, and Darren gave up his benefits to attend the sporting event), their duress does not seem to be substantial enough to void their consent. Darren may have to pay large medical bills if he gets hurt, but there was no real need for him to attend the sporting event in the first place. Furthermore, it is a stretch to say that the possibility of future high medical bills could have somehow coerced Darren into working instead of taking off. Mike could just have easily opted to plan a holiday together with his wife, but he instead chose to give the reins to Karen. Betsy did not hold Heidi's cats hostage in order to obtain her consent, and the option to just stay in for the night was equally tenable as going out. Dr. Doug did not threaten Billy's family in order to perform the surgery, and the procedure itself was voluntary and unnecessary, medically speaking.

Sufficient Signs All four of the agents in these examples expressed their consent through sufficient signs, as is required by classical consent theory. The

participants in intimate relationships gave their consent verbally, Darren gave his consent through the signing of a contract, and Billy's consent was expressed both verbally and through a contract. Also, all four of the relationships rely heavily on a Simmons-like notion of tacit consent. Neither Heidi nor Mike withdrew their verbal consents after Betsy and Karen made their respective choices, even though they had ample opportunity to do so, even though those choice opportunities were not formally announced and enforced by Betsy or Karen. Since there were no signs of coercion between the times when Betsy and Karen made their pronouncements and Heidi and Mike obeyed, then both pairs had clear choice situations "when objections or expressions of dissent are invited or clearly appropriate, and the acceptable means of expressing this dissent [is] understood by or made known to the potential consentor."²¹ Similarly, neither Billy nor Darren made attempts to withdraw their consent and sever the economic relationship from Dr. Doug or Hi-Bek before having the surgery and missing work, respectively, when both were possible.

It is also important to note that the signs of consent in these examples fit their respective circumstances. For the informal exchanges between intimates, verbal agreement and tacit consent are enough to transmit the moral weight of the consent and ground the new power exchange. It would be odd indeed for Heidi to express her consent to follow Betsy's movie choice by putting her hand on a bible and swearing a public oath, or if Mike and Karen had a signed and notarized document confirming Mike's agreement to go with Karen's vacation choice. On the other hand, because Billy and Darren's consentings are not between intimates and do involve the exchange of goods and

²¹ Simmons, Moral Principles and Political Obligations, pg. 80.

services. Because abuse of the power transferred could have significant consequences, it is appropriate for them to make their signs of consent more public and official.

In order for the formalization of a compact or other act of consent to occur such that both parties, consentor and recipient, could be aware of and understand its terms, that power transfer could not cover a near-infinite number of rules and technicalities to the point where it would be meaningless to the parties. When Darren took the job at Hi-Bek, he probably got an employee handbook as an addendum to the contract he signed. Even if it is an enormous company, Hi-Bek's handbook cannot be so large that Darren could not possibly understand all of its nuances enough to follow them all (to hold up his end of the contract), or that Hi-Bek's executives could not possibly enforce the rules (to hold up their end of the contract). The forms that Billy files with his doctors cannot be so numerous or complex that Billy is unable to comprehend exactly what he is consenting to. If the power-transferring acts are too complicated, then the sufficient understanding requirement of classical consent theory cannot be satisfied, rendering any act performed by either party null and void.

Sufficient Understanding

This leads us to the third formal reason why classical consent theory is able to legitimate some private authority exchanges: because our consenters have sufficient understanding of what they are getting themselves into by consenting to the others. Presumably, Heidi is aware of plenty of the movies currently in the theaters, and Mike is familiar with Karen's taste in holiday spots. They both know that, by consenting, they are binding themselves to pay the accompanying expenses of

their joint ventures, so when Betsy and Karen make their respective choices, there are no surprises to the consenters. Meeting the sufficient understanding requirement may be more difficult in some private economic exchanges, but Billy and Darren's cases show that doing so is entirely plausible. Darren may not be a legal scholar, and so may not know the nuances of what his employment means as well as Hi-Bek's executives, lawyers, or human resources personnel, but he is intelligent enough to understand the terms of his contract and accompanying employment information. And what's more, there is nothing for him to know that isn't already in the contract; adding a new clause to Darren's contract would require another consenting act. Finally, even though Billy's understanding of the procedure is not nearly as thorough as Dr. Doug's (we should hope that Dr. Doug is more knowledgeable on this account if Billy is not a physician, too), Billy can do research and read Dr. Doug's information brochures to gain sufficient knowledge of the object of his consent. While informed consent is a hotly debated issue in medical ethics, Billy is capable of meeting the generally accepted standards. Part of Dr. Doug's job (the service that he is providing, as well as his moral duty) is to make sure that Billy is cognizant of:

1) The patient's diagnosis, if known; 2) The nature and purpose of a proposed treatment or procedure; 3) The risks and benefits of a proposed treatment or procedure; 4) Alternatives (regardless of their cost or the extent to which the treatment options are covered by health insurance); 5) The risks and benefits of the alternative treatment or procedure; and 6) The risks and benefits of not receiving or undergoing a treatment or procedure.²²

Since Billy's elective procedure is minor and he has done his research prior to coming to Dr. Doug, Billy easily meets the sufficient understanding requirement for classical

²² <http://www.ama-assn.org/ama/pub/category/4608.html>

consent theory's proper transfer of power, and an imbalance of knowledge is not detrimental to Billy's autonomy.

Intentionality Finally, all of our consenters meet classical consent theory's intentionality requirement, which holds that the agent must intend for the act of consenting to bring about a change in power. Given their understanding of the object of consent, the agents give their signs to achieve a change in normative status between themselves and the recipients. Because she wants to make it clear that she is authorizing Betsy's power to make the movie selection, Heidi tells Betsy to make their movie choice; because he wants to make it clear that he wants Karen to decide where they are going on their anniversary vacation, Mike asks Karen to make the choice. Billy and Darren sign their contracts so that, in exchange for the respective surgery and employment, Dr. Doug and Hi-Bek can exercise authority in realms in which they were previously impotent. Because all of our agents are aware of the personal powers they are giving up and because they intend to give up those powers, they perform the appropriate consenting acts.

Classical Consent Theory's Implied Requirements

I believe that the four previous cases show that there are some relationships for which classical consent theory can provide the appropriate standard of evaluating the rightfulness of the authority exchange. In all of these cases, if the agents had not given their consent as dictated by the theory (with the correct intent, sufficiently informed,

through a clear and appropriate sign, and free from coercion), then the respective exercises of power would be illegitimate and immoral. However, I believe that there are further, implied requirements behind these state four. Simmons is right to stick by classical consent theory because it is appealing due to the picture it paints of the individuals involved and their relationship; the agents are special and valuable apart from their usefulness to others, and the relationship is only acceptable when that special value is preserved and supported. If the independence of the individuals and their relationship is to be honored, a richer background of circumstances must be present, beyond the stated four requirements. By exploring these further, implied requirements, we will see why classical consent theory determines the legitimacy of some private power exchanges so well, and – more importantly – why classical consent theory simply does not apply to the public, individual/state relationship.

Pre-Constitutional²³ Autonomy²⁴

I think it is important to begin with the pre-constitutional autonomy of the agents in the relationship, as this differs from the individual/state relationship; one of the traditional problems with consent theory is that we are almost always “born into” our state’s authority, making the possibility of pre-constitutional autonomy untenable. Prior to the consenting event, the parties in private relationships involved had no power-exchange or power-sharing. Their lives (or existences, for companies or groups) were, practically speaking, separate from one

²³ This term is borrowed from James M. Buchanan; the pre-constitutional phase is the time before an authority relationship is established, and the post-constitutional phase is the time after that relationships is established or constituted.

²⁴ For this section and the next, I use the term ‘autonomy’ in a loose, practical manner regarding the independence that the parties have from one another. I have no need to delve into deeper, Kantian ideas about practical reason here.

another. The agents in our examples can be regarded as being autonomous in the pre-constitutional phase, before the authority relationship is established. Much like a Lockean state of nature, it makes sense to say that, with regard to one another, our agents are independent of one another and have no common authority over them *on the matter of these particular exchanges*. Before Heidi consented to Betsy's movie-picking authority, Heidi was autonomous with regard to her movie-picking, along with most²⁵ other aspects of her life. Before Billy consented to Dr. Doug doing his surgery, we can say that he (Billy) had some real authority over what happened to his body. Nobody other than Mike was allowed to make Mike's holiday choices until he asked Karen to do so; in fact, Mike had control over most of his life choices before he married and agreed to share some of his decision-making powers. Our examples show that there may be real rights that can be given up. This point may seem redundant to the supporter of classical consent theory, but it is important to remember. Legitimate authority relationships can be established only where real autonomy and rights have previously existed, and if there is no right to x in the first place, then that right cannot be lent to another person.

To go along with the idea of pre-constitutional autonomy, we should also note that all of the persons and groups in these examples, rational and competent agents, entered their respective *associations* willingly – doing so was not necessary. Billy did not need the surgery to begin with, and even if he did, it could have been the case that he approached another doctor. Heidi did not need to leave her home tonight, to go to the movies, or to be friends with Betsy at all. Mike and Karen did not have to marry; Karen

²⁵ I am purposely shying away from claiming that our agents were 100% autonomous before entering into these specific power-sharing relationships. We presumably enter into many power-sharing relationships throughout our lives, and it is useful to speak of personal independence in these cases.

could have run off with her dance instructor, or they could have decided to remain just friends. Darren could have turned down Hi-Bek's offer and taken the plunge into the world of professional curling. Still, in spite of these 'could haves,' our agents decided to enter into power-exchanging relationships, as we are all bound to do.

The fact that the parties enjoy pre-constitutional independence and then willingly come together effectively eliminates the possibility that their consenting act might be tainted by some original unwilling association. It is not enough that the agents simply be making a freely-chosen decision *right now*. If the relationship is founded with some lack of willingness on the part of one participant, then that might mitigate the willingly-chosen status of the current exchange. For instance, I believe that even though I am a fully-grown adult now, I may not be as able to say 'no' to my parents if they needed something from me, as opposed to somebody else. This mitigated freedom is not necessarily a bad or dangerous thing, but it seems reasonable to argue that their former (benevolent) dominion over me might have impacted my current willingness to do as they wish. In a more negative light, the same could be said for slaves and victims of Stockholm syndrome. Even though a slave may eventually accept his current situation to the point that he consents to do a specific chore, the fact that he did not consent to the relationship in the first place mitigates at least some of the legitimacy of a current consenting act. A hostage or kidnapping victim may eventually develop a positive, empathetic relationship with his captor, but the present willingness of the current situation is undermined by the forced nature of the relationship, to the point where we may not hold a victim of Stockholm syndrome fully accountable if he commits a crime for his captor.

that I have given also highlight another important requirement for legitimate consent: the ability to withdraw one's consent and end the authority that was held over him. Not only do the consenters retain independence over other facets of their lives, but they also retain morally significant authority over the facet of their lives that they "lend" to others. While we expect both sides to commit to the terms of the contract (morally speaking), it is also imperative (morally speaking) that each member of the relationship should be allowed to exit when they wish, if the spirit of voluntarism is to be maintained. The consenter needs to be able to withdraw his consent, and the authoritative body needs to be free to relinquish its authority. Forcing a party to remain in the relationship is tyrannical, "a vain and contradictory convention,"²⁷ and defeats the spirit of classical consent. Billy can decide to find another doctor, or Dr. Doug can decide that he doesn't want Billy as a patient. Assuming that both parties are independent before the consenting event, as classical consent theory requires they be, the purpose of consent is to keep the consenter "as free as he was before" a la Rousseau.²⁸

This should be recognized as more than some moral platitude. For independence to be real and meaningful, withdrawal of consent must be a practical possibility. Properly construed, consent creates only a contingent, default power structure, and consent is to be used for the betterment of the consentee. Handing over bits of personal autonomy is necessary for meaningful survival, but it is odd to think that these bits should be

²⁶ Again, this use of 'autonomy' is only meant to apply to practical independence in our daily activities. I can admit that there is a sense in which we can say that all free and rational persons (not in prison, not having serious mental deficits, etc.) act independently from one another and are thus autonomous. It is useful to talk this way about people, even if I am dubious about any argument that advocates a deeper, more fundamental personal independence.

²⁷ Rousseau, Jean-Jacques, *On the Social Contract*. Book 1.

²⁸ *Ibid.*

permanent. How queer it would be for Heidi to forfeit her movie-watching autonomy for the rest of her life, only to satisfy tonight's interest. Building a meaningful life in civil society (which I believe is the purpose of classical consent as Locke, Rousseau, and others imagined it) means being part of the give and take of authority over oneself while maintaining the importance of the individual agent. Classical consent theory is the appropriate measure of legitimate authority in the examples I have given because those relationships were constructed so that the power-holding was never meant to be permanent. The possibility of withdrawal of consent is practical and *necessary*, for how could Billy continue his life if Dr. Doug had permanent authority over his body?

These private relationships allow for mobility and the possibility of the agents meeting their needs through others. If we maintain the idea that one can enter a consenting relationship and remain as free as before, then the agents must be able to withdraw from their relationships and pursue other avenues in order to meet their interests. As I stated earlier, sufficient understanding in the pre-constitutional phase entails that the consenter needs to be aware of other potential authorities and must be able to pursue those others if desired; the complement to this in the post-constitutional phase entails that the consenter needs to remain aware of other potential authorities and be free to withdraw his original consent and pursue them. The examples of private relationships that I have given are such that, because of the terms of the original consent (that they were not established with the desire that the authority be given over forever), they allow for free migration during the post-constitutional phase.

In all of the cases that I have used, from Billy's surgery to Heidi's movie-watching, classical consent theory is the correct evaluator of legitimate power because the agents have the option of open, regular communication and adaptation. With Billy's and Darren's cases, establishing this would be part of the original constitutional construction. Even if Hi-Bek is a large company whose chief executives are far removed from normal employees, Darren can interact with his immediate executives; it is with them that he signs his contract and makes arrangements for benefits. Because Darren's bosses are rightful executors of Hi-Bek's orders, and because Darren does actually consent with full understanding of his contract, the consenting act legitimates the authority. If he has questions about the nuances of his contract, he is able to ask his manager and get the correct answer so he can avoid breaking the rules. If Darren has problems with his contract, he can raise his grievances with his bosses, who can eventually consult the chief executives, making it possible for Darren to alter the very terms of his original consenting event.

In a similar vein, we can see Mike's consent to Karen's choice of holiday destination as an instance in a larger consenting structure, that of husband and wife. Of course, we expect them to have sufficient knowledge over the contents of their original marriage vows, but the written or spoken words of their ceremony do not begin to cover what married couples consent to. Much of the power that they share over one another is consented to only indirectly or implicitly. Their agreement is more open-ended than economic relationships, and new topics are constantly up for discussion. Mike will buy a new DVD with their common money, Karen will commit them to a dinner party, and yet we do not think that either has committed a wrong by not obtaining express consent in

this instance. Classical consent theory is still the correct basis for their relationship because the very nature of their relationship involves regular, face-to-face contact and communication. They consult with one another on new items of interest, and their commitment to old items of interest is regularly up for renewal. If Karen disapproves of Mike's spending on DVDs, or if Mike has to work late on the night of the dinner party, the disagreements can be instantly registered and adjusted for.

The cases of Darren and Karen and Mike show that for consenting relationships that extend over a period of time, beyond a single exchange, the possibility of communication and adjustment are required if the power exchange is to be legitimate. No relationship exists in a vacuum, so there is bound to be the need to adjust for unforeseen circumstances. Karen may have to break an appointment that Mike made on her behalf, and Hi-Bek may have to call Darren in for an emergency meeting outside of his normal schedule. Therefore, in authority relationships that exist over time, adjustments may have to be made if the parties are to truly remain as free as they were before. The rest of an agent's independence isn't suspended simply because he or she has entered into a single authority-sharing relationship, so that authority-sharing relationship must be flexible if it is to truly respect the agent's freedom in the spirit of voluntarism. The only way to achieve this flexibility is to have open lines of communication. Therefore, communication and the capacity to adjust are implied requirements of classical consent theory.

As all of my examples show, the objects of consent in private relationships are private issues, aspects of what we normally refer to as our ‘private lives’²⁹. Our actions do affect others in the world around us in obvious and not so obvious ways, sometimes with far-reaching consequences, but many of our private interactions are limited by our arm’s reach. Billy’s surgery essentially impacts only Billy and Dr. Doug (and affiliated medical persons) because Billy’s body is a private matter and he is able control what happens to it. Heidi and Betsy are capable of controlling their free time, and their watching the new blockbuster (because of Heidi’s consent to Betsy’s authority) has minimal impact on the world outside of their private lives. I will discuss another, non-private way of looking at these relationships, but for now – and for most aspects of our lives – I can say with confidence that our typical way of regarding one another is as private citizens. My normal, day-to-day actions are not going to be affected by whether or not Darren works at Hi-Bek, since very little of my life has to do with springs, and even if I was truly connected to the spring-making world, it may not matter to me whether it is Darren doing the work or somebody else, as long as I get my springs. If Darren is a stranger and not directly part of my life, whether or not he loses his benefits does not impact what kind of shoes I will buy; the fact that Karen controls the family’s spending is of no direct concern to the world at large, nor are most private authority relationships.

Classical consent theory is the appropriate arbiter of legitimacy in these relationships because all of the units of authority up for transfer are, in an important way of speaking, under the purview of private persons. I can only give to another my power

²⁹ As mentioned earlier, I use ‘private’ as a useful shorthand to mean not political, something that is not generally evaluated as part of a greater system.

over x when I actually have power over x to begin with. You can only have my authority over x when I give it to you and you are capable of exercising that authority. So, classical consent theory requires that the object of consent be a finite, specific right that is definitely held by one agent and that can be fully and properly transferred to another agent.

Self-Legislated and Adjudicating Because many relationships *can* be viewed as private affairs concerned with private matters, there is a strong sense in which the agents are their own rule-makers and judges. When it comes to tonight's movie watching, the only relevant decision-making participants are Heidi and Betsy; if Heidi does not approve of Betsy's film choice, she will only air her grievance with Betsy herself. If Mike does not want to go to Las Vegas for his wedding anniversary, it is up to Karen and him to settle the dispute. Especially between intimates, it is normal and useful to view the agents themselves as the only and final legislators and arbiters. It would be odd if Betsy looked to Vincent for back-up in trying to enforce her authority over tonight's movie-watching. Since he was not part of the original constitution of this private authority relationship, Vincent does not have any say-so, and because it is proper to regard Heidi and Betsy as autonomous in this situation, Vincent's opinions have no standing. If Heidi and Betsy had appointed Vincent as their arbiter in the pre-constitutional phase (they asked and he willingly accepted), he would have the authority to settle the dispute in that case, but only in virtue of the ladies asking him to be, and not because of any pre-existing movie-watching authority of his own. Similarly, Mike and Karen may agree to appoint a third-party arbiter to settle their dispute (which is,

apparently, the basis for NBC's show, *The Marriage Ref*), but any power that that third party had exists only because Karen and Mike transferred that bit of their own autonomy to him or her.

In private business matters, it is not as obvious that the consenter and consentee are the only relevant agents in the authority relationship, but I believe that we can say they are most of the time. *Most* disputes between employer and employee are settled by those two parties alone, and as long as they keep the matter between themselves (and possibly their respective lawyers), they are their own arbiters. If Darren does miss work to go to the sporting event and loses his benefits, Hi-Bek is the sole enforcer of this loss. If Darren objects to losing his benefits, he will take the issue up with the company itself; having courts intervene in the matter is not the norm, and when this does happen, the rules of the game change – a different, *public* authority becomes a player. Throughout the process, both parties have the option on severing the authority relationship, withdrawing consent.

Classical consent theory implicitly requires that the agents' authority relationship be self-contained if both parties are to remain as free as before. By being the only relevant parties in the constitutional process, the agents can make rules that they both deem appropriate, keeping them on an even level. No other types of power are involved than those chosen by the participants, so we can be sure that any exchanges made are the sole result of the free agents. If some third-party, outside authority becomes involved in the constitution and maintenance of the relationship, imposing restrictions not chose by the participants, then the original agents lose some of their relevant autonomy, fundamentally changing any authority relationship established.

Classical consent theory presents a compelling and inspiring picture of human nature and human interaction, and I believe this is the reason that Simmons supports it to the point of philosophical anarchism. The theory requires that the agents involved be rational and autonomous, capable of managing their life affairs. It demands that participants be treated as independent and valuable, apart from their usefulness to others. It maintains that the rights of a person are inviolable and that power can be exercised over him only when he allows it. The idea of human freedom is no trivial matter, so I understand why Simmons holds so strongly to classical consent theory.

Furthermore, because I acknowledge that personal value and autonomy may be real, I wanted to find situations where classical consent theory and all of its requirements is the appropriate measure of legitimate authority. For the examples I provided, I believe that classical consent correctly evaluates the rightness of one person's power over another. However, we cannot simply evaluate, for any given situation, whether the four basic requirements are fulfilled in a vacuum. Context matters, and I believe that the background conditions I have given are essential to considering the legitimacy of an authority exchange. Classical consent theory requires more of agents and their situations than the four stated conditions (freedom from coercion, sufficient understanding, right intent, and sufficient sign) if it is to be coherent – it requires that the agents and their interactions conform to a certain worldview. We must be able to show that the agents are autonomous in substantive ways, exercising real power over the facets of their lives that are up for trade. In scenarios where people can have real autonomy, in a manner of speaking, I agree with the Lockean that they should have real autonomy, and attempts to

impinge on that personal power are wrong unless they are authorized by the person in question.

I believe that my divergence from Simmons begins with my consideration of a greater consenting context. To disregard the real choosing situations that agents are in, I think, makes real consent start to look like hypothetical consent, which is nothing more than a thought experiment with no authorizing power. Freedom cannot exist in a vacuum, or in name only. Freedom has value only in situations where can truly be exercised. As I will go on to argue in the next chapters, just because we have freedom in one aspect of our lives, we cannot automatically assume that we have freedom in other or all aspects of our lives. Just because we think we should have some kind of power doesn't mean that we really do have that kind of power. I believe that Simmons conflates different types of personal power into a single thing called 'freedom'. By assuming that this one 'freedom' exists and is inviolable and can only be transferred by classical consent, he wrongly concludes that state authority over individuals cannot be justified because we do not, in fact, give our personal authority up to be governed.

Chapter 4: Functions of the State

And the Practical Failures of Classical Consent Theory in Public Relationships

In order to understand the several reasons why classical consent theory cannot be the basis of state authority by grounding the power exchange between the individual and state, we must first understand the areas of life over which states claim and exercise authority. The acts of state power, the authoritative acts that it performs on or in conjunction with the individual, will be the objects of any possible consent. In order for the individual citizen to even consider giving consent, he must sufficiently understand what powers he is consenting to, form the right intent to authorize the state's power over him, and then give that consent through a sufficient outward sign whilst free from coercion.

I will be starting with the minimum realms of power needed to constitute a state authority, and show that these realms can entail much more extensive exercises of power than Hobbes, Locke or any classical liberal may have considered. I will show that, in order to exist at all in a form we can reasonably call a state (and not any other private group, large or small), the state must have the *possibility* of exercising power over multiple facets of individual citizens' lives, beyond the minimal realms assumed by the liberal tradition.

From here on out, we must keep in the back of our minds the idea of the *political* relationship – the exercise of legitimate political authority over multiple areas of a person's life – as the potential object of consent. In later chapters, I will argue that political authority is of a fundamentally different kind than private interpersonal

authority, so one cannot be derived from the other, but for now, I want to mention that I find it interesting and, truthfully, telling that more of the attention of modern political philosophers has been paid to the justification of state power over individuals, than to the justification of private authority between individuals. Hobbes begins *Leviathan* with a treatise on the nature of man, and this soon develops into a work on man's necessary interactions; all is private and there is no public. From there, however, Hobbes arrives at the need, not just for private arbitration in private disputes, but at the need for "a common Power to keep them all in awe."³⁰ Given that individuals cannot rightfully be subject to the power of another (because there are no rights in a state of nature),

Before the names of Just, and Unjust can have place, there must be some coercive Power, to compell men equally to the performance of their Covenants, but the terrour of some punishment, greater than the benefit they expect by the breach of their Covenant.³¹

In the state of 'warre', private interpersonal power exchanges are bound to occur, but the invention of the commonwealth is necessary to control these previously-interpersonal power exchanges and bring about peace. Similarly, Locke argues that it is not "every compact that puts an end to the state of Nature between men, but only this one of agreement together mutually to enter into one community, and make one body *politic*."³² The Law of Nature (which governs private interaction) is, I believe, treated somewhat superficially, especially given how integral it is to the entirety of Locke's argument. Some private interpersonal authority has one set of rules, those that can and should be legitimated by classical consent theory, as discussed in the previous chapter, but I will

³⁰Hobbes, Thomas. *Leviathan*. Ch. XII.8.

³¹Ibid, Ch. XV.3.

³²Locke, *Second Treatise on Civil Government*, Ch. II.14, emphasis added.

argue that an entirely new and different kind of authority is created by entering into political society, and that this new authority cannot and should not be legitimated by classical consent. I mention this now because, as we begin discussing how classical consent theory's demands aren't met in public relationships, we should notice that these failures do not arise simply because of inconvenience, but because of a deeper rift.

For the first parts of this chapter, I will be outlining the minimum areas over which states can rightfully exercise power, according to classical consent theorists (and I cannot help but agree). If the state is to really exist at all and perform the desired services (the most basic of which are detailed below), then rational, previously free and private persons will come together and mutually agree to lend (or permanently give, for Hobbes) their personal rights to self-protection over to another entity, says the story. This other entity will use the lent rights to protect the individuals, gaining force from numbers and legitimacy from the consent of the lenders. After outlining these most basic realms of rightful state authority, I will then go on to argue that, if we are right about the basics, then several more realms of rightful state authority may be implied, beyond those few desired by the liberal minimalist.

The Minimum Realms of State Authority

Security of Persons and Possessions According to early consent theory, the primary reason for individuals joining together and creating a state has been for mutual security of persons and possessions. Whether we approach the pre-state scene as Hobbes³³ did, as an ever-present threat of war of all against all³⁴, or as Locke did, as a

³³ I do include Hobbes here as an early consent theorist, even if he would not think of himself as such. See Hampton for an explanation of alienation consent.

simple lack of assurance of security for an individual's body and the products of his labor³⁵, persons are motivated to leave the state of nature and give up their "swords" to a powerful, common authoritative body. Even if one does not support the story of the emergence from a state of nature as a historical truth, the fact remains that one of the primary purposes of the state is to provide security for its citizens.

There is not an infinitely large amount of goods, and people cannot always get what they want. Where there is a scarcity of resources (an inevitability of earthly living), disagreements over ownership may occur; from that comes arguments and stealing, and from these conflict. Persons will try to form mutual security bands, so those who want protection from those who would harm them and their possessions can join with like-minded individuals and agree to contribute monies to a security force for them all to share. Therefore, one of the primary or 'original' rightful realms of state authority is that of protection over persons and objects, via force if necessary. This is likely to include a police force for protection between the state's citizens, and a military force for the protection of citizens from outside threats.

Adjudication of Disputes As Nozick argues, in "states" that consist of only minimalist police protection, there is still the chance of conflict between members of private cadres and between members of competing cadres. Hopefully impartial judges, preferably external to the groups³⁶, can be appointed by group members to settle conflicts; still, there is no assurance that disputes will be settled and judges will be effective. Who is correct, my judge or yours? Even if yours is correct, why should I

³⁴ Ibid, pg. 185.

³⁵ Locke, Second Treatise on Civil Government, Ch. III.18.

³⁶ Buchanan, James M. The Limits of Liberty. Pg. 67.

abide by his decisions? Mutual protection associations will combine to form even more powerful groups, but the problems of enforcement and adjudication remain. Therefore, even a minimal state requires a judicial system with the authority to settle disputes and, hopefully, prevent further aggression between individuals and groups.

Presumably what drives people to use [a] state's system of justice is the issue of ultimate enforcement. Only the state can enforce a judgment against the will of one of the parties. For the state does not *allow* anyone else to enforce another system's judgment. So in any dispute in which both parties cannot agree upon a method of settlement, or in any dispute in which one party does not trust another to abide by the decision (if the other contracts to forfeit something of enormous value if he doesn't abide by the decision, by what agency is *that* contract to be enforced?), the parties who wish their claims put into effect will have no recourse permitted by the state's legal system other than to use that very legal system.³⁷

The Extension of Authority over State Territory

Even though persons may form mutual protection associations and voluntarily pay for their services, and even though these associations may grow to be very large, a state does not emerge until the enforcing body takes on the characteristics of a final, singular entity, culminating in what we now call a state. According to Morris, the modern state (as opposed to earlier forms of political organization) is partially delineated by its territory, "with relatively unambiguous geographic boundaries," which distinguish it from other political entities.³⁸ Because of this geographic component, all citizens are equally protected by the state's political powers, as opposed to private protection schemes, where only those who voluntarily contribute receive the protective services. Territoriality is not a necessary component of political existence per se, but this is how the modern world has worked out, and there are real advantages to citizenship being determined by location. When millions

³⁷Nozick, Robert. Anarchy, State, and Utopia. Pg. 14.

³⁸Morris, Christopher W. An Essay on the Modern State. Pg. 172.

or billions of people are involved, states determining and confirming the citizenship of every individual with one another is bound to be unreasonably complex and time-consuming, whereas determining citizenship by location eliminates conflicts of allegiance and unnecessarily complicated factors (lineage, for example).

Punishments and Incentives Because of the need for security and the adjudication of disputes, we have a justification for the most minimal state, consisting at least of protective, legislative, and adjudicative bodies. However, true social stability requires a proactive stance, and the state alone has the capacity to make laws and punish offenders in a socially effective way, according to early consent theorists. As the ultimate power-of-protection holder, the state can carry out punishments in an impersonal manner, as retribution, whereas both individuals and members of voluntary mutual protective schemes are more susceptible to personalized revenge. The retribution carried out by the state is in response to a wrong done to the whole society, and not just to the particular aggrieved parties. The state also has the unique capacity of formalized, impersonal deterrence punishment, of taking steps (making laws, providing incentives and disincentives, etc.) to change a would-be criminal's reasons for action. Individuals and members of voluntary but private mutual protection associations can provide disincentives and the like, but the cost of doing so can be too much to take on, whereas the state has the power to take on this burden for the benefit of all of its citizens.³⁹

To sum up, the minimal state rightfully protects individuals from those that would harm them in the form of police force, and makes laws to prevent future conflicts via

³⁹ Nozick, Anarchy, State, and Utopia, Ch. 4.

judicial and legislative systems.⁴⁰ Also possibly necessary are a military force and an internationally-oriented government, to prevent similar conflicts from outside. If a state is to exist at all, and not fall into anarchy, then these protection systems must function minimally well at the disposal of the state. And, if all of this is true, then the state must have the ability to assert power over its citizens to potentially a) stop them from harming one another via physical restraint or other punitive measures, b) take some monies in the form of taxes to support the protection systems, c) strongly discourage future wrongdoings via sanctions and disincentives, and possibly d) draft individuals into protective services.⁴¹ Therefore, the objects of possible political consent are both to the state exercising power in these domains over individuals and to the individual giving up any rights he might have had to self-protection and retribution.

Some libertarians/classic liberals will argue that these are the *only* justifiable political powers, that power exercised by the state over other areas of life is naturally at odds with individual freedoms, and that that state's authority, therefore, is illegitimate. Because the liberal's central concern is protection from the violation of personal rights, the sole reason for having a state is just the protection of those rights, for persons to work together and protect one another. Any other power held by the state is bound to infringe upon some citizen's personal rights, and is therefore unjustifiable. From this come ideas like laissez-faire economics and the privatization of education and other social programs. Since the education (or lack thereof) of another individual, for example, poses no immediate threat to my body or possessions, then forcing me to pay for his education amounts to stealing from me (through taxes) without protecting me – I am less free than I

⁴⁰ Locke, Second Treatise on Civil Government, Ch. VII.88.

⁴¹ Ibid, pg. 8.

was before. Libertarian ethics and social theory make strong arguments for the importance of independence and valuing the individual agent, so I understand some of the theory's allure, and there are obvious theoretical ties to support for full consent forming the basis of legitimate state authority. If it is truly the case that any kind of power can only be exercised over me when I consent to it, and if I do not consent to any other authority than that which protects me from immediate danger from others, then it is reasonable to conclude that any force exercised over me without my consent harms me and violates my personal freedoms.

Minimal states are merely protective from direct threats, but many of the dangers of modern life come at us indirectly, through less-obvious methods. The supporter of the minimal state seems to boil down all threats worth preventing to acts of force and coercion, which would make governments exist for mainly coercive purposes (laws to punish offenders, laws to threaten would-be offenders, etc.). This is short-sighted. Perhaps it harkens back to a simpler time, when social and political groups were smaller and people just performed fewer activities than they do today, but as the world becomes more complicated and interconnected, the impacts of our actions can reach much farther than we could ever imagine. Private citizens are simply not equipped to understand this or deal with this interconnectedness and all it entails, whereas states are in a position to see a bigger picture and operate on a larger scale. While a loner, independent type of existence may be logically possible (as in not involving a logical contradiction), an overwhelming majority of the world's population lives and have lived with others in communities and larger social structures. Conflicts between individuals need not be

intentional in order to pose threats to persons and possessions. People may desire to work pleasantly with others, but conflicts and confusion are going to occur anyway. On a more nuanced interpretation, the protective function of the state will also be concerned with coordination of behaviors – and even more so than with coercion and direct threats. The coordination of citizen behaviors not only allows for greater protection but allows society to be productive. Therefore, if the minimal, protective state is justified, then the more robust, productive, and forward-thinking state must also be acceptable.

The Modern Productive State

The following areas of potential political authority are implications of the original area of authority – protection. If we accept that a protective state’s authority can be justified, and I think we should, then many more realms of authority seem just as justified when we really explore what “protective” means. There are so many ways that people can harm one another, accidentally and on purpose, directly and indirectly, so minimal states that focus only on preventing direct, purposeful harm are neglecting the nuances of what it really means to be protective.

Public Agenda Creation Supporters of minimal state authority seem to interpret “harm” somewhat narrowly, but the interconnectedness of modern society, both within states and internationally, has created a world where “harm” must be interpreted much more broadly. While it is obvious that attempting to murder a person involves harm and the attempt to directly violate a person’s rights, other possible types of harms are so indirect and covert (whether intentional or not) as to seem invisible. For instance,

minimal state functioning may also rightfully include security and development to common areas and resources under the heading of providing for common protection. A state must be able to, when necessary, stabilize and secure the common lands and resources from which citizens draw their personal wealth in order to protect individual citizens. For example, a manufacturing company may not be directly interested in or planning on harming the environment in which their factory is located, but sometimes toxic chemicals are the byproduct of manufacturing practices. If they dump destructive chemicals into public waterways, then local fishermen might lose their livelihood because the fish they harvest have become contaminated. If the state ought to have the authority to prevent robbing a businessman at gunpoint, then it follows that it ought to have the authority to prevent robbing a fisherman by destroying his fishing grounds.

Similarly, the state must have the option of exerting some control over public health and other areas of safety in order to prevent harm to individual citizens. For instance, a chicken farmer may not have the intention of harming the general public (of human citizens) while running his farm, but the unintentional impacts of chicken farming can severely harm people: our kind farmer can destroy the land and waterways that all citizens depend on, and his neighbors can have adverse reactions to the fumes and pollution. If the state ought to have the authority to prevent somebody from poisoning a person with cyanide, then it follows that the state also ought to have the authority to prevent somebody poisoning another with ammonia; although one is intentional and the other is not, they can both be injurious.

Related to this is the issue of the state's need to be involved in public health. For better or worse, much of the world's population lives in densely inhabited areas, and

when one individual gets ill, he might spread that illness to others simply by proximity. Since many illnesses can be spread before the carrier is showing any symptoms, a person that wants to prevent the spread of illness can still infect others without ever meaning to. While I have a strong immune system and can survive the flu, an elderly or immunocompromised person may be killed by that disease. Even though some will make the argument that all individuals have the right not to have certain actions forced upon their bodies, an equally strong argument can be made that we must sometimes force citizens to be vaccinated against infectious diseases for a greater good. Because the health and well-being of individual citizens can be determined by other individual citizens, and because the state has an interest in protecting its citizens from harm and preventing future harm, it follows that public health is a proper realm of potential state authority.

Therefore, if a rightful arena of state authority is protecting individuals from harm by their fellow citizens, and if it is true that harm can come in many shapes and forms, both direct and indirect, intentional and unintentional, altruistic and malevolent, then it follows that many areas of common, public interest are also rightful arenas of state authority. This includes allowing for the powers of legislation, punishments, sanctions and disincentives, and other punitive measures for (potential or actual) violators.

Economics and Social Welfare If it is the case that the protection of citizens is the proper realm of state authority, then we can conclude that the state might need to wield power over some economic arenas. Although these will vary between states based on their individual needs, governments may need to help ensure the stability of markets and

security of means of economic existence. Individuals can cause great harm to others indirectly by damaging how people make their livelihood. The modern world is highly interconnected, economically, and much more complex and far-reaching than, say, Locke's time. Even if the connections are not intentional, the economic activities of a person can have a significant impact in the lives of others. As has been proven many times in recent history, one person or company's economic improprieties can devastate many lives – think of the global effects brought about by Bernie Madoff and AIG.

Although many modern libertarians argue that government interference in economic and business matters encroaches on the personal liberties of some and causes harm (and I can appreciate this as at least plausible in some respects), we know from experience that economic and business matters can also cause great harm. Even if it was the case that all persons and businesses were altruistic and never meant to harm others, the far-reaching consequences of modern economics cannot necessarily be seen or understood and prevented by those persons and businesses. States have a much better vantage point from which to evaluate economic activities, and to protect the lives and livelihoods of citizens, it is often the case that states must interfere with their economies. Given limited resources and the imbalances of power and property, persons can easily exert profound control (good or bad) over others. This poses risks both to the individuals directly affected, and to the society at large; if enough persons lose security over their possessions due to market forces, large scale social unrest is likely to occur.

Along these lines, the state must have the option of regulating social welfare programs⁴² and the distribution of resources for the protection of citizens from harm.

⁴² In a loose sense; I'm using the term to denote any program whose aim is the restructuring of persons and goods, not only those that benefit the least well-off.

Whether or not these programs and plans will benefit the least well-off, the market forces and the means of production influence who will have what. If the peace and security of the public is endangered, the state may need to distribute resources so that the above mentioned concerns (public health, transportation, environment, public safety, and crime prevention) can be satisfied and individual citizens can be protected. If people are so dissatisfied with their lots that they pose a threat to others, the state may need to act to prevent the threats from escalating. Although the nuances of this are not my concern here, the state has a profound interest in social and economic stability. If gross harms or injustices occur, civil unrest is likely to follow, and this leads us back to the basic, direct threats of direct harm to persons and possessions. Therefore, the state may need to exercise power over citizens by controlling a) the manner in which they conduct their business affairs (laws restricting business behaviors and punishments for violators), b) the value of their services and products, and c) their wealth (redistribution of monies for social welfare programs and other measures).

Education Another potential realm of state authority is both a public and private matter – the education of citizens. J. Buchanan and Morris do not mention this, but I believe that education is one of the most important components of a society's well-being, since it is a determining factor in all other components of that well-being. Especially in this increasingly connected world, the dissemination of information is becoming more and more possible, and the education of citizens has a profound impact on the state of the state. Whether they provide free education to all citizens outright, impose guidelines and requirements for private individuals and groups to follow, or something else altogether,

states have an interest in what knowledge their citizens have. A decent education leads to greater individual, personal success (financially and socially), reducing the need for social welfare programs, redistribution of wealth, and coercive law enforcement.⁴³

Increased citizen education reduces personal and social threats of all kinds, and so should be looked at as a public safety concern. Since this is the case, the state has very good reasons to exercise some power over what its citizens know.

From the power of “the sword” of the commonwealth and a more detailed understanding of “harm”, many other equally important realms of state authority can be derived. These are, at minimum, the domain of interaction between individuals and the state. All of this can be derived from a classical liberal point of view: if the state is to exist at all and provide security to its citizens, it must have the option to exercise power in these realms because they all involve aspects of life where persons can seriously harm one another. If consent by the individual to the state is to be possible, then all of these powers may be the possible content of consent. If the individual citizen could want to enter into a binding relationship with the state, he must intend to possibly authorize all of these things, and must show his consent to all of these items through a sufficient outward sign.

⁴³ Greater education is a proven crime deterrent, so the need for law enforcement and crime prevention goes down as education levels go up.

The Composition of the Modern Productive State

The type of state that is being discussed here is a modern, Weber-ian entity that is definite and distinct in its territory.⁴⁴ Today, if we want to find a particular state, we look at a map or atlas, and we will see that it is delineated from all other states by political markings. We can point to China on a map, and see that it is bordered by Mongolia, North Korea, Kazakhstan, Nepal, Burma/Myanmar, and so on. If a person is in China, then he is not in those states, nor is he anywhere else in the world. The modern world is lain out so that essentially all of the world's land is claimed by some state or other. The modern state's power is also highly centralized and exercised top-down over its citizens, where the state executives exercise more political authority than local leaders.⁴⁵ Furthermore, as the previous argument concludes, the contents of state authority can cover multiple aspects of life while still keeping within the protective mission. A productive state's realm of authority, then, involves massive, large-scale coordination of behaviors; the number of citizens per state multiplied by the number of state power applications will result in a very large to-do list for each state.

Who is to do the acting on the state's behalf? A government, and one that is bound to be made up of only a tiny percentage of the citizenry.⁴⁶ Despite pure direct democracy's theoretical allure, where each individual could directly participate in the creation and enforcement of the laws to which he is subject without the need for representation, the cost of having each person directly contributing to each political

⁴⁴ Morris, An Essay on the Modern State, pg. 45.

⁴⁵ At this point, I am just stating the way the modern world has turned out, and am not making any claims about the rightness or wrongness of territoriality or top-down authority. While I acknowledge that a lot of governance at the local or tribal level still exists, this does not change the fact that modern states still claim political power over these local entities.

⁴⁶Bodley, John H. The Power of Scale. Bodley argues that as population size increases, the ratio of rulers to citizens drops by orders of degree.

decision is much too high to be practicable. Even more minimalist states are bound to have hundreds or thousands of laws covering all of the areas of potential authority, and having all citizens be part of the creation, enactment, and execution of those laws would demand more time for each person than is even possible. Therefore, each state must find an acceptable balance of representation, a ruler to ruled ratio, if it is even to be useful. My point here is not to argue in support of one form of government or another, but merely to point out that the wills of individual citizens can rarely be directly related to the production of the laws of their states because of sheer impracticality: if it is true that a) there are many citizens per state (thousands, millions, or billions), b) high transaction costs prohibit direct democracy on the state level, and c) laws are made (written) and executed by real persons, then it follows by necessity that most to all of the laws that apply to us are not made by us. Elected or not, rulers are rulers, and citizens are subjects; it cannot be case that all people are rulers.⁴⁷

The laws of states are usually the product of the wide discretionary powers of bureaucratic personnel⁴⁸; taking into account all of the wishes of all citizens would be almost as impractical and time-consuming as direct democracy itself. Also, state laws have the potential to be at least in part accidental and arbitrary⁴⁹. For instance, American law mandates people drive on the right side of the roadway not because it is the morally worthy thing to do or because it was directly decided by the state's people, but because somebody along the way enacted a law. Even if many Americans were driving on the right side of the road due to convention before the law, conventions are by their nature

⁴⁷Hampton, Jean. Political Philosophy. Pg. 97. The term 'ruler,' as Hampton uses it, is value-neutral – a ruler is a maker of rules.

⁴⁸ J. Buchanan, The Limits of Liberty, pg. 100.

⁴⁹ Ibid, pg. 9, 14.

informal and arise in a variety of ways, whereas the enacting of the law for right side driving came to be for its own social reason: the solving of a social coordination problem.

Although I will discuss this more in depth later, the point I want to draw attention to is that the potential content of political consent may (and probably will) be something wholly unrelated to or derived from the individual citizen in will or design. This imbalance of power does not necessarily arise because the ruler(s) think(s) that the individual citizen is unimportant and not worth considering, but rather because rulers of states have so many citizens to consider, that any act or legislation done cannot take the citizens into account. The costs of decision making and the disproportionate relationship between rulers and ruled ensure this.

Apart from moral considerations, governmental bureaucracy is an especially useful solution for large-scale coordination problems. I say ‘apart from moral considerations’ because I believe that the justification for a government’s existence is a separate issue from our evaluations of the quality of its execution. Abuses of power and over- or under-centralization concern our moral assessments of already existing governments (their *legitimacy*), but do not necessarily cancel out the need for state authority. State bureaucracy makes possible cooperative interaction on a much larger scale than almost any private organization:

Government is a *productive process*, one that ideally enables the community of persons to increase their overall levels of economic well-being, to shift toward the efficiency frontier. Only through governmental-collective processes can individuals secure the net benefits of goods and services that are characterized by extreme jointness efficiencies and by extreme nonexcludability, goods and services that would tend to be provided suboptimally or not at all in the absence of collective-governmental action.⁵⁰

⁵⁰ Ibid, pg. 97.

The existence of state authority (which will be exercised by a government) can be justified because it fulfills public needs, like protection from harm in its many forms, and probably does it better than any private (voluntarily opted-into) organizations, but this comes at the “cost”⁵¹ of individual input and direct governance. This becomes even truer as the collective good becomes larger. If consent could ever be given to the modern state as it is, then the potential content of consent will be a multitude of laws which the individual citizen was never involved in creating.

The Practical Failures of Classical Consent Theory in Public Relationships

Now that I have hopefully made clear what possible realms of state authority exist and why they need to be that way, I will now cover the reasons why the public individual/state relationship cannot meet classical consent theory’s requirements. The first set of concerns, to be covered in this chapter, are practical, beyond those put forth by Simmons and other philosophical anarchists; the very structure of the modern state and the public relationship prevents the two parties from giving and receiving real consent. The second set of issues, to be covered in the next chapter, is epistemic; neither agent in the public relationship is capable of being in the cognitive state required by classical consent theory. The final set, to be covered in Chapter 6, is ontological; the nature of political authority is not of the right type to be legitimated by consent. I contend that Simmons addresses only superficial practical concerns, and does not do so with adequate consideration of their complexity, and furthermore, the practical concerns are the least interesting, least important ones. The individual/state authority relationship, the possible

⁵¹ I do not think that this cost really exists to begin with, as I will discuss later; for now, the scare quotes will have to do.

subject of individual consent, needs to be evaluated on its own, proper terms, and the classical consent tradition has not done this. I believe that, when we look at just the four basic requirements, consent should be viewed as an interactive process – a two-way street, with both parties impacting the content of the would-be consent. The sufficient sign requirement, especially, specifies that there be an aware recipient of a persons' consent; if the recipient is not engaged in the consenting process, then an appropriate sign would not be needed. Simmons, however, seems to regard consent as only a one-sided operation, the act of an agent *at* another agent.

State Agency The first practical reason why classical consent theory cannot apply to public relationships has to do with the agency of the state and the individual. As we saw in the discussion of private relationships, consenting acts take place between two distinct bodies. Billy, clearly an individual, consented to Dr. Doug, also clearly an individual. Each was acting as his own agent; each represented himself and his interests during the consenting act. When we look at the individual/state interaction, though, specifying each agent is not as easy. An individual may act publicly on his own behalf, representing his own public interests, but he doesn't always do this. He is also part of a family and a community; he is a father, son, neighbor, and business rival. While each person does not always act only with the best interest of the entire community in mind, he doesn't only act with his own best interest in mind, either. He is both himself as an individual and part of a social group, a "we," and he will probably ground his thoughts and actions accordingly. When I put forth my positive account in another chapter, I will discuss this more thoroughly, but for now, I just want to point out that there is a blurring

of the lines between individual and group, including the group of the body politic. For the sake of argument, however, I will leave this issue of individual, personal identification to the side. It seems quite reasonable to say that the agent on the side of the individual citizen is that same individual citizen, so I will leave it at that for now.

On the other side, the agent of the state is much more complex. Who could be the consentee? Is it a single entity – the **state** – that would act with a single will in coordination with the consenter? Is the state nothing more than shorthand for every individual citizen, acting with diverse interests through some sort of aggregating mechanism? Neither? I believe that, in a way, the state is both of these things, and this poses a serious problem when trying to “locate” the recipient of potential consent. States have governments (which are institutions, not humans, not territories) that exercise authority in the arenas discussed earlier, and the roles specified in the state’s governing constitution (written or not) are filled by individuals, but it seems wrong to conclude that the state’s agent and possible recipient of consent is simply one or more of those individuals because their filling of their roles seems to disregard the larger context in which they operate. Similarly, it is wrong to equate the state’s agent with its government – the institutions established by the state’s governing constitution – because government is not merely a bureaucracy but also the embodiment of certain ideas; after all, much of a state’s governing constitution is an unwritten, amorphous collection of practices and preferences⁵². Furthermore, it seems wrong to confuse the agent of the state with the citizenry, a collection of persons living in a certain territory, because their association seems to be the result of geography more than any intentional, personal union. Rather, as much as we can nail down anything called the state’s agent/exerciser of authority, the

⁵² Hampton, Political Philosophy, pg. 82.

word “state” ought to be associated with all three things: the government, the whole citizenry, and the set of institutions, or more accurately, the interplay of all three. The state is a constantly-changing body that has both physical (persons, territory, etc.) and conceptual (laws, conventions, etc.) parts.

All of this goes to show how hard it is to figure out who is interacting with whom in the public relationship. In private relationships, we have clear cases of “us” and “them”⁵³, Billy and Dr. Doug, Mike and Karen, or from the first-person perspective, me and not me. The individual/state relationship is not a case of me and not me; it involves me, us, them, ideas, and many other things, with all these concepts bleeding into one another. In order for classical consent to be given, we need definite parties having knowledge, having intent, giving and receiving signs. Even if we assume that individual citizens could give the appropriate kind of consent through an appropriate sign, the complexity of the state’s agency muddles where that consent would land, obscuring who would be authorized to exercise power. While the government’s agents would theoretically do the acting if the consent was given (as the government’s agents are the only human beings directly related to political power), the consent would not be given to those persons, but to the whole arrangement – governmental actors, fellow citizens, and constitutional structure. Real consent demands a fair amount of structure and background conditions as far as agents go if we are to figure out whether the parties are taking the proper steps in transferring power. The inherent fluidity and complexity of agency in public relationships hinders proper consent in ever finding the appropriate bodies to take foot, so it is not at all clear if the individual/state relationship can meet classical consent theory’s requirements.

⁵³ Not necessarily a competition for domination, really, but just one agent acting with another one agent.

Territoriality and State Agency The issues arising from the state's being based in large part on geography further complicates matters. The fact that we partially identify a state by its borders shows us how non-*personal* the state is⁵⁴, despite its ability to exercise agency. In the past (middle ages and before), political units were associated with particular persons; kings and, more importantly, local lords governed by *their* wills over *their* people. There was a closer connection between ruler and ruled and the rules, and the majority of governance was done on the local level. In modern states, though, this is no longer the case. There is no person or persons that we can readily identify the state with, even in monarchies. Since we now identify states geographically, governance is mostly done by institutions – positions that usually just happen to be filled by particular persons – and kept steady by the rule of law. Non-personal rule has led to higher degrees of centralization, and local government officials have much less power than state officials. Power is top-down, so there is practically no direct association between primary (top-level) legislators and executives and most individual citizens.

The fact that states are defined in part by location, not personal will, makes robust consent in public relationships impossible. Consent, if an individual felt the desire to give it, would have to be to some active body, and the state cannot provide a definite, appropriate consent-receiving entity. Because the state is geographic entity, because it is unified and defined by its laws and terms of association, the real recipient of consent would have to be the state's constitution – the whole arrangement, and not a particular person or group of persons.

On the other side of the relationship, an individual person may be able to have some interaction with local leaders and may be involved with local politics, to the point

⁵⁴ 'Personal' in the sense of being like a person – a discreet being with rationality, etc.

that the relationship might seem close to private and involving personal will. Some, such as Barber and Alperovitz, argue that such local participation ought to be encouraged, and that small-scale democracy (economic democracy in the workplace, for instance) is necessary for respecting human autonomy. However, while local governance is important and useful in many spheres, this is insufficient for legitimating state authority. First, the local leader could not be a proper recipient of the citizen's consent to the state; he has only limited power over a small jurisdiction. Above him are more and more broadly empowered legislators and, more importantly, more and more powerful laws that cover greater and greater amounts of territory. The scope of the state's power becomes grander and the seat of that power (the law) becomes more abstract the further it goes from the local level. Even if we could think that some proper consent-like action might be possible between an individual and a lower-level official, any consent-empowered authority that could reach the top level, where political authority is actually held, would be completely perverted from its original context. The structure of the modern state makes it the case that local governance can operate only within the bounds of larger governance. Smaller jurisdictions can exercise only the powers afforded them by larger jurisdictions. While states can never, will never, and won't want to fully control the goings-on of its smaller constituent parts, the top-down power structure prevents an individual's possible consent from going where it would need to go to legitimate all political authority exercised over him.

Sufficient Signs The next set of practical reasons why public relationships cannot meet classical consent theory's robust requirement of the proper giving and receiving of

appropriate signs of consent are nothing new, but bear repeating. In private relationships, sufficient outwards signs of the individual's consent to the new authority figure are standard and, typically, obvious. Nodding, shaking hands, signing contracts, verbal confirmation, etc., are all regular methods of conveying consent. As we know, what will count as sufficient will vary depending on the context, but even given that, most persons can still agree that this or that was a proper sign, and disagreement is not major; what really matters the most is that both parties to the power transfer agree to the sufficiency of the sign. This is not the case with what would count as a sufficient sign for an individual's consent to the state. Is voting enough? Paying one's taxes? Obeying the law most or all of the time? Remaining in the state? Paying one's taxes and following the laws might be done just to avoid punishment – if they're done at all – so they may not be enough to meet the uncoerced and free requirement of classical consent theory. Voting can be infrequent with some people and nonexistent with others, whether or not they would want to consent if they could. And, the "choice" to stay in one's home state is a complex phenomenon that has only some bit to do with the desire to authorize that state's governing power. Most importantly, though, these acts are hardly ever done with the proper intent of conveying classical consent: permitting the exercise of the state's authority over the acting individuals. True consent is distinctive because of its strong emphasis on outward performance, but that performance is only the last step in the consenter's journey. Not only are there no obvious candidates for the 'sufficient outward sign' criterion for robust consent to the state, but there is also no reason to believe that any of the candidates are regularly or universally done with the appropriate intent, free of coercion, and with full understanding of the impact of the agent's decision.

To go along with this, there is the corresponding difficulty of the state's ability to register certain acts as its citizens' signs of consent to their authority. Obviously, the usual candidates mentioned above can be registered: votes are counted, taxes are collected, lawbreakers are fined or imprisoned⁵⁵, and the census can be taken and immigration can be tracked, although none of these seem to be done completely accurately, even if only because of human fallibility. But can these be enough to ensure the state's rightful claim to authority? If the giving of sufficient outward signs is difficult or impossible for individual persons, then the receipt and registering of those signs is going to be just a difficult or impossible.

The thing that Locke may have neglected to notice is also the thing that the philosophical anarchists so rightly *did* notice: signs of consent must fit with and be appropriate to their tasks. It is quite possible that, in some circumstances, paying money (like one's taxes) is a true consenting event. If both parties knew beforehand – had agreed on such beforehand – that, if the potential consenter paid his taxes in a clear choice situation, then the potential consentee would gain a particular type of authority, and all of the other requirements adhered, then the tax paying event properly establishes the authority relationship. In Simmons' boardroom example, the participants are in clear choice situations where their voting or abstaining from voting count as real consent; both are equally able to convey intent and bind relationships, so long as all bodies are aware of the terms.⁵⁶ In some situations, doing absolutely nothing physically is a proper consenting event.

⁵⁵ Whether or not these actually happen is another issue altogether.

⁵⁶ Simmons, Moral Principles and Political Obligations, Ch. 4.

The individual/state relationship cannot meet classical consent theory's full requirements, though, because there *is* no sign of consent that is given and received that is also appropriate to the situation. The more critical the outcome and the graver the issues that hang in the balance, the stricter we must adhere to true consent's requirements. The content of the political relationship, possibly including many profound facets of an individual's life, is too important to fudge around. The loose, implied consent that Heidi gives to Betsy is sufficient because the authority Betsy receives is not so critical and so permanent that great steps must be taken to recognize its reality and delineate its bounds. Or, to put it another way, Betsy's authority is just not that big a deal, especially when we compare it to other kinds of authority, like Dr. Doug's authority over Billy or, more importantly, the authority of the state over the individual citizen. The number of people involved (citizens and rulers) combined with the importance of the political relationship makes the requirement for a sufficient sign more important yet practically impossible. Even if we could find an appropriate sign, the task of cataloguing all of the givings and receivings would be too large to be feasible when dealing with modern states, which can have hundreds of millions or even billions of citizens. I somewhat understand Simmons's expectation that a sufficient outward sign for consent to the state be the same kind of act that is a sufficient outward sign for consent to a private individual (because we *know* they work in real situations to legitimate authority). However, because he also considers the fitness between sign and situation to be important, I find it odd that he stops with the fact that traditional outward signs of consent (shaking of hands, signing of contracts, etc.) *just do not happen* in individual/state interactions. There is a good reason that they *just do not happen*: we know that doing so is completely inappropriate. There is

a good reason why other consent theorists keep trying to argue that things like voting, paying taxes, and continuing residency are sufficient outward signs of consent to the state: *we actually do and can do them* in interaction with the state.

If it is difficult to clearly give and receive a sufficient sign once between individual and state, this is only compounded if we must account for many consentings to many topics between individual and state, and further so if this has to happen between many individuals and the state. A further difficulty arises when we consider the ever-changing-ness of both the possibly consenting population and the powers of the state. Is the state to seek the consent of every person comes of age on every object as he comes of age? Is the state to go to all persons and re-seek their consent every time it would like to change the state's powers over them? All of this goes to show that any account of consent that makes every exercise of state power an object of consent is beyond impractical to the point of nonsense given the reality of the massive modern state. Therefore, whether we look at the object of consent as one thing (some amorphous "state authority" as a whole) or a collection of many things (this, that and the other exercise of authority), there is essentially no way to coordinate all of the givings and receivings of sufficient signs of consent, making the possibility of grounding the state's legitimacy in the consent of its citizens practically non-existent.

There seems to be no way, then, to nail down that all-important consenting event for a public relationship that is so clear and distinguishable in private relationships. Many marked interactions between the individual and the state are negative (violations of the law), and those that are neutral or somewhat positive are not regular and regulated and positive enough to clearly indicate the robust, obvious, intention-laden consent

required by classical consent theory. And because public relationships lack the clear outward giving and receiving of consenting signs, there cannot be an enduring record of the transaction. When a dispute arises, neither party can hearken back to that specific time or that particular act as a reminder of the terms of their agreement. There is no initial agreement to begin with, no original setting of boundaries, no pre-constitutional and constitutional phases. The outward sign of the consenting act and the fact that it can be recorded have a purpose – they cement the pact in a unique way, for the benefit of both parties, by establishing the bounds of the relationship. If the boundaries of the relationship cannot be properly established, then the likelihood that authority can be misused or abused rises, and the likelihood that the individual remains as free as he was before diminishes.

Unintentional, Unavoidable Association The next practical reason why classical consent theory is impossible concerns how our relationships with our home states begin. Entry into *association*⁵⁷ with a state, much less entry into a contract, especially in the modern world, is hardly ever voluntary:

“We find every where princes who claim their subjects as their property, and assert their independent right of sovereignty, from conquest or succession. We find also every where subjects who acknowledge this right in their prince, and suppose themselves born under obligations of obedience to a certain sovereign, as much as under the ties of reverence and duty to certain parents.”⁵⁸

Immigration and naturalization are still exceptions to state association, rather than the rule. The fact is that virtually all land on the planet is claimed by some state, and part of what defines a state (what makes it a state and differentiates it from other states) is the

⁵⁷ I use ‘association’ to indicate pre-official interaction.

⁵⁸ Hume, D. (1994). *Political Essays*.

physical area it exercises authority over⁵⁹. As all people are born within the territory of some state, all persons are ‘claimed’ by some state at birth. So, whether or not one would ever think of consenting to a state’s authority at a stage in life when consent is possible, one has already entered into association with some state. Furthermore, this association is typically long-lasting, usually for the duration of the individual’s life. Again, fleeing from the authority of one country and becoming a citizen of another is not the norm for the individual/state relationship, and the consideration of what most people do or can do is important to the possible legitimacy of states. There is overwhelming pressure to continue association with the state, stay where one is and how one is. Emigration is costly and difficult, and the problems with transplanting one’s whole life are well-known – and this really only applies to adults who could voluntarily emigrate, and who have already associated with a state. Also, severing all ties with society and becoming a recluse is extremely difficult and very rarely attractive, when compared to the long-espoused reasons for “exiting the state of nature” and becoming part of civil society.

All of this goes to show that an individual’s association with a state is inevitable. All persons are born in states, most persons remain in those states for the duration of their lives (even if they do not want to), and those that do emigrate enter automatically enter into association with other states. So, if consent to the state could ever be possible, it could not happen after the informal, pre-constitutional period typical of some private relationships – the period where the individual would contemplate whether he should or shouldn’t consent to the state’s authority. Strong reasons for being a part of civil society are already present at birth, simply in virtue of the impossibility of existing alone. On the part of the state, association with the individual is also generally automatic. Since states

⁵⁹ More on this in the next section, as it is extremely important

claim authority over lands – and therefore the people born in them – they are not in a position to consider whether they want to be the power-holder over each particular individual.

The fact that the public relationship always precedes one's cognitive capacity to give robust consent is a critical reason why classical consent theory cannot apply to the individual/state relationship. The terms of the relationship are not up for evaluation or emendation. As Pateman argues,

Consent...must be *to* something. In the case of [political] obligation, it [would be] consent to an already existing relationship of obligation...The content has already been defined by others, and the individual has to decide whether or not consent should be given, whether or not that particular obligation ought to be assumed.⁶⁰

Even if an individual wanted to take on this obligation, he would not be able to negotiate any of the terms before or during the constitutional phase. One of the things that made classical consent theory appropriate for measuring legitimacy in the examples of private relationships I gave was the possibility of wiggle room, of the consenter's ability to work out the minutiae before taking on the obligation and giving or receiving personal authority. So, any consent possibly given to the state would be completely without the personalized character so important to real consentings. Consent to the state and any obligations it would impose would be a one size fits all, take it or leave it deal. This hardly seems consistent with classical consent's aim of maintaining the personal autonomy of the individual.

One might object that this is the case for many authority-based relationships, especially that of employer/employee. After all, with many jobs, employers are looking to fill a position of their choosing; they want somebody with x skills to perform y tasks,

⁶⁰Pateman, Carole. The Problem of Political Obligation. Pg. 21.

and they will not hire until they find a candidate that agrees to the job's specifics. I agree that this is true. Hi-Bek wanted somebody who would make springs their way, and that would agree to their rules, codes of conduct, and any other conditions. It just so happened that Darren wanted employment and was willing to agree to the pre-established terms. These cases (Darren/Hi-Bek and individual/state) are not comparable, though, because of the impossibility of pre-constitutional autonomy. Before Darren considered going to work for Hi-Bek, he was still a free person in an important sense of the word. He existed apart from that employer, from any employer. He could have decided that traditional employment just wasn't for him, and gone into his own spring-making business.

Issues of emigration aside, the modern world is set up so that no individual can flee from the existence of states. Even if a person decided that citizenship just wasn't for him, that does not change the fact that he is a citizen – he is born in and will live in the territory of some state. Since persons cannot help but be citizens, the idea of pre- and post-constitutional autonomy is an empty one. Classical consent theory is the appropriate measure of legitimacy in some private relationships because the idea of autonomy has substance; there is a strong sense in which they are regarded as “ineluctably separate” units⁶¹. This cannot be the case with regard to the individual in public relationships, simply because of the set-up of the modern world. Most individuals will continue to reside in their birth-state, not because that state is so wonderful and meets the individual's needs particularly well, but because the cost of not doing so is too large to bear. States will continue to claim authority over most individuals, not because those individuals are particularly desirable citizens and they long for continued partnership, but

⁶¹ Ibid.

because doing so is easier than weeding through all persons and choosing whether they ought to remain citizens.

Because of problems with agency, territoriality, sufficient signs, and unavoidable association, classical consent theory does not fit the structure of the individual/state relationship. These problems indicate that classical consent theory's supporters (including Simmons) either overly idealize the choice situation where consent would possibly be given, or ignore the importance of context altogether. Real consent is possible only when real, distinct, autonomous agents are able to give and receive proper signs of their consent. The modern world, filled with modern states, is simply not set up so that this could happen in public relationships. Simmons undoubtedly notices the set-up of the modern world, but does not consider or allow for the possibility that changing the context of a consenting event might change the methods in which the consent is given and received, believing it is better to stand firm on the mandates of the basic requirements. Simmons gives us an A or B situation, and he chooses A, but he never considers whether or not A is an actual option *in that situation*. The plausibility of the options cannot be evaluated apart from the context in which they might apply. The principles of classical consent and their underlying motivation (respect for the autonomy of the individual) should not be chosen simply because they are, in fact, very appealing, but also because they are real and appropriate. It just so happens that, in Karen and Mike's relationship, and in Billy and Dr. Doug's relationship, classical consent theory provides a sensible method of evaluating the legitimacy of the authority relationship *because* it just so happens that those relationships are set up where robust consent's

principles have the potential to be met. Similarly, it just so happens that, in the public relationship, classical consent theory does not provide a sensible method of evaluating the legitimacy of the state's authority *because* it just so happens that the relationship is set up where robust consent's requirements cannot be met.

The classical consent tradition is founded upon the belief that individuals can be viewed as completely autonomous-with-regard-to-the-state, as possessors of natural freedoms, such that they can act as their own agents and be valuable participants in some kind of constitution-making. The set-up of the modern world (into which we are all born nowadays) is not arranged so that this is an option, despite its attractiveness and usefulness in private relationships. Individuals are regarded by states as citizens before they are able to make choices about consenting to the state's authority, and there is virtually no way of opting out of citizenship in some state. Furthermore, modern states are complex entities composed of persons and laws, and while governments are able to act on the behalf of states, it is not at all obvious that they are able to interact with individual citizens so that the giving and receipt of robust consent could be possible. It is also not obvious that governments as institutions are the appropriate recipients of consent, since governments are made of people while states are not so simply defined.

Finally, while modern states have methods of interacting with individual citizens (voting, law-following and breaking, punishment, etc.), no method is fully able to capture and convey the contents of would-be consent. Apart from the epistemic obstacles (which will be covered in the next chapter), no current methods of interaction can account for all of the state's realms of authority. A vote for a legislator or bond measure covers only that issue, and perhaps other things directly related, but it does not extend to all of the

things that states do. While I may actually want to have the proper intent, that this particular legislator have the authority to enact certain laws and have certain powers, it is not obvious that this extends to my intent, and thus my consent, to the whole system of which the particular legislator is only a small part. Furthermore, modern states are not equipped to accommodate instances where would-be consenters change their mind or similar variances, and as the world currently stands, the costs (labor, time, money, and so on) of accommodating all individual wills on all particular issues is simply too great, to the point that full consenting interactions are impossible.

Chapter 5: Bounded Rationality and the Cognitively-Limited Citizen

Critiques of classical consent theory as applied to the individual/state relationship have primarily focused on its impracticality. According to the traditional argument, the legitimacy of the authority transfer hinges on the success of the consenter's expression of his thoughts, and on the mode and environment of the consenting event. We concentrate on the nuances of express, tacit, and implied consent, how they differ, and whether or not one act or another will be sufficient to communicate the consenter's intentions to enter into and participate in the political relationship. If, in fact, a citizen's consent is the only way to legitimate the state's use of authority over him, then we as political philosophers (and citizens, and humans, for that matter) must be clear on what counts as consent, when the use of political power is appropriate, and when our states are treating us in ways inconsistent with our natural freedom. Supporters of consent theory assume that people are capable of and sometimes do perform acts sufficient for entering into the political relationship. Philosophical anarchists like Simmons, as well as other critics of consent theory, contend that consent theory fails primarily because of its lack of practicality.

What do these approaches have in common? Given the four basic requirements for real consent (sufficient knowledge, proper intent, sufficient signs, and lack of coercion), they all assume that the cognitive requirements can be fulfilled. The arguments for or against classical consent theory begin with the unwritten assumption that we as individuals are capable of a) understanding the terms of our consent to the state and b) forming the proper intent of entering into an authority relationship with the state. After all, the genesis and continuing allure of consent theory are tied to its respect for

natural human freedom: *Given that* all persons are born free and equal, any unauthorized use of power over them is unacceptable.

This chapter will focus these assumptions a) and b), and will conclude that, because they are only assumptions, the argument for classical consent as the basis of state legitimacy cannot be supported. To the best of my knowledge, there has been little work done in political epistemology and meta-epistemology, but I feel that such an examination is necessary because consent begins as a mental phenomenon. Consent theory and political philosophy hinge on so many separate aspects of general analytic philosophy, like morality, pragmatics, and philosophy of mind and epistemology, but so little attention has been paid to the latter that the theories are often the poorer for it.

It is my contention that one of the main failures of classical consent theory as applied to the political relationship is its lack of appreciating real persons and their cognitive capacities. This flaw is, I believe, a far more serious one than the practical ones recognized by Simmons, for it takes issue with the very nature of the project of consent theory, and much of political philosophy in general. I will not be arguing that typical citizens are irrational, stupid, or cognitively defective in any way. Rather, I argue that the epistemological underpinnings of classical consent theory overly idealize the would-be consentor, assuming that he has mental abilities and attitudes that he does not have, and assuming he is in a choosing environment that is unlike his own. If a citizen is unable to meet classical consent theory's high cognitive demands, then any outward consenting sign he might give cannot have sufficient legitimating power. My project is not pessimistic, but only realistic. After all, the point of much of analytic political philosophy is to examine features of real-world institutions and agents and, in many

cases, how to improve the quality of those institutions and the actions of those citizens.

Overall, we are looking for practical and moral fitness, and this must begin with cognitive fitness.

First, I will review the specific cognitive capacities that the idealized political agent must possess; these are the features that are implicitly required in order for classical consent theory to legitimate power exchanges. Since so little has been written on the particular mental faculties of political man, much of this will be supported by the models of idealized agents of other disciplines: economic agents, agents in theoretical psychology and philosophy of mind, as well as the agents in rational choice theory and game theory. My intent is not to create a straw man of political man. I believe that these features are required if the classical consent model is to be consistent in its cognitive demands, rather than vacuous. Then, I will make the argument for a more naturalized political epistemology, based on what we know about the mind's capacities in real-world settings and common-sense observations about motivation. Finally, I will argue that, if my arguments are sound, then full consent to the state is beyond the mental capacities and personal motivations of most, if not all, citizens. As was defended in Chapter 3, the robust consent of classical consent theory is possible in some private relationships in large part due to their easily meeting the sufficient knowledge and proper intent requirements. It should become clear that the person in the individual/state relationship lacks the complex cognitive faculties that make robust political consent possible.

The inspiration for this chapter comes in part from *Minimal Rationality* by Christopher Cherniak, *Simple Heuristics that Make Us Smart* by the ABC Research Group, *Bounded Rationality* by Gigerenzer and Selten, and primarily from Herbert

Simon's classic works, *Administrative Behavior* and *Reason in Human Affairs*. It is from these important texts that I will be pulling my conception of what a political agent is actually like.

Idealized Rationality

This section will cover the features of idealized agent implied by so many disciplines, particularly the social sciences and philosophy.

Knowledge Requirements An idealized agent is aware of facts that are relevant to the choice he is making, starting with the layout of his situation and his place in it. Take Bill the business man, for instance. Bill needs to decide whether or not to give all of his employees a raise this year. In order to make this decision, he needs to know a variety of key facts, like his company's number of employees, how much they currently earn, how many employees he might hire in a given time frame, what his company's current income is, what the company's projected income is over a certain period of time, how stable the economy is, how well the company is prepared to deal with changes of many kinds, and so on. If Bill is to behave rationally, to act in the best interest of his company, his decision must be well-informed on all of the pre-existing (for lack of a better term) facts. Although Bill is not omniscient (and nobody is asking that he be so), he is suitably knowledgeable.

Furthermore, according to some in rational choice theory and many aspects of economics, the idealized agent should have a reasonably consistent and well-ordered set of preferences. Bill needs to rank his options according to what he thinks the company

needs the most, or which will be the most beneficial to the company's welfare and increase its overall profits. In order to achieve this, Bill should have something like an ordinal utility function, where the value of each option has some relation (better than, worse than, or equal to) to the other options, and where applicable, how combinations of options might be compared to others. Possible options should be able to be ranked (this is the completeness requirement), and must remain fairly fixed in value amongst comparisons (this is the consistency requirement).⁶²

Implied in all of this is the idea that relevant facts and goals are easily accessed by the agent, and that he can keep them at the forefront of his mind when he is making a choice. It cannot be the case that, when Bill is in the process of making his decision, he forgets that the computer system is in need of upgrades. If he forgets or omits something so important, his understanding of the situation is flawed. All of these things must be in place before the decision is made, and are not part of a process of discovery or creation. Assuming the goal is fixed, like increasing profits or winning a competition, the idealized agent will base his preference ranking on whatever strategy best reaches that goal.

Inferential/Computational Requirements Understanding facts and goals are critical to an agent's being rational, according to the idealized account, but perhaps even more important are the agent's abilities to deal with the facts before him. Rational agency is not concerned just with the facts that the agent knows, but also his ability to use those facts to make an informed, well thought out choice. The fields that work by

⁶²Arrow, Kenneth J. "Utilities, Attitudes, and Choices." Pg. 1-23. Pollack, Robert. "Additive von Neumann-Morgenstern Utility Functions." I do not want to argue that all areas of inquiry require all of these conditions; rather, I am just offering them as examples of what some theorists do put forth as conditions for rationality.

idealizing agents are rational choice theory, game theory, economics, psychology, and philosophy. In order for the agent to truly be rational, according to many, he needs to have god-like or “demon-like” (to use the ABC Research Group’s phrase) inferential or computational capacities. However, even if we take the requirement for demon-like cognitive powers as hyperbole, rational agency still requires that agents be able to manipulate information adroitly. As I argued in Chapter 2, a lack of sufficient understanding of the object of consent may alter an agent’s choice, which decreases the chance that any consent given is not an accurate reflection of the agent’s will.

Depending on the situation, a rational agent is required to have an accurate understanding of relevant alternatives, possibly including some generations of consequences that follow. Bill’s case seems on the face of it fairly simple, but much more is going on under the surface. If he is considering hiring new employees, he must be fairly sure that his future revenues will be enough to cover all his new and old expenses, that the company will have the space and resources for new associates, and so on. If he is considering putting his money in advertising or new technology, Bill should be able to forecast whether or not the company will actually benefit from the expenditures, whether they will have the manpower and other resources to deal with the influx of new business if the investment pays off, and so on. To know any of these things, Bill will have to put a lot of time into research and planning; the idealized rationality approach suggests that guesswork or playing it by ear will not be enough to get the job done.

The requirement for the ability to process chains of consequences remains in place, even if the choice scenario is complicated. In order to perform these complex tasks, game theory would have us make decision trees or game trees, depending on the

number of players involved (decision trees involve only one agent, while game trees involve two or more). Each decision to be made or option to be weighed creates a fork, and others that follow from each option create more forks, leading to an increasingly full tree. The rational agent must be able to construct the tree and investigate the branches before making an informed choice. In situations of competition, these decision trees will also have to include the rival's anticipated moves, and the agent must be able to construct a table to figure out the value of each choice or option as viewed by all parties (like the classic prisoner's dilemma). It is only after the agent has made these computations and inferences that he can make an informed choice.⁶³ For game theory and other social sciences, these are a critical part of thinking rationally, and are to be part of our everyday operations and functioning. Even if we don't follow the game theory model of decision trees or use other complex computational apparatus, the ability to think ahead and plan for contingencies seems to be a key piece of sensible decision-making. If an agent was to only include his current situation in his choice, neglecting the possible consequences of his decision, we could hardly call his choice well-informed or well-thought-out.

As stated above, the agent makes his decisions based upon his previously-determined preferences, and these preferences are also subject to the standards of idealized rationality. In order for his preference set to be established, the agent should perform the same analysis about what he wants, along with the facts of the matter. In some cases, his preference set might be very simple; the agent could simply want to increase his profits for his business, or pick the driving route that will most quickly get him from point A to point B. If more factors come into play in the latter situation,

⁶³Dixit, Avinash K. and Barry J. Nalebuff. Thinking Strategically: The Competitive Edge in Business, Politics, and Everyday Life. Pg. 34-44.

though, the preference calculation becomes much more complex. For instance, if cost, convenience, and mode of transportation are also involved, along with time, then the agent must examine each possible combination to determine the best overall arrangement. Taking an airplane from A to B might be the quickest and most convenient, but the cost may be too much, whereas the cost of taking a bus might be the lowest, but can be outweighed by its lack of convenience. Taking the train might be in the middle as far as cost and time go, but the peace and relaxation of the quiet rail car can be very compelling. Idealized rationality requires the agent coordinate his knowledge of the facts with his preference set to achieve the most desirable result.

To arrange his preferences, the agent must rely on his faculties of imagination and mental simulation. Take the travel example again. Suppose that, even though our traveler has never been on the train or a non-local bus, he is including both among his options, along with airplanes and renting car. When deciding how to rank the train, he must imagine what the experience will be like, given facts that he already knows. Depending on the time schedule and popularity of the train he is considering, he may have to imagine how it would feel to be stuck in a train car with many other travelers, including persons shouting on their cell phones, babies crying, everyone competing for personal space, crawling over one another to get up and move about. He must also imagine how he would feel taking the long-distance bus, with even less personal space over a longer time, along with the possible temperaments of his fellow passengers. Are the bus passengers more or less likely to be louder and cruder than the train passengers? Will the loudness and crudeness outweigh the stress and cost of driving a rental car alone through what is bound to be awful traffic? Depending on his knowledge of the facts of

each mode of transportation, more or less effort will have to be spent into research and mental simulation of the experience. This imaginative process may seem like a negligible effort, especially given the example of transportation choices, but the task becomes more difficult the less familiar the agent is with the experiences.

No matter the particulars, the idealized agent is expected to perform whatever mental tasks are necessary for him to envision his possible ends. Once he has done this, when he has performed all of his inferences and computations, when his preference set is consistent and his knowledge of all facts is complete, he then simply has to pick the best branch on the decision tree. If he has done all of his tasks correctly, then the choice should be easy.

Other I must briefly discuss here a few other factors that seem to be relevant for the idealized rational agent of many of the social sciences and philosophy. First, the *time* for acquiring knowledge and performing mental computations does not appear to be an obstacle for the agents. It is not as though theorists writing about rational choice, game theory, economics, or other disciplines claim that the agents have infinite amounts of time to do their rational duty – they simply do not mention time at all, and merely assume that the agent is able to perform his tasks. Second, the *choosing environment* is also unimportant, but is implicitly assumed to be conducive to the agent's needs. Again, the focus is on the details of the mental tasks, not external variables. Third, the agent is assumed to have the *stamina* to perform, for lack of a better term. The tasks of knowledge acquisition and computation are not mentally or emotionally or physically taxing. The idealized agent is not one bogged down by other worries, and can devote

himself to solving the problem at hand. Finally, the *motivation* for performance is simple, self-evident, and complete for the agent. The fact that the problem needs solving is necessary and sufficient for the agent's desire to solve it.

The Idealized Agent in Classical Consent Theory

As I have so far argued, the argument for consent to legitimize political authority is motivated by the Lockean's valuing of the individual and his natural freedoms; if it is true that individual citizens are rational and free and equal, then any power exchanges made must maintain those qualities. If a power exchange is done without the sufficient knowledge and proper intent of the citizen, then any exercise of power over him is illegitimate because only he has the right to determine what happens to him. Since classical consent theory's notion of consent is quite cognitively demanding (as I will argue below), I believe that the theory operates under the implicit assumption that the would-be consenter is something like an idealized agent. As I argued in the previous chapter, an idealized external (to the agent's mind) choice situation is required for agents to be able to give their consent through sufficient outward signs; the theory needs idealized circumstances to work, and it becomes untenable in the actual world of modern states. Similarly, I believe that the agent must have idealized mental capacities often assumed in the social sciences and humanities if he is to give his sufficiently-informed, intentional consent.

Consider classical consent theory's requirement that the agent's choice be made free from coercion. Coercion would obviously invalidate any consenting act because the consent-like act would not be rooted in the agent's chosen will, and would instead be rooted in the agent's fear of the consequences he is being threatened with. However,

many consenting acts are free from coercion, and for those that are so free, classical consent theory implies that any consent given is rooted in the will of the agent. If the consenting sign is given on purpose, it is because the agent has made it so. From what I have read of the literature, coercion is the only real cognitive obstacle for the rational agent discussed; the other two requirements (sufficient understanding of the object of consent and proper intent) are assumed to be achievable in the political realm. If this is the case, then the agent's mental faculties seem highly idealized because, as I will argue, the sufficient understanding and proper intent requirements (especially the former) impose cognitive burdens that are simply too large for citizens to bear.

The requirement for sufficient understanding of the object of consent relies heavily upon the mental powers of an idealized political agent. This is especially true when we imagine the position of the modern citizen in a modern state. As argued in the previous chapter, the number of realms of modern state authority is sizeable, and the number of laws and statutes that apply to the citizen is considerable. The anthropological concept of scale theory shows us the sheer number of laws and statutes for an organization (in our case, the state) have almost law-like properties. Anthropologist Robert Carneiro “found that the number of organizational traits (N) in a given community could be expressed as the square root of its population (P), as in the equation ($N=\sqrt{P}$).”⁶⁴ For example, if a group has 100 members, then there are 10 organizational traits to remember, and if there are 10,000 members, then there are 100 rules governing it. If this rule of Carneiro's is true, then the amount of organizational traits for the United States in 2012 (approximately 300 million citizens) is around 17,320 at the federal level alone. The trend in the modern world is globalization and incorporation, including more and

⁶⁴ Bodley, The Power of Scale, pg. 89.

more people in the idea of a body politic, so the number of organizational traits that apply to a citizen shows signs of increasing. If we include the fact that citizens are also part of smaller groups (states, cities, neighborhoods, companies, etc.), we can see that individuals are part of incredibly complex networks governed by incredibly complex structures. This is true even if Carneiro's calculation is off quite a bit.

If the consent of the citizen to the state is to be meaningful, he has to sufficiently comprehend what he is really consenting to. Even if it is not clear what the citizen could consent to (entry into/remaining in civil society, the rule of leaders, particular laws and codes, etc.), the content of the consent would have to be strongly related to the law and to the state's realms of authority. Consent to something other than these, something less important than these, negates the entire purpose of state-related consent, which is the building of an informed, authoritative relationship between the individual citizen and his state.

The theoretical purpose of consent is to legitimize the exercise of authority, to differentiate just power from tyranny, and to bind the citizen to the state in some way. The sufficient knowledge requirement is the first step in safeguarding the citizen from surprises, to protect him from unwittingly "authorizing" exercises of force that he does not consent to, and from obligating himself to obey. If it is the case that sufficiently informed consent is the only way to authorize political power, and if it is the case that the content of political power is enormous, then it follows that citizen must understand a huge number of facts before he is able to give meaningful consent.

Along with the large quantity of facts, the would-be consenter would also have to have the impressive computational ability of an idealized agent. This capacity is required

in order to “get” the system of the state, for the agent to understand the interrelatedness of the many functions of the state. If we are talking about the citizen voting for or against a particular law or act, then he must consider alternatives and be able to track into the future to their possible consequences⁶⁵. In order to figure out the consequences of saying yea or nay, and assuming that one’s vote will be efficacious, a citizen will need to some real thinking about his decision if he is to be a rational, informed voter; not thinking about the effects of his vote seems to be neglectful of the duties of a rational agent.

If the potential object of consent is the authority of a certain person, then another set of facts and inferences are required of the consenter. A rational agent will have to determine what his priorities are when choosing a ruler (including considering alternate candidates), what qualities he prefers and what public issues he wants addressed. Once he figures out his preferences, what effects each candidate’s winning would make (through inference and imagination), and that his knowledge and computation set is sufficient, he can make his choice and vote, in the hope that he is in the majority.⁶⁶

If the potential object of consent is the state’s authority as a whole⁶⁷, then the citizen has the cognitive task of understanding that object. This would have to include a decent understanding of the state’s constitution and overall structure, as well as the workings of the legal system. Every area that the state claims authority over and every area it might claim authority over, by virtue of the state’s constitution, are the possible objects of consent. The idealized citizen, according to classical consent theory’s

⁶⁵ This is leaving aside for the moment whether or not something like voting on a local bond measure counts as consent to the state as a whole, or to that particular thing, or if it should count as consent at all. While I’m inclined to think that this vote wouldn’t count as consent to anything, especially as consent to the state, I’ll leave it here for the sake of argument.

⁶⁶ Again, this leaves aside the very obvious faults with majority rule, pointed out by Simmons, in Chapter 1.

⁶⁷ This is the most likely or important object of consent, and the most central to consent theory, especially given the modern state’s top-down authority structure.

sufficient understanding requirement, must be a bit like a constitutional scholar. He must know the facts and be able to perform the inferences to figure out what might be, in order to really “get” the state and give informed consent.

If the object of political consent is consent to the state’s authority as a whole, and since almost all of the land on earth is claimed by some state or other, then our idealized agent should understand not only the political system he was born into, but also those of other states that he might want to immigrate to, if he is to be sufficiently informed about which state’s rule he will consent to. He would have to investigate his various citizenship options (would he want to be a resident alien in another state, or divorce himself from his home state completely?), evaluate his preferences for what he wants from a state, and figure out which state satisfies his preferences the best. He must also factor in the costs of each of his options, and not just the financial ones; would he be able to have a good life in another land, perhaps without his family and friends? Classical consent theory as espoused by Locke and others does present emigration as a valid alternative to consenting to one’s home state’s authority, so giving informed consent to one’s home state would have to involve this research and consideration, preference evaluations and behavior assessment and planning. The fact that so much knowledge and inferential ability is needed in order for classical consent theory to be consistent gives one strong reason to believe that the theory envisions the would-be consenter as an idealized citizen, like that of rational choice theory and economics.

Closely related to the sufficient understanding requirement is the proper intent requirement, and this too depends on idealizing the would-be consenter. Once the citizen has a sufficient understanding of the object of his would-be consent, he must decide and

will that his consent authorize the state's possible exercise of its power over him. The proper intent requirement relies less on the idealized knowledge capacity (as knowledge of what constitutes the proper intent has already been done in the investigational phase) and more on the computational and proper environmental factors. Like the freedom from coercion requirement, the willful act of intending to enter into the political relationship with one's state must be done for the right reasons: given all that he knows, the agent earnestly intends to be a citizen of that state, authorizing its power and taking on his own political obligations. And, like the sufficient understanding requirement, most consent theorists do not portray the fulfilling of this requirement as taking place in the real world, in real time. While some persons may not need much time to make the decision to enter into the political relationship, it is not at all obvious that all potential consenters would be this way. Aside from information-gathering, internal deliberation could take a good deal of time and mental effort, even if the agent's only options are to consent or to not consent. The choice would be a weighty one, I think – the state's power deeply impacts many facets of an individual's life – and so care must be taken by the rational agent to make sure that his decision is the right one for him. Because classical consent theory devotes so little attention to the time and environment required to form the proper intent to enter into the political relationship, one must conclude that the theorists are idealizing the agent's choice situation. Belief and intent formation do not happen instantaneously and in a vacuum, and therefore the agent typical to political and social philosophy is not portrayed in his actual choice situation.

Classical consent theory has a good reason to idealize the would-be consenter: he must be free and rational if his consent is to carry its full weight. Since he is able to

perform complex cognitive tasks of considering the power of the state and the possible relationship he might have with it, he is capable of having his consent really be his own. The allure of consent theory has always been its recognition of the individual as a free and capable entity, able to make his own choices with regard to his own well-being. If he is to remain as free as he was before the consenting even, then the only excusable reason for exerting force over him must ultimately stem from his allowing it. Therefore, we must conclude that the agent necessary to make consent theory coherent is an idealized agent in idealized circumstances.

Bounded Rationality and the Naturally Limited Citizen

As I have argued in previous chapters, the argument in favor of classical consent theory is intuitively compelling and, in some instances, appropriate for legitimating power transfers. For some areas within the social and psychological sciences, as well as fields like computer science and artificial intelligence, the postulation of an idealized agent is quite useful. Idealizing agents and environments in rational choice theory, say, or economics can improve our decision-making. If the idealized agent would make such and such an economic decision, then maybe we ought to try that as well; if the idealized agent would make such and such a decision in a confrontation with another agent, then maybe we, too, should consider making that decision. Abstracting away from the particulars of our personal situations (and all of the baggage that accompany them) may give us insight into what may be objectively superior, unbiased preference rankings. When we deal with the purely theoretical realm, the sky is the limit as to how we

construct our environments and conceptualize our agents, and there is no real harm in doing so.

Thought experiments are useful for shaping and guiding our intuitions, but classical consent theory is by its nature an attempt at practical application. The requirement of consent is supposed to be the safeguard for real citizens from their real states, not for imaginary citizens in theoretical states. Idealizing agents and governments can help us when considering how we may want things to be; we might wish that all citizens be of high intelligence and well-informed on political and economic matters, and we might want to imagine alternative ways for states to be structured and how they might interact if they had no practical boundaries. However, political philosophy ought to respect the ways that individuals and states actually *are*, and not simply postulate how we want them to be. Facts of human cognition (including the environments that agents act in) must be taken into account if we are to give an accurate account of human agency in group settings, facts concerning limits on human knowledge and cognitive capacities, time and attention. Classical consent theory aims to legitimate exchanges of authority, but it does not take into account real world constraints and limitations.

In order to understand why classical consent theory fails as a measure of legitimacy in the political sphere, our political epistemology must be naturalized. I do not want to argue that normative epistemology must be done away with, since working towards better standards for justification and promoting greater rationality seem to be worthwhile pursuits, but these pursuits cannot be done without regard to the facts of human cognition. We should start with the empirical facts of cognitive science, and from there consider the traditional epistemological problems of justified belief and rationality.

Once we see and keep in mind that humans are boundedly rational, we will see that classical consent theory as espoused by Simmons implicitly overreaches the very real limitations on human knowledge capacities and motivational structures by not considering real persons in their real choosing environments.

Limited Knowledge Capacity As compared to the idealized agent of so many areas of study, real individuals have only a finite knowledge capacity. This is not to say that we are, on the whole, unintelligent or irrational, or that we are forgetful or epistemically lazy, but only that compared to the total amount of truths and possible intentional states, the number of things that we will know or believe is fairly limited. Even though the human brain comes well-equipped to collect and store data, we are not capable of collecting and storing all or even most extant information.

The agents of idealized rationality are assumed to already have sufficient information from which to make their decisions, but real agents do not have this advantage, especially when we treat them as single and isolated agents. In the real world, knowledge acquisition is time-consuming and energy-consuming; even if some knowledge is innate, much of it requires real effort with a lot of learning through trial and error. Persons in developed societies may spend large portions of their lives getting formal educations on a variety of subjects, and informal educations are also extensive. Still, no matter how much time we devote to knowledge acquisition, there will always be much to learn.

A cooperative naturalized epistemology à la Cherniak tells us that evolution will tend to provide us with limited cognitive capacity for efficiency's sake: "I think that

recent work in the field of computational complexity theory raises the possibility that there may be another “critical mass” for a knowledge representation, a maximum size threshold above which belief systems must in effect disintegrate.”⁶⁸ It is not in our interest, evolutionarily speaking, to have overly-large cognitive capacities because processing beliefs and desires (considering them, checking for consistency, comparing them to one another, evaluating them for truth, etc.) is costly in terms of time and exertion. Even though it takes up only about 2% of one’s body weight, the human brain uses approximately 20% of the body’s energy; gaining more mass would demand greater energy usage by degrees.⁶⁹

Furthermore, the modern human in modern society has much more information to process and many more beliefs to form than his more primitive cousins. Besides all of the beliefs required for biological survival, modern humans must have beliefs and desires to aid his social survival. The sciences are ever-growing and society is ever-changing. We have jobs, friends, families, hobbies, goals, and all of the cognitive states that go along with all of these facets of our lives. Even though we are currently evolving, biologically speaking, there is no reason to believe that our knowledge capacities and the computational capacities needed to process beliefs are keeping up to the point that we are able to know significantly more than our primitive ancestors. While there may have been some real steps forward in human brain development, within the last 20,000 years, our brains have not been able to keep up with the demand. The amount of knowable information has been growing geometrically, even exponentially. In the face of the modern world and its information overload, our only outlet for intellectual stability is

⁶⁸Cherniak, Christopher. Minimal Rationality. Pg. 128.

⁶⁹Hart, Leslie. How the Brain Works.

selective knowledge acquisition – although the selection process is not often in our hands. The world comes flying at us, and we do what we can to get by and to thrive.

The picture becomes even more complicated when we look at individuals instead of at the species as a whole. Knowledge capacities vary from person to person, as does the allocation of mental space per area of interest per person. The instances of brilliant individuals are rare, and even geniuses are not really optimal agents or brilliant in all areas. People are, on average, average and therefore boundedly rational, limitedly knowledgeable, just like those on both ends of the intelligence spectrum.

Success in learning and information gathering, according to Simon, is subjectively based. There is no objective standard of knowledge, no set amount of facts, which all persons try to reach. Individuals seem to have predetermined aspiration levels relative to their desire for information, and the aspiration levels are bound to vary between areas of interest. Though being more knowledgeable about cars and their maintenance is probably in my interest as a car owner, I really have very little desire to learn much about cars. I just want it to work correctly, to get me from point A to point B safely and comfortably. When my car is not working properly, I'm not interested too much about why – I just want it to work again, so I take it to a mechanic. My desire for automotive knowledge is low, so I only learn enough for basic maintenance, and once I reach that level, I'm quite satisfied and I stop learning. This stands in contrast to my high level of desire for knowledge about cooking and baking, where I try to learn as much as I can as often as I can, and I see no ceiling where my desires might be satisfied. The ideally rational agent is always sufficiently informed to solve his given problem, and the measure of knowledge acquisition success does not vary widely between agents. Removing the

personal element of information gathering might be fine when considering problems in a theoretical setting, but carrying over the objective standard to apply to agents in the real world poses an inappropriate expectation. We might recommend that people become more knowledgeable in this or that area – and sometimes they really should – but this is not the same as expecting an objective (usually very high) measure of success. Even if that person does readjust his standard, it is still his standard, and it still may be far from full or sufficient information.

The totality of knowledge must be subject to a division of labor if individuals and society as a whole are to survive and thrive. We see this in Locke's account of the formation of societies, and it becomes even more necessary the more complicated the world gets. You learn how to make houses so I won't have to; I learn how to bake bread so you won't have to. Specialization of knowledge is fundamental to taking us beyond the hunter/gatherer stage, where we merely subsist, to true society, where we develop and evolve. In *Administrative Behavior*, Simon talks of the horizontal division of mental labor in terms of businesses and corporations, where necessary tasks must be divided amongst mental laborers so that they may all be completed, as well as the vertical division of mental labor, where specialization is necessary for coordination and communication between mental laborers. While this is obviously necessary for business success, Simon's approach works even better as an analogy for the world of knowers in general. The division of mental labor goes hand in hand with the naturally bounded limits of knowledge for individuals; we are, collectively, much more successful knowing if each person knows a few things very well than we are with individuals knowing many things poorly and without real depth.

Government and other kinds of collective organizational structures are the essential complements of our naturally limited knowledge capacities, not our adversaries, so it is very problematic when political philosophers and other social theorists attempt to analyze the citizen in a mental vacuum. Classical consent theory expects a large amount of political knowledge from the individual if he is to be able to give consent to the state's authority, but this is an almost backward understanding of political knowledge, which is as subject to the horizontal and vertical divisions of labor as many other types of knowledge are. Governments and the accompanying bureaucracies arise so we do not have to know as much individually, and so that our political knowledge can be coordinated with that of others.⁷⁰ All of the pieces of political knowledge are too great in number for me or any other individual citizen to ever sufficiently understand on my own, so we create structures to help us with some of the mental work. We cannot all be professional politicians or constitutional scholars. Society and states have come so far from our primitive origins because some people bake the bread and build the houses, giving others the opportunity to write laws and enforce them (instead of baking bread, building shelter, or hunting beasts).

Classical consent theory presents the potential consenting situation as one where the agent has sufficient knowledge of his alternatives, but it does not deal with where this knowledge comes from. This cannot be the case with real agents gaining political knowledge. All political facts and alternatives are external to the agent, and most of them

⁷⁰ The next chapter will be devoted to the ontological status of political authority, how it gets its authority, but I will state for now that political authority's most fundamental job is that of coordination of individual behaviors and that it comes into existence for that purpose.

are greatly removed from his immediate situation.⁷¹ Very little political knowledge can be acquired through simple empirical observation, and only a small amount more can be acquired simply through conversations with others. As there is no single repository for political facts and possibilities, many things will have to be learned through out-and-out research, through the deliberate setting aside of other ventures of knowledge and investigation, if such knowledge is to be attained at all. The mental labor involved is bound to be intense, and when compared to the perceived results (sufficiently understanding the political landscape), perhaps not worth the effort.

A more conservative, boundedly-rational approach acknowledges that performing this exhausting mental feat for the sake of possibly consenting to the state's authority is implausible and highly unattractive to most individuals, especially when states will assert power over them anyway. Gaining political knowledge is done at the loss of other areas of knowledge for individuals, and too many people devoting too much of their information-gathering to gaining a sufficient understanding of the constitution (written and unwritten) of the state will pull cognitive resources from other important tasks. A boundedly rational approach recognizes the fact that the success of knowledge acquisition is measured subjectively, that we ought to be content with varying levels of political knowledge between individuals, and that this subjectivity can be valuable so long as the overall knowledge investment is secure and leads to the advancement of the body politic.

Simon's notion of satisficing asserts that not all people are required to have all knowledge of present facts and future consequences at all times, and that many situations

⁷¹ I'm going out on a limb here and stating that little to no modern political knowledge is innate, although more primitive social/political knowledge does seem so rooted.

call for just enough information to get by. I believe that the political arena is one in which most people having satisficing knowledge is acceptable and expected. As long as we have specialists in this area, like professional politicians, constitutional scholars, and judges, political knowledge and possibilities can be advanced without too great a sacrifice of mental effort on the part of the body politic. While specialists cannot be expected to be ideal (or idealized) agents in the sense often employed by social theorists, their knowledge capacity for political facts can be (and hopefully will be) larger and more finely tuned. Dixit uses the example of a chess grand master to explain how some individuals with large stores of specific knowledge see and understand their fields in ways radically different from average, non-expert individuals. I admit that I am horrible at chess. In the past, I tried to play but always did poorly. Very poorly. I could never think of my moves as part of any larger plan. Although few people are as profoundly bad at chess as I am, most recreational players have the same fundamental problems as I do. Rules are not easily remembered and smoothly employed. Individual moves are individual moves, separate fragments, and not part of a cohesive, all-encompassing thought about the game. The chess master (so I'm told) does not think of moves as separate actions, but sees the whole game as a much smaller, more cohesive unit. Multiple options are present in the mind of the master at a given time, and those options are constantly adjusting with each move of the opponent. The master's opponent's options are just as obvious as his own. As Halford et al. argue, the expert may have the same knowledge capacity as the non-expert, the same ability to process the same amount of information, but his expertise allows him to see patterns and connectedness where the

non-expert cannot.⁷² The master can easily assess his goals and give preference rankings to options with minimal effort.

Expertise is the result of a lot of time and cognitive effort, and can only come about where there is a division of mental labor. Natural aptitudes and particular training help individuals think in special ways, ways different from the non-trained and perhaps ungifted (like me with chess). A division of mental labor allows individuals to develop some type of knowledge while allowing them to neglect or merely satisfy in others. Even if political professionals never reach the “grand master” or genius level of political knowledge, they may still reach very advanced levels of understanding in their particular sector.⁷³ The well-trained economist’s specialized knowledge allows him to understand a state’s financial nuances, what options are available for encouraging job growth, say, or decreasing the state’s debt. His knowledge capacity of state financial matters is much more likely than the average citizen’s to be robust, easily accessible and fluid. He is substantially less likely to be mistaken about the relevant facts, and he is in a better position (due to the vertical division of labor) to relay key pieces of information to decision-makers higher than him. If we were to accept classical consent theory’s demand for sufficient understanding of the object of consent, the only people that could even come close to being able to give real consent would be these kinds of specialists, but even they are unlikely to be fully successful.

Even when we look at the state as a whole, we see that there is no single body doing the knowing. There are no persons who are experts on all political matters; there is

⁷²Halford, Graeme S. et al. "How Many Variables Can Humans Process?" Pg. 76.

⁷³ This is not to say that they will; incompetence is often widespread, but this is more the result of inappropriate people taking positions requiring particular knowledge. The important point is that the mental division of labor certainly extends to the political sphere, and that specialized knowledge allows for greater systemic efficiency.

no way to be a political grand master, since there is just too much to know. All we can hope for, and all we really need, is an analog to Simon's business model: horizontal division of labor allowing for specialized expertise, and vertical division of labor allowing for coordination between fields. As long as this is done satisfactorily, most citizens cannot and should not need to devote too much of their limited knowledge capacity to the specific facts of the political landscape.

This division of mental labor, carried out by specialists, does not mesh well with the aims of classical consent theory. The sufficient knowledge requirement of classical consent theory places an unrealistic and wholly inappropriate demand on individual citizens regarding understanding the state and its constitution. While attempting to be complementary by recognizing and trying to promote the intelligence and worth of individual citizens, the demands are too high for the boundedly informed citizen of the modern state. Most citizens will never be in a position to gain anything more than a superficial understanding of state affairs, and even those that are political professionals in one sense are not political geniuses in all senses. If the sufficient understanding requirement is to be taken seriously as a safeguard against illegitimate exchanges of power, then classical consent to the state's authority cannot be given.

Limited Inferential Capacity Research and common sense both indicate that the average individual's capacity for problem solving and complicated reasoning are just as subject to cognitive limitations as the knowledge capacity. Again, this does not mean that people are irrational or epistemically lazy, but that our computational capacities are often well below the "ideal" set out by the traditional view of the social agent. Given the

vast amounts of political facts and options, and the bounded scope of our inferential capacities, the robust cognitive requirements of classical consent theory (sufficient knowledge and proper intent) cannot be fulfilled. This seems to extend over many types of reasoning.

First, we are often limited in figuring out means/ends relationships, and this seems to be true both with respect to individual ends as well as in the integration of ends into some larger view. This is not simply a problem with a lack of knowledge, but has also to do with sub-optimal predictive powers. Bounded cognitive success involves effort from day to day, from month to month, and even though this is the most we can expect of individuals, it pales in comparison to understanding of means to ends gained after years and decades. Also, we are limited in the amount of variables that we are able to handle in decision-making: “the number of variables that can be integrated into a single cognitive representation is a major constraint on cognitive and neuropsychological processes.”⁷⁴ Halford et al. found that our information processing abilities dropped sharply as variables in problems were added (say, from 4 to 5), and this was true no matter the individual’s level of expertise.

The integration of ends is similarly subject to bounded rationality:

The means/ends hierarchy is seldom an integrated, completely connected chain. Often the connections between...activities and ultimate objectives is obscure, or these ultimate objectives are incompletely formulated, or there are internal conflicts and contradictions among the objectives, or among the means selected to attain them.⁷⁵

Persons do not always think of their ends as parts of a unified whole, and problems are rarely presented to us this way. Some of my ends today are writing four pages my

⁷⁴ Halford, et al, pg. 70.

⁷⁵ Simon, Herbert A. Administrative Behavior. Pg. 74.

dissertation, preparing for teaching, cleaning my apartment, preparing dinner, and so on. While I hope to get all of this done, the chances of it actually happening are not spectacular, and conflicts are bound to occur. Working on the dissertation is, I believe, more important than some of the other things, since completing it is integral to my long-term goals, but being ready to teach is a more pressing goal, since I have to be prepared by tomorrow morning. My hierarchy of ends is muddled and lacking cohesion; doing what I can when I can in order to get by is often the greatest success I can ask for.

When we look at the citizen's cognitive states regarding his home state, the same means/ends sub-optimality probably will be particularly pronounced. The average person's intended political ends run the gamut between specific and vague; the specific ends very well may conflict with one another, and the vague ends may be too ill-defined for the individual to conceive of any way of reaching them. Suppose that Lizzie wants her state to increase the availability of safe and affordable birth control to the underprivileged. She may write her congressperson and urge them to provide monetary support to women's health clinics, but it is not at all clear that this is the best option for Lizzie. It might be more efficacious for her to become personally active in Planned Parenthood, but doing this will conflict with her other community service work. Which is more important to her, women's health or community service? Lizzie herself may not be able to decide. Suppose she wants to vote for a new political candidate based on his social justice and poverty works, but it turns out that the same candidate has no interest in advancing birth control rights. Should she still support the candidate, or should she endorse another? Lizzie's being able to come to a fully rationally deliberated choice

seems highly unlikely, given the complexity of the situation, even if she devotes a good amount of her cognitive attention to it.

The state's realms of authority are many and complex, and are therefore delegated to many departments that often work independently of one another; one group deals with the environment, another with energy, another with finances, and another with social welfare (to grossly oversimplify things). One group writes laws, and another (probably with its own agenda) enforces those laws. Given the complexity of modern state bureaucracies, it is unlikely that a very well-ordered, internally consistent hierarchy of state ends could exist. Just like within individual boundedly rational persons, state goals are valued separately, pursued separately, and often are not united as a cohesive whole. If the state wants to improve the environment and augment its power supply, it is very likely that the means to meeting these ends conflict, or the ends conflict with one another; windtricity development and oil production, for example, will result in environmental damage. International security and domestic financial strength may both be highly valued state ends, but protecting the state through military power is costly, and lowering the costs of government is another separately valued and conflicting end.

If it is the case that consistent, well thought-out goals are implausible at the state level, and if it is the case that most individuals are not sufficiently informed about the working national constitution, then it is implausible, essentially impossible, that average citizens could be sufficiently able to derive the best actions for their states or what political actions they ought to take themselves. Like with subjective knowledge aspiration levels, individuals are not likely to aim for ideal levels of information-processing powers, nor should they want to, nor would they ever achieve them. It is not

in the average citizen's powers or interests to devote great time and attention to the particulars of achieving state ends. Lizzie may devote a good deal of her time and mental effort to improving women's health care, but she ought not be faulted if her understanding is sub-optimal, if she does not make the best possible choices, or if she does not recognize that pursuing this goal will conflict with some of her other goals. Conscientious person that she is, Lizzie is likely to do well through a boundedly rational standard, but her understanding of the state's authority will fall short of idealized rationality's (and classical consent theory's) strong cognitive demands.

Even though rational choice theory and other areas of interest would say otherwise, in some decision making scenarios, it is not in one's best interest to construct a detailed decision tree for every single factor that might be relevant to a choosing scenario, or make causal predictions on a large scale, especially if one's knowledge of these areas is also suboptimal. Bounded rationality implies a more limited, imperfect, but useful mechanism with which to make decisions based on causal understanding. Gigerenzer's account of Charles Darwin's decision of whether to marry is a particularly incisive and entertaining example of the oddness and not-very-useful nature of overly detailed decision making:

Marry: Children – (if it please God) – constant companion, (friend in old age) who will feel interested in one, object to be beloved and played with – better than a dog anyhow, Home, and someone to take care of house – Charms of music and female chit-chat. These things good for one's health. Forced to visit and receive relations *but terrible loss of time*. My God, it is intolerable to think of spending one's whole life, like a neuter bee, working, working, and nothing after all. – No, no won't do. – Imagine living all one's day solitarily in smoky dirty London House. – Only picture to yourself a nice soft wife on a sofa with good fire, and books and music perhaps – compare this vision with the dingy reality of Grt Marlboro' St.

Not Marry: No children, (no second life) no on to care for one in old age...Free-dome to go where one liked – Choice of Society *and little of it*. Conversation of clever men at clubs. – Not forced to visit with relatives, and to bend in every trifle – to have the expense and anxiety of children – perhaps quarrelling. *Loss of time* – cannot read in the evenings – fatness and idleness – anxiety and responsibility – less money for books etc – if many children forced to gain one's bread. – (But

then it is very bad for one's health to work too much) Perhaps my wife won't like London; then the sentence is banishment and degradation with indolent idle fool –

Darwin concluded that he should marry, writing “Marry – Marry – Marry Q.E.D.” decisively beneath the first column. On the reverse side of the page he considered the consequences of his decision for his personal freedom, ending with the insight: “There is many a happy slave.”⁷⁶

Such a detailed causal-predictive analysis on such an intimate and emotional decision strikes us as strange, and doing such analyses on a regular basis on many different topics is both mentally infeasible (given our limited knowledge and inferential capacities) and, often, a waste of time and effort. Since our lack of true expertise in so many areas limits our accuracy in causal understanding, detailed decision analyses are often useless and wasteful.

As argued in the previous section, an average citizen's actual political knowledge is bound to be limited, and if this is true, then the average citizen's causal understanding of the political realm is also bound to be limited and, therefore, suboptimal. This becomes clearer the farther from the individual the public issue goes. For instance, a citizen might be able to readily predict the effects of altering the speed limit near this school or placing a stop sign at that busy intersection if these are in his own community. Given that the typical citizen drives regularly, including near the school, he will probably have a good understanding of his local traffic patterns, leading him to conclude that accidents and injuries will likely go down if the alterations are made. However, since we are not experts on most political issues, our long-term, large-scale causal-predictive powers will be very limited. I cannot predict whether a new economic program will actually stimulate the economy overall (since I know so very little about economics),

⁷⁶Gigerenzer, Gerd, Peter M. Todd, and the ABC Research Group. Simple Heuristics that Make Us Smart. Pg. 7-8.

much less whether it will help small businesses, diminish the federal deficit, impact the country's relationship with China, or cause problems with Social Security for the next three generations. Devoting too much of my brain power to understanding economics at this time is most definitely not in my interest, so my ability to develop my predictive faculties is going to be severely restricted. Most of my political causal predictions are going to be shots in the dark, and while this is not really problematic for me and my lifestyle, it does pose a problem to reaching the robust intellectual requirements of classical consent theory. Informed consent, in the traditional sense of the term, is highly unlikely partially because being informed must involve being able to make use of knowledge – including making projections about the future.

Another realm of bounded inferential capacities is the average person's use of preference rankings. While preference rankings are common in many areas of consideration, well-developed systems of coordination and weighing are not very common, especially when compared to their rigorous use in optimal rationality-employing fields. I always prefer mocha ice cream to banana-flavored ice cream, but never prefer mocha ice cream over chocolate ice cream. When we consider simple things that are common in our lives, like ice cream flavors or vacation destinations, the task of ranking preferences seems fairly easy, but only as long as we keep our list of alternatives relatively short. I'm not going to consider every possible flavor of ice cream available on the market when deciding what my favorite is, but only which one to buy out of those that are being sold right now at my local market (it tends to sell a few Ben and Jerry's and some Häagen Dazs). Full consideration of many possible alternatives in many possible situations is both mentally implausible (given our limited knowledge capacities)

and wasteful of our time. Instead, we make our preference rankings situationally, based on what information is available to us and how important such rigorous rankings really are to achieving any given goal.

Efforts at mental computation tend to satisfice, not maximize, and work only so hard as to reach our subjectively determined goals. Furthermore, cognitive research tells us that the quality of these efforts is likely to go down the more abstract and far-removed the ends are from us and our expertise. My ice cream flavor ranking might be pretty robust and consistent since the value of each option (how good the ice cream tastes to me) is completely subjectively determined – no real expertise is needed besides my tasting the flavors. By contrast, my car preference ranking is going to be uninformed (since I know very little about cars) and therefore spotty and inconsistent.

The haphazard nature of preference ranking computations for political matters is much more likely to resemble the car case than the ice cream flavor case for most citizens. The purpose of the requirement of consent to a state's authority is to protect "not primarily the individual himself, or his interests, but rather his freedom to choose whether to become bound to a particular government."⁷⁷ Locke argues that persons must weigh relevant considerations like freedoms given up and benefits received when deciding to enter into civil society, and this assumes some kind of preference evaluation for each option. If a person's consent is to be sufficiently informed, the evaluations put into the choice ought to be more complicated than simple, unreflective tastes like those of ice cream flavors. As discussed earlier, the areas of state authority are numerous, and the facts, considerations, options, etc., of each realm are even more complicated. Well-informed consideration and valuation of the whole of the state is quite implausible for

⁷⁷ Simmons, Moral Principles and Political Obligations, pg. 69.

any boundedly rational human being, and even if we break down our mental work to the level of particular laws and policies and areas of interest, the task is still tremendous. Citizens do not approach the political realm as a single, interconnected web of issues and tasks (only partially because states themselves do not weave such well-formed webs), but rather as unconnected chunks that are brought up at different times and with different degrees of emphasis. Since our knowledge of things political is suboptimal and our capacity for mental calculations is suboptimal, our political evaluations are going to be spotty and decisions made from them will be similarly suboptimal. While this suboptimality is not always a problem in the way of getting political tasks done, it does pose a problem for attaining a citizen's sufficiently-informed consent.

In some ways, bounded rationality manifests itself in our inability to manipulate facts and accurately derive consequences from them, like the imperfect causal-predictive powers mentioned before. In other ways, though, bounded inferential capacities are not simply about not understanding facts and mechanisms, but have more to do with limited imaginative capabilities. When Darwin was making his marry/do not marry list, he considered the value of possible future experiences like child-rearing, lack of attachment, and later-life situations, and while he thought he had good reasons to value these things in certain ways, our imaginations are not often accurate predictors of future values. How could they be? Currently, in my mind, I want to have children in the future because I expect being a parent would bring me happiness (along with some unhappiness), but very little of my life so far has given me real insight into what it might be like to be a parent to my own child. Many of our future imaginings are cognitive shots in the dark, so to speak, because our current level of experience is insufficient to generalize from. While

we obviously need to make decisions about the future based only on our shot in the dark generalizations, it would be wrong to say that we actually *know* what we are doing.

When applied to the political realm, the accuracy of our future valuations is likely to run the gamut, often tending more toward inaccuracy. Even the most competent political professional does not easily predict future events and assign appropriate values to them, because it is often hard to get an appropriate imaginative jumping-off point to start with. When a citizen is deciding who to vote for, he might try to base his decision on facts he already knows about the candidate, like their previous voting record and policy suggestions they are making for the future. Is this enough to really know how the candidate will act in the future if elected? Clearly not, both because we cannot know what is actually in the candidate's mind (if the candidate is a stranger; we would have much better insight if the candidate was an intimate), and because the future will be filled with events we cannot begin to imagine. Not only are there too many alternatives to consider, but there might be no way to accurately imagine these possibilities in order to give them proper, valuable consideration. In some cases, sufficient understanding based on imagining the future is quite plausible (in cases like ice cream flavor imagining), while in other cases, gaining sufficient understanding is highly unlikely (like how political candidates would deal with unforeseeable major disasters).

As with limited individual knowledge capacities, limited individual inferential capacities are aided by the division of mental labor. Maybe even more so than knowing facts, problem-solving becomes easier when persons are able to devote special attention to developing particular faculties. Specialists in car repair can use their superior inferential capacities to solve car problems better than I could. Because I can trust

(hopefully) the mechanic to do car-related problem solving for me, I can devote more of my mental efforts toward other, non-car-related ends. While his knowledge and problem-solving abilities will never be perfect, they are much better than mine and are sufficient for resolving car-related problems.

Similarly, while political professionals are not perfect political problem-solvers in any way, they can be significantly better equipped for such tasks than many non-political professionals. While I do not want to argue that individual citizens can never be a part of the process or are incompetent, I do want to argue that this very important aspect of knowledge (problem-solving) is almost always going to be quite suboptimal when considering the robust requirements of classical consent theory. Average citizens are largely unfamiliar with the detailed work that goes into managing a state. I do not really understand the job of the Federal Reserve System, much less whether an adjustment to some interest rate or another will have a positive effect on the economy, and I do try to be decently informed. If we expect citizens to give informed consent to their states (or to withhold such consent), then their knowledge and problem-solving abilities would have to be substantial if the “informed” clause is to have any substantive meaning. While individuals can be very knowledgeable and informed in many different fields, real knowledge of the state and its workings by some or most of its citizens is untenable – there are simply too many other things that we must focus our abilities on. Projections and problem-solving are plausible only on a smaller scale, project by project, individual by individual, as compared to “getting” the state as a whole, with its large number of functions and duties.

As I have argued, ascribing idealized rationality to agents might be acceptable when dealing with the purely theoretical realm, but it cannot be appropriate for evaluating real-life agents in real-life scenarios. Although we can make recommendations that particular persons become better-versed in this area or that, wide variations in deliberation and talents in inference will remain the norm, and this must be the case, especially when considering an individual's knowledge and problem-solving capacities in the political realm. Because of this sub-optimality, private individuals will not be able to meet classical consent's requirement of sufficiently informed consent.

Environmental Constraints The fact that persons are naturally limited in knowledge capabilities and inferential capabilities poses a problem for idealized rationality, but natural cognitive capacity is not the only issue. Just as important, if not more important, are the factors external to the individual's brain – environmental constraints. There is no clean slate or vacuum in which real persons think, deliberate, learn, or solve problems. Even though many or most persons are naturally inquisitive and intelligent, our environments have a great deal of control over how we think and what we think about.

While individuals are capable of thinking up new options and alternatives when learning and deciding, pre-determined answers and options are valuable problem-solving tools. When deciding where to go for dinner this evening, I have the option of spending hours flipping through the phonebook and researching the possible value of each restaurant I come across. Doing more work means I am more adequately informed in my decision-making – but it also means that I wind up very hungry. It is much more useful

to me to ask friends for recommendations, to consult a favored website, or to just go to a place that I have already dined at and enjoyed. In this instance, as with others, I am thankful that my environment can and does present me with a limited set of options; so long as my decision about dinner locale meets my personal standards of quality, I am not overwhelmed with cognitive tasks.

Many individual choices are made in contexts of “givens,” pre-determined and pre-valued options, and this is especially valuable in public life. It is not in my interest to consider all citizens when determining who will be the best senator or president, and it is not in my interest to contemplate all possible solutions to all public problems. Through the mental (and physical) division of labor, others can devote a significant portion of their time and mental effort to narrowing down alternatives and giving them some sort of value so that I may devote a significant portion of my time and mental effort to other tasks that many other people can benefit from. If others do some of the work for me and present me with “givens,” I can vote for one of four political candidates or support one out of several movements to clean up the environment. Furthermore, I am more likely to be knowledgeable about my choices if I am presented with a finite number of options than if I have to do all the work for myself. Given that I have limited knowledge and inferential capacities, “givens” often help me allocate what mental resources I do have, and use them to greater benefit.

It may seem problematic to personal freedom that we must depend on the work of others for our thinking, especially since these others may be wrong, ill-informed, or just unintelligent. Even though we always run this risk when we rely on others to construct our thinking environments for us, doing so is still necessary. If we, as individuals, are to

move much beyond hunter/gatherer subsistence, we need to be dependent on one another, not just in physical labors, but also in mental labor. Having a pre-set structure of “givens” is necessary and useful for depth of thought, even if it takes away from some misguided notion of independent cognition. It takes a lot of brain power to form and run a state, to allow individuals to work in concert with others. Some might construe the division of political mental labor as coercive or manipulative, since the point of consent theory is to ensure that power may not be exercised over individuals except by their “free” choice. However, this sharing of the mental labor is quite preferable to attempting to do all of the political thinking as individuals, undoubtedly failing because we are overwhelmed, and ultimately getting nothing accomplished. Consent theory is therefore fundamentally flawed because it gives a higher value to an unattainable, so-called sufficient understanding than to attainable shared, suboptimal knowing.

In truth, it is only by accepting and valuing our environments as they actually are that rationality can occur. As argued earlier, a division of mental labor (both horizontally and vertically) increases the general knowledge and problem-solving base, and a well-organized environment is what allows this to occur. Although environments will never be optimally organized, they are still significant improvements over the individual’s lone powers. To use Simon’s business model, greater mental work, both in quantity and quality, is accomplished by having people specializing in different areas and by having some people coordinating the efforts of the group; a cabinetry business that only attends to its bookkeeping, and not its cabinet making, is not a good cabinetry business. The analogy is especially apt for political knowledge. By working in a pre-set environment, more things are known and they are known better. If I am to know anything about state-

level energy issues, it is only because of the mental work of others (energy professionals), and the better they are at knowing the facts and coordinating their efforts, the more likely I am to have quality knowledge about energy issues.

Furthermore, the more complex the topics become, the better organized the environment must be. If my business only makes springs, all I have to know is how to make the springs and how to sell them to others for profit. For an organization as multifaceted as a state, though, the division of labor must be more specialized and better coordinated, to the point that even the most intelligent, well-versed political professional will not *know* or *do* much beyond his own sub-specialty. If this is true for that professional, then the likelihood of the average citizen being truly informed is near-zero. Organization of the environment and group efforts are good at increasing overall knowledge and efficiency, but they tend to limit the breadth of knowledge and problem-solving capacities for any given individual.

Time and Attention Constraints Our environments clearly impact what we can know and how we can know it, but further constraints are apparent when we take into account all of the forces impacting the individual's time and attention. The fact that humans are finite creatures living in finite time is often left aside in social and philosophical discourse. Even if we had substantially more brain power, where we could know larger amounts of facts and solve even more complex problems, there are still 24 hours in a day and multiple tasks competing for our attention. Although we are capable of achieving real depth of knowledge in specific areas, perhaps in the way of professions or important hobbies, a variety of day-to-day tasks still *demand* our time and attention. I devote a fair

amount of time to writing this dissertation and to my job, but things like cooking, cleaning, paying bills, taking care of the cat, and being a good family member and friend regularly push themselves on me, taking me away from my primary areas of rational development, and my life is simple compared to most. If life forces me to regularly shift my attention from task to task in real time, then my chances of gaining deep knowledge in many areas become slimmer and slimmer.

As Simon argues, most potential agenda items, in business and in life, are problems and opportunities. Besides the fact that the environment limits or controls much of what we are exposed to, the things that we must cognitively deal with present themselves to us with varying degrees of importance and seriousness (or, to make things more complicated, we sometimes must assign degrees of importance to them – another cognitively draining task). When considering our expectations of rational agents, we must remember that all persons live in real time, and our lives often revolve around survival and subsistence, and non-necessary cognitive tasks must sometimes take a back-seat. Even well-ordered environments cannot make serious dents in the necessary tasks that people must deal with. Being well-ordered is only a matter of degree, and does not negate the large-scale chaos of the real world. As Cherniak argues, most organisms (not just humans) must deal primarily with external disorder rather than internal, mental disorder. Working to have a consistent and coherent set of beliefs is not a good use of a person's time when he must deal with paying the bills and getting food on the table (unless that cognitive work pays the bills and puts food on the table). For most people, even "simple" tasks are cognitively draining. Sitting in traffic is draining, having a conversation with a family member is draining, and watching the news on television can

be draining. If one has to devote so much mental power to simply getting through the day's chaos, then little time or energy may be left over to developing one's rational powers unless doing so directly alleviates the chaos.

In some cases of knowledge acquisition, when dealing with the allocation of time and attention, we are faced with stimulus overload. Even if we have excellent knowledge and inferential capacities, we are still ill-equipped to deal with the overload. In the modern world, the amount of knowable information is growing with astounding speed, to the point that knowledge acquisition can mean a lot of time and attention must be devoted to just figuring out what information to *not* consider. Coping with stimulus overload is frustrating and tiring and is a real obstacle to gaining knowledge and developing skills. In the face of such frustrations, especially when the learning is not immediately beneficial, some agents will shut down and discontinue their investigations.

Habit and routine conserve valuable decision-making time and attention by allowing the individual to rely on his past actions as a basis for his current and future ones. Shopping at my regular grocery store is easier than shopping at a new one because I already know where the things I want are (because I have used them before). We are creatures of habit because repetition is very useful for our mental economy. As long as this is the path that meets our pre-set standards, the fact that it is the path of least resistance means we can devote more of our mental efforts to other pressing issues.

Motivation At the heart of the attention/time allocation “problem” is the issue of motivation. Our time and efforts are directed at this or that area because of reasons, good or bad. This is how we can say that crises and problems “force” themselves on us –

our reasons for addressing them immediately are powerful enough to gain and hold our attention, powerful enough to push other things aside. If it is true that a large part of our time and attention are devoted to managing external disorder and struggling to get by, then we will need to be presented with very good reasons to divert our attention away from what we are currently doing, especially if our current tasks are important to us. A movie may not need much to hold my attention for two hours, so it may not have to be especially good or compelling, but I might have to be presented with very good reasons to explore new and obscure areas of study like theoretical physics; I know that, for some people, this is very interesting and therefore very compelling, but for me, here and now, it isn't compelling enough to draw me away from my other pursuits.

Motivation, as a key part of bounded human rationality, is not a simple or predictable thing. Classic conceptions of human rationality often fail to address the complexity of motivation. That is not always a problem, as long as we are dealing with the purely theoretical and not attempting to project to the practical world. In a prisoner's dilemma, the reason to defect or cooperate is built into the problem; given possible results, the goal is to maximize one's outcome, and so one should act in accordance with whichever way the numbers play out. Real, boundedly rational agents in real, complicated situations, however, cannot be expected to behave in such a simple, idealized way because motives as reasons for action are rarely simple.

As argued above, individuals rarely have coherent and consistent sets of preferences and goals, and motives are usually not clear and well-integrated. If this is true, then we cannot expect persons to always act according to highly rational, well thought-out reasons. Being selfish and impulsive is normal and ought to be expected

sometimes, no matter how much we might want selflessness and reason to prevail. We can honestly try to work in concert with others, but that does not entail our motives are consonant with those of others. There are power struggles and mind games and manipulation in many areas of life. We are not always cognizant of our real motives, and it would be wrong to believe that we are usually driven by reasonable purposes. The fact that humans are not ideally rational does not suggest failure in any way; however, expecting optimal rationality, especially in regard to motives, fails to appreciate the world's complexity and the human mind's status as a natural, situated object.

Since we have many different issues vying for our attention at any and all times, and since motivation is imperfect and subjectively based, it follows that to appreciate this or that as an important issue, worthy of our attention and time, will not be consistent across all people. We are all likely to devote great time and attention to things that we perceive as important, but the perception of importance is not objective. Some people are especially compelled by theoretical physics, and are willing to allocate a large portion of their time and attention to learning about it, but it is not so objectively valuable that we can expect all persons to divert their limited time and attention to it and away from other pursuits.

It is in this way that being politically informed, sufficient to have some sort of basis for valuable informed consent, becomes especially unlikely for a majority of the citizenry. Learning about the state and all of its complexities, its functions and possible realms of authority, and how all of this imposes on citizens, is not uniformly compelling to all people, and for many different reasons. If a harried working mother is struggling to make ends meet, she may devote all of her efforts to getting by, *or* she may devote a good

deal of her time and attention to learning about and supporting social efforts to support harried working mothers, but she will not have the time to pursue both. A wealthy suburbanite may be fascinated by state economics and will devote his large amount of leisure time to becoming better informed, or he may pick up golf or tennis.

We will make the greater efforts to becoming sufficiently informed when we are motivated enough, but the simple existence of an issue is not always enough to give people reasons for action. It might even be the case that, in some areas like political action, apathy is acceptable because it could mean lack of strong reason for concern. This is not to say that ignorant, chattel-like masses of citizens are wonderful things, because they are not. One can be vigilant and ready to act politically when necessary without always *having* to act because of necessity. The former seems like a valuable mental state for a citizen, whereas the latter should give us reason for alarm, because that state is in bad enough conditions that many citizens find it important enough to investigate and become better informed. As long as the state is in an acceptable order, a mental division of labor will probably be in everybody's best interest, with only a portion of the population having truly deep knowledge of the state and its authority (enough to know when something is wrong) while other parts of the population teach math, grow vegetables, and deal in real estate. As I will argue in Chapter 7, acquiescence because of low motivation might itself be considered a form of political action.

If it is the case that most of our attention cannot be spent on areas of new investigation and is instead focused on coping with external chaos, and that we are willing to devote large portions of our time and attention to endeavors only when we are

strongly motivated to do so, then it seems to follow that, for most individuals, gaining any real depth of understanding about a breadth of public, political issues is not possible, likely, or a good idea. There is simply too much to learn, and not enough time or energy in which to learn it. Although this may have some serious implications concerning social class divisions, the fact remains that robust knowledge of the political may be a matter of luxury; those that are both interested and capable of spending the time and mental resources (because that time and effort are not forced to other issues) are substantially more likely to be the ones that are informed in any relevant sense of the word.

Historically, the majority of the political knowing has been done by political professionals, academics and political and legal specialists, persons who have had lives structured to be conducive to such efforts. We cannot expect that a majority of citizens have lives so well-ordered that they are capable of pursuing knowledge of complex and nuanced things that are not immediate to their survival, things like politics and public policy. Similarly, we cannot expect a majority of individuals to feel compelled to becoming politically and socially informed, especially if their state is functioning in acceptable ways when their personal lives are not.

If classical consent is to be the basis of the state's authority, then the world and its inhabitants would have to be well-ordered enough that individuals could really be sufficiently informed so as to give substantive consent. Rousseau makes such arguments in the *Social Contract*: "In a word, besides the maxims common to all, there is within each People some cause which orders these maxims in a particular manner and makes its legislation suited to itself alone."⁷⁸ Each state and its citizenry must be so perfectly arranged that the economy is appropriately stable and the workload is properly

⁷⁸ Rousseau, On the Social Contract, Book II, Chapter 11.

distributed, interstate relations are appropriately understood and attended to, and the inhabitants are able to devote their individual efforts to the political realm. While we all might wish for such utopias, it seems inappropriate to expect real state authority to be grounded in fictitious arrangements, to idealize the lives and minds of individual citizens in such a way that their honest efforts will always be sub-par and irrational. It is not in the interests of individuals or states for most persons to devote a large portion of their mental efforts to becoming highly politically informed because doing so necessitates that other important items be neglected. Even if our environments become better structured and our citizens become better educated and more organized, there is still a lot of important work to be done, managing the chaos in our lives and in our minds. Bounded rationality, external restraints, and subjective motivation will always pose a problem for most (if not all) people becoming sufficiently politically informed, enough to give informed consent, so the robust knowledge requirement of classical consent theory will always be unattainable.

On the subject of political epistemology, Simmons's voluntaristic argument is bound to fail because he simply does not consider whether the cognitive requirements of political consent can be met. When we talk about purely theoretical persons, it is acceptable to idealize their cognitive faculties and choosing situations, but the very nature of Simmons's argument is an attempt to apply to the real world, to evaluate whether real states have or can have legitimate authority over their citizens. The fact that a hypothetical agent *would* consent to his government's authority over him does not ground any political obligations for real agents: "once [actual] consent is abandoned as the ground [for political duty], we have also abandoned much of what is most compelling

about classical consent theory – namely, the clear, uncontroversial ground of obligation on which it relies, and the high value of self-government with which it remains consistent.”⁷⁹

The underlying assumption in Simmons’s argument is that persons are really cognitively able to give political consent. To a certain point, this seems logical; there are some real circumstances where we are cognitively capable of giving real consent, including the examples I gave in Chapter 3. However, we cannot generalize this capability from one kind of circumstance to another because our knowledge is not equally strong across choosing situations. Heidi is able to consent to Betsy choosing their movie for the night in part because Heidi is sufficiently knowledgeable about current movie selections and Betsy’s excellent track record with picking quality films – there does not seem to be any additional, relevant information that is missing from Heidi’s understanding. From this, however, we cannot automatically conclude that Heidi is sufficiently knowledgeable about the content of possible political obligations. The scope of currently available movies is small and Betsy’s history of movie picks is obvious to Heidi, so becoming sufficiently informed is no great task for Heidi. The scope of possible political obligation, though, is much wider, much more serious, and much, much more complex than today’s top 10 movies.

If political consent is to be possible, then the would-be consenter must be sufficiently knowledgeable about the content of his consent, and in order to be sufficiently knowledgeable about the content of political consent, a would-be consenter would have to devote an inordinate amount of time, attention, and brain power to gaining

⁷⁹ Simmons, *On the Edge of Anarchy*, pg. 78.

knowledge. This simply is not possible for most (if any) people. Therefore, if Simmons's argument is to be coherent and consistent, agents must be idealized, and this is in direct contradiction to Simmons's overall argument for political voluntarism.

Chapter 6: The Uniqueness of Political Authority

In private relationships where classical consent theory's robust requirements can be successfully met, the consentor retains his authority over himself in a very real sense. While Billy gives up an important kind of personal power, the power to control what happens to his body, to Dr. Doug in order to have his surgery, we can say that Billy is still very much in control. If he changes his mind at the last moment, Dr. Doug cannot rightly perform the surgery on him; if Billy does not want to follow Dr. Doug's orders for post-operative recovery, he is free to do so, even if following the orders is in Billy's best interest. Billy controls the terms of the relationship – he determines how much power Dr. Doug is to have. So, while Dr. Doug holds the scalpel and forceps, Billy holds Dr. Doug's right to hold the scalpel and forceps. When it comes to private relationships, where individuals are active in and present for the creation and maintenance of those relationships, we can say that there is a sense in which power over one's body is an *actual*, rightful personal power⁸⁰. Since the individual has this power and is actively a part of the private relationship, he retains the power even if he consents to another's manipulation of his body. In this case, there is something real to “give up” and the individual has to authority to do so, all the while remaining as free as he was before.

The purpose of this chapter is to examine political authority as a special type of authority. Locke and Simmons, amongst others, argue that political authority is derived

⁸⁰ I use the phrase “in a sense” here to qualify my support of classical consent theory as it applies to private relationships. I do not actually believe in natural rights like Locke and Simmons, but for the purposes of evaluating private relationships, where there is no pre-existing authority between the two parties, I accept talk of pre-existing rights as useful shorthand. Even if I may not agree that Billy has some ultimate natural right to his body overall, it is good to act as if he does in most instances. Between Billy and Dr. Doug, Billy definitely has the right to control his body. I will do more to support this argument later in the chapter.

from personal authority, which would entail that they are similar enough that such derivations could be made. I believe that this cannot be the case – personal power and political power are so fundamentally different in source and content that one cannot be the product of the other. Even if the practical and epistemic obstacles put forth in the last two chapters could be overcome, to the point that persons could be sufficiently informed and properly desiring, and signs of consent could be easily exchanged between state and citizen, I believe that political authority is not the kind of thing that can be established via the consent of citizens. In this case, Lockeans are guilty of a category mistake regarding authority.

Personal Powers v. Political Power

Giving up power When we examine the public relationship and the realms of authority the individual citizen would supposedly consent to, both giving up and retaining his personal powers, it is *not* the case that these powers even exist in such a way that the citizen *can* give them up or retain them. Even the most minimal realms of state authority differ greatly from any personal powers that can be held by individual citizens. States may have to tax and imprison, protect the land and resources, encourage some behaviors and discourage others. States may have to raise armies and engage in wars. States make laws to govern all people in the territory, for better or worse. Even if we view individual, personal areas of authority quite liberally, there is no way that these requisite powers of the state are somehow embedded inside. As Hampton argues, individual persons aren't ministates: is it really plausible to think that the authority with which a ruler legislates or

punishes offenders or conducts foreign affairs is something that each of *naturally* has?”⁸¹
If the state tries to draw its powers from the powers of its citizens, it will come up empty.

Political authority is of a different kind than personal autonomy. The necessary powers of the state do not derive from individuals consenting and transferring their personal powers because individuals do not have those powers to begin with. Whatever authority states have, those powers cannot come directly from individual citizens via their consent. The allure of classical consent theory is that persons can enter into authoritative relationships without sacrificing their freedoms – they will still hold on to their personal powers in some strong sense, even if they consent to another’s exercise of power over them. The kinds of authority states must exercise in order to function even at a minimal level are not mere extrapolations from individual liberties, so we cannot say that citizens retain their personal power when entering into a political relationship, in the way that classical consent theory wants. As I shall argue in the next chapter, we can maintain some link between individuals and states in terms of rightful exercises of power, but contra Locke and Simmons, this link can only be very indirect and not transacted via consent.

Pre-Constitutional Relationship

We can begin to see why individuals have no personal political power to retain when interacting with the state by looking at the individual’s initial association with his state. Hume’s point bears repeating, that states as things we are born into, and states view us as citizens at birth as well. Obviously this does not establish any truth about the legitimacy of the state’s authority, but it does remind us of the fact that the state has already established the terms of our association

⁸¹ Hampton, Political Philosophy, pg. 76.

long before we could possibly consent to its exercise of power over us. Even though the state's laws and constitution are bound to change throughout our lifetimes, we still enter into citizenship being viewed by the state as *not political authorities*. We are already claimed as subjects, and individuals rarely view themselves as anything but. This bears a normative impact because, as I argued in Chapter 3, true consensual relationships meet classical consent's requirement for personal power preservation because there is a pre-constitutional period where both parties are independent from one another. If classical consent is to be the basis of legitimate power exchanges, the potential consenter must have plausible option of not entering into the relationship, or building into the terms of the relationship some opting-out possibility. Individuals must have some say-so about the bounds of the authority's power and input about his role as consenter. Consent is appropriate for evaluating power exchanges only when the option of not consenting is a real, feasible option, but citizens almost never have this option regarding the authority of states. If in a private relationship, the would-be consenter never had a choice about entering into the authority relationship, we would conclude that his personal authority was violated and thus diminishes any legitimating power his consent might have.

This is one of the reasons that I believe that political authority is of a fundamentally different *kind* than private, interpersonal authority. Although there are many dissimilarities (territoriality, kinds of punishments, etc.), I find that looking at the parent/child relationship helps to understand how the founding terms of a relationship impacts the nature of authority. Like when we are born into states, we are born into families having a particular place in the power structure; as children, our parents claim and exercise authority over us, whether we want them to or not. As we grow, we may be

able to negotiate some aspects of our roles as “ruled subjects” of our parents, but the nature of the relationships is not alterable. We do not expect the parent/child relationship to operate like other relationships in large part because the terms of its foundation are so very different – the same set of rules simply ought not to apply. The same goes with the individual/state relationship. Entry into the relationship is not done by independent agent and independent agent, but by ruler and ruled, one side forcing the other into his role. It is not as if the political relationships is just some type of variant of the interpersonal, having different external traits but existing by the same set of principles. Since the two are so fundamentally different, we should not be surprised that the basis for legitimating one kind of authority cannot serve as the basis for legitimating the other kind.

Although the state’s laws and constitution (written and unwritten) may change within one’s lifetime, the thing we think of as “the state” may endure for longer periods of time. Because the state is defined by some of its formal features (its laws, its physical location, etc.), it is able to persist much longer than any individual. The lawmaking bodies, legislatures⁸², allow the state to perpetuate itself and its authority into the future, so when we are born into the state, we already have laws that apply to us, whatever we may think of them. Many states have methods of allowing citizens to participate in government to a limited extent, but most often an individual’s participation is in reaction to the laws and regulations already in place before his involvement.

The pre-constitutional period in private relationships allows the participants to be active in the creation of the terms of authority, and this seems to be essential to the Lockean voluntaristic spirit. The nature of the modern state, by contrast, seems antithetical to voluntarism as the basis of political power and personal obligation. If

⁸² In one person or many, good or bad, elected or not.

individuals are not allowed to be active participants in the creation of their obligations because the state claims and exercises power at the individual's birth, then the existence of those obligations are not the product of the person's will. He is not as free as he was before, because there is no "before".

Post-Constitutional Relationship Just as the forced entry into the public relationship prevents classical consent from legitimating state authority, the state's claim to great power over citizens for their entire lives prevents any attempt at consent from transferring authority. Only when a person tries or succeeds in emigrating from his home state does that state even consider relinquishing its authority over that individual – and sometimes emigration does not prevent a state's claim to exercise its authority⁸³. Except for these rare cases, states claim authority over all individuals living within their borders for their entire lives, and may compel them to follow the laws, if such compulsion is needed, without exception. This exception-less, complete claim and exercise of authority over citizens prevents the individual/state relationship from ever being consensual, and this is true by necessity.

As argued in Chapter 3, one party forcing the other to remain in the relationship is tyrannical and seems opposed to the spirit of classical consent: to allow the consentor to maintain a true sense of personal power by only lending some of that power to the would-be authority. Withdrawing from one's original political relationship by emigration is almost an impossibility for many citizens; the costs (financial and other) of leaving one's life behind and moving to another state can be more than many citizens can bear. Also, even if one does have the resources to leave one's home state, there are further

⁸³ For example, states will seek to extradite criminals who have fled the country.

difficulties with finding another state to immigrate to, but this is a necessity because almost all land on the planet has been claimed by some other state. The consent tradition that follows from Locke centers on the value of the individual, arguing that persons are born with natural rights, and this creates a zone of personal power around the individual. The whole purpose of creating a state is to protect those persons, so to create a political relationship where the citizen has no plausible means of withdrawing from the relationship is contradictory.

It is also in this way that the political relationship is of a fundamentally different kind than private relationships. In private relationships, classical consent allows the parties to create an authority exchange so that one or both of their interests are benefitted. That authority exchange, however, has the option of being broken if either of the parties want their relationship to end or change. The power given and received is truly an extension of the participants, whereas in the political relationship, one party (the state) enters into the relationship with the rules already written and its permanent authority already asserted and ready to exercise. There is no power *exchange* at all.

To be fair, Locke and Simmons do seem to recognize that post-constitutional autonomy is integral to a power exchange's legitimacy, as it appears to underpin the argument for the possibility of the dissolution of a government – if the rulers go outside of the authority originally granted them, the citizens have the right to withdraw their consent and dissolve the government's powers.⁸⁴ Like the Lockean argument as a whole, this is a worthwhile attempt to maintain voluntarism, but it has not translated into the world of modern states. If citizens cannot give their consent in the first place because they do not have political authority as part of their personal authority, then there is

⁸⁴ Locke, Second Treatise on Civil Government, Ch. XIX.212.

nothing to take back when the government abuses its power. The world it set up now that, even if a citizen could emigrate, he would only be emigrating to another state and the authority of its government. The nature of modern state authority, as an ultimate power with ultimate authority, requires that this be the case.

Open-endedness The realms of state authority, such as public safety and economics and punishment, are not powers that individuals or non-state groups are capable of holding; rather, they are realms of authority that come into existence by the creation of the state. In order to successfully protect the population and develop a public agenda, the state's claims to power have to allow for changes and adjustments as the needs of the state change. There is no single perfect constitution that applies to all states. Each polity must consider its many features and special needs, and in order to secure the peace and prosper, each state must constantly adapt itself to its current situation. New laws and regulations will become necessary, and if the nature of the state requires the possibility of change on some fronts, it theoretically must allow for change on all fronts, to claim unlimited power.

Of course, no state can actually exercise unlimited power over all of its citizens, and no state would be interested in doing so. As experience, as well as theory, shows us, besides being so morally heinous and contemptible, attempts at tyranny are not really in the state's best interest. When governments try to exert too much control, rebellion is likely to follow, so actual exercise of complete power is bound to be self-defeating. Still, open-endedness is an essential feature of state authority. Even if no state ever wanted to exercise power in realm x, the state's authority must allow for the possibility of

exercising authority in realm x in order to secure its greater goals. This is one thing that makes the state a unique type of agent: it is neither a single person nor a unified group, and it exists to serve a variety of interests over a broad sphere. Because the state is a unique type of agent with a purpose unlike that of any other kind of group, we cannot expect its power to be comparable to any other in terms of type or extent.

Open-endedness poses both practical and theoretical barriers for personal consent creating state authority. On the practical front, as discussed in Chapter 4, there are no mechanisms for accounting for the will of individuals whenever a new realm of state authority is being considered. On the theoretical front, though, the state has an existence and purpose beyond its individual citizens. Take, for example, legislation to regulate harmful air emissions. Releasing pollutants into the air is clearly in the interest of many individual citizens and companies. The nature of state authority, though, is not simply concerned with aggregating individual interests, but must deal with a public good; even if a majority of citizens would be in favor of allowing more toxic emissions, the state can have a separate concern for the entire body. It needs to be able exercise authority on unforeseen fronts if such authority is needed, so it cannot be derived from the consent of individual wills.

Independence and Finality

Perhaps the most pertinent aspect of the modern state's power is its independence and finality as an authority. Any relationship that we can call private necessarily takes place within a context of greater authority than that held by either party. Mike and Karen are both citizens of states (probably the same state, since they are married, but that is neither here nor there), and many of their interactions with

one another are limited by the laws of their states, even though they understand themselves to have a very open-ended relationship of authority exchange. While they have direct and ongoing consent with one another over a range of topics, essentially making them both consenter and consentee at the same time, authority and subject, states still exercise power over some of these same topics. For instance, Mike and Karen have agreed to share their common monies, but that does not prevent the state from interfering in the handling of those monies; if all of their money is the result of a bank heist, the fact that they have consented to the other's spending of the money does not stop the state from seizing the stolen loot. The fact that Billy has agreed to let Dr. Doug perform surgery on him will not prevent the state from arresting Dr. Doug if he has no medical license.

My intent in mentioning this is not to delve into the particulars of state sovereignty, when it applies and over what realms. Rather, I wish to point out state authority itself as a unique brand of power, one that applies from all and only states to their respective citizens. Even though there is dispute about the extent to which states have sovereignty, even though there is dispute about the meaning of sovereignty, and even if whatever it is, is being altered or weakened by increased international interaction, the fact remains that modern states act over their citizens as if they are sovereign, and most states regard one another as largely sovereign.

In private relationships, if there is a dispute between consenter and consentee, the parties have the option of appealing to the state to settle their dispute. States need to have the authority to settle internal disputes in order to keep the peace and function properly. This is why the classical consent argument came about in the first place – to end state of

nature disputes. Furthermore, as Raz argues, “we feel that legal systems not only happen to be the most important institutionalized system governing human society, but that that is part of their nature.”⁸⁵ States are not just rule-makers; they are *the* rule-makers. The groundwork provided by the state’s authority determines the context in which other types of authority may take place. Other authority relationships are sought to accomplish certain goals (seeing movies, having surgery), but state authority’s purpose claims to be accomplishing the most important goal – life as a society.

By and large, though, political authority does not exist beyond the borders of modern states. While we may have large international policy bodies, and while states may make treaties with one another and exercise power over one another via economic transactions, there is no secure authority to hold the parties to the terms of their (seemingly consensual) compacts. For better or worse, anything put forth by these international bodies amounts to nothing more than recommendations to be taken into consideration by the acting states.

If this is the case, if state authority is by its very nature final and independent, then it cannot be the case that is derived from the personal power of individuals. No decent argument can be put forth that any one individual has complete power over another, and the modern world is set up such that individuals are always non-final in their power. If persons do not have this type of power to begin with, then it cannot be the case that state authority gains its standing by extrapolating from its individual citizens. The trait of finality is not something that any one person has – rather, it is something that we create by making a new, unique type of power.

⁸⁵Raz, Joseph. The Authority of Law. Pg. 116.

personal authority in two distinct ways. First, political authority has a monopoly on power over a given territory: political authority is the existence “of a convention to treat the orders of one or more persons (i.e., the rulers) as both preemptive and final...in a wide variety of domains of decision (indeed, maybe even all domains), where these orders may contain directives that may mandate unpleasant and even highly dangerous behavior.”⁸⁶ This first dimension of the state’s authority is Weberian, and includes within the concept that the rulers have a cadre of supporters to enforce the rules. The authority of the state exists to the degree that the rulers and their supporters are able to uphold the directives they make to the citizenry. The finality achieves the resolution to the state of nature that Locke and Hobbes both dealt with. Disputes may be adjudicated impartially and future disputes may be prevented by the enacting of laws. Political authority operates on a macro level – it locates within an entire state (comprised of many individual persons) a power-holder and rule-enforcer.⁸⁷ Personal power, however, exists only within a person as a Lockean ideal, that we are all born free and equal, and that we can exercise our freedom through our faculty of reason. While personal authority may seem similar to political authority in this instance, as Locke and many others would have us believe, I argue that this similarity is merely symbolic or metaphorical.

Second, political authority is unique in that it cannot be held by any one person or non-political group. The types and domains of power that modern states may have are not the types and domains that individuals and non-states are capable of having. Locke’s state of nature argument has individuals holding the rights to uphold the law of nature

⁸⁶ Hampton, *Political Philosophy*, pg. 97.

⁸⁷ Uphoff, Norman. "Distinguishing Power, Authority, and Legitimacy: Taking Max Weber at his Work by Using Resources-Exchange Analysis." Pg. 295-322.

and punish offenders, but these natural rights presuppose the existence of objective natural law. I simply cannot understand how this would be the case. As Hampton argues, for instance, “It is hard to believe that each adult... naturally possesses the right to use a trial procedure of her choice to convict the offender and the right to inflict retributive or deterrent forms of punishment on the offender.”⁸⁸ While I might approve of a murderer being locked away from the rest of society for the rest of his life because he needs to be stopped and I want him to suffer like his victim suffered, I cannot see how I (or any other individual or group) have a *right* to do so outside of the existence of a law. The existence of natural rights like legislation and punishment depend on the existence of an objective natural law, but the existence of Locke’s natural law depends on “that measure God has set to the actions of men for their mutual security.”⁸⁹ Unless a better foundation for natural law, beyond divine command, can be found, then the private possession of rights like punishment and legislation cannot be accepted.

These considerations go to show that political power, held only by states, is fundamentally different in type from any power held by persons in private relationships. States regard themselves and one another as the highest authorities, and citizens regard their states similarly. A state cannot persist if it does not have the power to control areas vital to its interests, relatively free from interference. In order for persons to be secure in their bodies and possessions, states must have real power to construct laws, punish wrongdoers, and generally coordinate large-scale behaviors. From this, we can see that political authority is fundamentally different from any authority conferred in private relationships. Not only are the necessary powers of the state far too vast for any single

⁸⁸ Hampton, Political Philosophy, pg. 76.

⁸⁹ Locke, Second Treatise on Civil Government, Chapter II.12.

citizen to understand properly enough to intentionally consent to the state's power via a sufficient outward sign – those powers are not of the kind that can exist as the product of robust consent, nor should they. Because the nature of the state's power is so different from the nature of any other type of power, we would be wrong to conclude that the method of securing that power (robust consent) will be the same.

Political Directives and Political “Intentions”

After showing that political authority is of a fundamentally different kind than private authority, I will now take a page from Raz and look at the unique content of political directives. After all, the point of having a subject/authority relationship has to do with directions⁹⁰ being given from one party (the authority) to the other (the subject) for some particular, practical purpose – the management of actions. As we shall see, the intentions behind such directions given by states differ dramatically from those given from private authorities, and the reasons for following them make it clear that public relationships create an authoritative atmosphere unlike any possible in private, interpersonal relationships.

First, we must look at the intentions behind the state's actions. Persons of the classical consent tradition, including Locke and the Lockeans as well as Rousseauians, have seen the state's authority as a product of individual wills; in order for persons to have their interests and needs met in a way that anarchy (state of nature) cannot provide, they unite to form a state. The purpose of the state, in this tradition, is to aggregate and interpret the wills of the individuals, who have given their consent to the body politic to

⁹⁰ Sadly, in this case, ‘directions’ is the best word to cover those things given by authorities to subjects for the alteration of behaviors. As it will become clear shortly, those given by public and private authorities are so different that the use of one term to cover both meanings makes for serious misunderstandings.

act on their behalf, so the outcome – the “will” of the state – is just a reworking of the original will of the individual. However, as we have seen, serious practical problems prevent this reworking from ever actually happening in real states: there are problems of accounting for consent via sufficient outward signs, of getting the intent of full consent to the state as a whole from any possible lower-level consentings, and so on.

Moreover, the domains of state authority cover different spheres from personal, individual interests. Although classical consent theory’s advocates and dissenters can agree that the main function of the state would have to do with the security of persons and possessions, the necessary laws and regulations for accomplishing this security have to cover a wide range of areas like public health and social welfare and other mass coordination of behavior. These public actions, however, (carried about by public intentions, if you will, or the state’s intentions for safety, prosperity, and peace) are often contrary to any given individual’s private desires and interests. A wealthy person is interested in preserving his wealth, and so may not want heavy taxes to pay for social welfare programs; the cautious driver might feel that he ought to be able to drive faster than the speed limit, as he believes his actions would not put the public at greater risk. The conscientious citizen will hopefully realize that the laws are put into place for a greater good to himself and society as a whole. He may realize that he ought to pay taxes to fund social welfare programs to combat poverty, and in return combat crime, so that his overall security is ensured – whatever his humanitarian feelings about helping the poor may be. He can realize that he ought to drive the speed limit to best coordinate with other drivers, thus securing his overall well-being.

One might argue that all citizens ought to be so thoughtful and realize that they ought to follow laws for greater security for themselves and others, and that we ought to be motivated to submit to state authority for these reasons. These are worthy ideals, and I wholeheartedly encourage civic-mindedness, even though robust consent to the state is impossible. However, when we look at the situation from the state's point of view, we see that the individual citizen's *attitudes* toward the laws – their intentions and particular interests altogether – are to a large degree superfluous. For although the state's interests have some overlap with individual interests (public health overall and Billy's health, for instance), it is impossible that the state's actions like creating and enforcing laws and regulations accord wholly with particular individual wants and needs.

Even the most minimal state must claim and exert authority over many domains, and so must act with the overall, public plan in mind, a goal that is at the most indirectly related to individual interests and desires. This is a fine point similar to that made by Kant in the *Groundwork*, concerning motives and maxims: we may have a wide variety of motivations concerning x, truth-telling for instance, including greed and duty, but it is only when we use duty as our maxim that the intent to tell the truth has moral worth. The similarity to state's intentions and individual interests is this: while individual interests are important and greatly inform the state as to what it ought to do (this point will be further developed in the next chapter), the state does not and cannot directly use these interests as the basis for its actions if it is to be effective. First, there are simply too many individual interests in a given state and no way to really account for them, so even if the state wanted to construct a public interest out of private ones, there is simply no way to accomplish this. Second, though, if the state is to perform its minimal functions, its

motivation must be primarily concerned with the big picture, with only indirect regard to individual interests. This public interest is more than a mere aggregation or direct function of individual interests. It is a *creation* by state actors (legislators and executives, and less directly, private citizens). The domains of authority are created to cover interests that did not exist apart from the state. Of course, states must account for the needs and wants of individuals so as to prevent social discord⁹¹, but they must also go beyond this and fashion laws and regulations to further their ends. This often means ignoring some interests, and punishing some persons who pursue their own interests. As even the smallest states can have thousands of citizens, attention to all or even most individuals is impossible. Legislators have the job of fashioning large-scale coordinative structures, creating trends in economies and the like. These interests exist only for states, and are not simply distilled from individual interests.

Pre-Emptive Reasons

As I have already noted, the public relationship is unique among authoritative relationships in that entry into the relationship is automatic, and the terms of the relationship have been established prior to any one particular person entering. These terms set up the state as a political authority, the highest and most pervasive level of authority, in relation to individual citizens. Also unique to the public relationship, though, are the force and meaning of the state's mandates: states, through their governing bodies, issue orders that are to be taken as *pre-emptive* reasons for action, to use Raz's phrase. Although Raz intends this kind of reasoning to apply to many types of

⁹¹ States that wish to avoid massive internal turmoil are most responsive to individual interests, but even minimally peaceful states have to do this to some degree if they want to maintain their hold on public power.

authoritative bodies, I believe that serious consideration of the term applies especially strongly to political authorities, much, much more so than authorities in private relationships.

First-Order and Second-Order Reasons for Action

According to Raz, a

preemptive reason combines a positive first-order reason and a negative second-order reason for action, namely following the authority's rules and mandates: we must obey the rules and mandates (positive first-order reasons for action) and ignore or exclude essentially all reasons for not obeying (negative second-order reasons against action). When applied to the state, this would mean that, even if we believe that we have good reasons for not obeying the government, the state's authority asserts that those reasons are to be overridden by the order to obey. This also would mean that, even if we personally believe that a law or regulation is a good one and ought to be followed in virtue of its goodness, then that reason is to be set aside by the trumping reason that the law came from the government. States expect citizens to comply with laws and regulations, even if they do not want to, simply in virtue of the fact that they come from the state's acting bodies. However, if we keep in mind that public relationships involve two active bodies (government and individual citizen) that have reasons for acting certain ways with regard to one another, we must realize that the notion of preemptive reasons is incompatible with real, voluntary consenting relationships.

In truly consensual relationships, even though one body is the subject, the recipient of the other's orders, neither body is actually passive, reason-wise. Even though Billy has placed himself under Dr. Doug's care and has agreed to follow his orders, Billy

is still a very active part of the relationship. When Dr. Doug gives an order to rest or take a certain medicine, Billy does not view the doctor's order as an ultimate mandate, eliminating all other reasons for action. Billy is an active participant in the creation of their relationship's constitution, and Dr. Doug's orders are only orders in a weak sense. This kind of robust consent guarantees that Billy is always in a position to say "no" to what Dr. Doug says. Furthermore, since Billy is only following Dr. Doug's orders to enhance his own health and well-being, any directive that does not cohere with Billy's own, pre-existing beliefs about his health are not likely to be followed.

For consensual private relationships, the negative second-order reason is not actually exclusionary, but is only a recommendation. The second-order reason for action in a private, voluntary transaction would be something like, "one ought to follow the authority figure's orders *if* one believes those orders are good." In private relationships, we seek the authority of another to advance our own self-interests, so the conditional portion of the second-order reason has weight only if the authority's orders mesh well with our pre-existing reasons for action. If the relationship is truly voluntary, then the order's recipient is in the position of deciding whether the content of the order and the order's source are sufficient in his mind as reasons for obeying. This evaluative reason maintains the spirit of robust consent as a process carried out by free, active, informed agents that are capable of being prominent forces in the direction of their lives. Both the authority figure and the subject are cognizant and respectful of this, as the authority figure must accommodate the agent by obtaining his consent before giving orders.

This is the case for all truly consensual private relationships. The subject must balance the authority figure's orders and the reasons behind them with other pertinent

information before he can meet the sufficient knowledge and proper intent requirements of classical consent theory. The object of robust consent is authorizing the recipient's use of power in a given area and, following from that, impacting what the consenter is expected to do. So, in order to form the proper intent, the consenter must sufficiently understand that his consenting authorizes the consentee's use of power and binds him (the consenter) to obey if necessary. In truly consensual relationships, an authority's orders are not given or received as preemptive reasons for action, but are only guidelines or recommendations, however strongly they may be worded.

Political Mandates The individual/state relationship calls for an entirely different reasoning structure. An individual citizen is only a passive party to his state's power over him because political authority cannot be the result of the individual's consent. Political power concerns a set of interests that is at most tangentially drawn from individual interests; the state is concerned with creating and maintaining the public agenda, so its interests are public, not private. An individual's personal agenda may be tied to the public agenda, but the public reasons for action are not directly derived from individual reasons – or individual consent. Because the state acts on reasons of its own, and not from individual reasons, individual citizens are passive recipients of state power. This is true even for state legislators and executives as well; their input into the construction of state laws and regulations is given with a public “hat” on, but received privately, assuming that those laws are to be applied to the officials. All individuals, as citizens, are addressees of the state's authority because full robust consent is impossible,

whereas in private relationships, there is a strong sense in which individual consenters are both subject and authority.

Because individual citizens cannot directly contribute to the state's construction of the public agenda, they are limited to indirectly defining the domains of the state's authority. As we have seen, state legislators and executives must have leeway in deciding what areas are to be under the state's authority, in order to meet the state's primary functions of providing security and encouraging prosperity. Creation of the public good is dependent on public interests, and these interests are bound to vary between states, so the limits of state authority have to be flexible and adaptive. Therefore, while individual interests and opinions influence the public agenda, and are bound to influence what legislators come up with, individual input to the limits of state authority is only indirect, and is not the result of robust consent.

And, since the formation and pursuit of the public agenda is a creation of the state and not a direct result of individual consent, the degree to which a state is responsive to the expressed opinions of its citizens is more a moral quality than a political one. Many proponents of classical consent theory view the state's authority and its legitimacy as one and the same thing, but this is incorrect. Political authority is merely its exercise of a particular kind of power – one not derivative from individual powers – involving a special set of interests, over people in a certain location. In modern states, if we want to identify the political authority of a particular location, we simply look for the highest, most abstract level of political orders given. If a thing is a state, it has an authoritative body; without such a body, there is simply anarchy. Because the nature of the state's authority is what it is, however, we can judge its value as being good or bad. This is a

large part of legitimacy. As I will cover more in the next chapter, the degree to which a state takes into account its citizens' interests and opinions can be a major factor in determining its legitimacy, but for now we should just keep in mind that a state's responding to its citizens is not a factor in determining if it is a de facto political authority.

We can see here the fundamental difference between public and private authorities. Since private authority is created with the direct intent for one party to issue directives to the other, the mandates of the new authority can be viewed as a direct extension of the consenter's will. By contrast, even though individual citizens indirectly contribute to the existence of the state's authority, a) the connection is too far removed to say that there is any direct power derivation between the authority and the ruled, and b) the state does not exert its power with the aim of accommodating the individual citizen's desires. As Raz states, "Orders are made with the intention that they should prevail in certain circumstances *even if they do not tip the balance [of the individual's reasons for action]*."⁹² As much as we might want it to be otherwise, the state does not issue directives with the goal of persuasion; the purpose is to override the citizen's own reasons for action, to end the disorder of the state of nature.

Executing the Law

Since the state's authority exists in its own right and operates to serve its own interests, we can conclude that its mandates are given as preemptive reasons for action, unlike those of private authorities. If the public agenda is to be advanced, compliance with the law must be largely secured and orders are to be subject to enforcement. In

⁹² Raz, The Authority of Law, pg. 23, emphasis added.

private consensual relationships, one might say that the authority figures have the capacity to punish, but this is true only insofar as punishment because of refusal to comply was part of the constitutional phase of the original consenting act. When there is no original consenting act, however, and when force might be used to preserve the very structure of the relationship, then that power of enforcement exists simply in virtue of the relationship existing, and is not dependent on the input of the subjects.

This is not to say, though, that might makes right, or that de facto authority entails de jure authority. All this argument implies is that might makes right, and that de facto political authority is not a function of de jure political authority based on a classical consent model. Because robust consent cannot erect, much less justify, the state's power, a model other than classical consent theory is needed to establish a basis for legitimacy, as I shall cover in the next chapter.

Returning to the notion of preemptive-ness, we can see that the state's orders are given and received with at least goal of overriding individual private reasons. While there is no way for the state to actually step in and ensure that people think certain thoughts, it has the power to strongly influence citizens' priorities – to create forceful negative second-order reasons for refraining from action. For those persons who might have positive first-order reasons for breaking the law, like stealing to gain money or killing to exact revenge, the possibility of punishment (a power held by the state that is not a result of a citizen's consent) provides a good second-order reason to ignore one's personal first-order reasons and embrace the state's first order reason to obey the law because it's the law.

Obviously there are plenty of cases where individuals do not find the possibility of punishment to be a good enough reason to abandon one's desire to commit a crime, since crimes are regular occurrences in states. Some argue that, for certain sets of crimes, many criminals do not engage in this kind of cost-benefit analysis, but common sense also tells us that there are plenty of would-be criminals who do refrain from breaking the law when the possibility of punishment is strong enough. In any case, however, the state's agents will not care how a criminal weighs his reasons for and against actions of public interest. Setting aside the complexities and failures of actual legal systems, states punish offenders to serve certain ends (retribution, prevention, etc.). In consensual private relationships, conflicts of interest between the authority figure and subject do not necessarily lead to punishment: they can simply dissolve the private contract, since the authority has his power in virtue of the subject's say-so. This is clearly not the case in public relationships. Criminals do not have the chance to opt out of laws they do not wish to obey (save maybe the possibility of fleeing the state), and few individual citizens have the power to directly change the state's laws⁹³. Modern states are officially the final arbiters of their laws, so citizens who may want to opt out of the law have no official higher recourse. Since robust consent to the state is impossible, the state's authority does not exist in virtue of individual contributions; and since this is true, and there is no original consenting act determining the bounds of authority, individuals cannot be in the position to dissolve the contract by definition.

The political significance of not adhering to the state's negative second-order reason for action – that the individual suppress any reasons he might have to break the

⁹³ Again, while legislators are private citizens *and* also make and change laws, they do not do so in virtue of their private-citizen status.

law – lies only in cases where the law is broken. As long as individuals obey the laws, the state will have no interest in their motives, whether the person acted from his own first-order reason or the state’s first- and second-order reasons. What is unique about the state’s power as a whole, though, is that persistent possibility of issuing mandates that really are preemptive reasons for action because they are backed up by the highest level of authoritative power.

The purpose of this chapter has been to argue that one of the main reasons that Locke and Simmons’s argument for political voluntarism is bound to fail is because of a category mistake regarding authority. To a degree, making this mistake is understandable. There are some instances where it makes sense to say that individuals truly have proper authority; Heidi really did have authority over her movie-watching choices, and Darren truly had authority over his work-life. They were able to properly transfer that authority to other agents because it was theirs to begin with. Given that all of the basic and additional requirements were fulfilled and fulfillable, consent was the right method of transferring their powers to others.

The voluntaristic argument and Simmons’s argument for philosophical anarchism are bound to fail, however, because they are based on the assumption that there is only one kind of authority to be had and in only one way. Locke’s argument that all rightful authority is ultimately derived from the law of nature, mandated by God, is coherent but unsupportable (for many reasons that I cannot go into here). Simmons seems to give authority based on the law of nature the same treatment, even if he does not directly mention a religious basis. Without anything supporting the law of nature argument, it

seems like the bottom of the Lockean argument has fallen out, and we are not compelled to agree that authority must be a simple concept. Furthermore, there is plenty of reason to believe that authority is *not* a simple concept; the authority of a teacher over a pupil, for instance, seems fundamentally different from a government's authority over a citizen.

No matter how much we may dislike the idea, the fact that there are different kinds of authority poses a powerful challenge to the Lockean position that we are all born completely free and equal. Even if it is only temporary, there is a time in our lives that our parents or guardians have real, non-consensual authority over us, for instance. This leaves the door open to the possibility that perhaps our communities have real, non-consensual authority over us. Maybe the whole society can have real, non-consensual authority over us. One of my fundamental disagreements with Simmons concerns his easy acceptance that only freely given consent can ground authority. I agree that we ought to value individual liberty and authority where possible – this is a moral goal. It just so happens, though, that we cannot put individual authority first in the political relationship because it cannot exist in the modern state. It could very well be the case that individual authority exists in other kinds of political relationships, but the modern state just has not worked out that way.

Chapter 7: Meta-Political Activity and Social Freedom

The goal of the previous three chapters has been to show that classical consent from the individual to the modern state is not merely an impracticality that does not happen, but an impossibility that cannot happen. Even if we could get around the enormous practical problems of giving and receiving consent, we are unable to meet the robust cognitive requirements of consent to the state. Furthermore, the authority of modern states is not something that is derived from personal authority and thus cannot be given to the government via consent.

Simmons gave the following option when faced with the fact that consent from the individual to the state does not actually happen: we must either a) abandon the voluntaristic spirit and admit that authority may exist without being rooted in individual consent, or b) abandon the idea that real states can have legitimate political authority – and embrace philosophical anarchism. I understand Simmons's desire to reject a); the moral idea that individual freedom and equality must be respected is compelling. Recognition of individual liberty, based in human reason, is very important and should not be set aside easily. Our rationality, our ability to make valuable decisions, is what makes us special amongst the universe's other specks of dust.

My divergence from Simmons centers on accepting the real world as it is: real political authority does exist, and it seems to exist necessarily and apart from the consent of individual citizens. The very nature of modern political authority demands that it exist apart from the consent of individual citizens. We cannot meet the strong demands of

classical consent theory, no matter how much we may want to. There is simply not enough reason to reject option a), even if it goes against our moral ideals.

The purpose of this chapter is quite simple. I want to explore one way that we may embrace the voluntaristic values of individual rationality and political participation while dealing with modern state structure as it is. Even if we cannot engage in consent-based relationships with our state governments, we need not abandon the impetus behind voluntarism – the belief that persons are intelligent and valuable and capable of being forces in their own lives. I want to reconcile these values with the reality of the structure of modern states.

The Reality of the Nature of the State (not to be confused with the state of nature)

If we are to ever make sense of the individual/state relationship as unique and complex, not based on consent but trying to maintain some of the Lockean voluntaristic spirit, we should review the important characteristics that make this important relationship *sui generis*. Assuming that the workings of this relationship have some impact on how we perceive the state's legitimacy, and assuming we want our perceptions to be based on the real world and not any idealizations of it, we must address persons, states, and political workings as they are, not just as we want them to be. Expecting the real world to live up to inappropriate, unfitting idealizations tells us very little about the nature of political authority and a state's legitimacy.

First, large-scale political power is, I believe, a necessary feature of modern states. Short of catastrophic events decimating most of the world's population, we are

not likely to move toward smaller loci of political power, and the possibility of a one-government world doesn't seem strong at this moment. For most persons past, present, and future, the state they inhabit exists before they are born and will continue to exist after they die. Although some states exist for shorter stretches of time, many others endure for hundreds of years with stable political structures. Furthermore, new modern states arise out of a variety of circumstances, and sometimes those circumstances are unpleasant and do not conform readily to the picture painted by classical consent theory. Even if some states come into existence by a method similar to a social contract, these are not necessarily the norm, nor should states that come about via other methods be considered *de facto* illegitimate. History shows us that violence, like warfare and revolution, is often responsible for the formation of new states, and even with states founded by some persons agreeing to work together, there are at the same time other individuals and groups trying to stop the founding of that new authority.

No matter the method of creation, though, state government is bound to come about. It is incorrect to say that one state's authority must be of a fundamentally different *kind* than another state's authority, simply because their origins differ. All states claim sovereignty, the sole, supreme, and final authority, over the peoples and lands within their borders. All states exercise power in policing, executing the law, making treaties with other states, among other things, and they all expect a large degree of obedience from their citizens. To go along with this, the creation and maintenance of *all* states are much more similar than the social contract theorist would let us believe. Although I will go into greater detail later in the chapter, but it should suffice for now to say (in an oversimplified way) that all states are created when a group of people get together and exert a

unique type of power over others (and perhaps themselves), and the authority is established and maintained when both sides continue to act in their pre-established ways, the rulers doing the ruling and the ruled being ruled.

Even if this is a crude over-simplification, it is essentially true, and an account of the individual/state relationship needs to be able to deal with fact that the most open, liberal democratic republics are not so different from the most closed-off, restrictive states that they should necessitate a fundamentally different theory of individual/state interaction. No matter how open and accountable a government is, the fact remains that most individual citizens will not be able to make substantial changes to their state's policies, organization, or the essence of the state's power. Most citizens will be subject to political forces without their explicit or indirect consent because that is simply the nature of the modern state. Whether the population numbers in the billions, million, or even (just) thousands, there is simply too much *stuff* to coordinate, such that many or most cannot make a dent in the state's power qua individuals. The ruling is going to be done by a few, no matter what the state's constitution looks like. Furthermore, as Bodley shows us, the ratio of ruler to ruled becomes smaller and smaller as the size of a population grows, which decreases the likelihood that an individual could make a sizeable impact at the state level.

While it is true that the individual is mostly powerless against the full, all-encompassing authority of the state, it is equally true that state authority cannot exist without individuals. States do exist and change because of the actions of persons; it is not as if the state is some self-sustaining, abstract object. Laws are written by people. Policing is done by people. Economic activity is done by individuals and groups (which

are made up by individuals). States and their governments are constantly changing. Rulers come and go, new laws are made and old ones are altered or eliminated, and the very constitution (written and unwritten) itself is always under review, interpretation, and revision⁹⁴. A state's bureaucracy and realms of authority are large and immensely complex, and the state's authority works only when individuals do their small parts in coordination with others. Furthermore, it is not just the work of official government agents that is required for the state authority's successful exercise. The efforts of legislators and police officers are important, to be sure, but those efforts would be useless unless many, many more non-governmentally sanctioned individuals also participated in ways useful to the state's exercise of power (much more on this later). Political authority is a wholly human construct, so it cannot be the case that individuals are unable to impact the authority exercised over them.

Many or most of a state's citizens are rational, moral agents who are active in complex social networks. People have families, jobs, hobbies, and other special interests, all of which make them interact with others in ways important to themselves. Because of this, plenty of individuals are likely to be socially and politically interested on larger scales, since social and political policy directly impacts their lives in profound ways. Even though few people ever devote their lives entirely to the political world because such allocation of attention is unfeasible, it is also true that few people are ever completely removed from it. The driving forces behind voluntarism, I believe, are the

⁹⁴ This applies to almost all laws, even those that may be regarded as unamendable. It is understandable that a state would want to have its laws be fixed, since altering them can possibly alter the state's authority itself – being self-defeating doesn't seem to be in the interest of any state. However, as I will argue, a written document is only part of a state's constitution, an embodiment of a deeper, more abstract constitution that exists in the thoughts and practices of the citizens. Some laws may be so fundamental that to alter them is to alter the very essence of the documental constitution, but such alteration seems likely to have already happened in the unwritten constitution of those doing the amendment. The problems of personal identity, it seems, can also apply to state identity.

beliefs that human rationality is inherently valuable and that persons ought to be able to make choices that impact themselves and the world around them. There must be a reason that Simmons and others hearken back to the law of nature – it is not simply the existence of the law (which it may not) that matters, but also what values that law embodies, apart from any religious beliefs. Even if I do not agree that there is some immutable law of nature, I still appreciate and support (at times) the moral motivation of the argument.

If all of what I have said so far is true, then the picture of individual/state interaction seems full of conundrums. States exist before and after us, but they also change within our individual lifetimes. State authority is almost entirely beyond the power of individuals, yet it cannot exist or function without the efforts of those same individuals. Classical consent is impossible in the individual/state relationship, yet there is something so alluring and *compelling* about the concept that political philosophers return to it time and again as an explanation of individual/state interaction and the basis for legitimate state authority. These seeming contradictions amount to something similar to what Hampton calls the ‘paradox of being governed’⁹⁵: “If the reason for creating a political institution is that people cannot govern themselves..., and the political regime that is created is one in which the people rule, the exercise appears useless.”⁹⁶ Political authority is and must be above the sway of individual citizens, yet it amounts to nothing *but* the sway of individuals. Or, to put it in a way consistent with my argument thus far, the individual/state relationship cannot be one that is founded on classical consent, yet the

⁹⁵ I am not wholly convinced that this is a true set-theoretic paradox, although I could be persuaded otherwise. Rather, it seems to be a conundrum or inconsistency, pointing out the possible ineffectiveness of democratic rule. Still, I appreciate the reasons for considering it a paradox, which will follow.

⁹⁶ Hampton, Jean. "Democracy and the Rule of Law." Pg. 23.

relationship does not seem capable of existing or functioning without overt actions by individuals.

The Two-Tiered Nature of Political Authority

The Lockean tradition puts forth the idea of consenting individuals “lending” their personal authority to political leaders so those leaders can bring peace, order, and prosperity to the body politic. Political authority is just a kind of rerouting of personal authority, and the consenting individuals retain the right to judge the ruler and revoke their consent, removing the leader(s) from power (assuming a sufficient number of individuals simultaneously do the same). If personal authority is just on loan to the leaders, individuals do not lose their freedom. According to this strain of social contract theory, the leaders are the people’s agents, temporarily authorized executors of the combined personal authority of the citizens. I argued in the last chapter, though, that political authority is not really related to personal authority, so rerouting is impossible. The two types of authority are fundamentally different from another, and once we appreciate this difference, political authority can make sense in its own right.

Kant and others, according to Hampton, recognize that agency contractarianism, when taken at face value, is inconsistent; rulers cannot rule if they cannot *rule*. Executive authority is useless unless it stands a good chance of being respected by most of the people most of the time. One of the most unique and relevant features of political authority is its finality. Hampton uses the metaphor of an umpire in a baseball game; when the players “hire” (paid or not) the umpire, it is necessary that he have final authority over how the game is conducted. He decides when a ball is foul and when the

runner is safely on base, and the players have to abide by his decisions if they want to remain in the game. If the players or coaches had the opportunity to override the umpire's decisions or dismiss him every time he did something they disagreed with, then he has no real authority over any part of the game. On the face of it, agency contractarianism⁹⁷ has the same problem. If a ruler's authority is completely dependent on the whims of those that empower him, then he has no real power to do his job. Power isn't power unless those subject to it really are subject to it.

To resolve this seeming inconsistency and make sense of agency-based democratic government, Hampton turns to Tarski's stratification solution to the liar paradox. In order to figure out whether any given sentence is true, including the sentence "This statement is false," Tarski argued that we must distinguish between object language and meta-language to evaluate truth. Object language refers to things in the world; for instance, "The tree is 40' tall" and "The flower is red" refer to the height of trees and the color of flowers, respectively. In order to evaluate the truth of those statements, we must abstract away from the object language to a meta-language, a separate sphere just for making truth evaluations. "The tree is 40' tall" is true or false depending on the height of the tree; "The flower is red" is true or false depending on the light-refracting properties of the flower. Similarly, "This statement is false" can be evaluated without incurring an automatic paradox by using the meta-language.

Hampton rightly adopts the stratification solution to resolve the seeming inconsistency of contractarian yet final government through an agent-like ruler. The truth

⁹⁷ This is Hampton's term for social contract theories like that of Locke, where the ruler acts as the "agent" of the ruled because his power is on loan from them via a social contract. She compares this to "alienation" contractarianism, something like that of Hobbes, where the authority of the ruler is the result of a permanent donation from the ruled via a social contract.

is that the inconsistency only arises when one assumes that there is only one type of authority, and only one way to rule. As I have already argued in previous chapters, this assumption is incorrect. There are different types of authority-based relationships, and personal authority is of a different *kind* than political authority. The seeming inconsistency is dissolved when we apply the stratification solution to the individual/state relationship. While it is true that the citizens are ruled with finality by the government and that the government depends on the citizens for its power (essentially being ruled by them), it is quite false that the same kind of “ruling” is happening in both situations. Although the different types of rule are importantly connected and interdependent, they are still two *kinds* of things – they involve different persons operating by different rules in different environments.

Object-level Governance To continue the Tarskian metaphor, one kind of ruling happens in the object-level legal system. The activities of this level are the creation, interpretation, and enforcement of object-level laws, and these activities are performed by object-level rulers alone. We can call them the rulers because they make *the rules*. Examples of this type of law include creating a taxation system and enforcing it, entering into treaties with other state-level authoritative bodies, and creating and enforcing a penal code for object-law violators, just to name a few. The object-level legal system applies to all citizens, or “the ruled”; they must obey these laws or the state will punish them if it so desires. If a citizen is also a ruler, then he has two different roles and operates in two separate realms of action. Under the stratification solution, it is not inconsistent for a single individual to be both ruler and ruled, and we can think of plenty

of real-world examples where it is perfectly coherent to say that a ruler broke part of the law even as he ruled.

Most of the ruled will not be part of the object-level system for reasons already discussed, and so they cannot directly contribute to the laws that they must obey. There are just too many practical problems with all persons in a state being object-level rulers. To begin with, the issues of coordination would be massive – having to coordinate millions of people legislating on a very large number of issues would likely be impossible given limited time and resources. Furthermore, most individuals are not equipped mentally to be both effective object-level legislators and normal people with normal lives and normal (non-political) responsibilities; there would just be too much to handle. The stratification solution makes these problems much less daunting by pointing out that free, open societies can function well with only some individuals doing the ruling (as political professionals), and all non-political-professionals can still have valuable roles beyond object-level legislating.

The object level of governance includes the bodies that most of us associate with government in the official sense. Legislators create laws and codify them in official legal documents. Executives (who perhaps are the same as legislators) enforce the contents of those official legal documents in official executive ways. A judiciary (which is perhaps part of the legislative or executive body) also helps enforce the official legal documents. The workings of object-level governance are usually the formal kinds of events and documents that can be put on paper or be pointed to as the content and structure of the state's authority. "They" (object-level rulers) make the rules and "we" (non-object-level rulers) follow them, or "they" will punish "us." Object-level laws are obvious in their

nature and power and they impact individual citizens directly and regularly, so it is easy to understand why so many people have identified them as the entirety of political authority, and why agency-like government seems paradoxical. If “they” “rule” “us” but “we” “rule” “them,” inconsistencies seem unavoidable.

Meta-Governance The stratification solution identifies the meta-political level as a real working realm of useful political authority that is significantly different from the object level, but which impacts it in important ways. Meta-political activity involves citizens participating (or at least being allowed to participate) in the governing convention – the set of arrangements that make and keep a structure/constitution and its specified rulers in power, and is governed by an implicit or explicit (or both) rule of recognition (more on this below). All those persons specified as the ruled by the constitution must act according to the object laws or they may be punished. However, the ruled also make meta-judgments and perform meta-actions concerning the ruler’s object laws, especially evaluating if the rulers have been respecting constitutional and social rules and norms. As rational, private individuals, the ruled evaluate whether a certain law, say an anti-drug rule, is acceptable; does it meet our needs, is it fair, is this what I wanted when I voted for or supported the ruler? When it is necessary or desirable, the ruled have ways to force the rulers to make changes to the object law or threaten them with removal from office (these ways will be addressed below). It is unlikely that most meta-political activity will be official or obvious in the way that object-level political activities are, because of the pragmatic and epistemic issues already discussed. However,

as we will see, the lack of official status or directness does not diminish meta-political power.

A state's rule of recognition is the (primarily unofficial) code that identifies, empowers, and controls the state's constitution and decides who will fill the roles of rulers. It is a social practice or set of practices that arise from the actions and interactions of all of society. As Coleman argues, the rule of recognition does not derive its validity or power from some official source: "It is not valid or in some sense correct; it just is."⁹⁸ It just happens because we as social creatures live together and work together. Hampton identifies three types of rules that are involved in a rule of recognition.

The Rules of the Rule of Recognition One type of rule is the structuring or constitutional guidelines that define the offices that will produce the object laws. The U.S. Constitution is an example of this first type, as it specifies how rulers will be elected, what those rulers must do in order to create a new object law or eliminate an old one, among other things. The Constitution happens to be an official legal document, but this official codification is not necessary for establishing the existence of the first type of rule. Common law and conventions have been sufficient in many cases for establishing a state's authoritative structure. To use the sports metaphor again, my friends and I could easily create a new kind of game that operates by a new set of rules. As long as all participants agree that we will only pick our leaders (referees and game-legislators) in this way and that they will be the ones producing and enforcing the game's rules, part of the rule of recognition is established. We don't have to be operating under some previously existing authority structure – thus eliminating the paradox of theoretically

⁹⁸Coleman, Jules L. "Rules and Social Facts." Pg. 703-726.

exiting the state of nature and creating the first authority – we just have to agree now.

The same principle applies to creating a new state and its constitution: this part of the rule of recognition gets its authority because people treat it as authoritative, not simply because of any official status it might have.

Another type of rule in the rule of recognition is what Hampton refers to as a meta-meta-rule: the procedures for altering the structural or constitutional rules just described. These rules can be part of the constitution itself or part of a separate system, and again, they need not be officially codified, although they can be. Through means like constitutional conventions, part of meta-political activity involves citizens deciding if the state's authoritative structure is empowering rulers and producing object laws in the ways they like. Even if the constitution-altering dimension of the rule of recognition can be part of some official legal document, its true force comes from its wider social support and the citizenry's authorizing power.

The most important (in my opinion), yet least official, dimension of the rule of recognition is comprised of the implicit, normative, *moral* rules that the rulers generally observe and have the object law conform to. These are the rules of public opinion, the sentiments and judgments held by the citizenry as a body, made public and observable through a wide variety of public activities, to be discussed below. This dimension of the rule of recognition is complex and dynamic, and is beyond formalization, yet I believe it is the most powerful and empowering. Although constitutional and meta-constitutional rules are vital for establishing and regulating a state's authoritative structure, they are not really part of active, day-to-day governance; they provide the framework, but this third type of rule of recognition rule fills in that framework and gives the rule of recognition its

character. This dimension of the rule of recognition is actively responsible for putting rulers into office, keeping them there, dictating what issues will be part of the public agenda, and overall influencing how the state will *be*. It is the day-to-day active socio-political atmosphere that makes the state exist as a real thing, beyond a bureaucracy ordered by rules.

It is through the rule of recognition and the public's meta-political activity that ruler's authority is created and sustained. Again, the traditional social contract story presents the transaction between ruled and rulers as one of lending pre-existing personal authority and amassing it somehow as political authority, but the stratification view contends that political authority is a new thing that arises out of a sphere of activity (meta-political activity governed by the rule of recognition). Acceptance of the rule of recognition is a complex phenomenon, as Hart argues, and no treatment I give it here will fully describe how it empowers previously private individuals. By people working together in seemingly mundane ways, the power of the rule of recognition is built up bit by bit until it is strong enough to sustain an entire state. This web of empowerment is so interwoven and overlapping that governing conventions can stand robustly in the face of plenty of random disgruntled citizens and lawbreakers, dissidents and would-be revolutionaries. Unless enough of these people come together with the common knowledge of the others' dissatisfactions, some plan to make dramatic changes, and the belief that revolution is worth the very high risks, the most these people can do is produce minor changes (unless their lack of efficacy is due to oppression by the rulers). Effecting these minor changes can alter the part of the face of the governing convention without breaking it.

Despite its unofficial nature and lack of pre-established authority, the rule of recognition is a real rule with real normative power. It is conventional, yet it has the power to guide decisions made by state agents. The rule of recognition provides a standard of behavior and a set of expectations of the rulers, and if they want to get into office or stay there, the rulers must meet those expectations. If the citizens are unhappy with their performance, they have ways of removing the rulers from power; democracies can hold elections to find more appealing rulers, and non-democratic states can depose their leaders through coups or other means. The authority-creating power of meta-political activity provides strong reasons for rulers to conform their behavior (and thereby the state's object laws) to the rule of recognition's standards. The rule of recognition is complex and hard to pin down, providing rulers a great deal of room to move and interpret when making object law without fear of being ousted⁹⁹, but that line can only be pushed so far before they face coming into conflict with the atmosphere of meta-political activity.

Types of Meta-political Activity

Before developing the stratification solution any further, it would be useful to briefly discuss different types of meta-political activity. Object-level political action is both obvious and simple in its activity: rulers make and enforce laws. While the details of performance of this activity vary between states, this variation is not very large, and in all cases, the results of this activity are evident and immediate. Meta-political activity and its fruitfulness are neither simple nor obvious nor direct, though many mistakenly

⁹⁹ This is actually necessary for productive ruling, since attempting to make a direct translation between the wills of millions of people and succinct object laws would be an impossible task for rulers.

focus on the simpler, more obvious, more direct cases. What follows is by no means a comprehensive list of meta-political activities, but it should be clear that all of these have similar political results; by performing these activities, individuals are able to affect the political atmosphere and force rulers to rule in favorable ways.

Official Meta-political Action One of the most obvious methods of meta-political activity just mentioned, and the one that tends to be the focus of political attention, is voting in elections. By voting for rulers in elections, the individual has the opportunity to help decide who will serve as a ruler, so indirectly and transitively, that individual has the chance to contribute to the object law. Similarly, participation in a constitutional convention (the political meeting kind, not the British parliamentary kind) will indirectly impact the creation of object law; if the individual citizen is involved in how rulers are elected or how they must act to enact laws, then he can affect how object laws come about. I believe that these two methods of meta-political activity, especially the former, are usually the focus of those interested in politics, because their results are direct and evident, and often these results are very powerful. I certainly do not underestimate the importance of voting and constitutional conventions, but it is necessary to note that these do not happen in a vacuum. Far from it. Rather, these are the results of many other important types of meta-political activity. Voting for rulers or political parties is useless without candidates and parties to vote for, and it is the unofficial, indirect meta-political activities that bring a candidate to the fore. The impetus to participate in a constitutional convention comes from other social activities.

I want to briefly mention referenda and ballot initiatives, since their location in the meta/object level distinction is not clear. By and large, these do seem like object-level political activities since the citizen acts in ways that directly and immediately results in object-level laws. However, since they are not and cannot be the normal way of creating and enforcing object-level law, and since it is still “the ruled” doing the voting, it is not 100% clear to me that they should be placed in the object-level of the stratification.

No matter where we place referenda and ballot initiatives, though, it is not at all obvious that they are high-quality options for creating object-level law. It is true that empowering private citizens seems valuable in itself, and that some instances of private citizens starting down this road, legislators have been motivated to address the issues in question in more formalized, object-level ways. It also seems true, however, that when private citizens carry their pursuits on in ways that end in ballots initiatives and referenda, the results can be suboptimal.¹⁰⁰ First, the initiatives and referenda can result in badly drafted law, since “the wording of the measure as initially proposed ends up as statute if the measure is passed.”¹⁰¹ As I have argued in previous chapters, the division of cognitive labor allows some persons to specialize in law-related fields so the rest of the citizens can specialize in other fields. A private citizen or group’s lack of specialized knowledge can actually hamper their own pursuits if they create law that cannot be applied properly, thus making their efforts counterproductive.

Continuing along this line of argument, when the individual citizen gets to the polls, the number and complexity of ballot initiatives and referenda can be (and often are, in the real world) overwhelming. Again, the mental effort of learning about and

¹⁰⁰ The following arguments come from an outline presented by ACE Electoral Knowledge Network; <http://aceproject.org/ace-en/focus/direct-democracy/citizen-initiatives>.

¹⁰¹ Ibid.

understanding all of the items may very well be impractical, so the actual votes may not be representative of the desires of the voters.

Another possible criticism, according to the ACE Project, is that these seemingly private initiatives can be monopolized by highly influential special interest groups.

While this hijacking is to a large degree sadly unavoidable, both in initiatives/referenda and the lobbying to object-level legislators, it seems especially disheartening and counter to the spirit of direct democratic efforts. Well-funded interest groups might have the money to advertise, advocate, and draft initiatives at a disproportionate rate to their opposition, so one could make the argument that the lack of balance in power does not complement the “one person, one vote” attitude of direct democracy.

A final potential criticism of ballot initiatives is that they are more likely to lead to the “tyranny of the majority” than normal object-level legislation. At least in theory, rulers in democratic legislatures can use systems of checks and balances to ensure that the rights of less-than-popular minority groups are not overridden by the moment’s majority. While the desire for a state’s laws to evolve and mature is well-founded, that morality and maturity might be better achieved through the slower, more methodical approach of state-level legislative action than the possibly fast-moving, capricious approach of some sects of private citizens.

I recognize that this form of activity allows the typically private citizen to act as a ruler, and that this has the potential to dissolve the object-level/meta-level distinction that I advocate. While the criticisms listed above certainly don’t doom the prospect of direct democratic activity, I hope to have shown that such activity may not be the best option for the private citizen who wants to make substantial changes in the overall political

game. Indirect meta-political activity can be just as powerful, I believe, and we should not view object-level activity as “better” and meta-level activity as “worse.”

Assistance to Authority This category includes activities like performing jury duty and working for law enforcement. While the citizen has no direct impact on the formation of object-level law, he can help enforce the law and thus assist the state in exercising its authority. By serving on a jury, a citizen recognizes the state’s mandates as the ones to be followed, and even if jury duty is legally compulsory, the individual still has the option of breaking that law and sending a message that he does not approve of the state’s authority; even though the likelihood of this defiance changing the state is minimal, doing so is still an option, and one can perhaps raise public awareness of political problems by doing so.

A state’s object-level laws typically need dispersal and enforcement in order to be effective¹⁰², so by acting in the role of a law enforcer or other agent of the state, one has the capacity to contribute to the state’s political atmosphere. The work of law enforcement professionals and volunteers makes the state’s authority active and vital; it is the muscle and skin of the state’s body, metaphorically, while the object laws make up the underlying bone structure. The work of these persons is very important for setting the tone of the state’s use of power, so even if they are not directly making the object law, they are critical to giving it meaning and substance.

Community Activity The state’s laws come from the top level of administration and apply downward, but individuals mainly live and operate on a much smaller scale, in

¹⁰² This enforcement is necessary at least in practice, but not necessarily in theory.

their local communities. By being active in one's community, one has the chance to contribute to part of the political atmosphere, and that will in turn trickle upward to the state level. Community boards and neighborhood assemblies, for example, give individuals the opportunity to interact with one another in a public arena, not simply as friends or families, but as citizens, to work on common interests and enterprises. These community-based activities are often much more accessible than state-level interaction, so people have a useful local avenue of acting socio-politically. And, when taken into account with activities from other communities, an important dimension of the state's political picture becomes apparent. The stratification solution recognizes that political influence can come from many different parts of life, and community is often an important point of peoples' lives.

A particularly crucial dimension of community activity is the local education system, so serving on school boards is another useful avenue of meta-political activity. Even if some of the object law comes down from the state level, it is enacted at the local level. Community educational systems can be massively influential in that community's social tone, so school board participants have the potential to urge rulers to act in desirable ways. Again, the impact to the state-level object law is indirect and subtle, but this type of meta-political action is a key piece of the whole puzzle.

Economic Work As the American climate has proven so clearly recently, politics is often tightly entwined with the state's economy, so it follows that economic activities are critical meta-political activities. Business owners, bankers, and economic regulatory professionals all greatly contribute to the state's political climate. Even individuals as

consumers factor into the political climate. Acting in particular economic ways has the power to force great change in the object-level law; taxes, interest rates and loaning systems are all dependent on greater social conditions, which are in turn dependent on the actions of individuals.

Another low-key but important dimension of meta-political activity lies within the workplace. Like with community work, workplace activity is local and immediate to the lives of individuals, so it is a more accessible form of political expression. Union activity and other worker interactions greatly impact both the lives of individual people and the greater social picture at the state level. Unions are often key voting blocks in elections, and candidates have to work with them to get their votes. By being active in a group's authority structure, an individual can have the power to exert a lot of pressure on political professionals, indirectly affecting the object law at very high levels.

Social Works In conjunction with community-based activities like neighborhood assemblies and school boards, other local-level social activities can have a serious impact on object-level governance. Churches, for instance, can provide not only community assistance in the forms of soup kitchens and counseling services, but also the opportunity for groups of individuals to gather and act as a unit. Religious congregations can have hundreds or thousands or tens of thousands of members, and religious affiliations can bring together millions of like-minded individuals. With numbers like these, it is unsurprising that many politicians have to be sensitive to religious parties and responsive to their desires.

For the religious and non-practicing alike, other service groups contribute to the political landscape. Urban and rural community projects build district unity, and civic education projects bring prominence to the idea that individuals can express themselves in public, social ways. Again, even though the effects are indirect and often quite subtle, these normal activities that private individuals can engage in contribute to the state's political atmosphere.

Persuasion The most powerful type of meta-political activity is probably persuasion or advocacy. Rulers cannot make object laws unless they are put in office, and they cannot be put in office (or removed from said office) without social support. Political campaigning requires the work of many, many people besides the candidate himself, and by being part of the candidate's team, the individual has the chance to eventually exert tremendous power over future object law. If the candidate actually wins and becomes a ruler, the individual can still have such power as a team member, since it takes the mental and physical effort of many people for legislating to happen. This is true at all levels of politics, from local and grass-roots movements to state-level party action.

I want to digress briefly on the place and value of grass-roots movements in the context of the object-level/meta-level distinction. As the name implies, the idea of a grass-roots movement suggests "naturally"-occurring local efforts that grow from the ground up. At first, this type of activity might seem at odds with the top-down nature of object-level governance, but it is really quite congruous as long as we keep the object/meta distinction in mind. In truly political systems, as opposed to outright tyrannies, the two levels work "organically" with one another, adjusting and altering as

the situation calls for it. Grass-roots movements have the potential to be just as useful, if not more so, than some top-down party systems. New ideas have to come from somewhere, and there is no reason to believe that one kind of organization is obviously better than another at producing those ideas.

Another persuasion-based meta-political activity is lobbying, where the individual brings issues to the attention of rulers in the hopes of making or changing object law. Although lobbying often gets a bad reputation as greed run amok, such activity is often useful. Rulers cannot know everything first-hand and may not be aware that there is a desire in part of the citizenry that x or y happen. By participating in special interest advocacy, the individual can urge rulers to spend more money on public education or healthcare, for instance, perhaps to the point that object law is affected.

An integral part of persuasion as meta-political activity is the dispersal of ideas: the media. Whether sectors of the media try to advocate for a particular side or remain neutral, they are largely responsible for where the public gets its political information. When an individual acts as a member of the press, he influences what people believe and how they are likely to act, politically, economically, or otherwise, based on those beliefs. The effect of the media on object law is indirect but powerful. This applies to all types of media, like television and newspapers, to more modern, technology-based avenues like blogging and online forums.

Another method of persuasive meta-political activity, aside from official lobbying, is simply being socially active by holding demonstrations or rallies. Even if there is no direct appeal to the ruler to make or change the object law in certain ways, public demonstrations indirectly contribute to the larger political atmosphere. Gatherings

of large groups united by a cause can draw the attention of rulers, and if they are moved by that cause and the group's devotion, there is the chance of object law being impacted.

Acquiescence? In responsive, well-run regimes, it is easier to dismiss the importance of meta-political activity because there is not an obvious struggle between the rulers and the ruled concerning the content of the rule of recognition. One might conclude that meta-political activity is only worthwhile when it is overtly active, but this isn't obviously true. It could very well be the case that acquiescence is a sign of a well-run state, one where object-level governance and meta-political activity are sufficiently in tune, to the effect that a battleground mentality in meta-level actors simply isn't necessary.

As Hart argues, citizens may acquiesce, but this may be analogous to the acquiescing of a client to his hired lawyer. By leaving the laborious, detail-oriented work to the professionals, the rulers in this case, individual citizens have the ability to focus on their other concerns as private people. As long as enough private citizens keep an eye on the bigger picture, there may not be a need to constantly focus on the minute details.

Even though acquiescence is not necessarily problematic, Hampton reminds us that the object-level political game is ultimately the people's to lose. Apathy does leave the door for corruption open, so acquiescence needs to be balanced with appropriate levels of vigilance. A happy medium can be found, at least in theory, between apathy and the constant struggle of individual citizens against their rulers, so that object-level activity can be primarily coordinative, and not combative.

Making Sense of Political Authority through the Two-Tiered Structure

If one focuses on object-level governance via consent alone, then the picture of ruler/ruled interaction is puzzling: while the rulers are “above” the ruled, in the sense that authority only flows downward, there is no satisfying explanation as to how the rulers came to be “above” the ruled. Besides the fact that true consent happens rarely if ever, and never enough for an entire population to create and maintain a state’s authority, theoretical problems with classical consent are unavoidable. If, however, we draw a new picture of the nature of state authority, one that acknowledges the interdependency of the two tiers of political authority, many of those plaguing problems dissolve. Picture two concentric circles, the inner circle being the object-level authority, and the outer being the meta-level authority. Even if the inner circle is the seat of technical power, its entirety still lies within the real but unofficial power of the outer circle. When the outer circle tightens up via meta-political activity, the inner circle must adjust or get squeezed out of existence. Every little squeeze has the potential to enact change at the object-level, and if enough squeezing is done in concert, then that change becomes likely.

As Hampton explains, one of the most important resolutions made by the two-tiered view goes back to Hobbes’s attempts to establish political authority. When we look at persons in the state of nature who are, essentially, in a prisoner’s dilemma, it cannot be in their interest to cooperate with others since there are no assurances that those others will hold to the deal. Consensual contracts cannot be rightfully formed (including those that would create political authority), according to Hobbes, without the authority existing to uphold them, so we can never emerge from the state of nature.¹⁰³ The state of

¹⁰³ Although Hobbes attempts to resolve this by creating the Leviathan, that cannot work without the Leviathan existing in the first place to enforce its own creation, so ; is not successful.

nature conundrum is resolved by focusing on conventions à la Hume, rather than on acts of consenting and contracting. The establishment of state authority can be and *is* accomplished by persons coming together and agreeing to create that authority by a variety of “unofficial” means (meta-political activity); the state’s authority emerges over time through these means. No formal consenting acts are necessary.

State authority just happens, almost organically, and once it emerges, the power to enforce object-level legal agreements becomes possible. The dilemma is dissolved, and legal and political justice become separate from morality. The newly-formed state has the potential to impartially judge disputes according to object-level laws, whereas before the state is formed, any judgments would not have the force of law behind them, only the power of private morality and physical force. The same thing goes for punishment for transgressions: before the creation of object-level law, retaliation and retribution may occur, but they cannot really be called punishment in any official sense because they have no legal standing.

The two-tiered approach also explains how all states come into existence, and does a much better job at this than consent-based approaches, for they imply that if the state is not formed consensually, then it cannot have legitimate political authority. Plenty of state structures have come about through violence, warfare, and coercion, and these will always entail that many new citizens are not consenting to their takeover. Intrastate revolutions and coups are likely to be illegal, and will probably be against the will of some (at the very least the pre-existing rulers and their supporters). While violence, coercion, and hostile takeover are unfortunate and should not be encouraged, they are still exemplars of meta-political activities. Warfare, whether inter- or intra-state, is a set of

actions by non-rulers made to effect changes in the state's structure. Violence has the potential to influence rulers enough to make changes in object-level governance.

Classical consent theory maintains that a state's power becomes legitimate by one factor: the way that power came into existence. For Locke, legitimate use of power arises by double consent process (first to joining the commonwealth, then by the will of the majority), so any group that does not complete this process cannot erect a legitimate government. According to Simmons, the legitimate use of power results from the direct consentings of individuals, so any group that exercises power without the consent of the individuals is illegitimate. Because of this direct reliance on the distinct actions of individuals, classical consent theory cannot make good sense of state authority that arises from non-consensual means, and it seems to prevent the state's authority from ever attaining legitimacy. The two-tiered approach, however, because it focuses on conventions and not consent as the relevant acts of individuals, and because it clearly separates political authority from moral/political legitimacy, can make sense of states arising from hostile actions, and it allows for the possibility that even a state formed through violence can still achieve legitimacy. However violently a state is formed, the rulers can change their behaviors to work for the good of the citizens and allow for them to have input through meta-political activity. If they want to stay in power and not be overthrown, they have to be responsive to the meta-political actions of the citizens. Given enough time and enough positive change, a once illegitimate state structure can *achieve* greater legitimacy, just as a state that is legitimate from the start can continually improve its moral standing. The opposite move can happen as well; a once-legitimate,

well-formed state has the potential to slide into illegitimacy through unjust actions and the quashing of meta-political activities.

Finally, the two-tiered approach brings to light a distinction between real political states and tyrannies that only pretend to be political states. There can be, have been, and are instances of “states” where the governing convention is so weak as to be non-existent, and where the ruling is so tyrannical that it eliminates almost all chances for true meta-political activity from the majority of the population. These instances, which Hampton calls “mastery states”, occur when the ruling cadre has so much control over the lines of interpersonal communication (technological or otherwise) that individuals cannot discuss with one another their dissatisfaction with the rulers or otherwise participate in convention-altering activities. Furthermore, the rulers have sufficient coercive power such that, even if individuals could share their concerns with one another, they (the ruled) face too much real danger to dare rebellion.

In these mastery states, the ruler’s authority cannot really be called “political” because too many of the mastered subjects have no chance to play in the political game. Although there cannot be any pure mastery or pure agency states, there are instances of essentially mastery states and essentially agency states along a continuum of meta-political activity. For those states tending toward the former end of the line, where the majority of citizens have little to no chance to participate in the meta-political arena, the two-tiered approach has no hold. There is no fluidity and interdependency between ruler and ruled, no responsiveness or respect, and there is no hope of attaining legitimate political authority. Mastery states are so broken and deficient that we cannot make sense of them by using the two-tiered model.

Meta-political Activity, Continued

Divergences from Hampton

The contents of this chapter, especially the stratification solution founded on a complex, non-explicit rule of recognition, relies heavily on the argument put forth by Hampton, but I would like to take some time to explain how my argument diverges from Hampton's in some places, and simply develops underdeveloped arguments in others.

This may seem like nitpicking, but I believe that the following statement by Hampton should not be supported:

Although the relationship is not literally contractual either in nature or origin, it is nonetheless similar enough to actual agency relationships instigated by contracts to make forgivable any metaphorical talk of a "social contract" between ruler and ruled... On the convention model, each subject of a regime gives a kind of "consent" to it as long as her behavior is either supportive of or at least not undermining of the governing convention of that regime.¹⁰⁴

The words we use to express concepts need to accurately reflect the content of those concepts. I understand the reason behind the heavy usage of the term "social contract" in past and present political philosophy, and how that usage has pervaded colloquial political talk; given the fact that modern democratic citizens are inundated with the term, it is easier to stick with it. However, it really is a stretch to conclude that the relationship between ruler and ruled is sufficiently agency-like to justify the continued use of the term. Such heavy reliance on the phrase has, I believe, created an expectation in the users of the language that cannot be fulfilled. This is one of the main threads running throughout this entire piece: part of the reason that traditional consent theory is bound to fail is because the word "consent" does not apply to the individual/state relationship. An inappropriate standard of behavior is set, and when we as players in the political game

¹⁰⁴ Hampton, Jean. Political Philosophy, pg. 82.

constantly fail to meet the standard, we seem befuddled as to why. Even though the use of the term “social contract” is understandable in a historical sense, letting the incorrect usage slide simply for convenience’s sake does not seem philosophically justified. I know that rallying against the term is a losing battle, practically speaking, but I believe that using proper terminology will increase the probability of gaining proper understanding of the individual/state relationship.

The same argument must be made against Hampton’s use of the term “convention consent.” Leaving aside the fact that the use of “convention” is confusing to those not familiar with Hampton’s argument¹⁰⁵, the use of “consent” as a term is too misleading to justify. I find myself having to side with Simmons here because his usage of the term “consent” is clear, distinct, and embodies the cognitive and voluntaristic properties that make consent meaningful. I will concede that Hampton’s term “endorsement consent” has some overlap of important properties with actual consent, since the term refers to outward activities performed by individuals to express inward, positive thoughts (which are often present when a person gives their consent). Many of the other things that I have been calling “meta-political activity,” though, aren’t necessarily consent-like enough to earn the label. Serving on the local school board does not imply that one has sufficient knowledge of the state’s constitution and governing convention; participating in civic education projects does not clearly convey one’s intent to transfer some kind of personal power; journalism concerning social issues does not have a specific recipient for the transfer of the journalist’s personal power. Meta-political activity, “the countless small

¹⁰⁵ I did conduct an informal, oversimplified poll on some peers about their familiarity with the term. Even after a brief explanation of Hampton’s position, some of these peers, who I consider well-versed in political philosophy terminology, seemed confused. “Convention” is most commonly associated with an actual meeting of persons, so the abstract meaning concerning ideology isn’t as robustly related.

actions of unknown people,”¹⁰⁶ weaves the governing convention in many ways, but most of these ways are not consent-ish enough to capture the true meaning of consent. And, as with “social contract,” “convention consent” has the very strong potential to mislead the term’s user into thinking that his action has the potential to engage him in a power-sharing relationship. Furthermore, use of the term might have the potential to create in rulers the expectation that they’ve received the approbation of the ruled or the belief that their power is automatically legitimate. Political legitimacy is a complex phenomenon, and even if there are plenty of instances of “endorsement consent,” much more must be done to attain that legitimacy.

Another area of divergence from Hampton deals with the types of activities that count as meta-political. Hampton focuses primarily on the more formal aspects of meta-level action, and to a certain degree, this is understandable. It is by resorting to a different type/level of activity that the prisoner’s dilemma of transitioning from the state of nature to civil society is found – non-legal conventions make way for legal state authority. Similarly, the most official and formalizable way for non-ruling individuals to affect legal change is by participating in overt meta-political activities like constitutional conventions. Focusing on the more formal aspects of meta-political activity makes good theoretic sense when trying to elucidate the two- (or more) tiered distinction, but I believe these formal components comprise only a part of the field of meta-political activity. The scope of informal but effective social activity is much more vast and compelling than Hampton (and most other people) gives it credit for.

¹⁰⁶ Zinn, Howard. [You Can't Be Neutral on a Moving Train](#).

solution and the contents of the strata gone unrecognized or underemphasized? Why have consent theory and other forms of social contractarianism remained the primary focus of discussions on political authority, despite their obvious fundamental flaws, while indirect socio-political activity's value has been neglected? I believe that this has occurred for a few reasons, starting at the beginning of social contract theory itself. The origins of social contract theory deal with the rights of individuals (which was fairly new in the enlightenment era) and how they must be balanced with and protected from the power of the state's authority. With this focus on the direct interaction between ruler and ruled through object-level law, it is easy to leave to the side the more indirect power of meta-level activity. It is object-level activity that levies taxes and imprisons criminals and invades the lives of private individuals in numerous ways. When the potential for all of these invasions and abuses are present, it makes sense to want to deal with or attack the threats head-on, instead of indirectly. The stratification solution reinforces the position of individual citizens as *ruled*, as the subject to the power of others, so it is much less likely to appeal to those who are concerned with potential abuses of power and invasions of freedom by the rulers. Classical consent theory is grounded on the natural rights and freedoms of individuals, and the stratification solution cuts that off at the head.

The stratification solution is also likely to be underappreciated in instances where the regimes are well-managed and responsive to the meta-level because citizens are not in a constant, vicious battle over the governing convention's role or power. If individuals are generally free to live their lives, they may not feel the need to be constantly vigilant

about the ruler's activities, and thus may not feel as compelled to view themselves as political actors.

The Legitimizing Strength of Meta-political Activity Compared to that of classical consent theory, the legitimizing strength of meta-political activity may seem unacceptably weak. According to classical consent theory, a state's legitimate exercise of authority is determined simply by its being the result of the consent of the subjects – de facto and de jure authority are one and the same. Since meta-political activity is only very indirectly related to object-level governance, supporters of traditional voluntarism may argue that it cannot be a sufficient method of individual/state interaction because it makes the actions of individuals essentially useless.

As I have maintained throughout this piece, I sympathize with those attracted to the voluntaristic spirit. If one subscribes to natural rights and natural freedom, it is difficult to accept any system that distances the will of the individual from so many of the realms that impact his life. How can any tax system be justifiable when citizens cannot directly determine how much money they are to give to the government and how that money will be allocated? How can a person be truly free if his only choices are to vaccinate his child or be punished? How can any use of power over a free man be acceptable if he has not made it acceptable? Simmons' desire to adhere to the spirit of voluntarism, even in the face of philosophical anarchism, is understandable when voluntarism paints such a positive picture of individual persons and the stratification solution keeps those individuals from effecting significant political changes.

I concede that most meta-political activities cannot directly bring about object-level political change, and that one citizen amongst millions probably cannot make a difference. The traditional political voluntarism of Locke and Simmons is impossible in the modern world of states, both in theory and in practice. However, just because we cannot make classical consent theory fit the world of modern states, there is no reason to abandon the moral impetus behind it. Meta-political activities are real things that persons can do to bring about changes in the political realm, and are the direct result of the exercise of rationality. Even if we cannot have meta-political activities carry the weight of traditional consent, we need not abandon them altogether. It is still important to encourage individual participation because we think it is important. Even if the rightness of promoting human rationality is not rooted in some immutable law of nature, that rightness can still be rooted in human-constructed values. While political authority may not be directly rooted in personal authority, it can still be indirectly related to personal authority. This, I believe, should be enough to satisfy our moral yearnings.

The acts of a lone individual may not impact the state's legitimacy as an authoritative body, but that legitimacy ought to be largely dependent on how governments respond to the pressures exerted via meta-political activity. There cannot be an easy formula like that provided by classical consent, but if we have responsiveness to meta-political forces be a key component of legitimacy, then a good deal of the voluntaristic spirit is maintained. For instance, if there is a strong movement within the citizenry for more spending for and better quality of care for war veterans, and the government responds by increasing spending on veteran care and legislating higher standards of quality for Veterans Affairs, then we would have good reason to argue that

the government has attained a higher level of legitimacy than if it had been unresponsive to the movement. If a region's education performance became weaker and the community called for the government to rectify the situation, then a government that worked on improving scholastic performance might have a greater degree of legitimate authority than a government that did not work to improve education in a failing area.

While a government cannot be and should not try to be responsive to every interested group, it can take the citizenry's meta-political activities into account when considering and *creating* the public good. I believe that the degree to which a government is responsive to public movements ought to be a key component in determining if that state's exercise of some power or other is morally acceptable (it will be legally acceptable by definition). Other important factors to determining legitimacy might be respect and advancement of personal and human rights, domestic peace, economic prosperity, good relationships with other states, and also the degree to which the state's citizens are allowed to act in meta-political ways without facing suppression, like freedom and accessibility of the press and ease of political demonstration, just to name a few. The stratification solution cannot provide a simple formula for determining when a state's use of force is legitimate, but it can point us in the right direction and highlight some very important factors to consider.

The Rightness of the Stratification Solution Classical consent theory could never be the basis of determining the nature and legitimacy of state authority because it cannot fit the reality of the individual/state relationship: the practical requirements like the giving and receiving of sufficient signs cannot be met, and the cognitive requirements

like proper intent and sufficient understanding cannot be met. There is a basic lack of fitness between the kind of relationship and the means of evaluating it, and this lack of fitness is what drove Simmons to the conclusion that philosophical anarchism must be the only acceptable option.

The stratification solution and the valuation of meta-political activity fit the individual/state relationship as it is, inconveniences and all. First, the practical aspects are more easily accommodated because there are no particular necessary methods of performing meta-political activity like voting or contracting, and there are no strict rules for accounting for those meta-political performances. Citizens simply act in ways that they see fit and that are valuable to them, and rulers observe those acts the best that they can and try to take them into account when creating and enforcing object-level law. Second, the cognitive and performative demands of meta-political activity are within the means of ordinary citizens, instead of being doomed to fail by too-high standards. Political knowledge acquisition and informational computation are done by persons at standards that are appropriate to themselves and that fit within their larger epistemic systems. Finally, the stratification solution reinforces the necessary powers of the state as independent and final in an important sense (the legal sense, which resolves disputes and keeps the peace), while maintaining the spirit that individuals are free and valuable in an important sense (the moral sense, which stands behind or beyond legality). Persons never have political authority on their own as part of some natural freedom, but there is still a very real sense of treating individuals as important members of the socio-political system.

Chapter 8: Conclusion

I was motivated to pursue this topic for a dissertation because the picture of political interaction painted by classical consent theory has been inspiring and compelling human interaction for several centuries now, despite its oft-noted, obvious flaws. The voluntarist's assertion of human rationality, freedom, and inherent equality should be commended, and many sociopolitical advances can trace their roots to John Locke's philosophical arguments. My question became, how can moral ideas so fundamental to the accomplishments of our civilization have so many problems when we attempt to apply them to real modern states? My project has been to reexamine the conceptual underpinnings of consent and explore whether consent is even possible in individual/state interaction; if consent is impossible in these interactions, it would explain why classical consent never occurs in the real world.

In Chapter 2, I began by tracing classical consent theory back to its beginning: John Locke's *Second Treatise on Civil Government*. Locke starts the *Second Treatise* by asserting the existence of the law of nature, which was laid out by God and discoverable by human reason, wherein all men are in "a state of perfect freedom to order their actions...within the law of Nature...[This is] a state also of equality."¹⁰⁷ The law of nature asserts that all men are free and equal and are prohibited from harming one another. Men prefer to live amongst one another for convenience and help, rather than try to survive on their own while at the same time attempting to protect themselves and

¹⁰⁷ Locke, John. Second Treatise on Civil Government, Ch. II.4.

their property. Disputes are bound to occur when men live and work together, and the state of nature does not provide for a common judge. For greater ease in protecting one's property by sharing the defense burden, and for want of an impartial, third-party judge, men consent to create a civil society run by a government and ruled by concrete laws. Even though man is now subject to the laws erected by the state, those laws are an extension of his will because he originally consented to create the commonwealth in the first place. Man maintains the freedom asserted by the law of nature because he only lends it to the commonwealth for the benefit of living in civil society; if the government acts beyond the bounds of the power lent to it and in opposition to the law of nature, man is allowed to withdraw from civil society and is not obligated to obey its laws.

John Simmons, a neo-Lockean, is among those that note that any purported act of consent must meet certain requirements if it is to maintain the spirit of voluntarism and legitimize any use of power by one party over another. From the works of several consent theorists, Simmons included, four distinct requirements emerge. First, the consenter must intend that his consenting act create a new authority over him; if the act is not the direct result of his will, then some of his natural freedom is lost in the transaction. Second, the would-be consenting act must be free from coercion or force. Third, the consent must be given through a sign that both consenter and consentee agree upon as sufficient to signify a transfer of power. This requirement holds that consent be a real, performative thing, obvious enough to both parties as the point in which the consenter lent his personal freedom to another. Finally, the consenter must be sufficiently informed about the details of what he is giving up and what kinds of powers he is agreeing may be

exerted on him; if relevant information is missing, it could impact his decision, so being under-informed compromises the accuracy of the will of the consentor.

Simmons rightly points out that, for a variety of reasons, individuals rarely have any interactions with their governments that might qualify as consent as laid out by the definition of the term. There is no method that fully conveys the will of the individual to the government and there is no system for intercepting and interpreting any signs of would-be consent, so consenting acts sufficient to legitimate the use of power by the government over the individual citizen simply do not occur in the modern world.

Simmons then presents the reader with a dilemma: either we must abandon the standards of classical consent, thereby abandoning the natural freedom and equality they protect, or we must accept that no states are, have been, or will be (probably) legitimate holders of political authority – this is the position of philosophical anarchism. Since Simmons is unwilling to abandon the freedom and equality afforded to us by natural law, he concludes that philosophical anarchism is the only acceptable position.

In Chapter 3, I begin by sympathizing with Simmons on the appeal of voluntarism and exploring some relationships where classical consent seems to be the correct method of legitimating the use of power by one party over another. Everyday power exchanges between friends, say, or the authorization of a doctor by a patient are instances where persons intentionally and temporarily alienate their personal power for their own benefit, like for pleasure or medical treatment. The four traditional requirements of classical consent theory are easily satisfied in situations like this, but I argue that this easy satisfaction is the result of less-obvious background conditions.

First, the agents in these (what I call private) relationships have no pre-existing authority relationship and were not forced into entering the authority relationship. I believe that it is possible that a pre-existing authority relationship might mitigate the legitimacy of a new one because the agents have been exposed already to a power inequality, and forcing any agent into an authority relationship seems to be in direct opposition to his pre-existing freedom. Second, the private relationships are built on the condition that the power exchange is temporary. Central to the classical consent tradition is that any alienation of personal freedom be temporary and that the agent remains as free as he was before the exchange, so any permanent or open-ended alienation of freedom is antithetical to natural law. Third, the private relationships are small and open enough where parties can regularly communicate and adjust the terms of their arrangement if necessary. Even when the parties include an abstract agent like a large company, that company has a real agent that the would-be consenter can reference and work with to maintain his personal freedom. If a relationship is to respect the autonomy of agents in the real world, and if the real world may involve unforeseen changes in the conditions of the relationship, it follows that the relationship must be able to adjust its terms to respect the autonomy of the agents involved. Fourth, the realm of authority up for exchange in private relationships is a private subject matter, meaning that the would-be consenter and consentee are, in an important way, the only relevant parties to the exchange. In a doctor/patient exchange, for instance, authority over the patient's body does not involve any other parties in any relevant way. The power up for transfer is definitely held by one party (the patient) and can definitely be held by the other (the doctor). For private relationships, the agents are the sole arbiters of the terms, which seems necessary for

maintaining the integrity of the consenter's natural freedom. Finally, the authority relationship is self-legislating and self-adjudicating, meaning the wills of the consenter and consentee are the only wills involved. The parties are the only ones to make and enforce the rules, so the chances of outside influences impacting the freedom of the would-be consenter are eliminated. I believe that, in private relationships, the requirements of classical consent theory are not only fulfilled, but are also fulfillable. There is a special type of fitness between the nature of the relationship and the method of evaluating its legitimacy – the background conditions adhere in the right way. The chapters that follow explore the possible fitness between the nature of the individual/state relationship and the demands of classical consent theory.

In Chapter 4, I argue that the individual/state relationship diverges greatly from private relationships firstly in the potential realms of power to be exchanged. In private relationships, the authority transferred from one agent to another usually only covers a small number of topics, like power over a person's body for a doctor. In the public relationship (the individual/state relationship), the areas that governments must have power over in order to even exist and minimally function are quite numerous. Besides mutual protection and the final adjudication of disputes, governments must also be able to carry out punishments and offer incentives to prevent future harms, and they do this over a particular territory (this is a product of the way the modern world has arranged itself). Furthermore, if we interpret "protection" with greater subtlety and foresight, the protective function of the government's authority might need to cover regulation of the environment, public health, economic transactions, and education. Modern states have evolved to require top-down authority structures and high degrees of centralization, and

the larger and more complex a state becomes, the greater the numbers of laws to coordinate people's behaviors must also become. The potentially necessary realms of political authority diverge greatly in quantity and quality from those of private relationships.

Because of the massive scale of states and their laws and their territorial nature, consenting acts between the individual and his government are practically impossible. First, it is difficult to locate an agent of the state that could appropriately interact with individual citizens such that the person's consent could be sufficiently conveyed. A state's government is both a collection of working persons and the organizational structure they operate within, but the state itself is much more abstract. There is no reason to believe that individual citizens consent to the government's employees or the set of laws or the abstract entity. Second, the state's territorial nature and top-down structure removes the individual citizen from whomever he might give himself to; a single government agent might represent thousands or millions of individuals, and lower-level officials cannot convey any consent given up the ladder of power. Third, at this time, there is no method of consent giving and receiving between the individual and state that sufficiently signifies the full weight of consent. Methods like voting, paying ones taxes, and remaining in the state have been counted as consenting acts by some philosophers, but there is no way that they meet the four classical requirements. When we multiply the number of citizens by the number of potential realms of political authority, the gross impracticality of political consent becomes even more obvious. Classical consent theory requires that the act of consent-giving be performative and concrete so that both parties can reference it and the terms set during it, but this cannot be

done in modern states. Fourth, in opposition to one of the background conditions detailed in Chapter 3 and because of the territoriality of modern states, citizens have no choice but to be in some kind of association with a government. Since states claim authority over all those born within their boundaries and since we all have to be born somewhere, we are all claimed as subject of some state's authority from birth. While emigration is theoretically possible, it is practically impossible for most people, and those that can emigrate automatically relocate to another state and its claimed authority. If individuals are to retain the freedom laid out by the law of nature, there must be a viable choice to not be a subject of another's authority, and the modern world is laid out such that all inhabitable (and plenty of uninhabitable) land is claimed by some state.

In Chapter 5, I argue that the public relationship's interactions are unable to meet the requirements of classical consent theory, not only because of the impracticality of coordinating behavior or the uniqueness of territorial authority, but also because of a deeper, more fundamental problem. Before a person can contemplate giving his consent to another's authority through a sufficient sign and free from coercion, he must first sufficiently understand the content of the potential authority transfer. My position is that, because of the sheer quantity of potential realms of political authority, individual private citizens are unable to sufficiently understand the object of their would-be consent. Because so little has been written about the mental capabilities of citizens, my argument borrows from other disciplines the necessary skills to gain sufficient understanding of the political realm.

In order to properly understand the government's potential realms of authority, a citizen has to have a version of idealized rationality, beyond the mental capacities of

typical individuals. First, agents need to be able to know a tremendous amount of facts like laws and the facets of their lives that might be impacted by the government. Second, they need to be able to manipulate, order, and work with those facts; they need to be able to consider multiple options for choices and contemplate the consequences of those choices. Third, they have enough time to learn all of the relevant information and make their choices, are not encumbered by outside worries or problems, and are motivated to do the work necessary. If, in the political arena, classical consent is to be possible, an agent must be able and willing to do all of these things to give their consent the appropriate content. In order to do this, though, the agent would have to have mental capacities that real persons simply do not have, and this leaves classical consent's requirements unfulfillable.

First, even though we are the smartest creatures on the planet, we are not able to reach anything near full understanding of the political realm. Our brains are not able to absorb infinitely much information, and levels of knowledge vary greatly between individuals. Furthermore, the modern world increases in complexity at an alarming rate, well beyond the mental abilities provided us by evolution. Political society operates efficiently only because of the division of mental labor; we can be productive by some people knowing some of things, and not necessarily the things that others know. Second, we are similarly limited in our inferential and computational capabilities. We are suboptimal at figuring out the consequences of our choices, especially when we are under-informed. Often times, it is more fitting and useful to satisfice (come to a good-enough but suboptimal conclusion) rather than optimize our decision procedures, and this seems especially true in sometimes abstract areas like state-level political ideas. Third,

unlike idealized agents, real persons operate in often-constraining environments. We do not always have control over what information is available to us, and progress personally and socially is dependent on some people doing some of the learning and transmitting the important information on to others. Fourth, all real persons are subject to time and attention constraints: there are only so many hours in a day, and many potential areas of investigation, but it is necessary that we allocate our efforts based on what we must do and are motivated to do. Necessities and emergencies, practically, must come first, so real agents have to deal with deciding what to do, based on what time and energy they have left. Finally, at the heart of all of this, is the topic of motivation. No matter how much we hope to be different or better, human motivation is imperfect, complex, and highly personal. Even if all other factors like knowledge and time were equal, the peculiarities of individual personalities would yield different choices in the same situation. Since people are sub-optimally rational and vary greatly in time, environment, and motivation, knowledge (and the desire to learn) of the political realm and potential areas of political authority are bound to diverge widely. There cannot and should not be an expectation of a high level of political knowledge across all people, and since not even the most intelligent and devoted person is able to obtain a deep knowledge of realms of political authority, it follows that average citizens cannot give substantive consent to their state's authority.

Chapter 6 is devoted to arguing that, even if we could overcome the practical and epistemic problems outlined in Chapters 4 and 5, a government's authority is so vastly different in kind and source from a private individual's authority that they cannot depend on the same method of legitimizing. The potentially rightful powers of the state cannot

be transferred from individual to the government because those powers do not rightfully exist in the individual to begin with. First, there is typically no pre-constitutional phase where persons can negotiate the terms of the authority to be exercised over them; we are instead almost always born with government's claiming authority over us. Modern states are set up to endure over time, despite changes in rulers, so that they may claim power even over future citizens. As we saw with private relationships, agents must be able to contribute to the terms of their power exchanges in order to maintain their freedom, and this does not happen between private citizens and the government. Second, there is very rarely a post-constitutional period where citizens can terminate the power asserted over them, and even when an individual can relinquish his citizenship, the modern world is set up that doing so involves becoming the citizen of another state. Again, not being able to leave an authority relationship seems antithetical to the spirit of voluntarism. Third, in order to *be* a state's agency, a government has to at least claim open-ended power over many aspects of the state. The state has a public good beyond the goods of its individual citizens, so the state needs to potentially exercise power over new realms apart from the input of individuals and whatever personal authority they may have. Fourth, as Locke himself noted, a primary purpose of creating a government is for authority to be exercised with finality and independence. Rulers cannot rule if their rule can be trumped, and if that rule can be revoked because it is actually held by individual persons, then the rule has no concrete foundation.

Political power is its own kind of power, separate from any kind of power individual citizens may have, and operating on an entirely different level. Its very purpose is to be different from the power held by any other individual or group. It is

meant to have different goals, those that arise from people living together in society. The government's laws are meant to be final, no matter the will of the individual, to maintain peace and achieve prosperity. The state's directives are issued with the purpose of overriding the will of the person, whereas a private authority's directives are not expected to trump individual reasons and instead balance and influence them. Most importantly, governments create, interpret, and *enforce* laws in ways that individual persons do not. Part of state power includes the ability to punish political wrongs, and while we may inflict harm on one another privately, we cannot truly punish privately – the very notion is a public one.

I begin Chapter 7 by examining the true structure of political authority. Arguments in support of classical consent theory have failed both practically and in theory because they have been based on the assumption that there is only one kind of authority, and that political authority arises when individual private citizens lend their rights to self-protection and self-determination to another body for their own benefit. As I argued in Chapter 6, though, political authority is of a fundamentally different kind than personal authority; the former is the *creation* of the latter, not just a resetting of it.

If there is only one kind of authority, a “paradox of governing” arises because the subjects of the law are also the creators of it (via authorizing the government through classical consent), and if subjects can modify the terms of their subjection, then they are not really subjects at all. In all states, though, including modern states, there are actually two kinds of authority which are related but not identical. Jean Hampton uses Tarski's object language/meta-language distinction as a model to explain the two different types of authority in play in states: the object-level law and meta-level law. In all political

societies, there is a limited set of rulers who alone create object-level law like taxation and the punishment of transgressions, which apply to all citizens with finality and without their direct input. However, governments come into existence and are sustained because of a second type of power, which is not formalized but is the result of the private power held by private citizens. My argument in this dissertation has been that classical consent is impossible because private citizens are unable to interact directly with political power – and employing the stratification solution shows why this is the case. The structure of political society in large modern states creates a significant distance between the ruled and the laws that govern them, but acknowledging the existence of the meta-political arena shows that individuals can make political differences in an indirect way.

Object-level government is the result of a rule of recognition, a formal and informal, written and unwritten set of practices and guidelines that arise from the conventions of a political society. Some states have written constitutions that establish the structure of a government and rules for determining how it will operate, and all states have unwritten codes of conduct and modes of interaction that, when taken together, delineate the bounds within which governments and their agents may operate. This is how we can say that (especially democratic) governments have some agency-like features, even though those governments are not under the direct control of their constituents. When citizens go about their private actions in a variety of ways, they establish formal and (mostly) informal conventions within which governments must operate, lest they be ousted. Methods of meta-political, convention-creating activities are many and diverse, from serving on a police force to participating in a protest, from running a business to buying from that business, just to name a few. Even though a

particular individual citizen cannot directly contribute to the laws to which he is subject, he can create the atmosphere in which governments are created and sustained.

The power of meta-political activity should not be underestimated simply because it is indirect or unofficial. Furthermore, the stratification approach alleviates some of the problems that consistently plague consent theory. First, the paradox of government and state creation is eliminated because those powers come about through different means. Hobbes's argument in *Leviathan* fails because the method of state creation (contracting with a potentially-governing body) is impossible without the ability to contract, which Hobbes argues is impossible without the authority of a government. Government creation is not paradoxical under the stratification solution because the rules of civil society arise unofficially and without political authority, whereas the laws of a government arise officially sanctioned by the rule of recognition. Second, the stratification solution has a government's legitimacy depend on multiple factors like social justice and other social/moral qualities determined by the rule of recognition, rather than a single (and impossible) factor – the consent of the governed. States come into existence through a variety of means, many of them through violence and coups, and classical consent theory would automatically bar all real states from achieving legitimacy because no states have been or could be established via consent. Legitimacy is a meta-political, moral quality, the achievement of which can fall along a continuum, rather than depend on a single and non-existent event. Third, the stratification solution offers a compelling explanation as to why free states are fundamentally different than tyrannies. In free states, even if they are considered monarchies, oligarchies, or democracies, the

citizens are able to operate in convention-creating, authority-creating activities, whereas tyrannies use force to prevent governing conventions from ever coming into being.

As I stated in Chapter 2, Simmons gives us the following dilemma: since people do not consent to the rule of governments in any way that conforms to the four robust requirements, we must either (a) reject voluntarism as the basis for legitimate state authority, or (b) concede to philosophical anarchism. This is, I believe, a false dilemma because Simmons, Locke, and many others wrongly recognize authority as being only one kind of thing. The purpose of this dissertation is to show that there are two different types of power in every political system, and each has a distinct and important role to play in governance. *If* (a) and (b) really were the only two options, and if one wants to stand on the side of individual freedom, then (b) seems to be the only acceptable choice. There is another option, however, one that maintains the voluntaristic spirit as far as is possible in the real world, while allowing governments the possibility of achieving a large degree of legitimate authority. Direct political democracy is simply impossible once a group reaches a certain size, and that size is much smaller than any state in existence today.¹⁰⁸ Even if the practical problems could be worked out, the epistemic and ontological ones will remain. Indirect political democracy, however, allows private individuals to actually contribute to the political atmosphere in a variety of real ways which are consistent with their practical and mental capabilities.

¹⁰⁸ Evolutionary anthropologist Robin Dunbar and other indicate that this size seems to be around 150 people, the size of a clan. Beyond this size, persons cannot keep track of the complexities of the group dynamic, which appears to be essential to direct democracy. While I am very interested in learning more about this correlation between group size, brain size, and modes of interaction, this seems to be more of an anthropological issue than a philosophical one.

For both Locke and Simmons, their commitment to voluntarism and consent rests on the belief that humans are naturally free of political obligations. Locke's argument depends largely upon the existence of a deity who created order and purpose as part of life, although Locke argues that reason is capable of directly understanding natural law. Simmons only touches lightly upon his belief in natural freedom, without going into much depth about that natural freedom's source. Unless we subscribe to a religious view in which the order of the universe is established, the source of Locke and Simmons's natural freedom as a part of the political world seems to be lacking a solid foundation. The political voluntarism of option (a) cannot be supported against its obvious problems simply because we like the idea of individual moral freedom (which I do). While I understand why Simmons wants to choose option (b), and while I understand the serious allure of voluntarism, I cannot accept that state authority can never be legitimate, not even in theory. The stratification solution shows that the realm of political power is not the same as personal, *moral* power, so we should not expect the two types of power to operate by the same set of rules, or that one should be a variety of the other.

Even though doing so may seem to be a sin in the modern world of individuals, I believe that looking into other, more communitarian, sources of political obligation (Simmons's primary concern) is worthwhile. Enlightenment may have pulled us from the strife at the hands of tyrants so characteristic of much of human history, but there have been other periods of real democracy without the intense focus on individuals. I believe that instances of true democracy may be able to shed some light on the legitimizing power of modern meta-political activities. Political authority and obligation need not be vacuous concepts simply because of the way the modern world has worked

out, and we should not give up on the idea of legitimate governance simply because it is complex. We are complex creatures living in a complex world, so we cannot expect the terms of our interaction to be simple.

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