LOCKE’S THEORY OF JUSTIFIED RESISTANCE

AN EXPLANATION AND DEFENSE

by

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One of the main goals of John Locke’s Second Treatise Of Government, is to explain when it is morally permissible for someone to resist their government with force. I call this “John Locke’s Theory of Justified Resistance.” How Locke derived this theory was by weaving together his thoughts about the nature of God, the law of nature, human nature, human understanding, natural rights, human history, and government. The result is what I think to be and what I hope to prove is a comprehensive and internally coherent moral theory. The theory provides for us the conditions and circumstances in which someone is morally justified to resist their government.

Although Locke’s theory has been very influential it has not been without its critics. Some of the criticisms have been answered and some have not. In my dissertation I provide answers to the critics. How I answer the critics is by either explaining the theory or by explaining the relevant aspects of Locke’s thought that come into play in a given situation. The best way to do those two things is to appeal most often to Locke’s own words. Locke is his best defender. Besides explaining the theory and providing answers to the critics, I also examine hypothetical and historical cases studies and apply Locke’s theory to them. These case studies test Locke’s theory and they allow us to see both the strength and the relevance of the theory, while also helping us gain a deeper understanding of the theory. In the end I offer my own disagreement and criticism of the theory, but I think without undermining Locke’s great achievement of giving us an invaluable theory of justified resistance.
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ABBREVIATIONS

*Two Treatises of Government* – I or II, followed by paragraph number

*Second Treatise of Government* - *ST*

*An Essay Concerning Human Understanding* – E, followed by book, chapter, and section number.

*Essays on the Law of Nature* – ELN, followed by page number

*A Letter Concerning Toleration* – L, followed by page number

*Two Tracts on Government* – First Tract or Second Tract, followed by page number

*An Essay Concerning Toleration* – ECT, followed by page number
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My family was wonderfully supportive in the whole process. This not only includes my great brothers but their wonderful wives. They never gave up on me despite this being years in the making. Their support and encouragement I will never forget. The person I have to thank the most is my mother, Natalie Reinisch. In the end, she just wanted me to do my best and to do well. This dissertation is dedicated to her.
Whosoever uses force without right - as every one does in society who does it without law - puts himself into a state of war with those against whom he so uses it, and in that state all former ties are cancelled, all other rights cease, and every one has a right to defend himself, and to resist the aggressor (II, 232).

One of the main tasks in the Two Treatises of Government is to prove that under certain conditions, people can resist their government. I call this John Locke’s theory of justified resistance. It is this theory that I will explain and defend. I will show that the theory is internally coherent, applicable, and able to respond to many criticisms people have raised. I will explain that the theory is all of these things because Locke’s philosophy works from premises and foundations that rest on theology, human nature, and reason. These different foundations can at times seem to conflict, but do not. To defend and explain this theory it is necessary to explain and discuss some background information. Essentially the first three chapters of this work will cover this necessary background information.

I will begin by discussing in this chapter the following:

1. Some of the historical background and context in which Locke wrote.
2. Locke’s Christian theology.

1 Many scholars say the main point of Locke’s Second Treatise is to show that under certain conditions the people have a right to revolution. For example, Richard Ashcraft says, “The whole point of the ST is to demonstrate that it is lawful for the people … to resist their King.” Ashcraft, Richard, Revolutionary Politics & Locke’s Two Treatises of Government, Princeton University Press, 1986, pp. 332. And John Dunn says, “The Two Treatises is a work principally designed to assert a right of resistance to unjust authority, a right, in last resort, of revolution.” Dunn, John, Locke, p. 28.

2 I am certainly claiming that Locke’s theory is internally coherent, but this does not mean that one has to agree or defend all of his premises or foundations. The law of nature for example, he often invokes, such as when he uses it as a necessary fact as to why human beings have the natural right to charity. There are certainly other ways to arrive at charity rights for human beings without invoking Christian theology. My point is, given Locke’s premises he is internally consistent.
3. Some of the necessary criteria, as Locke understood it, for legitimate government.
4. Locke’s account of the state of nature.
5. Whether Locke’s state of nature is hypothetical and why he often cites history.
6. What Locke’s account of the state of nature provides and established for him.
7. The necessary role of consent.

HISTORICAL BACKGROUND AND CONTEXT IN WHICH LOCKE WROTE

When Locke wrote the *Two Treatises of Government* in 1689 the circumstances in England were politically unstable. By the 1680’s England’s politics had a rich history of government by compact going back to the signing of Magna Charta in the year 1215. Many people, as expressed by the writings of Thomas Hobbes, opposed any form of social or political instability especially due to the recent history of the English civil wars of the 1640’s. Others worried about great abuses of power given their recent experiences with such men as King Charles I, King Charles II, King James II, and Oliver Cromwell. Locke and his friends, often with great risk to their lives, defended the idea that government exists for the good of the people: that people are born with natural rights and that governments are established to protect these rights, that rulers should rule with the consent of the people, and that under certain conditions the people can resist their government. Those who opposed Locke and his friends often believed in absolute monarchy. One of these people was Sir Robert Filmer, whose work, *Patriarcha* (1680), Locke argues against in the *First Treatise*. Often they believed that Kings ruled by divine right and therefore the people were not naturally free to choose who should rule them. Julia Rudolph sums things up this way, “This was an era of divine-right philosophy and a consolidation of monarchial power; of Anglican dominance; and of a consensus on the need for stability, a strong sovereign and abhorrence of the questions and struggle that
lead to civil war. But it was also a time in which contract theory and notions about the
popular origins of government developed and gained wider currency, and a time of
contest and challenge to the Stuart monarchs.\textsuperscript{3}

**LOCKE’S CHRISTIAN THEOLOGY**

Locke’s study of the natural sciences, medicine, anthropology, travel books,
politics, philosophy, and history was extensive and took place throughout his life.\textsuperscript{4} He
held a confidence in the human mind and our ability to reason that led him to believe that
human beings can live happy and productive lives. Yet the way that Locke studied the
world, how he encountered it and interpreted it on a daily basis was to a large degree
based on his theological beliefs. In the first paragraph of *The Essays on The Law of
Nature*, Locke tells us that there is a divinity that presides over the world who sets
commands for all objects, both living and nonliving. These laws being appropriate for the
object’s nature and the laws for human beings are moral laws.\textsuperscript{5}

To properly grasp how Locke understood the world, our relationship to it and to each
other, it must be understood that how Locke encountered the world was as John Dunn
says, “saturated with Christian assumptions.”\textsuperscript{6} Dunn also says, “Locke claims to be

\textsuperscript{4} Locke’s final library consisted of over 3,600 books, including 402 books on medicine and 240 scientific
books. It is now been catalogued and indexed. Also see, John Harrison and Peter Laslett, *The Library of
\textsuperscript{6} Dunn, John, *The Political Thought of John Locke*, Cambridge University Press, 1969, reprinted in 1995,
p. 99. Dunn’s work has been credited with explaining in detail the relationship between Locke’s
Christianity and the rest of his thought.
considering the human condition at large in terms of reason but what he perceives in it is what he already knows (from Christian revelation) to be there.”

Like Dunn I believe that Locke’s Christian faith played the paramount role in his political philosophy as well. Certainly Locke works from different moral foundations, but nothing is more influential as a foundation for his moral and political beliefs than his theology and belief in the law of nature.8

What follows is a non-exhaustive list of some of Locke’s Christian assumptions:

- God exists. He created us and owns us. We were made for his pleasure not each other’s.
- He made our natures. God does nothing without purpose. He created a law (the law of nature) that governs us and obligates us. He furnished us with senses and reason to help us live good lives. He gave us a world furnished with the means that allow us to live and prosper. He made us free, equal and independent of each other. We all are made with a strong desire for self-preservation. We all are bound to preserve ourselves and each other.
- We all have natural rights. We all have a right to punish those who violate our rights.

It is without question that to a large degree based on these Christian assumptions, and others, Locke derives much of his political theory. For Locke good and moral political arrangements must account for and conform to these assumptions and if they do not, those political arrangements will be lacking in one way or another, or worse be immoral and harmful to people.

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7 Ibid, p. 98.
8 John Yolton explains that what Locke “the law of nature” is not some general maxim or single general law. The law of nature turns out to be a list of laws, which are God’s will and also apparent to rational beings. See, Yolton, John, W. Locke on the Law of Nature, The Philosophical Review, Vol. 67, No. 4. (Oct., 1958) p. 488.
Locke’s Christian assumptions help him derive many rights and duties. It is not the subject of this work, but it is a premise. God’s laws and the way God created us make up much of the foundation for Locke’s political theory.

LOCKE’S THEORY OF LEGITIMATE GOVERNMENT

In the First Treatise John Locke refutes the arguments given by Sir Robert Filmer in his work, Patriarcha Or The Natural Powers Of Kings, published in 1680. Filmer’s work was becoming very influential during the 1680’s and Locke thought it necessary to refute it. Filmer was himself a biblical scholar and he often used the Bible as a source and authority to support his views. Filmer held that kings had a divine right to absolute power. To make way for this right, Locke emphasized and pointed out that Filmer denied that mankind had a right to natural freedom (I, 3). Regarding whether, “Mankind is naturally endowed and born with Freedom from all Subjection, and at liberty to chose what Form of Government it please” (Patriarcha, I, 1), Filmer says, “howsoever this Vulgar Opinion hath of late obtained a great Reputation, yet it is not to be found in the Ancient Fathers and Doctors of the Primitive Church: It contradicts the Doctrine and History of the Holy Scriptures, the constant Practice of all Ancient Monarchies, and the very Principles of the Law of Nature. It is hard to say whether it be more erroneous in Divinity, or dangerous in Policy” (Ibid).

9 Filmer and Locke are both Christians that believe that the law of nature exists and they each use the law of nature to support their views. Of course, what are the contents of the law of nature and how to interpret them they greatly differ on.
Filmer’s theory was not only false according to Locke, but was the kind of thinking that leads to tyranny and oppression. It makes people think that “all Government in the World is the product only of Force and Violence” and therefore lays “a Foundation for perpetual Disorder.” (II, 1) Locke tells us the ST “is An Essay concerning The True Original, Extent and End of Civil Government.” So a goal of Locke’s ST was to establish criteria for legitimate government. To do this, Locke begins the ST by summarizing what he has shown in the First Treatise, namely, that Sir Robert Filmer’s theory of government results in illegitimate government (II, 1-4). Filmer’s theory is that God vested in Adam the divine right of sovereignty and that right has been transferred to Adam’s descendants ever since (I,9). This divine authority gave Adam and his descendants absolute, arbitrary, and unlimited authority over the lives, liberties, and properties of their subjects, making men, according to Locke, in essence slaves.

Locke thinks that properly defining moral and political terms is very important, and is a theme in many of his writings. Having incomplete or wrong ideas about them is not just some failed academic exercise for Locke. It can lead to the kinds of misunderstandings about the nature of things that can cause people real harm including death.10 In fact he criticizes Filmer for not defining essential terms to explain his theory (I, 6, 7). So to help establish the criteria for legitimate government Locke thought it was necessary to properly define political power.

10 Regarding the failure to properly define words in a chapter entitled Abuse of words, Locke says, “Nor hath this mischief stopped in logical niceties, or curious empty speculations; it hath invaded the great concernments of human life and society; obscured and perplexed the material truths of law and divinity; brought confusion, disorder, and uncertainty into the affairs of mankind; and if not destroyed, yet in a great measure rendered useless, these two great rules, religion and justice” (E. III. X.12). And “wrong ideas, move the passions, and thereby mislead the judgment”(E.III.X.34) And he also said, “Definition is the only way, whereby the precise Meaning of moral Words can be known” (E.III.XI.17).
Political power is that power which every man having in the state of Nature has given up into the hands of the society, and...to the governors whom the society hath set over itself...it can have no other end or measure, when in the hands of the magistrate, but to preserve the members of that society in their lives, liberties, and possessions, and so cannot be an absolute, arbitrary power over their lives and fortunes, which are as much as possible to be preserved; but a power to make laws, and annex such penalties to them as may tend to the preservation of the whole...And this power has its original only from compact and agreement and the mutual consent of those who make up the community (II, 171, see also II, 4).

This definition shows what Locke has in mind when he writes about properly defining words so that confusion does not follow. For Locke political power properly defined, entails that it be legitimate. Defining it in a way that does not entail it being legitimate would be incorrect and lead to wrong ideas about political power. Illegitimate power therefore is not political power according to Locke. For Locke political power is not just the authority to administer resources or policies of the state and society, but it entails in its very essence a moral component.

What we find in Locke’s definition of political power is essentially almost all that makes up the criteria for the formation of a legitimate political society, but not quite everything. The remaining criteria will be covered in Chapter Two. We see in this definition that Locke thought political power was a power that all humans had in the state of nature. Political power in the state of nature grants people the ability to secure and preserve their lives and properties and the lives and properties of others. The definition also includes that it is only by consent and agreement that people give this power up in the state of nature and hand it over to society, which then chooses a government to secure each member of that society’s life and property. To secure these things, government has the authority to make laws and punish those who break those laws, but it may only do this only for the public good. We see in Locke’s definition that there is a goal or a purpose that must make up the
very composition of proper political power, which is that it exists to serve the good of the people and not the good of the government.

Thus far we see, Locke’s criteria for legitimate government consist of: (1) Government deriving its political power from the consent of free individuals through compact and agreement. 
(2) That its political power is for specific ends, namely, to preserve the members of society’s lives, liberties, and possessions. (3) To accomplish these ends it can make laws and annex penalties to them as they tend to preserve their society. And finally (4) its power is limited, that is, it cannot be absolute or arbitrary. It must always be used for the public good. When government has political power it has what Locke calls rightful authority. As such, citizens are obligated to obey the government (II, 97). Why Locke holds these views about political power and why he believed it was necessary to refute Filmer is to a large degree based on his views about the state of nature, natural law, and natural rights.

THE LOCKEAN ACCOUNT OF THE STATE OF NATURE

To further help establish the necessary criteria for legitimate government and to properly understand political power, Locke introduced the concept of the state of nature (II, 4). As Locke uses the idea it is an analytical concept that represents a certain state of affairs.\(^\text{11}\) Locke defines it this way: “where-ever any two men are, who have no standing

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\(^{11}\) How the state of nature is defined is important. Hobbes for example defined it as a pre-political state and a condition of war. Hobbes says, “Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war, and such a war as is of every
rule, and common judge to appeal to on earth, for the determination of controversies of right betwixt them, there they are in the state of nature, and under all inconveniences of it” (II, 91).\textsuperscript{12} Certainly the existence of government is a necessary condition for people to live outside of the state of nature, but it is not sufficient. For example, the state of nature is the condition that exists between countries.\textsuperscript{13} Locke says, “All princes and rulers of independent governments all through the world, are in the state of nature, it is plain the world was, nor ever will be, without numbers of men in that state” (II, 14). The state of nature also exists when a government is ruled by an absolute monarch. Locke says, “Hence it is evident, that absolute monarchy, which by some men is counted as the only government in the world, is indeed inconsistent with civil society…which necessarily follow from every man’s being judge in his own case…where-ever any persons are, who have not such an authority to appeal to, and decide any difference between them, there those persons are still in the state of nature” (II, 90).\textsuperscript{14}

As we will see, even in a civil society with an effective government, if a person is unable to appeal to a judge, they are actually in the state of nature. For example, when a person is being robbed at gun point, and there is simply no time to appeal to a common judge, the person being robbed is actually put back into a state of nature (II, 19). And people are in the state of nature when they are ruled by a foreign power, regardless of


\textsuperscript{13} Similarly Hobbes says, “so in states and commonwealths not dependent on one another every commonwealth (not every man) has an absolute liberty to do what it shall judge (that is to say, what that man or assembly that representeth it shall judge) most conducing to their benefit” Hobbes, Leviathan, Chapter XXI, 8, Hackett Publishing company, Inc. 1994

\textsuperscript{14} Also see (II, 91) where Locke explains when a person has their property invaded by an absolute monarch, he has no appeal, and therefore is in unrestrained state of nature.
how effective that ruling power is, because they rule by conquest and not consent (II, 211).

**LOCKE’S STATE OF NATURE IS NOT HYPOTHICAL BUT A HISTORICAL FACT AND WHY LOCKE USES HISTORY**

Locke anticipated that introducing the concept of the state of nature would cause objections, especially if this idea was understood as a hypothetical construct. If people were never in a state of nature, how can it truly provide any relevant information or support for Locke’s arguments? “Did the writer intend a historical reference or was he employing a fictional concept as means of presenting an a priori ethical argument?”¹⁵ I believe that Locke does think the state of nature is historical fact and that it did and does continue to exist¹⁶ in contrast to some contemporary philosophers who use the state of nature as a hypothetical construct.

Whether the state of nature is a historical fact or not I think we can look to Locke’s own words and historical references used throughout the *ST*.¹⁷ Locke says, “It is often asked as a mighty objection, where are, or ever were there any men in such a state of nature? To which it may suffice as an answer at present, that since all princes and rulers of independent governments all through the world, are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state” (II,

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¹⁷ For a nice explanation as to why Locke needs the state of nature to be an historical fact see, A.J. Simmons, Ibid, 461-462. I owe a lot of my understanding to Simmons account and explanation.
14). Locke’s most frequent use of historical references to support the idea that the state of nature is a historical fact certainly occurs in Chapter VIII, *Of the Beginning of Political Societies*. After his description of how men get out of the state of nature in (II, 99) Locke lists two objections to the very idea of a state of nature. “First, That there are no instances to be found in history, of a company of men independent, and equal one amongst another, that met together, and in this way began and set up a government” (II, 100). For this objection, Locke lists several historical references from II, 101 until II, 115. He tells us for example that the beginning of Rome and Venice were formed by the uniting of free and independent men (II, 102). He often cites the work of José d’Acosta where it states in many parts of America there is no government. The second objection Locke mentions is “That all men being born under government, some or other, it is impossible any of them should ever be free, and at liberty to unite together, and begin a new one, or ever be able to erect a lawful government” (II, 113). Locke responds, “For there is no examples so frequently in history, both sacred and profane, as those of men withdrawing themselves, and their obedience, from the jurisdiction they were born under, and the family or community they were bred up in, and setting up new governments in other places” (II, 115).

Although Locke took seriously the criticism that there never was a time in the world in which the state of nature existed, there does remain a serious issue. Locke says, “Though at best an argument from what has been, to what should be right, has no great force” (II, 103). This theme is repeated in several other writings by Locke. In the *First

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18 d’Acosta, José, *Natural and Moral Histories of the Indies*, was first published in 1590. The first English translation was in 1604.

19 Locke throughout these passages cites several other historical references, such as those men who left Sparta with Palantus who were freemen independent of each other and set up government over themselves with their own consent (II, 103) as they founded the Italian city of Terentum in the Eight Century B.C.
Locke says, “They who allege the practice of Mankind, for exposing or selling their children, as a Proof of their Power over them, are with Sir Rob. happy Arguers, and cannot but recommend their Opinion by founding it on the most shameful Action, and most unnatural Murder, human Nature is capable of.” (I, 56) And at (I, 57) he writes, “But if the Example of what hath been done, be the Rule of what ought to be, History would have furnish’d out A\textsuperscript{20}——— with instances of this Absolute Fatherly Power in it’s heighth and perfection, and he might have shew’d us in Peru, People that begot Children on purpose to Fatten and Eat them.” The serious issue and Locke’s point is that we must be careful when using history because historical references can furnish us with many dangerous and even depraved things upon which we would not want to build a foundation.

We see on the one hand, Locke defending the idea that the state of nature has and does indeed exist in history, and on the other hand warning us that if historical precedent is used to form governments, it can be dangerous. Locke does this because of his general concerns about how we study and then use history. We must remember that it was Filmer’s false history and principles that Locke debunks in the \textit{First Treatise}. According to Locke, to properly study history and to properly make use of it, men must first know the principles of morality and the law of nature. Quoting from one of Locke’s Journals, dated April 6 – 10, 1677, Richard Ashcraft says, “Consequently, the study of history is useful only ‘to one who hath well settled in his mind the principles of morality and knows how to make a judgment on the actions of men.”\textsuperscript{21} According to Jeremy Waldron when using history to help formulate a political theory, “The principles of ethics and morality

\textsuperscript{20} Locke’s use of “A” throughout the \textit{First Treatise} refers to Sir Robert Filmer. The “A” means author.

\textsuperscript{21} Ashcraft, \textit{Locke’s State of Nature: Historical Fact or Moral Fiction}? P. 214.
which Locke thinks we ought to bear in mind when we consider political anthropology and history of mankind are nothing other than the postulates and the dynamics of the social contract story.”\(^{22}\) As mentioned previously, Locke sees the entire world through Christian assumptions, history not excluded. This is why for him the proper study of history must include knowledge of morality and only then can we make proper use of it.

Given the kind of creatures we are, and Locke’s understanding of the moral law, it can legitimately be asked why Locke uses history in the first place. Why can’t we just say we should establish our governments based on values we believe in and the kind of rational beings we are? One reason was to refute Sir Robert Filmer, as both Locke and Filmer regarded the Bible as a historical document.\(^{23}\) Throughout the *First Treatise*, Locke refutes Filmer’s beliefs and Biblical interpretation that Adam’s fatherly authority over his children somehow is also the foundation of all governments that follow him (I, 6). In the *FS* Locke uses the Bible to prove Filmer’s interpretation to be a false historical record of the foundation of legitimate government.

A second reason Locke uses history is as a source of evidence to corroborate his theory. That is, the state of nature did and does exist, and governments have come about by mutual consent. Locke is talking about human history. Locke’s theory must be appropriate for human beings. According to Aschcraft, “A proper political theory, then, should present a moral position relatable the record of human history.”\(^{24}\) Throughout the *ST* Locke uses and references ancient history, the Bible, and several works by travelers of the new world. The latter were often anthropological works that Locke took very

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\(^{23}\) Aschcraft, p. 214.

\(^{24}\) Ibid.
seriously. Locke says, “In the beginning all the world was America.” (II, 49) William G. Batz points out what he calls perhaps the “most interesting parallel between Seventeenth-century anthropological travelogues and the Two Treatises, however, appears in the pattern of development that Locke posits in discussing the emergences of peoples from the State of Nature contractual, civil government.”

In the ST a story of the gradual development of civil government is discussed. The story consists of the stages of development that took place over the course of human history. These stages of development Locke calls “ages” (II, 110).

In the first stage of development, things were simple. Economic transactions were not complicated. There was no appropriation of land (II, 37). People owned little. There was little occasion for quarrels and contentions (II, 31). It was more than appropriate and even prudent for government to be simple and even patriarchal according to Locke (See II. 105-111). Government or rulers of the people were often found in just one person (II, 105,107).

Locke explains that eventually cities came into existence, property became fixed, disputes grew, and things became so complicated that new forms of government became necessary (II, 108). However, when rulers started to rule and use their power for their own interests and not the people’s interests, “men found it necessary to examine more carefully the original and rights of government; and to find out ways to restrain the exorbitances, and prevent the abuses of that power, which they having entrusted in another’s hands only for their own good, they found was made use of to hurt them” (II, 111). What is so interesting about Locke’s story is that it parallels the historical record of

the anthropological studies Locke read, especially with regard to Aztec history. Blatz says,

Acosta himself prefaces his Aztec history with a summary of the three successive political stages in Central American history. Explorers, says Acosta, Have found three manner of governments at the Indies. The first and best, was Monarchie, … The second was of Comminalties [i.e. Navaltalcan], where they were governed by the advice and authority of many…. The third kind of government [Chimecan] is altogether barbarous, composed of Indians without Law, without King … It is impossible that Locke merely borrowed the order of Acosta’s account, extracted the pattern from its Aztec embodiment, and so acquired the outline for his development theory of political institutions.²⁶

The third reason Locke uses history is that history is prudence. It often provides solutions to problems. Locke says, “Politics contains two parts very different from one another. The one containing the original of societies, and the rise and extent of political power, the other, the art of governing men in society.” And he says, “As to the other part of politics, which concerns the art of government that I think is best to be learned by experience and history.”²⁷ When Locke discusses the separation of powers for example, it is experience and knowledge he gained from human history that guides and teaches him how these constitutional powers shall be best arranged.²⁸ All power in the hands of one person for example, has proven to be too much temptation. When power is in the hands of one person they often start to use this power for their own private advantage or exempt themselves from the very laws they make for others. This is why for Locke legislative power must be put into diverse hands (II, 143).²⁹ Here we see how Locke’s understanding of human nature has influenced his moral and political ideas and provides for him another foundation for his political theory. Our own moral weakness as human beings and our

²⁶ Blatz, p. 250.
²⁸ For Locke, the separation of powers means the legislature, executive, and federative branches of power. (See, II, 143, 148)
²⁹ This point will be discussed in chapter two as it is another necessary criterion according to Locke for legitimate government.
frailty must be acknowledged and accounted for when we decide how we should make our political arrangements. Locke says, “For he that thinks absolute power purifies men’s blood, and corrects the baseness of human nature, need read but the history of this, or any other age, to be convinced of the contrary” (II, 92).

Further, it is also history that teaches that the Executive power and Federative power (the power to conduct foreign policy, including war, peace and treaties) really ought to be placed in the hands of one person. Although distinct powers, if the force (military) of the country is under different commanders, history shows this will cause disorder and possibly worse, utter ruin (II, 148). Even when it comes to things like royal prerogative, something Locke’s friends wanted to greatly limit, it is history that teaches Locke that prerogative is needed to secure the common good on occasion. Locke says,

> This power to act according to discretion, for the public good…is that which is called perogotive:… because also it is impossible to foresee, and so by laws to provide for, all accidents and necessities that may concern the public, or to make such laws as will do no harm, if they are executed with inflexible rigour, on all occasions, and upon all persons that may come in their way (II, 160).

The fourth reason why Locke uses history I believe to be the most important. He uses history to argue that men are free. At the most rock bottom level, it is because we are free by nature that we have the right to choose the lives (both political and non-political) we want to live. So even if we are made to be a slave in the state of nature, this is an infringement on our natural liberty. Locke does not just think about freedom in a way that gives us a right to satisfy our wants, desires, and needs. When he says we are naturally free in the state of nature he is referring to a notion of freedom that involves the relationship between people. That is, we all exist independent of each other and we are all

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30 Although I am indebted to many Locke scholars for understanding this aspect of Locke’s thought, I believe Simmons made it most clear to me. See, Simmons, p. 461-463.
non-subordinate to each other. This is what freedom consists of according to Locke in the
state of nature. Here again we see Locke’s Christianity influencing him. Our freedom is a
truth for Locke based on the will of God. Locke’s Christian beliefs tell him we are free in
a metaphysical sense. That is, our having freedom is the condition all human beings exist
in *independent* of what one thinks or wants, or what other people think or want. Any
unlawful infringement on our freedom is therefore a violation of the will of God and
natural law. Locke Says,

> No one ought to harm another in his life, health, liberty, or possessions: for men being all
> the workmanship of one omnipotent, and infinitely wise maker; all the servants of one
> sovereign master, sent into the world by his order, and about his business; they are his
> property, whose workmanship they are, made to last during his, not one another's
> pleasure: and being furnished with like faculties, sharing all in one community of nature,
> there cannot be supposed any such subordination among us, that may authorize us to
> destroy one another, as if we were made for one another's uses, as the inferior ranks of
> creatures are for our's (II, 6). And at (II, 22) The natural liberty of man is to be free from
> any superior power on earth, and not to be under the will or legislative authority of man,
> but to have only the law of nature for his rule. The liberty of man, in society, is to be
> under no other legislative power, but that established, by consent, in the commonwealth.

This right is so essential to our lives that we can never part with it, even
voluntarily (II, 23). Freedom for Locke works like a fence to help secure our lives. He
says, “To be free from such force is the only security of my preservation, and reason bids
me look on him as an enemy to my preservation who would take away that freedom
which is the fence to it; so that he who makes an attempt to enslave me thereby puts
himself into a state of war with me” (II, 17).

Freedom works as an essential building block for Locke. It is the condition or
state of affairs in which human beings naturally exist. As such, it must be realized and
accounted for when we decide how to arrange our governments. Our freedom even limits
what we can and cannot consent to. This freedom was given to us by God, and it
therefore comes with restraints as we are God’s workmanship, made for his pleasure and not one another’s pleasure (II, 6, 54).

Now of course there are many good reasons today for citizens of Western democracies and beyond to take seriously Locke’s normative theory on government and his theory of justified resistance. Despite some of its theological underpinnings we can find much to learn from it. I have mentioned that Locke argues from different foundations. A great example of this is Locke’s defense of our freedom. His explanation of the foundation of our freedom and why freedom entails that we are the kind of beings that must be ruled by consent is one of the best reasons to take seriously what Locke has written for us. It both supports and provides a rational foundation for our own beliefs about legitimate and good government.

Regarding Sir Robert Filmer’s theory of government Locke says, “His system lies in a little compass, ’tis no more but this, That all Government is absolute Monarchy. And the Ground he builds on, is this, That no Man is Born Free” (I, 2). To take on Filmer’s system Locke has to show that men are born free, that it is our nature, and that this is God’s will. However, when he explains the foundation and basis for his belief that human beings are free – he uses a non-theological explanation. According to Locke it is our ability to reason, our rationality, that makes us free. Locke says, “The freedom then of man, and liberty of acting according to his own will, is grounded on his having reason, which is able to instruct him in the law he is to govern himself by, and make him know how far he is left to the freedom of his own will” (II, 63).
Locke acknowledges that Adam’s children were born ignorant and without the use of reason (II, 57). Therefore at the early stages of their lives they were not free. But in time as they matured they became fully free. Locke says,

What made him free of the law? I answer, a state of maturity wherein he might be supposed capable to know that law, … Is a man under the law of England? What made him free of that law? that is, to have the liberty to dispose of his actions and possessions according to his own will, within the permission of that law? A capacity of knowing that law; which is supposed by that law? At the age of one and twenty years, and in some cases sooner (II, 59).

It is because man is free that we are the types of creatures that must be ruled by consent. Locke says, “MEN being, as has been said, by nature, all free, equal, and independent, no one can be put out of his estate, and subjected to the political power of another, without his own consent” (II, 95).

Some people might argue that there are beneficial consequences of allowing people to have a lot of freedoms and rights. When we give each other freedoms and rights it is beneficial and even perhaps necessary to help create conditions that are conducive for us to live good lives. But this is not what Locke is saying. He is saying we are free because God made us that way. Locke says, “For God having given man an understanding to direct his actions, has allowed him a freedom of will, and liberty of acting, as properly belonging thereunto, within the bounds of that law he is under” (II, 58). We are free because we are rational. Certainly Locke’s argument does not prove with certainty that we are free logically or metaphysically. But to help corroborate his opinion he again refers to history. It is just a fact that throughout history that people have believed that they were free and acted as if they were free (II, 114). This may not prove that we are free, but on some level it provides some evidence that, “we may see how probable it is, that people that were naturally free” (II, 112).
The Lockean state of nature, its definition, the nature of human beings as we exist in it, and its moral status, all contribute to Locke’s belief that government by consent is the only kind of legitimate government for human beings. Locke thinks human beings as we exist in the state of nature are free, equal, independent, rational, and subject to the law of nature.

In the first paragraph of this work I mentioned that Locke works from different foundations and standards, namely theology, human nature, and reason. This is clearly evident when it comes to Locke’s assertion that in the state of nature human beings are equal (II, 6). For Locke the idea of human equality is not some aim or goal, but a fact and a truth. Today many people believe in basic human equality, but its denial Locke had to take very seriously.31 By taking on Filmer and others, Locke had to prove that no one had a natural right to be king or to rule (I, 104). For Locke human equality was both a moral truth and a factual human condition (II, 123). For Locke basic human equality does not mean we all have equal strengths or capacities, or that people deserve things equally no matter what they have done. For Locke our basic human equality consists in the fact that we all have similar faculties, needs, and desires, and more importantly that we all are equally God’s property, made for his pleasure, not each other’s, and that we all equally have to obey the law of nature and have duties toward God.

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31 See Waldron, p. 4-7.
To prove that human beings are equal in the state of nature, Locke works from at least two different foundations. The first argument that Locke makes to establish the truth of human equality comes from Richard Hooker. Although Hooker was a theologian, the quote Locke uses from him to establish human equality does not rest on theological grounds, but on the nature of human beings as we exist in the world. That is, the equality of human beings by nature. Our similar faculties, needs, wants, and desires, physically, psychologically, and emotionally established for Hooker that we must come to love each other - that loving one another is a duty. Hooker says,

My desire therefore to be loved of my equals in nature as much as possible…imposeth upon me a natural duty of bearing to them-ward fully the like affection; from which relation of equality between ourselves and them that are as ourselves, what several rules and canons of natural reason hath drawn, for direction of life, no man is ignorant, Eccl. Pol. Lib1 (II, 5).

The idea is, since I have needs that can be met only by other human beings, and other human beings are just like me, I must try to help them since they share the same nature as me. This concern, love, and help, should be mutual. The point I want to make clear is that Locke not only thinks as does Hooker, that the equality of faculties and needs which human beings share establish duties toward one another, but that in fact we are equal. Equality is our natural condition.

The second way Locke argues for the equality of human beings is theological. Locke holds that since we are all created by God, we are his workmanship, his property, made for his pleasure and not each other’s. Locke says,

Being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise

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32 I owe this explanation and understanding both from Peter Josephson and Jeremy Waldron. With regard to Waldron his entire book has contributed to this understanding. With respect to Josephson, see, Peter Josephson, *The Great Art of Government*, University Press of Kansas, 2002, pages, 24 -33. Josephson explains and asserts that Locke establishes human equality three different ways.

33 Locke quotes Hooker 15 times in the *Second Treatise*.
maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: ... there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for our's (II, 6).

We are equally God’s property. We equally have duties toward God and each other based on God’s will alone. With regard to each other we are free and non-subordinate; with regard to God we have free will but are always subordinate.

Regarding the moral status of the state of nature, Thomas Hobbes sees the state of nature as a non-moral state. For Hobbes, until there is a commonwealth there is no such thing as morality, right, wrong, justice or injustice. That is, morality itself does not exist until the formation of the state. Hobbes says, “Nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law, no injustice” (Leviathan, Part I, Chap. Xiii, [13]). Locke sees the state of nature at all times being governed by the law of nature (God’s law) (II, 6). These are not laws and regularities discovered with regard to how the universe operates, it is moral law, rules by which we should govern ourselves.³⁴ Locke says that the law of nature is “the decree of the divine will discernable by the light of nature and indicating what is and what is not in conformity with rational nature, and for this reason commanding or prohibiting” (ELN, 82). Mankind can get to know the divine law in one of two ways. By reading the Bible, which Locke calls the voice of revelation (E.II.28.8), and by using the faculty of reason, which Locke calls the light of nature (E.II.28.8). Reason is here used only to discover the content of the natural law, not to make the content up. (ELN, 8) Even after a commonwealth is formed, the law of nature is always in effect as it is an unchanging, eternal and immutable law.

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Although the state of nature is a state where men have freedom and liberty, it is not a state of license and uncontrollable liberty (II, 6). For example, we do not have the liberty to destroy ourselves. Nor can we harm other’s lives, health, liberty, or possessions. Locke sees us as God’s workmanship, property, made for his business and not one another’s pleasure (II, 6). Locke does not give us an exhaustive list of natural laws, but he does tell us in several places that there is a fundamental law of nature, which is, as much as possible that mankind should be preserved (II, 16, 134, 135, 149, 159, 183). Since God’s law exists in the state of nature, this limits our choices and actions. It limits the kinds of things to which we can consent when we do decide to form a government.

An important distinction between Hobbes and Locke is their ideas about natural rights and natural laws. Hobbes thinks that human beings are born with natural rights (what he calls the Right of Nature) because we are born with a natural desire for self-preservation. He thinks that this is objective and anthropological in that it is an observable empirical fact about us. He says,

The RIGHT OF NATURE, ... is the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto (Leviathan, Part 1, chap. XIV, 1).

The laws of nature are for Hobbes general rules which we must follow in order to preserve our lives. These we discover by using our reason. He says,

A Law of Nature (lex naturalis) is a precept or general rule, found out by reason, by which man is forbidden to do that which is destructive of his life or taketh away the means of preserving the same.35

For Hobbes the laws of nature do not lie outside of us as they do for Locke, but are dependent on us. "Hobbesian laws of nature are rules of rational self-interest not norms of an absolute ethics independent of society."\(^{36}\) They are objective according to Hobbes, but they are dependent on us, on the kind of nature’s we have, dependent on our strong innate desire to live, our fear of death, and on our rationality. For Locke, our natural rights and the law of nature are independent of us. They both come from God and it is our responsibility to conform to and comply with them. Regarding natural law Locke says, “This is the only true touchtone of moral Rectitude; and by comparing them to this law, it is, that Men judge of the most considerable Moral Good or Evil of their actions” (E. II. 28.8).

The last thing I want to mention about the state of nature here is that Locke thinks we have natural rights. We have nature rights because as human beings we are simply born with them. Locke considers these rights to be gifts given to us by God (I, 116). As such, we do not earn them. Locke never gives us a definition of a “right” in any of his works,\(^{37}\) but what he does do is make the claim that a natural “right is grounded in the fact that we have free use of a thing” (ELN, 111). Locke never gives us an exhaustive list of natural rights anywhere in his writings. Some of these natural rights can be transferred to others, such as the right to political power (II, 174) and the right to execute the law of nature (II, 7, 8).


\(^{37}\) I owe this to Simmons, see *The Lockean Theory of Rights*, p. 70.
Some of these natural rights are so important that we cannot ever be fully alienated from them.\textsuperscript{38} Even if we consent, our consent is void. This condition has serious ramifications for Locke’s theory of justified resistance. For example, one of the natural rights with which we can never depart is our natural right to freedom. Locke sees this right as being necessary to have at all times, for our own preservation (II, 23). Another natural right we cannot ever completely abandon is the limited right of war or self-defense (what Locke calls ‘a liberty to kill the aggressor’) (II, 19) because at all times, it also may be necessary to use for our own preservation.\textsuperscript{39}

Another natural right we have in the state of nature is the right to property (II, 87). Locke says, “By property I must be understood here, as in other places, to mean that property which men have in their persons as well as goods” (II, 173). Locke holds that we are both owned by God (II, 6) and that we each own ourselves (II, 27). It is this self-ownership that for Locke provides the foundation for our other natural property rights (II, 44). Having ownership of ourselves makes us unlike other creatures. We are not made for one another’s uses the way other creatures are made for ours (II, 6). Other creatures in the state of nature can be appropriated. We can never be appropriated. We have, according to Locke, natural property rights that derive from self-ownership and not from political authority. Locke believes that government is therefore created to protect and not grant us these property rights. One important feature to note that Simmons points out is that political bodies have no natural rights at all, only individuals do.\textsuperscript{40}

\textsuperscript{38} Three natural rights I briefly discuss here are the natural right to freedom, the natural right of war, and our natural right to property.

\textsuperscript{39} Killcullen, John, “Locke on Political Obligation” in \textit{Locke’s Moral, Political and Legal Philosophy}, p. 335.

\textsuperscript{40} Simons. \textit{On the Edge of Anarchy}, p. 59.
and then transfer to the government. If an individual does not have a right to something, a political body can never obtain that right either. Political bodies therefore always have limited rights, and can only have the rights that are given to them by the people.

Locke’s state of nature establishes that human beings are free, equal, independent, rational, and have natural rights. We are the kinds of creatures that if ruled, must be ruled by consent. And although we must be ruled by consent, the law of nature (God’s will) exists; therefore what we can and cannot consent to is limited. As such, there are limits to what governments can do. Thus, the state of nature provides Locke with the background knowledge necessary to establish and then assess legitimate government.

**THE ROLE OF CONSENT**

As mentioned, Locke holds that because human beings are free, equal, and independent we are the kind of creatures that must be ruled by consent (II, 95). In fact, government established by consent is a necessary criterion for a government to be considered legitimate according to Locke. Legitimate governments according to Locke have the legal and moral authority to pass laws, execute those laws, and to be obeyed by the people living under their jurisdiction. Legitimate governments have this authority according to Locke based on two different sets of criteria: consent and the law of nature. For a government to be legitimate, according to Locke, it must have been formed by the mutual consent of those who make up the political community (II, 171). “Consent is the central device controlling the move from the state of nature into civil society, consent
allows a formal governmental framework to assume the rights and powers of every man in the state of nature for the sake of security and possessions.\textsuperscript{41}

However, for a government to remain legitimate, the role of consent does not end with the establishment of a government formed by the original political community. Individuals and future generations are not bound by that act and are bound only by their own consent. Locke says, “Every man being, as has been shewed, naturally free, and nothing being able to put him into subjection to any earthly power, but only his own consent” (II, 119, see also 191, 112, 114, and 189). Legitimate governments, therefore, must both be formed by consent and must rule with the consent of the current members.

However, consent alone is not enough according to Locke for a government to be legitimate. Locke also uses another standard to judge whether or not a government is legitimate - the law of nature. The law of nature is God’s moral law for human beings and it exists prior to any government being established but it also exists after a government is established. All governments must rule in accordance with the law of nature to remain legitimate according to Locke. In addition, consenting itself must comply with the law of nature, both at the government’s founding and after the government is established. Locke is very aware that people can and do at times consent to wrong and evil things (II, 123, 128). Therefore, the consent of the people and what the law of nature might allow can conflict with one another. When this happens the law of nature must always trump the

will of the people. Peter Josephson says, “Consent, which at first seems merely an expression of unrestricted will, must in some way be governed by reason.”

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The law of nature limits what we can and cannot consent to morally. For example, we cannot morally consent to be ruled by an absolute monarch not only because that would leave us in a state of nature with all of its inconveniences, but also because we can never willingly subject ourselves to the arbitrary will of another person (II, 22). Locke says, “For a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases” (II, 23). Consent is necessary according to Locke for a government to be legitimate because of the kinds of beings we are, but consent is not sufficient. What we consent to must never violate the law of nature. This is why Locke holds that just because people have consented in the past to form a government this does not give this government the right to hurt innocent people and fellow citizens. Any legitimate power a government can ever have can be no more than what the people had in the state of nature, and no one according to Locke has the right to harm an innocent person in the state of nature. Locke says, “For no body can transfer to another more power than he has in himself; and no body has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another” (II, 135). Locke holds the people have a right “to have such a legislative over them as the majority should approve and freely acquiesce in” (II, 176). But they do not have a right to have a government that violates the rights of innocent people. Indeed, the people have a right to exist as a body in the first place only because in

thus incorporating themselves, they “injure not the freedom of the rest” (II, 95). Their incorporation gives them no new right to injure anyone, in or out of society.\footnote{Simmons, \textit{On the Edge of Anarchy}, p. 191.} It is therefore important to understand and review what is involved in the content of consent according to Locke, both before and after legitimate governments are formed.

**THE CONTENT OF CONSENT**

When people are living in the state of nature with each other and no government exists, the only legitimate way that free and rational people can remove themselves from this state and form a government for their mutual security is by their own consent (II, 95). By agreeing with others to remove themselves from the state of nature and form a new government, Locke holds that the content of this consent consists of several important things. First they agree to form a political community by unanimous consent. This first move has to be unanimous according to Locke because, being free individuals, no one can be bound unless they themselves consented. Next, their consent consists of each member agreeing to form a new government by majority vote (II, 96). In addition, the person’s consent also includes in it that each member must put themselves under the obligation of the newly-formed government. This last aspect must be the case according to Locke for practical reasons, because if a person’s consent did not include in it that one is now obligated to the newly formed government, the compact would signify nothing. Locke says,

\begin{quote}
Every man, by consenting with others to make one body politic under one government, puts himself under an obligation, to every one of that society, to submit to the determination of the \textit{majority}, and to be concluded by it; or else this
\end{quote}
original compact ... would signify nothing, and be no compact, if he be left free, and under no other ties than he was in before in the state of nature (II, 97).

Therefore after a government is formed, it is the case that each member who has consented is now obligated to obey the government continuously over time, unless the government loses its legitimacy or unless you are for some reason kicked out of the membership. Once you have expressly consented, you are “Perpetually and indispensably obligated to be, and remain unalterably a subject to it, and can be never again in the liberty of the state of nature” so long as that government remains legitimate (II, 121). So after you consent and a new government is formed, you cannot justifiably withdraw your consent unless (or until) the government in power does something wrong and becomes illegitimate.

It is also the case for Locke that if I have not consented I am not obligated to this newly-formed government or any previously established government, even if that established government is a legitimate one. The idea is, if a government has been established by consent and it has remained legitimate, it has the legal and moral authority to pass laws and execute those laws for the common good. However, even if the government is legitimate, that does not mean that I am under the authority of this government or that I have a perpetual duty to obey it if I have never consented to it. To be truly able to give your consent, this has to include an actual choice. When people agree to leave the state of nature and form a new government they are undoubtedly making a choice, so the question is; what about those of us who are born into an already existing commonwealth or a foreigner visiting another country? Are we perpetually obligated to obey the authority of a government so long as that government is legitimate? According to Locke, we are obligated to obey that government as long as the government remains
legitimate when we are in that government’s jurisdiction. However, if we have not expressly consented we are not perpetually obligated to obey that government. It is clear from the several passages that Locke thinks that people born under an already existing government are free to unite themselves with another government and it is only when someone consents themselves are they obligated to obey a government. It is under this context – that because people are naturally free and that they cannot be under the subjection of any government unless they consent to it - that Locke discusses what he calls, the common distinction of express and tacit consent (II, 119).

**EXPRESS AND TACIT CONSENT**

It is without a doubt that Locke holds that because of the kinds of beings we are, (free, rational, equal, and independent) that if we are ruled it must be with our own consent. If we express our consent to a political community or an established government by an oath, or compact for example, Locke thinks this binds us to perpetually obey the government so long as that government remains legitimate. Locke says,

> He, that has once, by actual agreement, and any *express* declaration, given his consent to be of any common-wealth, is, perpetually and indispensibly obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved (II, 121).

When we express our consent we actually do something, perhaps in writing or by saying something which indicates that we consent to this government or arrangement. However, what if we never do anything expressly, but only tacitly consent, that is, we approve of the government in an unexpressed way? Locke says,
The difficulty is, what ought to be looked upon as a *tacit consent*, and how far it binds, *i.e.* how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all (II, 119).

When it comes to tacit consent and what it entails, it seems not to involve very much according to Locke and it also obligates people to a degree which disappoints many Locke scholars. For example, anyone simply in the territory of a government’s jurisdiction is tacitly consenting to that government according to Locke. Locke says,

> That every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, doth thereby give his *tacit consent*, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of any one within the territories of that government (II, 119).

If you only tacitly consent as opposed to giving explicit consent, you are free to join another government or establish with others a new one. Of course you are not free to start a new government in that same geographical location where you have tacitly consented. You and the others with whom you are uniting would have to form a new government in a location where there is either no government in existence or the government in existence is illegitimate. If you expressly consented you cannot ever again be in the state of nature unless that government becomes illegitimate (II, 121). But so long as you have tacitly consented, even if you are just walking along the highway, you are under the obligation and laws of the government in that territory according to Locke. Some Locke scholars criticize Locke’s notion of tacit consent as being so broad that it “undermines the whole point of consent theory” in that it is inconsistent with our natural freedom to choose to whom we are obligated.\(^{44}\) In this work I do not wish to get into that

\(^{44}\) Simmons, *On The Edge of Anarchy*, see pages 199-202 for an overview of a collection of criticisms with regard to Locke’s ideas on tacit consent.
debate. However, I do want to explain how I think Locke’s ideas on consent fit together with regard to his theory of justified resistance, which I will discuss in chapter 3.
CHAPTER 2

LOCKE’S GOVERNMENT: A TRUSTEESHIP

In the first chapter I examined some of the necessary criteria to establish a legitimate government according to Locke. I also explained how Locke defined the state of nature and what the state of nature helped establish for him. In this chapter I will examine the following:

1. Additional criteria which Locke thought necessary for establishing legitimate government.
2. Why Locke thought people want to leave the State of Nature.
3. How the formation of legitimate government must occur.
4. What is a political community according to Locke? And why he thinks it is necessary to establish one.
5. How Locke saw government functioning.
6. And what kind of government should exist given human beings’ natures, our natural rights, and the law of nature?

Locke tells us that people want to leave the state of nature and that when they are in it they tend not to stay there very long. He tells us that in the state of nature when people confront and interact with each other they do it without a right to rule or restrict each other in each other’s (natural) law-abiding activities.45 It is a state of perfect freedom, equality, and a moral state governed by the law of nature (II, 4, 6.). Locke points out that it has been asked why, given these conditions, anyone would leave the state of nature and put themselves under the control of another person (II, 123)? Locke explains that when the state of nature is also a pre-political state it means that the people are living with all the inconveniences, insecurity and uncertainty that come from living without a government to rule and restrict people. That is, without government, the

enjoyment of our rights and the preservation of our property are constantly exposed to the invasion of others.\textsuperscript{46} For example, without a government there is often no entity with the power and ability to enforce the laws of nature, making enforcement sometimes impossible or very dangerous for those who attempt to enforce them. Even if people are able to enforce the laws of nature individually they often do not do it impartially but with passion and revenge, carrying punishments too far. Without government there are no established settled laws made from common consent and there are no established common measures to decide disputes between parties. There is also no indifferent common judge with the authority to settle disputes (II, 123 -126). For these and other reasons Locke says, “In the state of nature there are many things wanting” (II, 124).

Certainly Locke has a much more positive outlook regarding human nature as compared to Hobbes who tells us that without a sovereign to keep people in awe, that is, to make them fear severe punishment in case they act outside the law, the state of nature is necessarily also a state of war (See, Leviathan, Pt. 2, ch. 17, para. 1). However, we see at times Locke sounding very Hobbesian with respect to why human beings form governments. Locke says it is because the majority of human beings are not strict observers of equity and justice, and there is a necessary need for humans to make arrangements that will secure their lives, liberties and estates (II, 123). In order to reduce those inconveniences and live a more safe and secure life, people are willing to give up

\textsuperscript{46} By \textit{property} Locke includes not just real estate and goods but life and liberty. Locke says, “The enjoyment of the property he has in this state is very unsafe, very unsecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual \textit{preservation} of their lives, liberties and estates, which I call by the general name, \textit{property} (II, 123).
much of their natural freedom and put themselves under a government to help preserve their lives and property (II, 127, 136).

The natural freedom that people are willing to give up to which Locke is referring are two powers that people have in the state of nature. The first is the power to do whatever you think fit to preserve yourself and others within the law of nature. This power is one which a person gives up only so far as the society requires (II, 128, 129). The second power is the power to punish crimes against the law of nature (what Locke calls the power to execute the laws of nature (II, 7). This power you give up entirely to the government (II, 128, 130).

For Locke, conditions in the state of nature are simply too dangerous for human beings, including and especially innocent human beings. This fact establishes for Locke that the formation of government is something we must do. That is, it is something we must do not merely because it is prudent, but because it is the right and moral thing to do. It is the best way to enforce and bring about God’s moral law, the fundamental law of nature. The fundamental law of nature says that mankind should be preserved. Locke says, “The fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred” (II, 16) and “the fundamental law of nature being, that all, as much as may be, should be preserved” (II 183). It is the establishment of government according to Locke that is the best and only means to secure and enforce the fundamental law of nature. Locke says, “The end of government is the good of mankind; and which is best for mankind” (II, 229).
WHO SHOULD GOVERN?

Given that people allow themselves to be governed, Locke thinks it is necessary
to determine who should govern (II, 1). Locke says,

The great Question which all Ages has disturbed Mankind, and brought on them
the greatest part of those Mischiefs which have ruin’d Cities, depopulated
Countries, and disordered the Peace of the World, has been, Not whether there be
Power in the World, nor whence it came, but who should have it (I, 106).

The English civil war of the 1640’s was fought over this very issue, but the issue
of who should rule was never theoretically resolved, nor was this issue resolved on the
battlefields. Locke thinks this issue must be resolved once and for all lest what
happened in the 1640’s be repeated again and again. He says,

The settling of this point being of no smaller moment than the security of princes, and the
peace and welfare of their estates and kingdoms, … for if this remain disputable, all the
rest will be to very little purpose; … without shewing who has a right to have it, will
serve only to give a greater edge to man’s natural ambition, which of its self is but too
keen (I, 106).

Of course one of the answers as to who should rule and have political power in
Locke’s day was given by Sir Robert Filmer. He taught that who should rule and have
political power over us was taught to us by the Bible, the Old Testament. That is Adam
and his descendants should rule us (II, 1). In fact the main point of Locke’s First Treatise
is to refute Filmer’s false teachings. According to Locke this paternal theory fails to both
understand the teachings of the Bible and to take into account the proper nature of human

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47 Even after two civil wars, from 1642-1651 and the rule of Oliver Cromwell, when the British crown was
restored in 1660 with the return of Charles II, the questions of who should rule, how should they rule, royal
prerogative, royal ascension, were all fiercely debated and cause for political instability and left
unresolved.

48 After King Charles II died in 1685, his Roman Catholic brother, James II, ascended to the throne after
him, and this along with several other things caused England to be once again on the verge of civil war.
beings and all of their experiences, thus resulting in bad ideas and leading to illegitimate
governments. Locke says,

This *paternal regal power* being by divine right only his, it leaves no room for human
prudence, or consent, to place it any where else (I, 126).

Besides the issue of who should rule, another important question Locke wanted to
answer was: how should people be ruled? Often it was the case that those who were
sympathetic to divine rights theories and absolute monarchy held that the political power
was unconditional. No matter what the king did, the people had to endure. There was no
redress available to them and no moral way to bring in a new government. Political
power was conferred at birth and could not be taken away. Filmer explains this point of
view in this way:

The unlimited jurisdiction of kings is so amply described by Samuel … in that majestical
discourse of the true law of free monarchy, wherein it is evidently shown that the scope
of Samuel was to teach the people a dutiful obedience to their king, even in those things
which themselves did esteem mischievous and inconvenient; for by telling them what a
king would do he, indeed, instructs them what a subject must suffer, yet not so that it is
right for kings to do injury, but it is right for them to go unpunished by the people if they
do it. So that in this point it is all one whether Samuel describe a king or a tyrant, for
patient obedience is due to both: no remedy in the text against tyrants, but in crying and
praying unto God in that day.49

Locke thinks that this misinterpretation of the Bible, and that this world view and
way of thinking is very dangerous and often very harmful to people. This idea of wrong
ideas and wrong interpretations about the Bible is a theme and worry for Locke
throughout his writings. In the preface to the reader in *The Two Treatise of Government*,
regarding Filmer’s and others false biblical teaching concerning government Locke says,
“‘There cannot be done a greater mischief to prince and people, than the propagating
wrong notions concerning government.’”

The question of who should rule is not only a practical question for Locke but one that is intertwined with morality. Locke says, “MEN being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent” (II, 95). Locke argues that there are legitimate moral grounds for a government to rule and to have political power. Those grounds are not force and violence, in which people live together like beasts, (II, 1) nor on grounds build on false biblical teachings, but that these grounds should be determined on other more rational grounds, namely consent. Being the kinds of creatures that are rational, naturally free, equal, and independent, the only moral and legitimate way for a person to be ruled by another is by their own consent (II, 95). Over and over again Locke explains in the First Treatise that the right to rule is not an unconditional birth right, but a conditional right given by the people by their consent. This point of view goes to the very foundation of why government exists. For Locke it is for the good of the people and not for the good of the rulers (I, 92).

THE FORMATION OF A LEGITIMATE GOVERNMENT

When a legitimate government is formed Locke tells us that it is actually a two-stage process. The first stage happens when a free individual agrees with other free individuals to create a political community for their security and comfort. At this stage the agreement must be unanimous. Other people perhaps may not agree to join and they remain living in the state of nature (II, 95-98). What is important and necessary about this first stage is that all the members agreed to join the community. One thing to note is that
a political community is not the same as a government. If there is dissolution of the
government in the future for example, this does not necessarily mean the dissolution of
the political community (II, 211). What goes on in the first stage is that free people are
unanimously agreeing to form a community and agreeing to be obligated to it via
majority vote. When a person joins the community they are making a pledge to it and are
now obligated to it.

As people are free by nature, it is only by consent that they can be removed from
the state of nature. This first stage is no hypothetical construct for Locke. It is an
additional criterion that is necessary to establish legitimate government. In this first stage,
consent is always expressed consent and never tacit consent. Locke says, “Nothing can
make any man so, but his actually entering into it by positive engagement, and express
promise and compact” (II, 122). The reason why at the first stage consent must
necessarily be expressed and not tacit is that this first stage constitutes a contract. The
idea is that no one but yourself can enter you into a contract because the contract is
binding and obligatory on you. Why in the first stage the agreement constitutes a contract
is because all the parties that have entered into the agreement benefit by that agreement.
What exists at this first stage is what Locke calls a society or a community (II, 96, 211,
242). At this stage no government exists, but what does exist is a society or community
that has unanimously agreed to form a government. Each person at this first stage gives
up an important right, what Locke calls the executive power of the law of nature (which
is the right to punish transgressors of the law of nature, that is to actually execute the law)
(II, 7, 89, 128) and they resign it to the political society. In return each get the benefit of
being able to preserve themselves, their liberties, and possessions in an easier and more
secure way (II, 123, 130, 131). In addition, the people at this stage also give up at this stage all the powers necessary to be able to achieve the ends of the political community. Locke says,

The power of punishing he wholly gives up, and … he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require (II, 130, see also II, 99).

THE NECESSITY OF FORMING A POLITICAL COMMUNITY

It is important to understand what Locke means by a political community and why he thinks the formation of one is a necessary first step before a legitimate government can be formed. Another way to think about this is to ask why can’t an individual or a group of individuals living in the state of nature without a government simply form a government and other individuals are free to join the government or not? Why can’t the formation of a legitimate government be a one stage process according to Locke?

Locke holds government is the best way to ensure that the fundamental law of nature is enforced. That is, that mankind as much as possible should be preserved, and when all cannot be preserved the safety of the innocent is to be preferred (II, 16). The very best way to ensure that the government will do the job of protecting all of the people is to form an entity which can create and judge that government. Locke refers to this entity, what I call a political community, synonymously by several different names throughout the Second Treatise. For example he calls it, the commonwealth (II, 133), society (II, 211), community (II, 96), or the people (II, 225). This is no hypothetical entity; it is a real entity that exists with power and force. The way it works is as follows:
(1) Free individuals explicitly join it unanimously.
(2) They agree to form a government by majority vote.
(3) The agreement is between the people only and is a contract.
(4) They forever agree to be obligated to the political community.
(5) They agree to exclude their private judgment and hand it over to the community, which now acts as umpire indifferent to individuals and parties.
(6) Once a government is established with a common judge to whom to appeal for all disputes, the political community must lie almost idle and allow the government to do its job.
(7) Yet, although idle, once a legitimate government has been established there remains in the political community a power, what Locke calls the supreme power, to remove and alter the government if the government acts contrary to its trust (II, 149).

The most concise area of the Second Treatise in which Locke explains what a political community is, what is does and why it must be established, is in paragraph 87. He says,

No political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is political society, where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it. And thus all private judgment of every particular member being excluded, the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, for the execution of those rules, 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.

The most concise area of the Second Treatise where Locke explains what the political community always retains, that is the supreme power, I find in paragraph 149. He says,

There remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them: … And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of any body, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject: … And thus the community may be said in this respect to be always the supreme power.
Why this political community must be formed ultimately lies in the fact that Locke trusts the political community the most. Certainly it plays the central role in the formation of the government and as such is an entity that works by collective action. But after the government is formed it essentially observes and makes sure the government does its job. That is no trivial job, as ultimately it has the responsibility of securing itself on occasion. Locke trusts the political community the most because in effect it exists to ensure its own security. This is why it is never truly idle, because it always retains the supreme power to save itself. This power it has is God given according to Locke and the political community does not have the right to rid itself of that power, for this is the power to preserve each other (II, 149). John Ashcraft put it this way,

One reason why Locke lays such emphasis upon placing political power in the hands of the community is only the latter can have the power over life and death … since the law of nature commands preservation of mankind this will most likely prove to be an enforceable proposition when the majority of the community are the designated custodians of this executive power of natural law, because they are, in effect, acting to preserve themselves.\textsuperscript{50}

This ultimate power to preserve itself is not the only reason for Locke why the political community must be established for Locke. The political community plays an important role as a deterrent for the government to act according to its fiduciary responsibilities. That is, when the government knows that the people have a right to start a new government and, if necessary, use force to defend itself when the government breaches its trust, it will behave accordingly to Locke. This idea, Locke calls the \textit{doctrine of the power in the people}. This doctrine not only works as a deterrent against the bad behavior by the government according to Locke but it promotes peace. Locke says,

\textit{This doctrine} of a power in the people of providing for their safety a-new, by a new legislative, when their legislators have acted contrary to their trust, by invading their

property, is *the best fence against rebellion*, and the proballest means to hinder it… the properest way to prevent the evil, is to shew them the danger and injustice of it, who are under the greatest temptation to run into it (II, 226).

**MAJORITY VOTE**

Once the community is formed unanimously, all other decisions can be decided via majority vote. Therefore the consent of every individual is no longer necessary, nor is it even possible according to Locke. The reason for this is practical according to Locke. Given all of the variables that come into play, from differing opinions, to differing interests, or simply just people attending to their own businesses or even getting sick, it would be impossible ever to have complete consent of the members on a given issue, including what kind of government to form, so the power to act as one body would now be determined by the majority (II, 96, 98). In this stage, the political community agrees to give political power to a specific government (II, 97). Each person who agrees to join the community is now obligated to submit to the determination of the majority. Once the government is formed and a person has given their consent to it, they are, “perpetually and indispensably obligated to be, and remain unalterably subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved” (II, 121). That means no one can withdraw their consent on a given issue, or at all.\(^5\) If the government was established legitimately then the government has the moral and legal authority to make and enforce laws for the public good and its citizens have a duty to obey these laws. Again this is practical for Locke. If

\(^5\) What is interesting to learn is unless the government comes to be dissolved or by some declared public act you have been cut off from being a member of your country, you cannot withdraw your consent to a government even if you emigrate. You can emigrate but your consent must remain (II, 121).
you can withdraw your consent, either on a given issue or entirely, this would leave all members as free as they were before they made their compact. Locke says,

And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation, to every one of that society, to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact, if he be left free, and under no other ties than he was in before in the state of nature (II, 97).

**A TRUSTEESHIP**

Locke explains that the form of this newly-formed commonwealth can be one of several, such as a democracy or hereditary monarchy (II, 132). Yet its goals, in order to remain legitimate must be the same: to preserve society and every person in it (II, 134). To do this, the government must function as a *trusteeship*. In fact, the second stage of this process to form a government is the establishment of a trust, *not a contract*. In a contract, both parties must benefit and are contractually obligated to each other, which in the case of the government Locke would be against. Peter Laslett says, “If a contract is to be set up, or understood, it is necessary that the parties to it should each get something out of it, and applied to politics this would mean that the government got something out of governing which the subjects are bound to give. Now this is something Locke was most anxious to avoid.”  

Locke thinks government responsibility, like any other trusteeship, is a fiduciary one (II, 149). It has this right and authority because it was given to the government by the consent of society (II, 134). Here again we see Locke giving us additional criteria for legitimate government. That is, legitimate government must function as a trusteeship. In general, a trustee has the responsibility to hold and manage

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52 Laslett, p, 127
assets for the benefit of another. As a trustee a person must do their best (their due diligence) to manage the property/assets in the best interest of another and never for their own best interest. To do otherwise would be a violation of their fiduciary responsibilities. Laslett says that what Locke is doing here is stressing what the proper nature of all legitimate political power must be; that is, political power must have a fiduciary nature to it (II, 149, 156).\textsuperscript{53} The concept that the relationship between the government and the people is a fiduciary one and not a contractual one is built on the idea that government exists for the good of the people and not vice versa. Locke says,

But government being for the preservation of every man’s right and property, by preserving him from the violence or injury of others, is for the good of the governed (I, 92).

Therefore, all legitimate government must have the same ends: it must do things for the public good (II, 3).

The concept of the government functioning as a trusteeship is one which Laslett says also secures another idea for Locke; that the people are sovereign, both in eminence and political power.\textsuperscript{54} As stated prior, at all times there remains with the people a supreme power, a power to remove or alter the government when it acts (but never until) contrary to its trust (II, 149).

This right to preserve itself, this supreme power, is one of those rights the political community can never part with, even voluntarily, as this would be against the law of nature. Locke says, “They have not the power to part with” (II, 149) it because it is so

\textsuperscript{53} Laslett, p. 128. Laslett explains Locke’s purpose for the substitution from contract to trust in great detail, see pages 125-129.

\textsuperscript{54} Laslett, p. 128.
connected with our right and duty of self-preservation. For Locke self-preservation is both a right given to us by God as well as a duty we owe to God.

The idea of a trust also serves another purpose. It provides us with criteria or a model we can use to determine when a government is illegitimate. We can now ask and judge, is this government breaching its fiduciary responsibilities? If a government is or is to remain legitimate, it must always function as a trusteeship. This criterion allows us to judge our own and other governments in the world.

**HOW LOCKE SEES GOVERNMENT FUNCTIONING – PART II**

There are many reasons (some of which are not mentioned below) why government is formed according to Locke;

1. To remove people from the inconveniences of living in the State of Nature (II, 136).
2. Because human beings desire a social life and fellowship with others (II, 136, see footnote from Hooker).
3. To help mankind live better lives (II, 229).
4. To help redress injuries (II, 89).
5. To preserve mankind (II, 159).
6. To preserve people’s property rights (And by property Locke means not just possessions, but also life and liberty) (II, 124).

All of these reasons to form government are reasonable by themselves according to Locke. But the fact is these reasons at times can and do conflict with one another, and this is something of which Locke is acutely aware. Take property rights for example. Locke says people have a right to property and no one can take your property without your own consent (II, 45, 138). This belief is justly identified as one of the cornerstones of Lockean political thought. Even if someone accidently damages your property, not
only does the liable party have to compensate you for your loss if you so choose, but the government can never interfere with this right to compensation. While discussing two distinct rights we all have in the state of nature (the right to punish and the right to reparations) Locke explains our right to reparations, He says,

From these two distinct rights, the one of punishing the crime ... the other of taking reparation, which belongs only to the injured party, comes it to pass that the magistrate, ... can often, where the public good demands not the execution of the law, remit the punishment of criminal offences by his own authority, but yet cannot remit the satisfaction due to any private man for the damage he has received. That, he who has suffered the damage has a right to demand in his own name, and he alone can remit: the damned person has this power of appropriating to himself the goods or service of the offender, by right of self-preservatio. (II, 11, see also, II, 8, 9, 10).

Locke sees the right to reparations as part of our overall property rights. For Locke property is essential and necessary because it represents one of the means by which a person has to secure their natural right to self-preservation. (II, 25) This is why Locke thinks government’s chief aim is to secure our property (II, 124). However, at times a person’s property right, a right the government must protect, can come into conflict with another reason why government was formed, that is the government’s duty to preserve mankind and the common good. Locke discusses this kind of thing happening in Chapter XIV, Of Prerogative, with a now-famous example of the government having not only the authority, but the duty and moral obligation to pull down an innocent person’s home in order to stop a fire from spreading and destroying other innocent people’s homes and lives. Locke says,

That as much as may be, all the members of the society are to be preserved: for since many accidents may happen, wherein a strict and rigid observation of the laws may do

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55 As a note of interest, when politicians, business leaders, or insurance executives discuss different aspects of tort reform, one aspect often discussed concerns limiting recoverable damages with regard to “Pain and Suffering” and excluding from tort reform economic damages that a person may recover due to someone else’s negligence. Limiting economic damages (such as lost wages) by law would indeed violate Locke’s idea of a person’s right to reparations.
harm; (as not to pull down an innocent man’s house to stop the fire, when the next to it is burning) (II, 159).

In this case it is a government’s duty to make sure the fundamental law of nature (that is, to preserve mankind and the innocent) trumps an individual’s property right. In an emergency for example, if my house must be used and converted into a shelter or hospital in order to save innocent lives this must be done according to Locke, with or without my consent.

For Locke this is the way a government must function. That is, one of government’s functions is to properly handle seemingly conflicting rights claims. This necessary and vital function of government cannot be some erratic or arbitrary process according to Locke. Nor can this function play favorites, picking winners and losers based on personal biases or gains. A government must always function for the good of the people and for the preservation of humankind. Locke says our laws are, “Not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at court, and the country man at plough…These laws also ought to be designed for no other end ultimately, but the good of the people” (II, 142).

According to Locke, in order for government to properly handle seemingly conflicting rights claims we must have knowledge of an order or hierarchy of a certain kind. This knowledge is a kind of moral knowledge according to Locke. Therefore, for a government to properly function, it must have moral knowledge in order to make the necessary rules and judgments and to then execute them properly. The importance of having moral knowledge, and how to achieve it is one of the main themes and goals of Locke’s, An Essay Concerning Human Understanding. Locke says,

Our business here is not to know all things, but those which concern our conduct. If we can find out those measures, whereby a rational creature, put in that state in which man is
in this world, may and ought to govern his opinions, and actions depending thereon, we need not to be troubled that some other things escape our knowledge (E. I. I. 6).

For Locke, knowledge about God and knowledge about ourselves provide the foundation for our morality and teaches us our duties toward one another and the correct rules for action (E. IV. III.18). For example, from the fact that God made us for His pleasure and not each other’s, and from the fact that human beings have the need for food and shelter, means that we can learn that human beings have a natural right to charity (I, 42) and as such we can and must conform our morality and laws to this law of nature. In the Essay, Locke was very optimistic about human beings’ ability to have moral knowledge and he thought our moral knowledge, if we work hard enough thinking about it, could be known to us with certainty similar to our mathematical knowledge (E. IV. III. 18).

Having moral knowledge or at the very least taking moral knowledge seriously is a big deal to Locke. In Lockean epistemology the only knowledge we can ever have about the world is knowledge about ideas (E.IV.I.1). And getting our moral ideas right in particular is one of the most important things we can do because when we get them wrong, innocent people are often unjustly harmed. Regarding moral ideas Locke says, “There being no part of knowledge wherein we should be more careful to get determined ideas, and avoid, as much as may be, obscurity and confusion” (E. II. XXVIII. 4).

One terrible thing that Locke has noticed is that often rulers, religious leaders, and even teachers have worked to obscure and confuse people about morality. He thinks they often do it for their own interests, and not for the good of the people. This is not some academic exercise where no one gets hurt according to Locke. Wrong ideas about rulers and Kings, women, laws, divinity, and many other moral ideas have truly harmed
innocent people. Often these wrong moral ideas have taken away peoples’ *natural rights*. Locke explains the purposeful misleading and teaching of moral ideas and its effects this way;

> Nor hath this mischief stopped in logical niceties, or curious empty speculations; it hath invaded the great concernments of human life and society; obscured and perplexed the material truths of law and divinity; brought confusion, disorder, and uncertainty into the affairs of mankind; and if not destroyed, yet in a great measure rendered useless, these two great rules, religion and justice. What have the greatest part of the comments and disputes upon the laws of God and man served for, but to make the meaning more doubtful, and perplex the sense? What have been the effect of those multiplied curious distinctions, and acute niceties, but obscurity and uncertainty, leaving the words more unintelligible, and the reader more at a loss? How else comes it to pass that princes, speaking or writing to their servants, in their ordinary commands are easily understood; speaking to their people, in their laws, are not so? And, as I remarked before, doth it not often happen that a man of an ordinary capacity very well understands a text, or a law, that he reads, till he consults an expositor, or goes to counsel; who, by that time he hath done explaining them, makes the words signify either nothing at all, or what he pleases.

> I leave it to be considered, whether it would not be well for mankind, whose concernment it is to know things as they are, and to do what they ought, and not to spend their lives in talking about them, or tossing words to and fro;—whether it would not be well, I say, that the use of words were made plain and direct; and that language, which was given us for the improvement of knowledge and bond of society, should not be employed to darken truth and unsettle people's rights (E. III. X. 12 -13).

By moral knowledge, or the knowledge of a moral hierarchy I will briefly explain what Locke means. For a government to properly function it must know how to adjudicate between seemingly conflicting rights claims that human beings will have on occasion. I say seemingly conflicting rights claims because when properly understood the rights do not conflict with one another per se, as much as they fall into an order of importance. According to Locke the law of nature, God’s moral law, may never be violated morally. But within the law of nature there is a moral hierarchy that exists. For example we can say in general a person cannot tell a lie, but the telling of a lie in order to save an innocent life is not only permissible but morally required. This is because saving the life of an innocent person is morally much more important than telling the truth on
this occasion. This kind of moral hierarchy is something which our governments must know in order to govern properly. The existence of a moral hierarchy within the law of nature and how this affects Locke’s theory of justified resistance will be discussed in more detail in chapter five, but for now I am emphasizing that Locke sees adjudicating between citizens conflicting property rights claims as an important and essential function of government.

**GOVERNMENTAL POWERS**

To function as a trusteeship and to do the things for which it is responsible, a government must have the authority to do these things, therefore is must have political power. Recall Locke says, “Political power, then, I take to be a right of making laws with penalties of death, and consequently all less penalties, for the regulating and preserving of property, and of employing the force of the community, in the execution of such laws, and in the defence of the common-wealth from foreign injury; and all this only for the public good” (II, 3). What I want to point out is that a government only legitimately has this right when a government is formed legitimately. Political power is a right that is conferred by the people to the government. Government cannot get this power any other way and still remain legitimate. In fact all government powers and rights must first be held by people and then given to the government by the people or else they are illegitimate rights and powers. An important thing to know (and made clear by A. John Simmons) is that rights and powers according to Locke are only naturally held by
persons. The only way a government can legitimately have these rights and powers is by the voluntary alienation or transferring of them by the rights and power holders. That is by consent (II, 95, 192). The way that a government gets its power matters a great deal to Locke. If these rights and powers were granted to the government by the government, and not by the rights and power holders, then they would all be illegitimate powers. They would be derived from, and dependent upon the discretion of a government and not by the people. This is something Locke wants to avoid. These rights and powers must spring from the rights and power holders only, or from God. If a political body is allowed to confer a power to itself this would be a government of unlimited powers. In essence it could now do things it never should be able to do, and to have powers it should never be able to have legitimately. This would make it a very dangerous government and illegitimate according to Locke.

AS THEY THINK FIT

In Chapter 10 of the Second Treatise, “Of The Forms Of A Commonwealth” Locke tells us the form of the government that is chosen by the political community can be one of several. Why is it that this newly formed government can be one of several forms; such as representative democracy or hereditary monarchy? Wouldn’t a representative democracy be best, especially given Locke’s knowledge of past monarchs’ abuses of power and recent English history? Locke reminds us, it is not only monarchies that have abused their power. He says,

56 A. John Simmons, On The Edge of Anarchy, p. 59.
It is a mistake, to think this fault is proper only to monarchies … for wherever the power, that is put in any hands for the government of the people, and the preservation of their properties, is applied to other ends… there it presently becomes *tyranny*, whether those that thus use it are one or many (II, 201).

Locke is certainly aware that history is filled with other forms of governments including assemblies of individuals who have abused their power and become tyrannical and he gives several examples of them in the *ST*. Locke is confident that people can choose a government that fits them best. This is a practical consideration that he leaves to the wisdom of the people. That is, because people are free and rational they must always be allowed to set up a government “as they think good” (II, 132) and “as they think fit” (II, 136).

But this is not the end of the issue. The law of nature actually imposes on the political community and does not allow it to pick just any form of government as it sees fit. That is the political community itself is limited in the form of government it chooses, as it must choose a government that does not violate the law of nature. This is a theme found often in Locke’s work. People are free, but are also bound by the law of nature (II, 6). For example, even if the majority of the political community chooses to place all political power and authority into the hands of a government that did not protect the rights of its citizens, or worse actually conspired to violate the rights of citizens, this government from inception would be illegitimate.57

57 The Nazi Germany example is an easy case to recall for this situation. From its inception, the Nazi government violated the *fundamental law of nature* of the Jewish citizenry. Locke says, “Their power, in the utmost bounds of it, is *limited to the public good* of the society. It is a power, that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects. The obligations of the law of nature cease not in society, but only in many cases are drawn closer, and have by human laws known penalties annexed to them, to inforce their observation. Thus the law of nature stands as an eternal rule to all men, *legislators* as well as others. The *rules* that they make for other men’s actions, must, as well as their own and other men’s actions, be conformable to the law of nature, *i. e.* to the will of God, of which that is a declaration, and the
GOVERNMENTAL POWERS AGAIN

Besides the law of nature, human experience and the use of our reason has to play a vital role as well in teaching and informing us on the kinds of governments we must choose according to Locke. Also, our reason and experience must inform us how the chosen form of government should be arranged. There is no question that human prudence has a big place in Locke’s political theory (I, 126). This is a point of view we see throughout Locke’s writings. God gives us reason to use for the best advantages in life and therefore we must use it (II, 25). He says, “Nor indeed can man believe, since he perceives that he has an agile, capable mind, versatile and ready for anything, furnished with reason and knowledge…that all this equipment for action is bestowed on him by a most wise creator in order that he may do nothing…Hence it is quite evident that God intends man to do something” (ELN, Chapter. 4, Paragraph. 2).

Recall from chapter 1, Locke tells us, “Politics contains two parts very different from the other. The one containing the original of societies, and the rise and extent of political power, the other, the art of governing men in society.”58 It is the second part; the art of government about which that Locke extensively speaks as being best learned by experience and history. In fact he says it is absolutely necessary that people learn chiefly from experience, and secondly from a judicious reading of history.59

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59 Ibid, pps. 351- 353.
With regard to this second part, the art of governing people in society, Locke thinks political power should always be separated into different hands. This is not an option for Locke; this is a necessity. And it is also another criterion that Locke uses to establish and judge whether a government is legitimate. Locke divides government into three parts; the legislative, executive, and federative parts. A point I want to stress here is that Locke separates the government into three parts not just because of the law of nature, but because reason has informed him that this is the best way it should be done. Each governing part has both the moral right and the legal authority to do certain things for the good of the commonwealth. That is each part according to Locke has the power to do certain things for the good of the commonwealth.

He tells us the legislative power of the government is the supreme power of that government and once power is placed in it by the political community it is now sacred and unalterable (II, 134). Legislative power is the means for the community to make laws that protect and preserve the community. Locke says the first and fundamental positive law of all commonwealths is to establish the legislative power (II, 134). This power to make laws can be placed in one or many hands. This power is of course, limited to the public good of society (II, 135). Legislative power includes in it not only the power to make laws for the public good, but something else essential and fundamental: the power to dispense justice. This is done by the legislature authorizing judges to decide cases and disputes between people and/or the government based on the standing laws (II, 136). We see therefore that Locke trusts the appointment of judges to the legislative branch. Locke tells us that without established judges to determine the rights and properties of the people, we all would live with the same uncertainty as in the state of nature (II, 136).
Locke says that since laws can be made almost at once or in a short time, those who make the laws do not always have to be legislating and can proceed with other aspects of their lives. But since the standing laws are perpetual and must be executed (II, 144) another part of government must continue to exist, the executive part.

This part must have what Locke calls executive power (II, 144). This is the legal power to execute all of the laws that are made. Whoever has this power must always be around to make sure that at all times the laws are being enforced (II, 153). This power is also limited, as it too must always be used for the public good.

A government must also have another power according to Locke. Locke says this power can be called natural because it is one of those powers that everyone naturally had in the state of nature. Locke tells us that each government in the world lives in the state of nature with all other independent governments in the world (II, 14) and therefore the government must have power to deal with these other independent governments. Locke calls this federative power. It is the power to make all of the transactions with all other people and all other governments that live outside your commonwealth (II, 144). This includes the power to make war and peace (II, 146). Federative power by its very nature is carried out with much less antecedent and positive laws than when executive power is carried out. It is therefore often left to the wisdom of those who have that power in their hands to decide what to do (II, 147). Again, this power is also limited to the public good.

Locke tells us that executive power and federative power are conceptually distinct powers (II, 147) but for very practical reasons are usually placed in the same hands. Placing the power in the same hands helps to insure the preservation of the society. Locke says,
As I said, the *executive* and *federative power* of every community be really distinct in themselves, yet they are hardly to be separated, and placed at the same time, … it is almost impracticable to place the force of the common-wealth in distinct, and not subordinate hands; or that the *executive and federative power* should be *placed* in persons, that might act separately, whereby the force of the public would be under different commands: which would be apt some time or other to cause disorder and ruin (II, 148).

Also to note is that when Locke explains and introduces the three separate parts of the government in the *ST*, he does not use the word “part” or “parts.” He uses the words “power” and “powers” respectively. I do not think this is an accident. Chapter 12 is entitled, “*Of the Legislative, Executive, and Federative Power of the Common-wealth*” and Chapter 13 is entitled, “*Of The Subordination Of The Powers Of The Commonwealth.*” Locke does this because he sees each part of the government as having powers that are limited to their respective roles in the government. When parts of the government do things outside of their limited power, they act outside their trust and their powers.

In chapter 13, “*Of The Subordination Of The Powers Of The Commonwealth,*** Locke explains that all of the members of the political community (II, 150) and the executive part of the government are subordinate to the legislative part of the government (II, 53) so long as the legislative part of government acts according to its trust (II, 149). For Locke powers are given on trust and are conditionally kept. The parts of the governments that have these powers must realize, and citizens must realize, that all of these powers granted to the government are subordinate. That is, not only is there a placing of an order of importance of these powers here done by Locke, but something else is revealed. In essence, in the end, all powers are subordinate to the people, as the people always retain the supreme power (II, 149). If for example the legislature violates

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60 See chapter 13 of the *ST*, “*Of The Subordination Of The Powers Of The Commonwealth*.†
their trust, its power is forfeited and returns to the people (II, 149). That is, if any part of the government violates their trust by an abuse of their power it is within the law and within the rights of the people to divest that power (II, 151). All of this is necessary to prevent the abuse of power according to Locke and is based on experience. Again, it is not just the law of nature, it is also experience and reason that informs us the best way to arrange the government and to separate its powers.

What if the political community decided, as they saw fit, to confer all of these powers into one person? Would this violate the law of nature and therefore be illegitimate? It would be illegitimate but not just because it violated the law of nature. This point brings up other criteria for legitimate government. In order for a government to be legitimate its powers must be in separate hands, otherwise such a government would be putting everyone back into the state of nature. Locke makes it clear that in order for a government to be legitimate its legislative and executive powers *must* be in separate hands. He does allow and envisions the executive branch having a share in the legislative branch (II, 151, 152) but he would never allow all of those powers to be in one person’s hands. This would result in absolute power or absolute monarchy which is the very antithesis for legitimate government according to Locke. Locke says,

> For he being supposed to have all, both legislative and executive power in himself alone, … is as much *in the state of nature*, with all under his dominion, as he is with the rest of mankind: for where-ever any two men are, who have no standing rule, and common judge to appeal to on earth, for the determination of controversies of right betwixt them, there they are still *in the state of nature*, and under all the inconveniencies of it, with only this woful difference to the subject, or rather slave of an absolute prince (II, 91, see also II, 90).

What is important about this criterion for legitimate government is that it was derived from reason, human experience, human history, and prudence and not just natural
law or an appeal to God. Locke says, “For he that thinks absolute power purifies men’s blood, and corrects the baseness of human nature, need read but the history of this, or any other age, to be convinced of the contrary” (II, 92). This aspect of having power in separate hands has to do with the art of governing. As such, we have learned that this is the rightful way for human beings to govern themselves is from experience and the reading of history. We are free, rational and capable; as such Locke recognizes this and accounts for it, while Filmer and other absolutists do not.

MORALITY AND THE LAW OF NATURE ...AGAIN

Besides working for the public good, Locke also sees government being limited in other ways. One could imagine for example, a case in which some individuals or members of society are used immorally by the government for the benefit of the majority. For example, let’s say by majority vote it is agreed that all citizens’ names will be entered into a lottery and upon completion of the lottery three percent of the population will be enslaved to benefit the other 97 percent. Let us further say this lottery is done with procedural fairness. Finally let us add that as a result of enslaving three percent of the population the other 97 percent of the population has truly benefited. That is, we have tangible evidence that this public policy has made things better, such as better roads and bridges, better hospitals, schools, cleaner parks and so forth. Even if all these things were true, none of these things could be allowed under Locke’s theory of government. All of these things would be immoral and off limits according to Locke regardless of the procedures and consequences. For one thing consequences cannot be the foundation of

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61 In his own age, Locke could simply refer to Cromwell or King James II.
morality for Locke, nor can they be used to override morality. Locke says, “The binding force of law does not rest on the principle of utility as its foundation, for if you should run over all the dutiful actions of human life, you will find none that arises out of mere utility and is binding for the sole reason it is advantageous.”

Second, we are God’s property made for His use and not each other’s according to Locke (II, 6). Third, Locke recognizes a moral equality amongst innocent people (I, 67, II, 4). Locke also sees government being neutral and indifferent with regard to individual interests and group interests. Government is to be a fair umpire, an indifferent judge that resolves disputes between property holders. Locke says, “They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at court, and the country man at plough” (II, 142).

Regardless of whether there is a benefit to the majority or not, groups and individuals can never be used to achieve the common good without their consent and at times even with their consent. No one can morally quit their station in life, voluntarily or not. This would be a violation of the law of nature. Locke says, “Every one, as he is bound to preserve himself, and not to quit his station willfully” (II, 6).

Government’s power is given to the government by the people according to Locke (II, 135). The people collectively give the government its power, but they cannot give any power to the government which they do not already possess. For example, in the state of

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62 ELN, Essay, Chapter 8, Paragraph 2, (i).
64 Locke has a broad definition of property, He says, “lives, liberties and estates, which I call by the general name, property” (II, 123).
65 In a time of War a government can do many things it cannot do normally. For example it could institute a draft forcing citizens into the armed services against their will. Why this is not a contradiction to what has been said above will be discussed at length in chapter 5.
nature people have the power to punish transgressors of the law of nature (II, 7). This is a right and a power they can and do transfer to the government. However, in the state of nature, a person can never harm another for their pleasure (II, 6). It is a power that they do not possess and therefore cannot transfer to a government. Since people can only transfer powers they have to the government, government has no absolute or arbitrary powers. Whatever power a government does have comes only from the power which the people have in the state of nature and it can only be used for the common good (II, 135).

Another reason a group or an individual can never be used by the government for the common good is that this idea goes against the very reason why free people leave the state of nature in the first place. That is, they do it to improve their condition. Men are free and rational in the state of nature. They give away their liberties and in exchange they get security. This is rational. To give up all their freedoms to be then used as slaves or worse, Locke thinks would be irrational. He says,

But though men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society, to be so far disposed of by the legislative, as the good of the society shall require; yet it being only with an intention in every one the better to preserve himself, his liberty and property; (for no rational creature can be supposed to change his condition with an intention to be worse) (II, 131).

The last point about government being limited in its actions that I want to add refers to actions regarding non-citizens. Throughout Locke’s writing he mentions that people or mankind are part of one community, “distinct from all other creatures” (II, 128, see also II, 6 and II, 172) and that “all men alike are friends of one another and are bound by common interests” (163, ELN). Being part of the human family and always governed by the law of nature limits what a government can morally do even to non-citizens according to Locke. Citizens from different countries are always in a state of nature with
each other, as there is no common judge with authority to whom to appeal. As such, this state of liberty is not a state of license, it has the law of nature that governs it (II, 6), and therefore limits what people or governments can do to other human beings. A good example of this is found in Locke’s Chapter XVI in the *Second Treatise, Of Conquest* between II, 176 and II, 190. Here Locke explains in great detail that when a country invades another country unjustly they use force without right when attempting to conquer others. As such, it is normal practice that if or when the unjust conqueror is defeated, the just victors get paid back reparations for the damages and expenses they have incurred as a result of this unjust force and war by the defeated country. So far so good, but what if those reparations hurt the innocent? What if the money paid back to the people who were only defending themselves actually hurt innocent children for example? What if the payment of these reparations hurt innocent parties not responsible for this unjust invasion? Then the victor is not entitled to those reparations because that would violate the fundamental law of nature according to Locke. Locke says,

> The conqueror has a title to reparation for damages received, and the children have a title to their father’s estate for their subsistence: for as to the wife’s share, whether her own labour, or compact, gave her a title to it, it is plain, her husband could not forfeit what was her’s. What must be done in the case? I answer; the fundamental law of nature being, that all, as much as may be, should be preserved, it follows, that if there be not enough fully to satisfy both, *viz.* for the conqueror’s losses, and children’s maintenance, he that hath, and to spare, must remit something of his full satisfaction, and give way to the pressing and preferable title of those who are in danger to perish without it (II, 183).

**TO SUM UP**

Locke sees government as a means to help people live better lives. Government is for Locke necessary, in that it provides the best means available for human beings to bring about and obey God’s fundamental law of nature, to preserve mankind and protect
the innocent (II, 16). When people live in the state of nature with each other it is filled with too much insecurity and inconvenience. People are special creatures that have dignity, are rational, free, equal, and loved by God. They have rights and a strong will to live. For any creature such as this, the only legitimate way for them to be governed is by their own consent. How this government by consent must be formed is by a two stage process. This government by consent can be one of several so long as it does not violate the law of nature and it removes people from the state of nature. It exists for the good of the people. The government has fiduciary responsibilities and it must function as a trusteeship. Locke recognizes that human reason must be used to properly arrange this kind of government. We must read and study history and use our reason and be prudent when making up this government. Locke reaches the conclusions he does regarding government because of the two foundations on which he often rests; one being the kind of creatures that we are, especially our rationality, and the other being his Christian world view.
CHAPTER 3
LOCKE’S THEORY OF JUSTIFIED RESISTANCE

In the previous two chapters I discussed the kind of government that must exist given our human natures, our natural rights, and the law of nature, according to Locke. I have discussed how Locke thinks such a government must be formed and how it must function in order to be legitimate. Besides arguing about these things regarding the nature of government, one of the main tasks of the Two Treatises of Government for Locke was to also argue that there can be legitimate grounds for the government to be resisted. John Dunn says, “The Two Treatises is a work principally designed to assert a right of resistance to unjust authority, a right, in last resort, of revolution.”66 In this chapter I will explain what I call John Locke’s theory of justified resistance. I will begin with a review of the historical context in which Locke wrote.

THE HISTORY THAT LEAD TO THE WRITING OF THE TWO TREATISES OF GOVERNMENT

In the Preface of the Two Treatises Locke tells us he is hopeful that his work would help establish the throne of King William, who along with his wife Mary had taken control of the British Monarchy. That event is referred to as The Glorious Revolution of 1688. It is called this because incredibly no battles were fought when power changed hands from King James II to William and Mary. King James II was a Roman Catholic and Locke and his friends were worried that a Catholic King would not be beholdent to the people of England but rather to the Pope in Rome and even the Catholic King of France. Locke and his friends were unsuccessful in preventing James

66 Dunn, Locke, p. 28.
from becoming King,\textsuperscript{67} and as things unfolded claimed that their worries were not unfounded. Locke and his friends thought King James II worked aggressively to usurp power in Parliament and to rule outside the law almost as soon as he assumed the throne. These perceived abuses of power by King James II during his four years of rule are well documented,\textsuperscript{68} and Locke had them in mind when writing the \textit{Two Treatises}. These so-called abuses of power were greatly debated in England at the time. Some held that the King’s actions were lawful and not actual abuses of power, but rather appropriate use of the King’s prerogative allowed under the constitution. The perceived abuses are numerous but in this work I will mention just three - his dismissal of Parliament on Nov. 20, 1685, his suspension of The Tests Acts of 1673 and 1678, and his expansion of the army without the consent of Parliament. The Tests Acts prevented Roman Catholics from holding political offices and from becoming members of Parliament. James wanted them repealed but was unable to get Parliament to go along.\textsuperscript{69} He then dismissed Parliament and he never called it again to meet during his rule. By royal prerogative he then suspended The Tests Acts. King James II felt he had the right to do this because in the past courts had upheld royal prerogative. Only in this case Parliament felt this was an abuse of power as it believed that only their body held the right to decide who could become a part of their membership.

\textsuperscript{67} In English history this is referred to as the \textit{Exclusion Crisis}. Some members of Parliament attempted to pass a bill, The Exclusion Bill, which would exclude a Roman Catholic from becoming King. Specifically, this bill was aimed to exclude King Charles’ II brother James II from becoming King.


\textsuperscript{69} One of the ironic things regarding the attempted repeal of the Test Acts was that King James II, who felt protestant religions were false and who also believed in the Divine Right of Kings, argued that the repeal of these acts would show toleration and freedom of conscience. He in fact issued a proclamation called, The Declaration of Indulgence (or the Declaration for the Liberty of Conscience) on 4 April 1687.
In order for King Charles II to be restored to his throne in 1660, Parliament made Charles sign, *The Disbanding of the Army Act* of 1660. The rule of King James I, King Charles I, and especially the rule of Oliver Cromwell, informed Parliament that a standing army during peacetime was a threat to their rights and liberties. The act allowed for a small standing army to exist in case of foreign invasion, and it established a new militia system for England’s defense. To expand that army further, the King needed the consent of the Parliament. When King James II assumed power the standing army stood at around 16,000 troops. But to help secure his power he grew the army illegitimately according to Parliament. He found ways to raise revenue without the consent of Parliament and even housed soldiers in people’s homes without consent. Over time he expanded the army to just over 30,000 troops by the time he left power.

After *The Glorious Revolution* of 1688, a very important thing in human history occurred. *The English Bill of Rights* was passed in 1689 and signed into law by King William III. The document consists basically of two parts. Very much like our own Declaration of Independence it first lists the grievances in indictment form of King James II and in the second part it lists the rights of the British subjects. This Bill of Rights is still in force today. In the first part twelve offenses of King James II are listed. Here are two of them:

- By assuming and exercising a power of dispensing with and suspending of laws and the execution of laws without consent of Parliament;
- By raising and keeping a standing army within this kingdom in time of peace without consent of Parliament, and quartering soldiers contrary to law.70

70 Taken from the Yale Law School University online web site, Lillian Goldman Law Library.
RESISTANCE NOT REBELLION

Locke says, “That it is lawful for the people, in some cases, to resist their king” (II, 232). I call his thoughts on this, his Theory of Justified Resistance. The reason I use the word “resistance” and not “rebellion” is that Locke specifically says that rebellion is something that is immoral and should never be done. This is because Locke understood rebellion to mean an opposition to legitimate authority. Locke thinks legitimate political authority is grounded in constitutions and laws. That is, legitimate authority originates from the constitution and the laws and as such, one cannot rebel against legitimate authority morally. Locke says, “For rebellion being an opposition, not to persons, but authority, which is founded only in the constitutions and laws of the government” (II, 226). So when someone uses force without authority instead of the law they, “Do rebellare, that is, bring back again the state of war, and are properly rebels” (II, 226). Being guilty of rebellion whether done by a person or branch of government is, according to Locke, the greatest crime we can commit (II, 230).

THE RIGHT OF RESISTANCE

According to Locke all human beings have the right of resistance under certain conditions to oppose the unjust use of force whether they live in the state of nature without a government, or whether they live under the rule of a government (II, 208, 232).
This right ultimately derives from our natural right to self-defense (II, 232, 233). Locke says, “THE state of war is a state of enmity and destruction: and therefore declaring by word or action, not a passionate and hasty, but a sedate settled design upon another man’s life, puts him in a state of war with him against whom he has declared such an intention” (II, 16). Whenever someone puts you in a state of war with them, Locke says you can assume that not only will they are take away your freedom, but that they would kill you or make you their slave if that is their design (II, 17). It is therefore just for you to destroy them, and you have the right to destroy anything that would seek your destruction (II, 16). In the state of war, you now have what Locke calls, the right of war, which he defines as the liberty to kill the aggressor (II, 19). A state of war is also necessarily a state of nature, because at that moment there is either no common judge with the authority to appeal to, or no time to appeal to such a judge. Locke says,

But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war: and it is the want of such an appeal gives a man the right of war even against an aggressor, tho’ he be in society and a fellow subject. … Want of a common judge with authority, puts all men in a state of nature: force without right, upon a man’s person, makes a state of war, both where there is, and is not, a common judge (II, 19).

Locke recognizes that having a legitimate government with the power to punish wrong doers will often greatly deter and reduce attempts by people to put others under their unjust power and is one of the main reasons why governments are formed. He also recognizes that government authorities cannot be everywhere at all times, and that from time to time some people will attempt to put others under their unjust power. These are instances of local states of war.

Locke explains that when an individual harms or attempts to harm another individual, and there is an appeal to the law available, the harmed individual is not in a
state of war, and therefore cannot destroy the individual that harmed them, even if they harmed them a great deal. But if someone is to harm or attempts to harm you and there is no time to appeal to the law, you may kill that person, because at that moment you are in a state of war. That is, the condition of being harmed without right and the condition of being in the state of nature exists, making the condition a state of war. Locke says,

Thus a *thief*, whom I cannot harm, but by appeal to the law, for having stolen all that I am worth, I may kill, when he sets on me to rob me but of my horse or coat; because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which, if lost, is capable of no reparation, permits me my own defence, and the right of war, a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common judge (II, 19).

Our concern is not when the state of war occurs on an individual v. individual basis. Our concern is when a state of war is brought about by a government.

**ABSOLUTE MONARCHY AND GOVERNMENT BY CONQUEST**

In order for a government to be legitimate according to Locke it must be both formed by consent (II, 95) and there must be a common judge with authority to who to appeal for resolving disputes (II, 91). In *Chapter XVI, Of Conquest*, Locke explains that governments that have been set up by conquest are always illegitimate because they were not set up by the consent of the people. Locke says, “But *conquest* is as far from setting up any government, as demolishing an house is from building a new one in the place” (II, 175). When a government is established by conquest an aggressor unjustly invaded another person’s rights by force and put themselves into a state of war with that person (II, 176). As such, the conquered is under no obligation to obey the conqueror (II, 176, 187), and may morally resist them with force.
In the case of government by absolute monarchy, it is illegitimate because there is no common judge with authority to whom to appeal in order to resolve disputes between the monarch and a subject. An absolute monarch according to Locke is someone who rules with unlimited power. That is, they are not limited by the law, the courts, or other branches of government. Power is not divided in the case of absolute monarchy and resides in just one person. So when there is a dispute between a subject and the monarch, it is the monarch that hears and then decides the dispute. In the case of a limited monarchy, power is divided, and as such the dispute will be decided by another branch of government that has the power and authority to do so. It is not that the absolute monarch would always be unjust according to Locke. Nor is it the case that a government with divided powers would always be just. There is no guarantee that divided government would always be just and not invade a subject’s rights either. It is just that given human nature – that is we are often partial to our own cases and situations, and given human history, in which we have seen great abuses of power when power is concentrated, it is much more likely according to Locke to have less abuses of power when the power of government is divided into several parts. John Kilcullen says, “Locke’s rejection of absolutism indicates a condition which a regime must meet to be a legitimate form of government: it must be open in principle to some dispersal of power, so that it will be possible for a citizen in dispute with some part of the government to appeal for adjudication to some other.”

In the case of government by absolute monarchy, Locke tells us that things are often even worse than simply living in the state of nature because power is concentrated and the monarch has armed power rather than power spread out among people. This is an

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irrational and an unacceptable form of government according to Locke. As rational creatures, it makes no sense for us to ever allow so much power to be concentrated into one person’s hands. Locke says,

This were to put themselves into a worse condition than the state of nature, wherein they had a liberty to defend their right against the injuries of others, and were upon equal terms of force to maintain it, whether invaded by a single man, or many in combination. Whereas by supposing they have given up themselves to the absolute arbitrary power and will of a legislator, they have disarmed themselves, and armed him, to make a prey of them when he pleases; he being in a much worse condition, who is exposed to the arbitrary power of one man, who has the command of 100,000, than he that is exposed to the arbitrary power of 100,000 single men (II, 137, see also, II, 91 and 93).

A. John Simmons points out that besides being irrational, absolute monarchy is also a morally impermissible condition according to Locke. We are God’s property, made for His use and pleasure, and everyone is bound to preserve themselves and others (II, 6). As such, we can never allow for anyone to have absolute power over ourselves.

Locke says,

For no body can transfer to another more power than he has in himself; and no body has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, as has been proved, cannot subject himself to the arbitrary power of another; and having in the state of nature no arbitrary power over the life, liberty, or possession of another, but only so much as the law of nature gave him for the preservation of himself, and the rest of mankind (II, 135).

These two types of illegitimate governments are governments that exist for the good of the rulers and do not exist for the good of the people. They represent the antithesis of Locke’s ideas of what a legitimate government must entail. With regard to absolute monarchy Locke spends the entire FT explaining that this theory of government defended by Sir Robert Filmer is illegitimate. In fact, he also begins the ST with a summary of what he had proven in the FT; that the origin of political power defended by Filmer, that is, paternal power derived from Adam and his descendants is illegitimate

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72 Simmons, A. John, *On The Edge of Anarchy*, Princeton University Press, 1993, p. 53. Simmons says it is morally impossible and irrational to allow for absolute monarchy according to Locke.
power. Locke did this because Filmer’s theory of government was becoming very influential in the contemporary political debates of Locke’s time and he had to address it thoroughly. In addition, the writings of Thomas Hobbes also played a large role in influencing people of Locke’s time on the moral and practical legitimacy of government by absolute monarchy, especially with the memory of the English civil wars fresh in many people’s minds. These facts required Locke to address the issue of absolute monarchy head on. Locke says, “Hence it is evident, that absolute monarchy, which by some men is counted as the only government in the world, is indeed inconsistent with civil society, and so can be no form of civil-government at all” (II, 90). Although Locke spends considerable time in the Two Treatises explaining both the illegitimacy of these forms of governments and that both forms of government can be resisted, they are not the main focus of Locke’s theory of justified resistance. Locke’s theory focuses mainly on governments that began as legitimate governments and when it is morally permissible to resist them.

LEGITIMATE GROUNDS FOR A GOVERNMENT TO BE RESISTED

Although one of the main tasks of the Two Treatises is to prove, “That it is lawful for the people, in some cases, to resist their king” (II, 232), Locke does not undertake this task in earnest until the last three chapters of the ST. One reason why Locke waited until the last three chapters to address the conditions that would allow someone to

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73 Gordon, Jill, *BY ANY MEANS NECESSARY: JOHN LOCKE AND MALCOLM X ON THE RIGHT OF REVOLUTION*, P. 53. Gordon explains that it is only after Locke established the proper foundations of government that he then moves on to explain the conditions that would allow for legitimate resistance.
legitimately resist their government is that Locke is focusing on governments that began as legitimate governments, including his own. That is, he first wants to establish the criteria for legitimate government, and then he uses that criterion to also establish when a government can be resisted legitimately/morally.\footnote{Locke wants to establish the proper criteria for legitimate government so people can both establish their government properly and judge their government properly. Recall that he tells us that the \textit{First Treatise} deals with false principles and foundation promoted by Filmer, but the \textit{Second Treatise} concerns, \textit{``The True Original, Extent, and End of Civil-Government.''}} Historically this was the exact kind of situation in England at the time Locke wrote the \textit{Two Treatises of Government}.\footnote{Although the \textit{Two Treatises of Government} was not published until 1689 and in the Preface Locke mentions the work is to establish the just rule of King William, we now know from the tremendous work done by Locke scholar Peter Laslett, the work was written between 1679-80 to exclude James, a Roman Catholic, and brother of King Charles II, from inheriting the thrown upon Charles’s death. See Peter Laslett’s introduction to John Locke’s \textit{Two Treatise of Government}, Cambridge University Press, 1960, reprinted in 1963, 1965, p. 64.} That is, Locke was writing to address a government that began legitimately and was beginning to act tyrannically, specifically the reign of King James II and his brother King Charles II. According to Locke the legitimate grounds for a government to be resisted often begins when those who have been given the right to hold political power by the consent of the people fail to hold up their fiduciary responsibilities. When a government does not hold up its fiduciary responsibilities and when that same government uses force without authority and there is no common judge with authority to whom to appeal (what Locke calls \textit{a state of war} II, 227), the people may justifiably resist.

In Chapter XVII, \textit{Of USUPATION}, and Chapter XVIII, \textit{Of TYRANNY}, Locke defines what he calls ‘disorders’ that occur by governments or branches of governments. Locke wants people to be aware of these and take notice of these disorders. These disorders of government are usurpation (II, 197) and tyranny (II, 199). When a branch of government usurps power, it takes a power to which someone else has a right and takes it
for themselves. Locke says, “So far as it is *usurpation*, is a change only of persons, but not of the forms and rules of the government (II, 197). Locke has in mind his perceived usurpation of power by both King Charles II and King James II. That is, a branch of government has a power based on the constitution, consent, and authority of the people, but then that power is taken away and taken over by another branch of government who was never given that authority legitimately. When this happens the usurper according to Locke, “hath no right to be obeyed” (II, 198).

According to Locke when a government or branch of government acts tyrannically, it means that it has taken on a power or has exercised a power to which no one ever has a right to. That is, they are exercising a power that cannot ever be given to them by the constitution or the people. Locke says, “*Tyranny is the exercise of power beyond right*, which no body can have a right to” (II, 199). These acts are not just committed by monarchs according to Locke but can be committed by the legislature as well (II, 201, 202).

Chapter XIX, *Of the Dissolution of Government*, is the last chapter in the *ST* and it is also the longest chapter in the *ST* by an entire third. According to Locke when a government fails to uphold its fiduciary responsibilities, it either alters the legislature, it is incapable of securing people rights, or it acts contrary to its trust. When these sorts of things occur the government is no longer legitimate. The government has what Locke calls, dissolved from within (II, 212). When Locke uses the concept of the dissolution of government, he is for the most part, using it as a moral concept. That is, he is not referring to a government that has been destroyed physically. The exception to this is in

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76 I owe my understanding to this idea to Simmons. For a terrific explanation of what Locke means by the dissolution of government, both from without, and from within, see, *On The Edge Of Anarchy*, pgs. 160 - 165.
the case of conquest, where an actual physical government is destroyed by a foreign source and no longer exists (what Locke calls dissolving from without) (II, 211). So most often when Locke refers to a government that is dissolved, he is referring to a government that has lost its moral authority, and the once entrusted rights to its political power.77

It is in this chapter that Locke gives specific examples of how governments that began as legitimate lose their legitimacy. One way Locke mentions that a government may lose its legitimacy is when it no longer can secure people’s rights. That is, for one reason or another, the government is unable to protect people and their rights. It may be from neglect and abandonment (II, 219) but it also may be because it simply is incapable of doing so. When this occurs, and laws can no longer be enforced, Locke says, “This is demonstratively to reduce all to anarchy, and so effectually to dissolve the government” (II, 219).

Another way Locke mentions is when the legislature is altered (II, 212, 214). Locke lists several ways in which this can happen. One way this can happen is when some person or branch of government arbitrarily introduces new laws or subverts old laws that overturn the legislature that society had legitimately authorized. Locke says, “Whoever introduces new laws, not being thereunto authorized by the fundamental appointment of the society, or subverts the old, disowns and overturns the power by which they were made, and so sets up a new legislative” (II, 214).

Another way the legislature can be altered is when the legislature is prevented from meeting. This is what happened when King Charles II dismissed Parliament in 1679

77 Ibid, p. 163.
and 1681 and when King James II dismissed Parliament in 1685. Unless people are free to meet and debate, to perfect things that are for the good of society, Locke says, “When these are taken away or altered, so as to deprive the society of the due exercise of their power, the legislative is truly altered” (II, 215). Another way the legislature can be altered is when the powers of the different branches of government are altered without the consent of the people and contrary to the common good. Locke says,

When, by the arbitrary power of the prince, the electors, or ways of election, are altered, without the consent, and contrary to the common interest of the people, there also the legislative is altered (II, 216).

An example of an attempt to alter the legislature occurred during the reign of King James II. The legislative branch of the government according to Locke is made up of people who represent the people at large. Locke calls it, “The soul that gives form, life, and unity, to the common-wealth” (II, 212). This is an entity established by the majority. When it is dissolved or altered because power is usurped and abused, any laws that come from this body have no authority and the people are not bound by them according to Locke (II, 212). When King James II dismissed Parliament in 1685, he then worked hard to replace members of Parliament with new members that would rubber stamp his agenda. This was a clear attempt to alter the legislature. One of the ways James went about this was by using a method called, “closeting.” After dismissing Parliament James had the idea of holding new general elections for Parliament but having those running for office be supporters of his agenda. To achieve this, his method was to have his deputy lieutenants ask three standard questions to members of Parliament and to Justices of the 

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78 In 1679 after Parliament introduced the Exclusion Bill (a bill aim to exclude Roman Catholic James II from becoming King) Charles II dismissed parliament and again in 1681 he dismissed parliament after the Whig members of parliament reintroduced the Exclusion Bill. King James II dismissed parliament in 1685 after it refused to repeal the Test Acts.
Peace. They were asked whether they would support repeal of the Test Acts, repeal the penal laws, or support those who did. If they answer negatively or refused to answer, James would have them dismissed and replaced.\textsuperscript{79} \textit{The English Bill of Rights} listed this as, “Violating the freedom of election of members to serve in Parliament.”

Another way the legislature can be altered is when the government hands over power or subjects the people to a foreign power. Locke says,

The delivery also of the people into the subjection of a foreign power, either by the prince, or by the legislative, is certainly a \textit{change of the legislative}, and so a \textit{dissolution of the government} (II, 217).

In all of these cases where a government has dissolved from within, the government was once legitimate and had the right to be obeyed and authority to rule. But when the government loses its legitimacy it no longer has to be obeyed and has no moral authority to rule. It may still physically exist and even have tremendous military strength and power, but it is in Locke’s view, morally dissolved. What is important to grasp when Locke uses the idea of a government dissolving he means it has lost its moral authority and legitimacy because it either did something it should not have done or did not do something it should have done.

Whenever a government loses its legitimacy the people are free to set up a new government. Locke says, “In these and the like cases, \textit{when the government is dissolved}, the people are at liberty to provide for themselves, by erecting a new legislative, differing from the other, by the change of persons, or form, or both, as they shall find it most for their safety and good” (II, 220).

TRUST

The final way that Locke mentions that a government can lose its legitimacy is extremely serious, as it automatically puts people into a state of war. In this case, either the legislature or the executive branch of government acts contrary to the trust that has been given them by the people, by purposely and intentionally invading the property of their subjects. Locke uses the word “property” here in the broad sense, meaning lives, liberty, and estates. This way of a government losing its legitimacy is the most serious, and in a very real way worse than the other ways of a government losing its legitimacy that Locke mentions. When governments dissolve from within by the other ways Locke mentions, the people are not necessarily in a state of war with the government. That is, unless the government uses force without authority and there is no common judge with authority to whom to appeal, you may not yet be in a state of war. But in the case where the government endeavors to invade the lives, liberty and property of the people, they have transgressed the fundamental rule of society and have already put themselves in a state of war with the people. In this case, the government has already used force without authority. Much earlier is the ST, at paragraph 155, Locke addresses the question, What if for example, the executive blocks legislation from being enforced, or blocks the meeting of the legislature itself by the use of force? He answers if the executive does either of

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80 Sometimes Locke uses the word property in the narrow sense meaning material goods, but in this case and other cases he uses it in the broad sense. At (II, 87) Locke defines property broadly, he says, “Man being born, as has been proved, with a title to perfect freedom, and an uncontroled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power, not only to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men.”
these, it acts contrary to the very trust that has been given to it and he therefore puts itself
into a state of war with the people. Locke says,

What if the executive power, being possessed of the force of the common-wealth, shall
make use of that force to hinder the meeting and acting of the legislative, when the
original constitution, or the public exigencies require it? I say, using force upon the
people without authority, and contrary to the trust put in him that does so, is a state of war
with the people...In all states and conditions, the true remedy of force without authority,
is to oppose force to it. The use of force without authority, always puts him that uses it
into a state of war, as the aggressor, and renders him liable to be treated accordingly (II,
155, see also II, 173).

What Locke teaches here is that, in some cases when the government is dissolved,
and the government does not then use force without authority, the people are not in a
state of war. And he teaches that when the government is not dissolved, yet has violated
someone’s rights, and there is a remedy for appeal, the people or person is not in the state
of war either. But when the government has acted contrary to its trust, it uses force
without right, and therefore whether or not there is a common judge, the people are in a
state of war and the government can be resisted. Acting contrary to the trust which people
have placed in the government, puts those actions in a unique category, that is, a category
where the government is actually using force without right, against someone’s person.
Here a person has no time to appeal, as their very lives are in danger at that moment
therefore, “The mischief may be irreparable” (II, 19). As such Locke says, “Want of a
common judge with authority, puts all men in a state of nature: force without right, upon
a man’s person, makes a state of war, both where there is, and is not, a common judge”
(II, 19).

Locke says the reason why people enter society is to preserve their property (II,
222). In the case of acting contrary to their trust they are actually invading people’s lives,
liberties and property, going against the very design and purpose of government. This is
no longer political power as defined by Locke, but what he calls despotic power. Locke says, “Despotical power is an absolute, arbitrary power one man has over another, to take away his life, whenever he pleases. This is a power, which neither nature gives, for it has made no such distinction between one man and another; nor compact can convey” (II, 172). Here Locke is talking about something nasty and intentional. This is the case of an all-out assault on people’s lives by the government that is supposed to be protecting them. That is, the government is attempting to truly take absolute power and control over people’s lives.81 Speaking about when either the legislature or executive acts contrary to the people’s trust, Locke says,

> Whensoever therefore the legislative shall transgress this fundamental rule of society; and … endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people …they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people, who have a right to resume their original liberty, and, by the establishment of a new legislative (II, 222). And, What I have said here…holds true also concerning the supreme executor…He acts also contrary to his trust, when he either employs the force, treasure, and offices of the society (II, 222).

One thing to notice about all of these examples of government losing its legitimacy is that the government either did something it should not have done or did not do something it should have done. That is the government did something wrong and unless a government does something wrong it still has the legal and moral authority to rule. It has not yet lost its legitimacy and the people have an obligation to obey and respect its authority. Once people consent, the consent is perpetual and people are under the obligation to obey the government unless, but not until, the government has lost its legitimacy. Locke says, “Given his consent to be of any common-wealth, is, perpetually

81 Of course an example of this kind of thing happened during the Holocaust of Nazi Germany. Hitler became chancellor of Germany on January 30, 1933. The Reich Citizenship Law was passed on September 15, 1935 stripping the Jews of their German citizenship.
and indispensibly obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved” (II, 121).

Recall for Locke, for a state of war to exist two conditions must be met. First, someone has harmed or is trying to harm you. But this alone is not enough to put themselves into a state of war with others. There must also be no common judge to whom to appeal for relief, either because there is none, (such as in the state of nature) or there is no time to appeal to one. Therefore no remedy is available (II, 19) and you are in the state of war. So only when there is no common judge to whom to appeal and when someone tries to harm me, can I legitimately resist according to Locke.

Locke recognizes that sometimes even a legitimate government can at times do unjust things to its citizens. That is, unjust acts and mismanagement by the government happen now and then, but these unjust occurrences are not enough to completely undermine the obligations that citizens must honor. It is only when government acts unjustly within a pattern or design that its citizens are no longer under an obligation to that government (II, 225).

Here are two examples to illustrate how this works. Suppose a high government official has a son who, while driving intoxicated, causes an accident that seriously injures a young woman. Then the government official contacts the local authorities and orders them not to charge or arrest his son. Next he orders the local judge to dismiss any civil action that may be filed against his son. If the orders were followed by the local authorities, they would be taking away the young woman’s rights under the law. Yet, if she could seek justice by appealing to a common judge with authority, (such as the New
York State Court of Appeals) then this woman is not and never was in a state of war. This woman could not, in Locke’s theory of justified resistance, resist in any way shape or form with force. The remedy available to her, the appeal to a common judge, takes away a necessary ingredient that would justify resistance. Locke says,

For where the injured party may be relieved, and his damages repaired by appeal to the law, there can be no pretence for force, which is only to be used where a man is intercepted from appealing to the law: for nothing is to be accounted hostile force, but where it leaves not the remedy of such an appeal (II, 207).

Next I will use the historical example of Nazi Germany. In this case, the government, by design, put itself in a state of war with its Jewish citizens. But what if a citizen appealed to the law? After all, in Nazi Germany, there was a legal system. What is the difference between this case and the case previously discussed? In this case, a person had no true remedy for appeal. The courts worked in concert with the Nazi regime to deprive and harm the Jewish citizenry. The Reich citizenship law (which ended citizenship for Jews), the anti-Semitic Nuremberg laws, and the Volksgerichtshof court, headed by Roland Freisler, deprived Jews of their natural and civil rights. In the previous case, the appeal to the law exists to make sure that people’s rights are protected. In the Nazi case, the law exists to help deprive certain people of their rights. In essence, there is no remedy for appeal at all. Locke says, “Where an appeal to the law, and constituted judges, lies open, but the remedy is denied by a manifest perverting of justice, and a barefaced wresting of the laws to protect or indemnify the violence or injuries of some men, or party of men; there it is hard to imagine anything but a state of war” (II, 20).
For Locke, the aim of government is to preserve society. When this very aim of government is threatened or truly dissolved, it is only right for people to preserve themselves (II, 16). As discussed in Chapter 2, Locke holds that at all times the political community (that which came into existence by unanimous consent and by majority vote established a government) always retains the power to save itself. It is a right with which it can never part, that is the right to preserve itself. Again this power to save themselves Locke calls the supreme power and we can never fully part with it because Locke sees the supreme power going hand in hand with the fundamental law of nature, to preserve mankind (II, 16). Locke says,

Thus the community perpetually retains a supreme power of saving themselves from attempts and designs of any body, even of their legislators ...they will always have a right to preserve, what they have not a power to depart with: and rid themselves of, who invade this fundamental, sacred, and unalterable law of self-preservation, for which they entered into society (II, 149).

TACIT CONSENTERS AND THE RIGHT TO RESISTANCE

Implicit in Locke’s theory of justified resistance is that as long as a government is legitimate, that is, was formed by consent, performs its fiduciary responsibilities, and complies with the law of nature, it cannot be resisted and must be obeyed. As mentioned in Chapter 1, many Locke scholars criticize Locke’s notion of tacit consent as being so broad that it “undermines the whole point of consent theory” in that it is inconsistent with our natural freedom to choose to whom we are obligated. The question I will explore is;

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82 Simmons, *On The Edge of Anarchy*, see pages 199-202 for an overview of a collection of criticisms with regard to Locke’s ideas on tacit consent.
Is Locke’s notion of what constitutes a tacit consenter so broad that it undermines his theory of justified resistance? It is my view that it does not. It is my view that both express consenters and tacit consenters are obligated to obey the government unless that government becomes illegitimate according to Locke.83 We are never obligated to a government in which we have not consented according to Locke. If, for example, I have never been a citizen of China and I am not there visiting, I am not under any obligation to the Chinese government whatsoever. I have, in Locke’s terms, never expressly or tacitly consented to that government. But once we have consented under Locke’s scheme, even if only tacitly, we can only resist that government if that government has become illegitimate.

Governments exist according to Locke to remedy the weaknesses of living in the state of nature and Locke sees government as the best way to fulfill the fundamental law of nature, that is, to preserve mankind and the safety of the innocent (II, 16). Tacit consenters and visiting foreigners both get the protection and benefits of legitimate governments according to Locke (II, 122). However, both express consenters and tacit consenters can resist a government if that government becomes illegitimate. Locke’s theory of justified resistance is a moral theory that explains the conditions that would allow someone to morally resist a government with force. If Locke’s ideas on tacit consent are too broad and even go so far as undermining his views on how free and rational creatures become obligated, I don’t think this affects his theory of justified resistance because to be able to justifiably resist morally, either the government was never legitimate in the first place (such as in the case of conquest or absolute monarchy) or the government has become illegitimate. When these kinds of situations occur no one

83 See Josephson, The Great Art of Government, pg. 156, for a similar point of view.
is obligated to obey the government whether they expressly consented or not. Let’s say a government and its people decide that tacit consent the way Locke describes it is too broad, and that tacit consent in general is not quite good enough either, so they decide to seek some sort of reasonable remedy. They decide to either make people who want to become full citizens take an oath at a certain age or have their natural born citizens and their naturalized citizens ratify a constitution every twenty-five years or so, all in an attempt to get the express consent of those who are under the subject of the government. Even if a government that has decided to make all citizens expressly consent in these ways, those citizens would still be only able to be resisted under certain conditions according to Locke. This is why I do not think Locke’s ideas on consent, tacit consent included, undermine his theory of Justified Resistance. Regarding this very issue as to whether or not tacit consent undermines Locke’s theory of resistance, John Dunn says,

The most consensually based and legitimate polity is not protected by its formal legitimacy from political challenge where it has been guilty of morally vicious behavior … any government is in principle subject to just resistance, if it behaves wickedly … the consent which creates such legitimacy is not a sufficient condition for the obligatory force of any particular act of authority in such a society.84

**MY UNDERTAKING OF LOCKE’S THEORY OF JUSTIFIED RESISTANCE**

For some reason, despite the fact that the *ST* is mainly a work to prove that under certain conditions people can resist their government, Locke’s theory of justified resistance has not been thoroughly vetted the way the rest of his theories have been. This is why my dissertation is unique, as it contributes to the literature and our understanding

of Locke. I explain the theory and I also explain how it fits into all of Locke’s ideas. My work is unique in its thoroughness, as I explain what lies behind the theory and why Locke insists on the things he does. I think I prove that he is internally consistent, but also I prove that the theory is made up of interrelated parts that make it rich and useful to us. I see this as the strength of Locke’s theory, and it is what I emphasize in Chapter 5. Chapter 5 is also very unique in this regard in the literature. Nowhere have I seen someone take Locke’s theory and show how it can deal with the ever-changing conditions in the world, and give us direction as to when it is or is not morally permissible to resist your government.\textsuperscript{85}

\textsuperscript{85} For example, Thomas asks, “Why is the theory of rebellion comparatively neglected in the discussions of Locke’s political philosophy, while so much more attention is given to the theory of political obligation, and to his discussion of private property?” \textit{Locke on Government}, p. 58.
CHAPTER IV
CRITICISMS OF LOCKE’S THEORY OF JUSTIFIED RESISTANCE

Having reviewed and explained Locke’s theory of justified resistance I now turn my attention to several criticisms that others have made against Locke’s theory. I think these criticisms are unjustified. It is my view that the critics often fail to understand the scope and depth of Locke’s philosophy and theory. Some critics think of Locke as someone who supports only the rights of the majority and the common good at the expense of individuals, or that Locke’s principles are incoherent because at times they seemingly conflict with each other. Both views simply fail to grasp and understand Locke’s comprehensive thoughts. I will begin this chapter by reviewing an interpretation of Locke’s theory of justified resistance offered by D.A. Lloyd Thomas. It is my view that Thomas’s interpretation is incorrect. As a result of this wrong interpretation he then offers criticisms of Locke’s theory that are also wrong. The criticisms I will focus on in this chapter are as follows:

1. Locke’s theory does not allow individuals and or minority groups to justifiably resist.
2. Locke’s theory cannot and does not work in practice.
3. Locke’s theory does not but should include civil disobedience.
4. Locke’s theory is too abstract and not specific enough.
A DIFFERENT INTERPRETATION

Chapter 3 of D.A. Lloyd Thomas’s book, *Locke on Government*[^86] is entitled, *Rebellion*. In his chapter I find numerous mistakes about Locke’s theory of justified resistance and I will begin by discussing what Thomas calls Locke’s “decisive importance to the will of the majority.”[^87] As Thomas understands things, this leads him to a different interpretation of what I think Locke has in mind with regard to his theory of justified resistance.

Thomas says that Locke’s argument which gives a decisive importance to the will of the majority is weak. He says,

> There is no reason why Locke’s own majority principle should result in a decision in all circumstances. There could be, for example, roughly equal factions entrusting power to a democracy, an oligarchy and a monarchy, with no faction prepared to compromise sufficiently to allow a majority to form.

> This objection could have been avoided if Locke had said that a member of the community is obligated to accept the view about where the executive power of the law of nature is to be placed which has *most* support.[^88]

Thomas says that if Locke makes this move, that is allow, that executive power can go to a place where it got most support, even if it is not a majority, this would lead to several problems. First, it would make his theory of justified rebellion paradoxical because, “in some circumstances Locke would then have to say that a government is legitimate, because it is favoured by more members of the community than any alternative, and that it is not legitimate, because the majority do not consent to entrusting


[^87]: Ibid, 73.

[^88]: Ibid, 73-74.
In order to take care of this problem, Thomas says that Locke’s theory would have to be altered to say, “rebellion is permissible only if there is some alternative to the present form of government which would have the support of more members of the community than the present one.”

This remedy would not work either according to Thomas, because this would “unacceptably reduce the number of circumstances in which it would be possible to justify revolution” even in the case of very unpopular government, there is not always a clear alternative opposition party that has majority support.

Thomas’s interpretation leads to two conclusions that he thinks causes Locke problems and makes the theory unacceptable. First, at times a government might not have legitimate authority to rule, because it never had majority approval, that is over 50 percent of the vote. And second, at times no matter what the government has done, unless there is an alternative opposition waiting in the wings, resistance cannot occur. Both of these conclusions are completely false.

To begin, Thomas makes an assumption that what Locke means by majority is what might be called today, an absolute majority, or 51 percent or more. Locke simply does not make this distinction anywhere in the ST. In fact, Locke would not be making any sort of mistake or contradiction in his theory if he allowed for the “determination of the majority” to mean a relative majority, that is, simply more than the others. Locke is not making a moral claim that says it is absolutely necessary for a government to have

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89 Ibid.
90 Ibid.
91 Ibid.
92 For example, he says the French Revolution of 1789 would probably be justified but perhaps not the American War of Independence because it may not have had actual majority support. See page 71.
93 For a nice review of the different options regarding majority rule and how they work in practice, see The Complexity of Majority Rule, in the Praesidium, Ben Saunders online blog. October 14, 2005.
more than 50% of the popular vote at its inception to be legitimate. He is simply coming up with a procedure that is both binding and fair. Regarding this very issue John Dunn says,

What differentiates a fully political society from any random aggregation of human beings...is that it possesses a determinate decision-procedure which is binding on all members of society....It is a defining condition of a political society that it should possess some binding decision-procedure and since no man intrinsically possesses authority over any other man ... the society is to make laws which bind all members, the procedure must take equal account of the choice of each.94

According to Locke, the formation of a legitimate government is a two-stage process. In the first stage everyone agrees to join the political community unanimously and agrees to form a government by majority vote. Regarding what the members should or ought to mean by majority, that is, whether it should mean more than any others, or more than 50%, Locke leaves that to the free choice of the political community’s members to decide.95 The point is that the procedure is binding and fair. The procedure as Dunn says, “Must take equal account of the choice of each.” And Locke’s majority vote procedure does do exactly that. What they agree on, as long as it is explicitly expressed, is up to the members. Locke says,

Whosoever therefore out of a state of nature unite into a community, must be understood to give up all the power, necessary to the ends for which they unite into society, to the majority of the community, unless they expressly agreed in any number greater than the majority (II, 99).

Thomas’ view that Locke gives “decisive importance to the will of the majority” is simply wrong. Thomas insists on these claims throughout his chapter and I address

95 It is sometimes forgotten that President Lincoln did not just defeat Senator Stephen Douglas for President of the United States in 1860. He defeated two others who were on the ballet, and actually the Vice President of the United States, John Breckinridge, came is second in the Electoral College vote, and came is 3rd in the popular vote. I mention Lincoln here because our founders did not insist (nor did Locke) on a 51% popular vote majority winner to rule; instead the winner needs 270 Electoral College votes. Lincoln received just 40% of the popular vote. Saunders mentions this as well.
another aspect of it in this chapter as well. The point is, Locke’s theory of justified resistance is a moral theory, one which is not based on statistics. Thomas’ talk of not being able to resist unless an opposition party had majority approval (more than 50%) also fails because it again uses the idea and false assumption that Locke must have meant by majority vote - more than half. I define Locke’s theory of justified resistance this way:

When a government does not hold up its fiduciary responsibilities, and when that same government uses force without authority, and there is no common judge with authority to appeal to because either there is no judge that exists, (such as in the state of nature) or because there is no time to appeal to one, the people may justifiably resist.96

Notice in my definition that there is no concern or words about the majority. Given all that Locke holds about the nature of government, the nature of human beings, and our special place in God’s universe, it follows that an individual or minority group would never have to forfeit their right of resistance, their very right to self-defense, unless some set of numbers where in their favor.

LOCKE’S THEORY DOES NOT ALLOW FOR INDIVIDUALS AND MINORITIES TO RESIST97

This criticism starts from D.A. Lloyd Thomas’s incorrect understanding that according to Locke’s theory only if a majority of the people withdraws their consent and trust from the government may the people justifiably resist. Therefore, if a branch of government violates only an individual or a minority group’s rights, they cannot resist even if they have no remedy for appeal. D.A Lloyd Thomas says, “The problem with

96 This definition is very similar to how Locke defines the state of war at (II, 19). See page 5 chapter 3 of this work.
Locke’s position on revolution from our perspective is not that it may be thought to sanction too much resistance, but that it may be thought to sanction too little. If a minority is having its rights violated by the government, it would seem that this minority does not have the right to resist, so long as the majority do not withdraw their trust from the government. Thomas’s error consists of conflating several arguments given by Locke and fusing them together into such a way to give a wrong interpretation of Locke’s theory of justified resistance. Thomas begins his argument by noting paragraph 97 of the ST. In that paragraph Locke explains that once a political community is formed, the kind of government that will be decided upon will be determined by majority vote and that every individual who agreed to join the political community is now bound by the decisions of the majority. Locke says,

And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation, to every one of that society, to submit to the determination of the majority, and to be concluded by it (II, 97).

Thomas then cites paragraphs 230, and 208 of the ST, in which Locke explains that if a government causes injustice and harm to a private unfortunate person now and then, this most likely will not stir the majority of people to withdraw their trust and resist. Finally, Thomas cites paragraph 240 of the ST, in which Locke asks the rhetorical question: Who shall judge whether or not the executive or legislative branch has violated their trust? Locke answers - the people. Locke says,

Who shall be judge, whether the prince or legislative act contrary to their trust? …To this I reply, The people shall be judge.

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99 Ibid, Thomas’s argument runs essentially from page 67 through page 70.
What is almost insincere about Thomas using (II, 240) to support his interpretation, is what Locke says in the very next paragraph - that every man is to judge for himself. Locke says,

But farther, this question, (Who shall be judge?) cannot mean, that there is no judge at all: … But every man is judge for himself, as in all other cases, so in this, whether another hath put himself into a state of war with him, and whether he should appeal to the Supreme Judge, as Jeptha did (II, 241).

Those who oppose Thomas’s interpretation, including myself, hold that both individuals and minorities under certain conditions can justifiably resist. It is my view that the textual evidence is overwhelming and that both individuals and minorities do in fact have the right to justifiably resist under certain conditions. Besides the textual evidence in support of an individual’s and a minority group’s right to resistance, I will also explain in this chapter how Thomas’s understanding of Locke’s theory is incompatible with Locke’s thought in general.

What Thomas does not explain in his argument is that even when an individual agrees to be bound by the majority and the government it chooses, the government’s powers are always limited to protect the good of society and those powers can never be absolute or arbitrary. Locke says,

*Political power is that power, which every man having in the state of nature, has given up into the hands of the society … that it shall be employed for their good, and the preservation of their property. … So that the end and measure of this power, … can have no other end or measure, when in the hands of the magistrate, but to preserve the*

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101 For an outstanding article which also supports my claim but also yields much insight into the connection between Locke’s theory of justified resistance and the rights of oppressed and systematically abused African Americans in our own country, see Gordon, Jill, *By Any Means Necessary: John Locke and Malcolm X On The Right To Revolution*, Journal of Social Philosophy, Spring 95; 26 (1) 53-85, Blackwell Publishing.
members of that society in their lives, liberties, and possessions; and so cannot be an absolute, arbitrary power over their lives and fortunes (II, 171).

The government does not have the right to use its power to take away people’s lives, liberty, or property arbitrarily, nor can other people give it that power. As such, no individual or minority group has to allow for this power to be placed over their lives. Locke says,

*Despotical power* is an absolute, arbitrary power one man has over another, to take away his life, whenever he pleases. This is a power, which neither nature gives, for it has made no such distinction between one man and another; nor compact can convey: for man not having such an arbitrary power over his own life, cannot give another man such a power over it (II, 172).

It is without question that Locke holds that the political community as a whole has the right to resist their government under certain conditions and, if necessary, erect a new government. But this does not mean that individuals and minorities do not also have the right to resist when their rights are violated and they have no remedy for appeal.¹⁰² The textual evidence that individuals have a right to resist is overwhelming, and should not be ignored.¹⁰³ For example Locke says,

And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to heaven, whenever they judge the cause of sufficient moment (II, 168, my emphasis).

But every man is judge for himself, as in all other cases, so in this, whether another hath put himself into a state of war with him, and whether he should appeal to the Supreme Judge, as Jeptha did (II, 241, my emphasis).

If the innocent honest man must quietly quit all he has, for peace sake, to him who will lay violent hands upon it, I desire it may be considered, what a kind of peace there will be in the world, which consists only in violence and rapine; and which is to be maintained only for the benefit of robbers and oppressors (II, 228, my emphasis).

¹⁰² Just as the Japanese American’s case in chapter 5 will show.
¹⁰³ I owe much of this understanding to A. John Simmons; see On The Edge of Anarchy, Princeton University Press, 1993, pp. 174 – 177.
Even when Locke admits that at times an individual right to resist is utterly hopeless, the person still has the right to resist. Locke says,

For if it reach no farther than some private men’s cases, though they have a right to defend themselves, and to recover by force what by unlawful force is taken from them; yet the right to do so will not easily engage them in a contest, wherein they are sure to perish (II, 208, see also II, 230, 242, my emphasis).

If it were the case that individuals and minorities could not resist with force unless the majority did as well, then without recourse under Locke’s system they would become victims in the truest sense of the word. This view is simply the antithesis of Locke’s thought.

Besides the specific textual evidence where Locke explicitly states that individuals have a right to resist, this criticism is incompatible with multiple aspects of Locke’s thought. It ignores, for example many of Locke’s lifelong commitments, such as why he thinks individuals agree to join a political community in the first place, his thoughts on slavery, and how Locke understands what kind of creature a human being actually is - that is something special made in the image of God.

For example, one of Locke’s lifelong interests, going back to the late 1660’s concerned religious liberty for all and freedom of conscience. In fact, religious minorities, those who were referred to in Locke’s day as Dissenters, were vigorously defended by Locke in many of his writings. In *An Essay on Toleration*, Locke says, “I say that the first sort only, viz., speculative opinions and divine worship are those things alone which have an absolute and universal right to toleration.”¹⁰⁴ A worry of Locke’s was the abuse of power by both the king and Parliament when it came to penal laws.

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¹⁰⁴ *Locke, Political Essays*, edited by Mark Goldie, Cambridge University Press, *An Essay on Toleration*, pp. 136 -137. Of course this is overstated by Locke himself, as he was intolerant of both atheists and Catholics and did not believe either could be trusted.
against Dissenters. For example, the Clarendon Code passed by parliament as a series of acts passed over the years 1661-1665 violated an individual’s natural liberty rights. The code forbade Non-Anglicans from public office, required the use of the Book of Common Prayer in worship services, and even forbade meetings of five or more people to worship if it was an unauthorized worship. This type of constant and systematic persecution Locke says tempts people to shake off their yoke and start a new government.\(^\text{105}\) Gordon J. Schochet says, “There is a crucial link between the denial of religious freedom and the right to revolution which can be seen throughout the Two Treatises. In particular, the abuses of prerogative and the possibilities of tyranny, which Locke thought had occurred in recent English history largely because of the use of the dispensing of power by the King to set aside penal laws against non-Anglicans.”\(^\text{106}\) Again Thomas’s view ignores this commitment of Locke’s to religious liberty for minorities.

Another aspect of Locke’s thought that is ignored by taking the position that only when the majority withdraw their trust can the people resist, is why Locke thought individuals would leave the state of nature and agree to form a political community in the first place. Fundamentally the reason why individuals agree to give up much of their natural freedoms that they had in the state of nature is that they expect to be better off living in a society and under government. Locke says that no one would agree to join a political community in order to be worse off. It would be irrational to do so. Members of a religious minority for example, who have had their rights repeatedly violated, would know that they would be better off if they lived under a government committed to

\(^{105}\) An Essay on Toleration, p. 157.

\(^{106}\) Schochet, J. Gordon, Rutgers University, Toleration, Revolution, And Judgment In the Development of Locke’s Political Thought. POLITICAL SCIENCE, Volume 40, Number 1, July 1998, p.85. It is Schochet’s view that since Locke considers religious toleration as an absolute universal right, that’s its denial can be the grounds for the right to revolution. See page 93.
protection of their rights. So they agree to join a new government only when they know
their rights will be protected. In fact for Locke, protecting people’s rights is a
fundamental criterion and must be the goal of any legitimate government. Locke says,

Government being for the preservation of **every man**’s right and property, by preserving
**him** from the violence or injury of others, is for the good of the governed: for the
magistrate’s sword being for a “terror to evil doers” (I, 92, my emphasis).

Legitimate governments do not give us our rights but protect them as they are our
natural rights given to us as a gift from God. If these rights are not protected, people
would be worse off, especially minorities. Locke says,

Though men, when they enter into society, give up the equality, liberty, and executive
power they had in the state of nature, into the hands of the society…yet it being only with
an intention in **every one** the better to preserve **himself**, **his** liberty and property (for no
rational creature can be supposed to change his condition with an intention to be worse)
(II, 131, my emphasis).

To drive home the point of my argument against Thomas and others who hold a
similar position, notice the words in bold above: every one, himself, and his. Locke is
talking about individuals. Similarly Locke uses words and language indicating
individuals when it comes to their right to resistance and their right to self-preservation
throughout the ST, independent of whether a majority of the people want to resist or not.
This textual evidence is something that Thomas overlooks and ignores. For example,
Locke says,

He who attempts to get another **man** into **his** absolute power, does thereby put himself
into a state of war with **him** … I have reason to conclude, that he who would get **me** into
his power without **my** consent, would use **me** as he pleased when he got **me** there, and
destroy **me** too when he had a fancy to it; for nobody can desire to have **me** in his
absolute power, unless it be to compel **me** by force to that which is against the right of
**my** freedom, i. e. make **me** a slave
(II, 17, my emphasis” see also (II, 16,135), for similar words indicating an individual’s
right to resist).
Jill Gordon correctly points out in her article\textsuperscript{107} that although one of Locke’s main goals in the \textit{ST} is to show that under certain conditions the people can resist their government, most of these arguments happen late in the text. There are smaller arguments sprinkled in the text (see II, 13, 135, 138, 139, 140, 151), but the main thrust of Locke’s argument for resistance begins in the later paragraphs of the \textit{ST}, from late 190’s through paragraphs in the late 220’s. As Gordon explains, it is only after Locke explains what the state in which people naturally are, that people having natural rights, that we erect governments to protect these rights, how a legitimate government must be formed, and what a government’s obligations are to the people, does Locke then address the contingencies of when a government dissolves, becomes tyrannical, and when legitimate resistance may occur.\textsuperscript{108} Given what Locke says about the status of human beings as we exist in the world prior to government, and why we erect governments in the first place, it would seem inconsistent with Locke’s thought that individuals and minority groups would not have the right to resist under certain conditions. With no place to go for appeal when our life, liberty, and property is at stake, it is inconceivable to me that Locke would conclude anything other than the right of resistance to exist for individuals and minority groups.

\textbf{HIS THEORY CANNOT WORK IN PRACTICE}

D. A. Lloyd Thomas says that even if we accept the necessary conditions for Locke’s theory of justified resistance, “There would still be a problem about their


\textsuperscript{108} Ibid.
application to concrete situations. Resistance to government is justified if a majority of
the community has withdrawn its trust. This suggests that there is a procedure whether
trust has been withdrawn…But it is not a procedure that already exists within a
constitutional framework.”109 The worry is that an individual would not know that a
majority had withdrawn their trust. What is the apparatus that lets them know? Opinion
polls? Statistical sampling? In some cases, Thomas acknowledges that informal
indicators are good enough because it is clear that a majority has withdrawn its trust. But
at other times, it is not so clear. Without such an apparatus, an individual could be left in
the dark, not knowing what to do. Such a necessary apparatus simply did not exist during
Locke’s time. Thomas says, “These are not the conditions we can expect to find in the
pre-revolutionary situations where we might wish to apply Locke’s criteria.”110

In many ways, this criticism piggybacks on the first criticism just discussed.
First, if it is indeed the case that a majority must withdraw its trust for there to exist the
conditions for justified resistance, then without question, knowing if the majority has
withdrawn its consent is vital information. As such, how this is to be known with some
degree of certainty can be a serious problem, especially in the case where it is a close
call.

But this criticism is unjustified since it is never necessary to wait for the majority
to withdraw their trust before an individual can resist, but this criticism does however
bring up a point that will be discussed shortly. Locke wants only to know if you are in a
state of war, that is, are the two necessary conditions for justified resistance being met?

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109 Thomas, *Locke on Government*, pp 83
110 Ibid, p.84.
“But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war” (II, 19).

The question of numbers or majority when it comes to a people’s right of self-defense is not an issue. They always have that right, according to Locke. What makes Locke even more radical is that he wants that right, and the decision to act upon it, to always lie with the people. That is, even if we could come up with a political body to decide if someone has abused their trust or not, Locke would have nothing of it. The right to resist and the decision to act on it, cannot, according to Locke, ever be given to another body. It remains, and must remain with individuals and the people at large. In fact, the people don’t even have the right to give this right to another person or political body. It is a right they must always retain. Locke says,

When the body of the people or any single man, is deprived of their right, or is under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to heaven,111 whenever they judge the cause of sufficient moment. … They have, by a law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth, viz. to judge, whether they have just cause to make their appeal to heaven.—And this judgment they cannot part with, It being out of a man’s power so to submit himself to another, as to give him liberty to destroy himself; God and nature never allowing a man so to abandon himself, as to neglect his own preservation: and since he cannot take away his own life, neither can he give another power to take it (II, 168, and also see II, 149).

Therefore, it is not a weakness in Locke’s theory that there is no apparatus or formal institution to decide if there is a majority or not. In fact, there would be a weakness if that were the case. Individuals and minority groups would be beholden to the majority, people in power, or simply the opinions of other people for their lives, liberty, and property. This is simply the antithesis of Locke’s theory of justified rebellion.

111 By appeal to heaven, Locke means the right to make war or resist. See Grant, John Locke’s Liberalism, pp.72-173 and Pasquino, Pasquale, Locke on King’s Prerogative, Political Theory, Vol. 26, No. 2. (Apr., 1998) pp 205.
But Locke does speak of the majority, with regard to resistance in several places in the *ST*. Why? Often when Locke speaks about the majority resisting he is not stating, as Thomas insists, that an individual has a right to resist only if the majority have withdrawn their consent. He is simply bringing out the fact that unless the majority resists, an individual or small group simply will not have a chance to survive against the government in power. In other words, if an individual tries to resist he/she will probably fail. This has nothing to do with Locke’s theory of justified resistance. Locke’s theory as a whole is making a moral claim. So when Locke often speaks about the majority he is making a point about facts and prudence. For example at (II, 94) he says that when the people know they are being abused and they have no appeal on earth, “They are apt to think to themselves in the state of nature, in respect to whom they find to be so; and to take care, as soon as they can, to have that safety and security in civil society, for which it was first instituted.” Locke says, “as soon as they can” because he knows sometimes you have to wait for the right time, so your efforts have a greater chance of success. This is not about moral rights but about practical considerations. Locke is more than aware that at times individuals are in hopeless situations. Sometimes people cannot get help from the law, and they have no other means for justice without sure harm or death coming to them. When this kind of thing occurs, the only thing a person can do is practice patience, and perhaps in time (or even in future generations) there will be relief and justice. Locke says, 

If God has taken away all means of seeking remedy, there is nothing left but patience. But my son, when able, may seek the relief of the law, which I am denied: he or his son may renew his appeal, till he recover his right (II, 176).

In summary I have shown that Thomas’s two related criticisms - that individual’s under Locke’s scheme don’t have the right to resist unless the majority of the people have
first withdrawn their trust, and that there is no way for an individual to actually know if
the majority of people have actually withdrawn their trust, so the theory does not work in
practice are both false. I have shown that the textual evidence found in Locke’s writings
are overwhelmingly in favor of the right of every individual to resist their government
when their rights are being violated and when there is no remedy for appeal. I have also
shown that these false criticisms fail to recognize Locke’s lifelong interests and
commitments, especially in protecting the rights of minorities and religious dissenters.
And I have shown that these criticisms fail to account for why Locke thinks anyone
would want leave the state of nature in the first place. That is, to be better off. The idea of
only having the right of self-defense and resistance until the majority has first withdrawn
their trust not only leaves us often worse off, it would be irrational to consent to as well.

CRITICISMS FROM CIVIL DISOBEDIENCE

There are two criticisms that involve the notion of civil disobedience. The first
criticism is that since civil disobedience does not involve resisting the government in
such a way as to overturn it, Locke would probably condemn it.112 Second, Locke simply
does not focus enough on other techniques or remedies, other than all-out warfare, such
as civil disobedience. Simmons says, “The greatest weakness in Locke’s position on
these questions is not in his denial that people have a duty to overthrow their government
whenever it abuses individuals or minorities…The greatest weakness lies rather in
Locke’s failure to acknowledge that the people have a duty at least to employ less

112 Thomas, D. A., Locke on Government, pp. 58.
dramatic measures than revolution in defense of their innocent but victimized colleagues.”

Regarding the first point, it is absolutely true that Locke is focusing on resistance and on all-out overthrow of an unjust government. Most often, people who use the technique of civil disobedience are not trying to do such a thing. They are knowingly breaking a law in order to bring attention to an injustice with the hope that this will bring about change. Philosophers who hold that people do not have to go against their conscience and therefore can disobey the law for a higher law are numerous and pre-date Locke. Breaking the law as a way to bring about change - would Locke condemn such an action? In regard to breaking the law to bring about change specifically, without attempting to overthrow the government, I know of no place in particular where Locke explicitly writes about this. The fact is it may be a technique he had never thought of or heard about. The technique as a means to achieve political ends may have even originated as late as the mid-1800’s with the opinions and writings of Henry David Thoreau. But my inclination is that Locke would in fact approve of this technique. Why do I say this? To begin with, remember, even if someone is harmed by the abuse of the government, it is only when they have no remedy or appeal available to them are the conditions right to justifiably resist. Locke says, “For where the injured party may be relieved, and is damage repaired by appeal to the law, there can be no pretense for force, but where it

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113 Simmons, *On the Edge of Anarchy*, pp. 187-188.
114 For example, Aquinas, and even Greek plays such as Sophocles’ *Antigone*. Martin Luther King, Jr. in his famous “Letter from a Birmingham Jail” written April 16, 1963 sights a long history of civil disobedience, he says, “Of course, there is nothing new about this kind of civil disobedience…It was practiced superbly by the early Christians, who were willing to face hungry lions and the excruciating pain of chopping blocks rather than submit to certain unjust laws of the Roman Empire. To a degree, academic freedom is a reality today because Socrates practiced civil disobedience. In our own nation, the Boston Tea Party represented a massive act of civil disobedience.”
leaves not the remedy of such an appeal; and it is such force alone, that puts him that uses it into a state of war, and makes it lawful to resist him” (II, 207).

Second, as long as you don’t break God’s law, I do not see in any of Locke’s works any technique that is specifically off the table; either explicitly where he speaks of redressing wrongdoing, or by some rational principle Locke uses to guide him in the proper ways of governing. In his *Essays on Toleration*, Locke talks explicitly about disobeying the law as a matter of conscience. Here though, he is talking about something altogether different than civil disobedience. Here you are doing it not for the sake of effecting public policy or public consciousness but as something necessary as a way of doing your duty toward God and to not break any of God’s laws. It allows for disobedience. My point is that if Locke were aware of such a technique he would have approved of it. Locke says,

> If the magistrate, in these opinions or actions by laws and impositions, endeavour to restrain or compel men contrary to the sincere persuasions of their consciences, they ought to do what their consciences require of them, as far without violence they can; but withal bound at the same time quietly to submit to the penalty the law inflicts for such disobedience…And certainly he is a hypocrite, and only pretends conscience, and aims at something else in this world, who will not, by obeying his conscience and submitting also to the law, purchase heaven for himself and peace for his country, though at the rate of his estate, liberty, or life itself (ECT, 143).

Locke is saying in *An Essay on Toleration* that these two things at times, can and do conflict, and if you only obey the law, Locke says it could cost you heavily. So, if disobeying the law is found in Locke’s writings with regard to a person’s conscience, I cannot see any reason found in Locke’s writings why one could not do the same thing with regard to the abuse of power (which also could go against a man’s conscience). So I do believe that there is a room for civil disobedience found in Locke’s thought even if he did not think of it specifically.
I now want to address the second criticism by Simmons; that the people have at least a duty to employ less dramatic measures than all-out revolution. This criticism seems very reasonable. But I find three problems with it. First, Locke divides politics into two parts. In *Some Thoughts Concerning Reading and Study for a Gentleman*, Locke says politics is divided into two parts, first the moral and theoretical part, and second, the practical part that is best learned by experience and history. In Locke’s political writings he focuses mainly on the moral and theoretical side. This is especially true with his case of justified resistance. The theory is built on his theoretical foundations, and those foundations help set the stage for the necessary conditions that have to be first met for legitimate justified resistance. Jill Gordon says, “Only after laying a firm foundation of natural rights, formation of the social contract, civil rights, and government obligation, does Locke move on to address contingencies of civil life such as tyranny, dissolution of the government, and legitimate rebellion in the face of these.”

My point is that it certainly would be nice if Locke expressed Simmons’s sentiment. But I think Locke would view Simmons’s sentiment as a technique or a means to an end. The ST is his theoretical work, partly aimed at those who thought that, theoretically and morally, no one has a right to resist their king. Locke’s project and all his energies, therefore, had an end goal, to argue convincingly, “That it is lawful for some people, in some cases, to resist their King” (II, 232). Simmons could respond that

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116 See Tarcov’s discussion of this distinction in *In Locke’s Education*, pp 5-6.
118 See Ashcraft, Richard, *Revolutionary Politics*, especially pp 292 for the non-resistance argument. In which Ashcraft reviews the non-resistance arguments of Locke’s day.
yes, this was Locke’s aim, but he should have made it clear that this could happen only after all reasonable measures are first exhausted. Simmons is correct that Locke never does say that all reasonable measures must be exhausted first before resistance begins, but this was because Locke simply did not think it was necessary to say such a thing.

People in fact do not leap to all out resistance quickly. Locke is explicit about this, and addresses the fact that people just do not resist at the “drop of a hat.” “It is not easy to get people to change” and often there is a “slowness and aversion in the people to quit their old constitutions” (II, 223). In other words, because of the way people are, that they are slow to resist, it is not necessary to say that people have a duty to exhaust all reasonable means first before they take up arms and resist. By their very nature, and as experience has shown, that is simply just what they do. Locke says, “Revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty, will be borne by the people without muting or murmur” (II, 225). If it were the case that resistance did occur at the drop of a hat, then perhaps Simmons would be in a better position to argue his point. But since it is actually often hard to get people to resist, Locke perhaps did not miss an opportunity to say that people must first employ less dramatic means before all-out resistance.

Finally, Locke makes mention in several places that when people are abused by their governments, they do first try to appeal to the law (II, 207). He also says that people who are continually abused, “Cry up their governors” (II, 224). So, they already

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119 Our own Declaration of Independence took place only after a long struggle of appeals made by the colonists to Parliament and the King going as far back as the Stamp Act of 1765. In fact the Declaration lists these attempted appeals in great detail. My point is this Declaration was not some overnight snap decision, but one that took years in the making, which serves as a historical example to support Locke’s claim.
are employing less dramatic means. But my most important defense of Locke in this area is what people actually did do during his life at the time of his writings.

In fact, in Locke’s own day, besides disobedience, and crying foul, people were actually engaged in several different ways and used various methods while appealing to the government. This fact shows that Locke and others did not at all jump right into armed resistance. The practice of the use of pamphlets and petitions was widespread.\textsuperscript{120} Richard Ashcraft says, “Throughout 1680, Shaftesbury and the Whigs maintained a high level of political pressure directed against the king. The petitioning campaign, begun in the winter of 1679, continued into the following year. As late as August 1680, Locke was reporting to Shaftesbury the presentation of a petition to Charles II by the Lord Mayor of London, which asked the king to call Parliament into session.”\textsuperscript{121} Both the Whigs and the Tories employed these practices frequently. Besides this, there was often considerable debate in all the houses of Parliament, and also highly politically charged sermons preached throughout England.\textsuperscript{122} These sermons were certainly on both sides of this issue. For example, one of the themes frequently used pointed out by Ashcraft regarding nonresistance supported the idea of a hierarchical society and universe forged by God. Often preached was the idea that individuals should sit still, be quiet, mind their duties, and let God and his wisdom decide who shall rule society.\textsuperscript{123} Ashcraft points out that often the preachers on the side of nonresistance frequently quoted Romans 13:1 to support their position. This says, “Let everyone be subject to the governing authorities,

\textsuperscript{120} For a great overview of the events, petitioning campaigns, and opinions found in sermons and political literature of the time, see Ashcraft, \textit{Revolutionary Politics}, chapter 7.
\textsuperscript{121} Ibid. p. 286.
\textsuperscript{122} I just want to note three examples of political literature around the time of when Locke’s \textit{Two Treatises of Government} was written. 1. James Tyrell’s \textit{Patriarcha non Monarcha}, 1681. 2. Samuel Parker’s \textit{Discourse of Ecclesiastical Polity}, 1669. 3. and \textit{A Letter from a Person of Quality}, written by Shaftesbury or for him in 1675.
\textsuperscript{123} Ashcraft, \textit{Revolutionary Politics}, p. 292.
for there is no authority except that which God has established. The authorities that exist have been established by God.\textsuperscript{124} Calling for nonresistance in his sermon in 1682, English preacher Benjamin Calamy said, “Everyone of us should first and chiefly mind his own private duty, that belongs to him in that station God’s Providence has placed him in here … everyone should keep his own proper rank, follow his own work and calling … leaving public affairs to those who have the authority and ability to manage them.”\textsuperscript{125}

Another theme used by the Tories and defenders of nonresistance was the use of the thoughts of Thomas Hobbes. The idea being that the only alternative to nonresistance will result in “a war of all against all.” This theme Locke took seriously and made a point to account for it in the \textit{ST} in detail. Locke had to present an argument that his theory of government by consent and justified resistance would not result in frequent revolutions or a war of all-against-all. Locke says,

> People are not so easily got out of their old forms, as some are apt to suggest…It is not an easy thing to get them changed, even when all the world sees there is an opportunity for it. This slowness and aversion in the people to quite their old constitutions, has, in the many revolutions which have been seen in this kingdom, in this and former ages, still kept us to, or, after some interval of fruitless attempts, still brought us back again to our old legislative of king, lords and commons (II, 223, see also 224 and 225 for further arguments addressing this concern.).

To sum up, I think Simmons’s two criticisms, that Locke would probably condemn the use of civil disobedience, and that Locke should have made it clear to the reader that before all out revolution and resistance people should always first exhaust all less dramatic means, both fail. Regarding civil disobedience Simmons fails to acknowledge that Locke allows for people to obey their conscience and disobey laws so long as they do not commit violence in doing so. Civil disobedience would also not

\textsuperscript{124} This kind of use of the Bible was the method used by Filmer in \textit{The Patriarcha} which Locke refuted in the \textit{First Treatise}.

\textsuperscript{125} Ashcraft, Richard, \textit{Revolutionary Politics}, pg. 292, see footnote 33.
violate the law of nature, and as such, as a technique to help bring about change, I see no reason found anywhere else in Locke’s writings that it should be taken off the table and not be allowed to be used. In fact, I think he would approve of it. Regarding the second criticism, that Locke should have made it more clear to the reader that before all out revolution and resistance, people should first always exhaust all less dramatic means, it simply fails in that it does not account for how Locke understood human nature. That is, people are very slow to resist. This criticism also fails to notice all of the measures and efforts people undertook prior to all-out revolution.

**LOCKE’S THEORY IS TOO ABSTRACT AND NOT SPECIFIC ENOUGH**

This criticism saying that Locke is too abstract deals with the issue of who are “the people”. That is, what does “the people” mean? The debate in the literature is wide ranging. The idea here is that since “the people” are not clearly defined, Locke could be on the one hand a cautious conservative, who represents the interest of the British aristocracy, or a radical revolutionary on the other hand, who thinks all citizens have the right to resist under certain conditions. George Sabine for example, in his *A History of Political Theory*, does not see Locke as committed to the idea of revolution for the people at all, “the people” being defined as the people in general or citizens in

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126 Ashcraft identifies this criticism as an “abstract problem,” this is why I am identifying this criticism in this way as well. Ashcraft explains this “abstract problem” in *Revolutionary Politics*, pages 304-312.

That is, resistance is reserved for landowners, the well-to-do, and the aristocracy of British society. This abstract problem Ashcraft says not only reveals that there are many Locke scholars who do not think Locke is uncommitted to a right of resistance for all members of society, but that his work in the ST is abstract enough to leave this issue up for debate. I, like Ashcraft oppose this idea that Locke is not committed to the right of resistance for all members of society, and I do not think it should be an issue for debate either; I think Locke is clear on this issue.

This notion of this ongoing debate about what Locke means by “the people” Ashcraft says also reflects an internal debate amongst members of the Whig party of Locke’s time. Ashcraft says, “So long as the people could be identified with Parliament, the House of Commons, property holders, or some similar group, there were many Whigs who were willing to subscribe to an abstractly formulated endorsement of the people’s power.” This point of view is one which Locke could not share with his fellow Whigs. Throughout the Two Treatises of Government Locke clearly and vigorously defends the right of resistance for all members of society. Locke in his arguments not only had to take on the Tories, and followers of Filmer, but also had to take on the members of the Whigs party who clearly expressed the view that the right of resistance should be limited to the aristocracy.

To make this argument Locke argues on at least two fronts. First, history has taught us that at times the legislature can and does harm people, and therefore ultimate sovereignty, or supreme authority and power should always lie with the people at large and not with just a select few. And second, that the people can be trusted. That is, they

128 Ashcraft, Revolutionary Politics, p. 305.
are truly rational creatures and are capable of judging for themselves whether or not their rights have been violated and whether or not they should resist.129

Regarding the first argument, limiting “the people” to the representatives of Parliament, or the aristocracy Locke simply cannot do. Locke is acutely aware that there are too many examples in history where the legislature has abused their power and harmed people. That being the case, sovereignty must always lie with the people and not with Parliament. This idea is fundamental for Locke and is one of the cornerstones of his political philosophy. Locke says,

When they find the legislative act contrary to the trust reposed in them…the trust must necessarily be forfeited, and the power devolve into the hands of those that gave it … And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of any body, even of their legislators (II, 149).

Whenever therefore the legislative…endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people…they forfeit the power…and it devolves to the people, who have a right to resume their original liberty (II, 222).

Since all forms of government can abuse their power and become tyrannical according to Locke, it is necessary that every person has the right to judge what they think is the best thing to do. When government loses its legitimacy according to Locke, it puts everyone back in the state of nature where every person has the right to punish the offenders. Locke says,

The execution of the law of nature is, in that state, put into every man’s hands, whereby every one has a right to punish the transgressors of that law to such a degree, as may hinder its violation (II, 7).

And thus, in the state of nature, one man comes by a power over another…And in this case, and upon this ground, every man hath a right to punish the offender, and be executioner of the law of nature (II, 8).

129 I am indebted to Ashcraft for much of this argument and certainly understanding of this argument. My argument uses more explicit passages found in Locke regarding examples of Legislative wrongdoing, but in general my argument is the same as Ashcraft’s in overall scope.
The other way in which Locke defends the position that all members of society should have the right to resistance under certain circumstances is to defend the rationality of all human beings. Many Whigs strongly denied that the people in general were rational enough to be afforded the right to resist and judge for themselves. Ashcraft says, “When it came to revolution, even a Whig like Burnet wanted nothing to do with “the wildness of ungoverned multitudes” or “the madness of lawless men” such as he believed “the people” to be.\textsuperscript{130} For Locke our human freedom is founded on our rationality. It is our rationality, our capacity to understand, that allows us to have free will, and to understand God’s Law and man’s law (II, 59). Locke says, Thus we are born free, as we are born rational (II, 61).

As free rational creatures no human beings can therefore reasonably put themselves at the mercy of another in any absolute or in any arbitrary sense. Locke says, “A rational creature cannot be supposed, when free, to put himself into subjection to another, for his own harm” (II, 164). For Locke, having the right to resist that extends to all, including the lower classes, is a necessary condition founded on the kind of creatures we are, that is, rational ones. And when a branch of government abuses its power and can be resisted with force according to Locke it is not the people who are to be blamed but the abusers. Locke says,

Are the people to be blamed, if they have the sense of rational creatures, and can think of things no otherwise than as they find and feel them (II, 230)?

\textsuperscript{130} Ashcraft here is referring to Whig preacher Gilbert Burnet, expressing these opinions is his sermons. See \textit{Revolutionary Politics}, p. 299.
It is my view that Locke is clear and therefore what he means by “the people” is not too abstract or open to debate - the people includes all members of society. To drive his point home, as he often does in the ST Locke quotes William Barclay, who says,

Must the people then always lay themselves open to the cruelty and rage of tyranny? Must they see their cities pillaged and laid in ashes, their wives and children exposed to the tyrant’s lust and fury, and themselves and families reduced by their king to ruin, and all the miseries of want and oppression; and yet sit still? Must men alone be debarred the common privilege of opposing force with force, which nature allows so freely to all other creatures for their preservation from injury? I answer: Self-defence is a part of the law of nature; nor can it be denied the community, even against the king himself…Wherefore if the king should show an hatred…with intolerable ill-usage, cruelly tyrannize over the whole, or a considerable part of the people, in this case the people have a right to resist and defend themselves from injury (II, 233).\textsuperscript{131}

\textsuperscript{131} William Barclay was a Scottish Jurist (1546-1608) who published, \textit{In Defense of The Rights of Kings}, in 1600.
CHAPTER V
HISTORICAL CASE STUDIES

In this chapter I will further examine and explain Locke’s theory of justified resistance. To do this I review several historical case studies and then apply Locke’s ideas and principles to them. When I examine these historical cases I will explain how someone would or would not be justified in resisting their government based on Locke’s ideas. My answers will not be uncontroversial. That is, when making my judgments based on Locke’s ideas I think other people can and would disagree with my conclusions at times. Although I think Locke’s theory is very rich, insightful, and useful, this does not mean it always provides us with easy answers. In addition, at times I will tweak the historical facts to demonstrate how an alteration of the facts can make for wholesale changes in what would be or not be morally permissible. I will also explain that there are conditions that could exist that might limit a person’s right to resist their government. I will explain how Locke’s ordering of our natural rights allows him to fit together all his ideas and principles without them contradicting each other. I will then review how Locke addressed the worry and fears that his theory might lead to frequent revolutions. I will end with my conclusion. I will begin by a discussion of what I call the moral burden of Locke’s theory.
THE MORAL BURDEN OF LOCKE’S THEORY

Recall that John Locke’s theory of justified resistance says “that when a government does not hold up its fiduciary responsibilities and when that same government uses force without authority and there is no common judge with authority to whom to appeal because either there is no judge that exists (such as in the state of nature), or because there is no time to appeal to one, people may justifiably resist.” One of my claims in this work is that Locke’s theory is a moral theory that is prescriptive in nature. It teaches us that we have a moral right under certain conditions to resist our government and that the exercise of this right is our individual decision. Since it is an individual decision, I think this right comes with a moral responsibility. That is, having the right under certain circumstances to resist your government with force means you have the responsibility as an individual to decide whether resisting would be the right thing to do or not. Locke says,

But farther, this question, [Who shall be judge?] cannot mean, that there is no judge at all: for where there is no judicature on earth, to decide controversies amongst men, God in heaven is judge. He alone, it is true, is judge of the right. But every man is judge for himself, as in all other cases, so in this, whether another hath put himself into a state of war with him (II, 241).

Since individuals must decide for themselves whether or not resisting is the right thing to do, having moral knowledge and having knowledge of the law of nature is very helpful and perhaps even essential. Under no circumstances can an individual ever violate the laws of nature, or the fundamental law of nature according to Locke. This is a very difficult task for people because sometimes the choices are either not so clear, or the
choice comes with a real loss. At times true moral dilemmas exist. That is, despite
different choices being available, sometimes these choices are between moral values that
conflict with one another and can seem almost morally equal. Choosing between different
moral values is often very difficult, but despite this extremely difficult decision people
have to make, the burden always lies with the individual. Locke also believes that if you
make a mistake in your decision, you are doing something immoral. Locke says,

>This I am sure, whoever, either ruler or subject, by force goes about to invade the rights
>of either prince or people, and lays the foundation for overturning the constitution and
>frame of any just government, is highly guilty of the greatest crime, I think, a man is
capable of (II, 231).

**FIRST CASE STUDY - PROTECTING THE RIGHT TO LIFE**

To help show and explain how some of our moral values can conflict at times and
show how they should be adjudicated according to Locke, I will review some historical
cases. The first case involves a situation where people’s right to life is being threatened
and violated, and whether others may morally resist their government on behalf of those
whose life is in jeopardy. In this case the government was formed by the consent of the
people,\(^{132}\) protects the rights of those who have consented expressly and tacitly, and
performs its fiduciary responsibilities. Such a government seems to be legitimate and has
not dissolved nor has it lost its moral authority. However, this is not the case. From its
inception, in order to unite against a common enemy, a compromise was reached by
members of the political community to form a government that would allow human
beings to be owned and appropriated by other human beings. This government was

\(^{132}\) Of course not the consent of all the people, e.g., not the consent of the slaves, tacitly or otherwise.
therefore formed by the consent of the people to allow slavery to be legal and to be protected by the laws and forces of the newly formed government. The government I am referring to is the United States of America. Despite changes in the law to outlaw some aspects of the slave trade, and despite an ever growing movement and opposition to slavery within the country to abolish slavery, slavery still existed. In this case, the very government that protects the institution of slavery and the rights of slave owners is deciding the fate of innocent people on a given occasion. What I will be reviewing in this case involves the actions and rights of abolitionists living in the United States of America in the late 1830’s and early 1840’s, after the capture of the Spanish slave ship, the *Amistad*,\(^{133}\) off the cost of Long Island, New York, by a United States Navy surveying ship on August 26, 1839. In this case many Lockean moral principles come into play and need to be examined.

By 1839 most countries in world, including Spain, had already passed laws that outlawed the importation of new slaves, but their laws still allowed for the trade of existing slaves and their children. According to Spanish law, second generation slaves called *ladinos*, could be bought and sold legally with the proper documentation. The problem was that, to a large degree, that the Spanish were constant violators of their own laws and the importation of new slaves was still a thriving enterprise. Spanish governors would often forge documents for a fee, allowing for slave traders to kidnap human beings from Africa and transport them to places like Havana, Cuba, to be sold.

\(^{133}\) Martin, Christopher, *The Amistad Affair*, Abelard-Schumann, London, 1970. What follows in the next few pages is essentially a summary of relevant facts and information I have learned from Martin’s terrific book. The entire work has been useful and informative, but I mostly summarize from page 48 of the book, when the Africans were first captured, until the decision by the United States Supreme Court, through page 202.
On June 26, 1839, a man named Don Jose Ruiz bought 49 slaves\textsuperscript{134} and was given proper documentation for them, intending to take them to a sugar cane plantation. The documents said these were *ladinos*, which meant they resided in Cuba, before 1820, but the fact was these people were not *ladinos*, but were newly enslaved Africans illegally kidnapped. From Locke’s perspective, and certainly from the African’s perspective, whether or not Spain allowed *ladinos* to be legally bought and sold is irrelevant. The slavery of innocent people is immoral regardless of any man-made law.\textsuperscript{135} Locke says,

> THE *natural liberty* of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule (II, 22).

This *freedom* from absolute, arbitrary power, is so necessary to, and closely joined with a man’s preservation, that he cannot part with it … for a man, not having the power of his own life, *cannot*, by compact, or his own consent, *enslave himself* to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases (II, 23).

Therefore the Africans were in a state of war with their captors or anyone else that held them in custody. As such, each African under Locke’s theory had the natural right of self-defense, including the right to kill their captors and anyone who held them in custody. The denial of their freedom made it the case that these Africans were under the absolute power of both their kidnappers and the U. S. authorities. This fact, combined with the fact that no common judge with authority existed between them and those denied them their freedom, put them in the state of nature. Locke says, “Want of a common

\textsuperscript{134} The Africans in the Amistad Case were kidnapped from the Mende region of West Africa.

\textsuperscript{135} Locke does allow for one form of legitimate slavery. This condition can occur when someone by their own fault forfeits their right to life and is deserving of death. Locke uses an example of an unjust conqueror that has become captive. They would not be harming themselves by becoming a slave instead of being put to death according to Locke (II, 23, 24).
judge with authority, puts all men in a state of nature: force without right, upon a man’s person, makes a state of war” (II, 19).

Even though the Africans were in the state of nature with their captors and anyone else that held them in their custody (II, 14, 191), Locke also holds that the Africans and all other human beings that are in the state of nature with us are part of one special community - the community of mankind. Locke says,

He and all the rest of mankind are one community, make up one society, distinct from all other creatures (II, 128).

For though in a common-wealth the members of it are distinct persons still in reference to one another, and as such are governed by the laws of the society; yet in reference to the rest of mankind, they make one body (II, 145).

Being members of the community of mankind, and living in a state of nature with each other, the Africans, along with all Americans, still had according to Locke, a law to govern them with which all must comply, that is, the law of nature. Locke says, “The state of nature has a law of nature to govern it, which obliges every one” (II, 6). Quoting Richard Hooker, Locke explains the law of nature is obligatory on all people. Hooker says,

*The laws which have been hitherto mentioned, i. e. the laws of nature, do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do, or not to do* (II, 15).

After purchasing the Africans, Ruiz loaded them onboard the *Amistad* and sailed out of port. After five days at sea, the slaves revolted, killing the ship’s captain and a few others, and took possession of the ship. The Africans decided to have one of the ship’s crew, Don Pedro, who had been a ship’s captain before, navigate the ship back to West
Africa. Instead Pedro tricked the Africans and kept the ship going in a zigzag pattern moving up the east coast of the United States for months and anchored perhaps thirteen times at various ports. On August 26, while the ship was anchored near Sag Harbor it was spotted by a United States Navy surveying ship, the USS Washington, commanded by Lieutenant Commander Thomas R. Gedney. The Lieutenant Commander, suspicious of the ship, ordered his men to board it to find out her ownership and destination. When aboard, Mr. Ruiz told the naval officers that the Negroes were his slaves and that they had taken the ship and he needs their protection. Lieutenant Gedney thought the ship was in effect taken over by pirates and mutineers and also saw that he had an opportunity to become somewhat wealthy, as officers were often granted salvage rights for captured vessels, due to the fact that the owner of the ship, Captain Ferrer had been killed. Knowing that New York State had abolished slavery around 1828, Lieutenant Gendey took the ship to Connecticut where slavery was still legal.

After a brief inquiry a judge made the decision that the Africans were to stand trial for piracy, robbery, murder, and mutiny. Shortly after the Africans arrived in their jails to be held for trial, abolitionists from New York City began to organize themselves and help the Africans. Noticing that the Africans could not speak Spanish and that no one could recognize their language and communicate with them, combined with the knowledge that the Spanish were constantly engaged in the illegal importation of slaves, it became clear to the abolitionists that the Africans were not ladinos but were in fact free people who had been recently kidnapped.

One issue that had to be worked out by the courts was whether or not a treaty signed by the U.S. and Spain in 1775, The Spanish – American Treaty of Commerce and
Amity, would be applicable in this case. The treaty contained articles that said if a Spanish ship came into American waters and there was an “urgent necessity” it should be secured. It also stipulated that all ships and merchandise “of what nature soever” that were rescued from pirates and robbers should be restored entirely. It was these clauses, that caused the Spanish government and Mr. Ruiz to claim the slaves should be returned right away to Mr. Ruiz. However another issue had to be investigated by the courts as well, Spanish law said that international trade in slaves was now illegal and therefore Mr. Ruiz and others may have actually committed crimes against the Spanish government.

On September 18, 1839, a hearing concerning the criminal charges and whether or not the captives were property was presided over by United States Circuit Court Judge Smith Thompson. After hearing the testimony and reviewing the relevant law, the judge ruled that the Africans could not be tried for murder or mutiny by the United States because those acts in question occurred in Spanish waters and on a Spanish ship, and therefore would have to be tried by a Spanish court. He found that the laws of United States did provide that slaves were property, and that the treaty with Spain provided that property should be returned to the Spaniards. So he ordered a trial as to whether or not the captives were property and whether or not they should be returned to the Spaniards.

The President of the United States, Martin Van Buren, along with his Attorney General, Felix Grundy, took the position that the Amistad was a Spanish vessel, and that the Negroes on the ship were the property of the Spaniards. They held that it was not for the United States to decide whether or not the Negroes were property, or whether the documents saying the Africans were ladinos were fraudulent or not. These were issues that as far as they were concerned, should be decided by Spain and their courts. President
Van Buren and Attorney General Grundy held that since the Spanish government claimed that the Africans were property and that the documents were legitimate, that this was all that should matter to the United States. Of course, the Spanish government was illegitimate in the same way the United States government was illegitimate, because they were governments that both protected the institution of slavery.

It is this issue, whether or not the captured Africans were property, where the illegitimacy of the United States at its founding and afterwards is revealed. The fact that the American constitution, ratified by the consent of its people, allowed for human beings to be owned by other human beings makes it the case that this government was doing things that it did not have the rightful authority and power to ever do, according to Locke, whether the people consented or not. All governments can only have powers that have derived by the people, and since no one has the power to enslave an innocent person, a government can never rightfully have this power. With regard to slavery, Locke mentions this explicitly when he explains how a government’s powers are limited to the powers that people have the right to give. Locke says,

It is not, nor can possibly be absolutely arbitrary over the lives and fortunes of the people: for it being but the joint power of every member of the society given up to that person, or assembly, which is legislator; it can be no more than those persons had in a state of nature before they entered into society, and gave up to the community: for no body can transfer to another more power than he has in himself; and no body has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. … Their power, in the utmost bounds of it, is limited to the public good of the society. It is a power, that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects (II, 135).

On November 19, 1839, the trial as to whether or not the Africans were property began with Judge Andrew T. Judson presiding. After hearing many witnesses during
commencement of the trial Judge Judson interrupted the proceedings and said that he was quite convinced that the Africans had recently come from Africa and that it was no longer necessary to take any further time of the court to establish that fact. On January 13, 1840, Judge Judson issued his verdict, stating he found that there were three classes of Negroes in Cuba: *creoles*, born in Cuba, *ladinos*, residents since before 1820, and *bozales*, those recently imported from Africa. He found the evidence showed the *Amistad* Negroes to be *bozales*. Considering the treaty of 1795 and the claims about the Negroes pertaining to it, he found the treaty must be subject to the laws of Spain, and the laws of Spain did not hold that *bozales* could be enslaved. He ruled that the Africans must be delivered to the President of the United States to be transported back to Africa.

After learning about the judge’s decision President Van Buren had the case immediately appealed to the United States Supreme Court. With this news the abolitionists decided that men of stature must continue the argument before the United States Supreme Court. They chose Roger Sherman Baldwin and former President of the United States, John Quincy Adams. The case began on February 22, 1841. New Attorney General, Henry Gilpin, arguing for the United States, stated that the ship’s papers were in proper order, that the Negroes were slaves in a country where slavery was legal, and as property, the Spanish government had the right to demand the slaves be given back to their owners, and therefore the Africans must go back to Spanish soil to be tried for the crimes they committed under Spanish law.

Roger Baldwin opened for the defense and reviewed that the Africans were seized as freemen, capable of having and enforcing rights of their own, that Ruiz was in possession of permits fraudulently obtained, and after achieving their freedom by armed
struggle, the Africans sought asylum in the State of New York, and were illegally seized by Lieutenant Gedney and brought to the district of Connecticut. The Africans were illegally enslaved, illegally sold and purchased, and as such, were free people who must be returned to Africa.

On February 24, President John Quincy Adams rose for the defense to address the court. He decided that it was much more important for him to speak as a political leader and not as a lawyer. He told the justices that the case was unique and unusual, as the case seemed to lie outside the laws that we had on our books. Adams said,

I know of no law, but which I am not at liberty to argue before this Court, no law, statute or constitution, no code, no treaty, applicable to the proceedings of the Executive or Judiciary, except that law ----. Adams at that moment paused and pointed to a copy of the Declaration of Independence that hung on a court room wall.

I know of no other law that reaches the case of my clients, but the law of Nature and Nature’s God on which our fathers placed our national existence. The circumstances are so peculiar, that no code or treaty has provided for such a case. That law, in its application to my clients, I will trust will be the law on which the case will be decided by this court.¹³⁶

After arguments, the court issued its decision in favor of the defense, upholding the lower court’s ruling. The Africans must be freed. The decision was written by Justice Joseph Story and he said the fact that the Africans were free people, who were kidnapped, made the case about the principles of justice and rights. He wrote,

Supposing these African negroes not to be slaves, but kidnapped, and free negroes, the treaty with Spain cannot be obligatory upon them; and the United States are bound to respect their rights as much as those of Spanish subjects. The conflict of rights between the parties under such circumstances, becomes positive and inevitable, and must be decided upon the eternal principles of justice and international law…The doctrine must apply where human life and human liberty are in issue; and constitute the very essence of the controversy. The treaty with Spain never could have intended to take away the equal rights of all foreigners, who should contest their claims before any of our Courts…And that the Spanish treaty interposes no obstacle to the just assertion of their rights.

To underline the immorality and illegitimacy of the United States government at this time, in this same decision Justice Story wrote,

If these negroes were, at the time, lawfully held as slaves under the laws of Spain, and recognized by those laws as property capable of being lawfully bought and sold; we see no reason why they may not justly be deemed within the intent of the treaty, to be included under the denomination of merchandise, and, as such, ought to be restored to the claimants.

I have reviewed this case because I want to discuss the rights of the abolitionists. They were certainly true heroes in this case having spent time visiting the Africans in jail, clothing, feeding, teaching, finding an interpreter, and providing them a legal defense.\(^{137}\)

But what author Christopher Martin has made clear in several passages of his book, was that many of the abolitionists were prepared to break the law, including using force if necessary, to free the Africans if things should ever go badly against them. Martin says,

The Africans studied the New Testament and learned hymns, while the abolitionists plotted. They were prepared to break every law of the land to save the Africans. A constant watch was kept on the jail, on the harbor, and on the officials who might spirit the Africans away some dark night. A route was planned to take them to Canada.\(^{138}\)

Given Locke’s theory of justified resistance I ask this two-part question: May the abolitionists rightfully use force against their government to free the Africans if things

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\(^{137}\) One of Locke’s ideas is that human beings create in their minds most of the ideas that are involved in the fields of morality, divinity and law, (he calls these ideas mixed modes) and that since we make them up we have the moral responsibility to make good ideas, and define them properly, and that wrong ideas and bad definitions in these subjects have truly harmed and confused many people. One interesting observation is that the abolitionists, editorial writers, and legal scholars pointed out in the Africans’ defense was that the Africans could never be found guilty of piracy because their actions failed to meet the definition of piracy. Citing Azuni’s Maritime Law, Vol. 2. 351, they said a pirate was “One who roves the sea in an armed vessel, without commission or passport from any prince or sovereign state, but solely on his own authority, and for the purpose of seizing by force, and appropriating to himself, indiscriminately, every vessel he may meet.” This definition was not applicable regardless of whether you thought the Africans were property or free.

\(^{138}\) Martin, *The Amistad Affair*, p. 156. See also page 89 for a similar passage.
should go badly against them, or at any time in which the Africans were held in custody? Given the facts as we know them and Locke’s ideas, my conclusion is that the abolitionists could use force against their government whether things went badly for the Africans or not. Locke says, “And any other person, who finds it just, may also join with him that is injured” (II, 10).

Christopher Martin says the abolitionists were prepared to resist the government with force if things should go badly against the Africans. Ruiz, who purchased the Africans, wanted them back because he sought them as property and he invested a large amount of money and still wanted to use them on a plantation. But the Spanish government wanted the Africans returned to Havana, Cuba, to be put on trial for such crimes as murder, theft, piracy, and mutiny. It was very clear to the abolitionists that if the Africans ever got into the custody of the Spanish authorities, eventually they all would have been put on trial and be put to death. It is my view, that the abolitionists could resist the United States government if either the courts attempted to return the innocent Africans to the Spanish government or if President Van Buren did. I say this for several reasons - not only is the taking away of innocent life irrevocable (II, 19), the taking away of the innocent Africans lives would violate the fundamental law of nature according to Locke. Locke tells us that a government can never morally have the power to take away the lives of innocent people. Governmental powers are limited for Locke, as the government gets only the power that people had in the state of nature, and no more. No one ever has the moral right to kill an innocent person. No one, not even a legitimate government can violate this law. In a foot note in the Second Treatise at paragraph 135 Locke quotes Hooker.
Human laws are measures in respect of men whose actions they must direct, howbeit such measures they are as have also their higher rules to be measured by, which rules are two, the law of God, and the law of nature; so that laws human must be made according to the general laws of nature, and without contradiction to any positive law of scripture, otherwise they are ill made (Hooker’s Eccl. Pol. l. iii. sect. 9).

However, what if the abolitionists decided not to wait to see if things went badly, could they resist the government to help free the Africans? I say yes they could resist the government at any time the Africans were held in custody for the same reasons I listed above. I do think, however, there are other important ideas that Locke holds which must be considered and weighed, and that these ideas might cause someone to reach a different conclusion. Below is an argument against the abolitionist’s right to help free the Africans unless something should go badly against them.

Recall, according to Locke, once a person becomes a member of the political community they are perpetually obligated to it unless, and not until, the government fails in its fiduciary responsibilities or acts contrary to its trust (II, 121). In this case, one can argue the federal government had done neither. In fact, except for the actions of Lieutenant Commander Gedney, who wrongfully took the captured Africans to Connecticut because he hoped to enrich himself, a good argument can be made that the government of the United States and especially their courts did everything right. No branch of government attempted to usurp power and each branch merely exercised the powers that it had under the constitution.

There is no doubt that the government was protecting a practice and institution that was completely immoral - slavery - and despite the fact that its legitimacy was doubtful, it was this same government that was doing some of the most important and progressive things in the history of humanity. It was a government that believed it existed
for the good of the people and the people did not exist for the good of the government. It was formed by the consent of the people, ruled by the consent of the people, and held that its powers were limited both for the common good, and by certain individual and natural rights that were codified by a Bill of Rights that made up the first ten amendments of its constitution. This special government was certainly not extending these same principles of good government to all of humanity and therefore making it to some degree double-dealing, hypocritical, and illogical. But when this government was formed it was made with many compromises. It was formed by majority vote with several “great mistakes in the ruling part, many wrong and inconvenient laws” (II, 225). Many citizens who were subject to the new government certainly knew things were not perfect and, with respect to slavery, doing something incredibly immoral.

When weighing whether to form this new government that was going to make the grand attempt of forming a government built on the consent of the people, a government that recognized that human beings had rights and that government exists to protect those rights or continue living under the tyranny of King George III, they agreed to compromise and form the new government and thereby became obligated to this government despite its great mistakes and many wrong laws. Many of the people who put themselves under the rule of this government knew that on the one hand, an incredibly important new government for the history of humanity was formed, while on the other hand, knew that this government was also allowing for the most “vile and miserable Estate of Man”139 to exist. They were aware of this great paradox. However, it was

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139 The very first sentence of the *FT* says, “Slavery is so vile and miserable an estate of man, and so directly opposite to the generous temper and courage of our nation; that it is hardly to be conceived, that an
simply the case that there was no other way to get this government established without this compromise. Majority vote was their best option if the other option was not forming this new government at all. Locke similarly thought that majority vote was the best option as well, given all the conditions that have to be considered. Locke says,

*If the consent of the majority shall not, in reason, be received as the act of the whole, and conclude every individual; nothing but the consent of every individual can make any thing to be the act of the whole: but such a consent is next to impossible ever to be had, if we consider the infirmities of health, and avocations of business…To which if we add the variety of opinions, and contrariety of interests, which unavoidably happen in all collections of men* (II, 98).

Therefore despite knowingly forming a government that was protecting the rights of slave owners, they could reason that they could over time attempt to change these immoral laws within the government’s constitutional framework and also know that given this was a special and unique government in the history of mankind it was much better to form it despite its moral failings than not to form it at all.

It is my view that the uniqueness of this government has to be taken seriously despite its serious deficiencies. There were no democracies in 1789 when it was formed, and in 1840 there were no others that existed and there would not be another that would exist until Switzerland became democratic in 1847. What existed was truly rare. It was a place where the ideas of civil liberties and human rights could not only be debated, but over time become realities. This representative democracy with all its major flaws cannot be lightly brushed aside despite its gross injustices. Of course those who make this argument also know that Locke holds that the law of nature can never be violated and that we are bound to preserve each other. Locke says, “Every one, he is *bound to preserve* Englishman, much less a gentleman, should plead for it.” The Englishman to whom he is referring to is Sir Robert Filmer.
himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind” (II, 6). Since it is the case that the law of nature is being violated by the United States of America and its President, and that we are bound to preserve each other when we can, how can Locke reconcile his belief about the law of nature with the fact that he also holds that the abolitionist must remain obligated to this same government if nothing goes badly against the Africans?

Those who make this argument can say that the way which Locke deals with holding these two beliefs simultaneously, is that he holds another belief that reconciles them. Locke believes that it is a fact about us that at times we have obligations, including moral ones that we cannot perform at a given time, because at that time we are performing other obligations, including moral ones. Locke thinks this kind of thing happens often. This includes for Locke obligations which we have even under the law of nature. Locke explains that it is impossible for a human being to perform everything that natural law commands at the same time. It is a fact of the human condition that we have many duties and obligations that are imposed upon us. We cannot ever act contrary to them according to Locke, but we cannot always do what is required of us for the simple reason that we often cannot do two things at the same time. Locke says,

The binding force of the law of nature is permanent, that is to say, there is no time when it would be lawful for a man to act against the precepts of this law...However, this permanently binding force must not be supposed to be such that men would be bound at all times to perform everything that the law of nature commands. This would be simply impossible, since one man is not capable of performing different actions at the same time, and he can no more observe several duties at once than a body can be in several places...The binding force of the law never changes, though often there is a change in
both the times and the circumstances of actions, whereby our obedience is defined. We can sometimes stop acting according to the law, but act against the law we cannot.\textsuperscript{140}

Although I think the argument that has been given has many strengths, and helps us to understand Locke more, I think in the end it is flawed. The African’s natural rights to freedom and life were both being violated and put into jeopardy. The laws of nature and the fundamental law of nature supersede and trump all positive laws and all agreements that people might make no matter how important the agreement might be. In fact, in the quote above, Locke tells us we can never act against the precepts of the law of nature and that is precisely what the founders did when they allowed for slavery to exist and be protected by law. That is, they acted against the law of nature. No matter how important the foundation of this new nation was, the ends do not justify the means so to speak. Therefore anytime the Abolitionists could help free the Africans they had the moral right to do so as they would be helping to enforce the fundamental law of nature. Waiting to see if things went badly for the Africans was not necessary. Helping to free the Africans when held in custody would be morally permissible at any time. Of course given the presence of armed soldiers and guards this may not be practical, or even possible, but it was certainly morally permissible. It is my view that Locke’s theory of justified resistance allows individuals and others who want to help them, to resist their government simply to preserve innocent human life. Locke says,

\begin{quote}
Whosoever uses \textit{force without right}, as every one does in society, who does it without law, puts himself into a \textit{state of war} with those against whom he so uses it; and in that state all former ties are cancelled, all other rights cease, and every one has a right to defend himself, and \textit{to resist the aggressor}. This is so evident, that \textit{Barclay} himself, that great assertor of the power and sacredness of kings, is forced to confess, That it is lawful for the people, in some cases, to \textit{resist} their king (II, 232).
\end{quote}

And then Locke quotes Barclay in the next paragraph,

Must men alone be debarred the common privilege of opposing force with force, which nature allows so freely to all other creatures for their preservation from injury? I answer: Self-defence is a part of the law of nature (II, 233).

The fact that the United States was an important and rare place in the world in 1840 and from the fact that I have concluded that the abolitionists did not have to obey the government and could resist the government to help save the Africans, leads to another conclusion that I think is compatible with Locke’s thought. That is, there can be two levels of legitimacy when it comes to a government, the legitimacy of a government as a whole and the legitimacy of a government in a particular case. On the whole it is simply the case that a government can be legitimate to a large degree, yet not completely. That is, it was formed by consent, performs its fiduciary responsibilities, and complies with that law of nature most of the time. And, in a particular case it may do something immoral and awful to a citizen or group. This kind of situation regarding legitimate governments is to a large degree very common. This is why most abolitionists were not trying to overthrow the United States government. Most thought the United States was a special and important place, but in the case of slavery, it was doing something completely unjust. Most of them simply wanted the slaves freed and America to become a better place. In the Amistad case they would have resisted to save the Africans with no intention whatsoever of an all out overthrow of the United States government. Locke understands this kind of thing happens often. He explains that even when horrible things are done by a government it often will not lead to all out revolution until abuses are seen by the people as being part of some tendency or design on them. Locke says,

Such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human
frailty, will be *born by the people* without mutiny or murmur. But if a long train of abuses, prevarications and artifices, all tending the same way…it is not to be wondered, that they should then rouze themselves, and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected (II, 225).

**OUR PROPERTY RIGHTS WHILE A NATION IS AT WAR**

The next case study involves the government acting against people’s natural and civil rights, namely, their property rights while at war with another country. In this case, there is a remedy for appeal. As such, you cannot morally justifiably resist. Here again, I will use a historical example. This involves the case when President Truman issued Executive Order 10340, which allowed The Secretary of Commerce to take possession of the steel mills in the United States and keep them operating.¹⁴¹ At the time President Truman seized the nation’s steel industry, the United States was involved in the Korean War, what the Truman administration called a “police action.” To prevent a strike of the nation’s steel workers and thereby allowing for the continued making of shells and bombs¹⁴² necessary for American soldiers at the front in Korea, the President took control of the nation’s steel mills. The background of the case was that in the past, while at war, such as during World War II, to avoid inflation and other problems, the United States government used price controls, but during the Korean War, the Truman administration created a Wage Stabilization Board.¹⁴³ Its goal was to keep prices down and avoid labor disputes. In this case the Board proposed a wage increase for the steel workers but would not allow the steel owners to increase the steel prices to the level they wanted. So the

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¹⁴² Ibid., pp. 14.
¹⁴³ U. S. National Archives, Records of the Wage and Salary Stabilization Boards of the Economic Stabilization Agency [ESA], see, 293.1 Administrative History.
owners rejected the wage increases and the steel workers threatened strike. To avoid the strike, Truman seized the steel mills under his authority as President during a national emergency. Locke allows actions by those with executive power to do these kinds of things on occasion because of unforeseen emergencies that might come up now and then, and that these actions are necessary at times to preserve mankind, otherwise great harm might occur (II, 159). Locke calls these actions “prerogative”. He says,

This power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it, is that which is called prerogative: ... it is impossible to foresee, and so by laws to provide for, all accidents and necessities that may concern the public, or to make such laws as will do no harm, if they are executed with an inflexible rigour, on all occasions, and upon all persons that may come in their way; therefore there is a latitude left to the executive power, to do many things of choice which the laws do not prescribe (II, 160).

Certainly these actions by Truman and his administration were a serious expansion of Presidential power and understood by many to be an abuse of power because it allowed for the seizure and control over someone else’s property without their consent, in violation of their legal and natural property rights. For Locke property is essential for our preservation and a natural right. Once born we all have a strong desire to live and we need things for our preservation. The world is furnished with things that can sustain us such as food, clothing, and shelter (II, 25). Governments are therefore created to help protect our natural property rights. Locke says,

For the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires, that the people should have property. ... Men therefore in society having property, they have such a right to the goods, which by the law of the community are their’s, that no body hath a right to take their substance or any part of it from them, without their own consent: without this they have no property at all; for I have truly no property in that, which another can by right take from me, when he pleases, against my consent (II, 138).
The nation’s steel industry was very large with over one million United Steel Worker members and with 235 steel companies producing steel.\textsuperscript{144} The President claimed that he had the authority to do this by the powers granted to him by the United States constitution under the constitution’s emergency powers. The steel industry on the other hand challenged the President’s seizure as unconstitutional\textsuperscript{145} and sought remedy by appealing to the court, thus Youngstown Sheet & Tube Co. v. Sawyer. The case eventually reached the United States Supreme Court and oral arguments began on May 12, 1952. On June 2, 1952, Justice Black\textsuperscript{146} wrote the opinion for the court deciding in favor of the steel industry. Later that same day President Truman issued an order to the Secretary of Commerce to comply with the decision and returned the plants to the steel industry.\textsuperscript{147}

If President Truman refused to comply with the court’s decision and ordered the Secretary of Commerce to retain control of the steel mills \textit{it would seem} that the steel mill owners and stockholders and any other person sympathetic to their circumstances could justifiably resist the government as it had then exercised force without authority. Under Locke’s theory of government, the President would be in effect usurping the power of another branch of government to which it had no right under the constitution. On the other hand, if the U.S. Supreme Court decided that the President was within his powers, it seems the steel mill owners and stockholders could not justifiably resist. Their property was seized and they lost temporary control over it, yet not for the President’s own gain, but for the common good and the preservation of their society. The President exercised

\begin{footnotes}
\textsuperscript{144} Ibid., pp. 3.
\textsuperscript{145} Ibid., pp. 5.
\textsuperscript{146} Ibid., pp. 136.
\textsuperscript{147} Ibid., pp. 173.
\end{footnotes}
his rightful authority, his prerogative as Locke might call it, under the constitution, and the owners exercised their right to appeal. The case went to a court of justice, a common judge with authority, and not a court that existed to pervert justice (II, 20). Therefore, the owners could not resist assuming these were the facts.

**WITHDRAWING TRUST**

I now turn to a criticism of Locke’s theory offered by D.A. Lloyd Thomas. Thomas thinks that Locke’s theory is incoherent and contradictory. Thomas thinks that some of the grounds that Locke cites as being legitimate reasons for people being able to morally resist their government contradict each other. For example two grounds that Thomas mentions that people can have to resist their government are (1) If the government fails to enforce the law of nature (II, 135) either because it is ineffective in protecting people’s natural rights (II, 219) or the government’s policies actually promote such a thing, and (2) if the government loses trust of the majority, and no longer rules with the consent of the people (II, 149).

Given these two grounds for a justified rebellion, Thomas asks this question; “Nevertheless it does seem appropriate to confront Locke with this question: what if a government fails to enforce the law of nature but enjoys the consent of the majority; or enforces the law of nature but fails to enjoy the consent of the majority?” We can for the first part of this question (as Thomas does in that chapter), use the example of Nazi Germany. Here is a case where the government still enjoyed the consent of the majority,

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148 Thomas calls this justified rebellion despite Locke’s insistence that rebellion is what those who act contrary to their proper ends and who then use force without authority (II, 226 and 227).
149 Thomas, pp. 67.
and yet victimized its Jewish citizens in the worst way humanly possible. In this case, Thomas holds that the minority can’t legitimately resist the Nazi government because the government still rules with the consent of the people.

The second part of his question seems to me to impose a much harder case for Locke’s theory. The idea here is that the government is protecting the natural rights of its citizens, perhaps a minority group, but the majority of the citizens are not happy about it, and as a result have withdrawn consent. The majority wants the government to back down and not protect the minority group and the government refuses. Under Locke’s criteria, if the government uses force against the people, it would seem, and Thomas would have us believe, that the government is the true rebel and is now using force without authority. Locke holds that people who justifiably resist are not rebels. Rebels are those who introduce the use of force without the right to do so, that is, without authority. Those who do such a thing are truly rebels and actually bring into existence the state of war (II, 226). Thomas has in mind a government who, while protecting the natural rights of a minority of its citizens, is asked to stop doing this or leave power. If they do not and they resist the majority with force, they are doing it without authority and are rebels. They are in fact ruling without consent according to Thomas. But if they don’t resist and allow the minority group to be abused and not protect their natural rights, it also seems they have violated the trust of those citizens. It seems Thomas has found a flaw in Locke’s theory.

Under the first case, it does not matter if the government enjoys the trust and consent of its people. It cannot abuse the natural rights of a citizen. When it does such a thing, and that citizen or minority group cannot appeal to anyone on earth, they can resist.
In many cases it may not be prudent to resist, but they indeed have that right under Locke’s theory. A government can be wrong and immoral. The majority can also be wrong and immoral. The Nazi Germany case illustrates this fact all too well. But why can an individual justifiably resist? The answer lies at the heart of Locke’s theory. First, at all times the innocent have the natural right of self-defense (II, 233). Second, Locke holds that the law of nature exists in the state of nature as well as in a well-ordered commonwealth. It is eternal and unchanging (II, 135). It is antecedent to any man-made law, or existence of any government. All of us at all times are subject to it. Locke says,

> Yet they have, by a law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth, viz. to judge, …it being out of a man’s power to submit himself to another, as to give him liberty to destroy him; God and nature never allow a man so to abandon himself, as to neglect his own preservation: and since he cannot take away his own life, neither can he give another power to take it (II, 168).

Now to Thomas’s second criticism, here, it seems the government is doing its job, and yet, has lost the consent and trust of the majority. If the government uses force to stay in power, in order to protect the minority group, or if it does not protect the minority group, it seems it acts unjustly in either case. It appears that this scenario shows that the different grounds one can have to justifiably resist can work against one another given the right facts and circumstances. An example from American history can illustrate that this kind of thing can and does happen: The American Civil War. Under Locke’s theory, would President Lincoln be morally or constitutionally justified to do some of the things he did? Did not the Southern states have the right to secede? Do not they have a right to be ruled by their own consent? Is not that one of Locke’s political creeds? Was not that

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their right according to Locke? How could President Lincoln, on April 15, 1861, call the militia of several states to suppress the states that withdrew their consent against the Union? Isn’t that using force without authority? In fact, the constitution says Congress has the power to declare war and not the President. Mattie says, “It appeared that Lincoln assumed legislative powers and, in Lockean terms, threatened revolution.” For he may have according to Locke even usurped power. How could Lincoln emancipate slaves, and thereby take away an owner’s property right’s without his consent? It is my view that Lincoln may do all of these things and be morally and constitutionally justified under Locke’s theory of justified resistance.

The problem with Thomas’s criticism starts with him stating that if the government loses trust of the majority, and then the government tries to use force to stay in power, the people have grounds to resist no matter what. Thomas says, “But if government has its power on trust from the people, then the people have the right to withdraw that power whenever it pleases them to do so.” The fact is the people cannot just withdraw trust whenever it pleases them. Withdrawing trust has to be for good and specific reasons. Martin Seliger explains this perfectly. He says,

> It usually has escaped notice that Locke carefully limited what it is that the people judge in deciding to revolt…. To decide on the rightness and wrongness of an appeal to heaven implies that the people must decide whether the prince or legislature, or both, act contrary to their trust. This is a decision whether the wrongs perpetrated against the people by their rulers are worth bearing or not. By their conscience or feeling, the people are called

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151 Ibid., see footnote on page 92.
152 Ibid.
153 *The Emancipation Proclamation* says in part, “That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free.” January 1, 1863. Copied from the U.S. Nation Archives & Records Administration web site.
154 Thomas, pp. 64.
155 Thomas, pp. 31.
upon to decide whether there exists a serious threat to their lives, liberties, and fortunes.\textsuperscript{156}

Notice two things found in this quote by Seliger. First, the government must have done something wrong. Second, a decision then must be made as to how great a threat this wrong amounts to be. Locke says,

He that \textit{appeals to heaven} must be sure he has right on his side; and a right too that is worth the trouble and cost of the appeal (II, 176).

The fact of the matter is unless and not until Lincoln broke his trust and in some way failed in his fiduciary responsibilities, the southern states could never withdraw their trust, and consent and justifiably leave the Union. When they did this, the states violated their duty to be obligated to the government that was established by the consent of the political community at the time the country was founded nearly one hundred years prior, and therefore Lincoln had every right to use all constitutional means available to save the Union. One of the several cases that reached the United States Supreme Court during the civil war was called The Prize Cases.\textsuperscript{157} President Lincoln had ordered the U.S. Navy to block the southern states ports by proclamation of April 15, 19, and 27, 1861, but congress had not declared war until July of 1861. Besides the blockade, Lincoln ordered the navy to capture ships and impound the ship’s property. Many people, including the owners of the ships captured thought that these proclamations were unconstitutional, even amounting to piracy. Martin Sheffer says that Lincoln believed that secession was rebellion and insurrection and he had the authority under the constitution to blockade the southern ports, and that this was his prerogative under the constitution. Sheffer says


\textsuperscript{157} Decided by the United States Supreme Court on March 10\textsuperscript{th} 1863.
Lincoln “Believed that he had the inherent power as chief executive and commander-in-chief to ensure that the law of the United States was obeyed throughout the Union.”

Sheffer thinks that what Lincoln did was use Locke’s notion of prerogative, which says since the legislature cannot foresee all the problems and dangers that their nation will face, at times the executive needs the discretion to break laws, because not breaking them could cause harm to innocent people and violate the fundamental law of nature (II, 159).

Sheffer says,

It is Locke’s notion of prerogative taken to its ultimate conclusion. In sustaining Lincoln’s actions, the Court legitimizes his argument that he alone possesses the power to determine (1) the existence of an emergency, (2) what measures are needed to successfully meet the emergency, and (3) when the emergency is over and the government actions taken no longer needed. In essence, the decision sustains the notion that during an emergency the law of necessity supersedes the law of the constitution, i.e., during time of war laws are silent (inter armes silent leges).

Both of these beliefs of Lincoln were affirmed by the court. Writing the decision for the court Justice Grier said,

When the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the courts cannot be kept open, civil war exists and hostilities may be prosecuted on the same footing as if those opposing the government were foreign enemies invading this land. And,

Whether the President in fulfilling his duties, as Commander-in-Chief, in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided by him, and this court must be governed by the decisions and acts of the Political Department of the government to which this power was entrusted. “He must determine what degree of force the crisis demands.” … [W]e are of the opinion that the President had the right, jure belli, to institute a blockade of ports in possession of the states in rebellion neutrals are bound to regard.

159 Ibid.
160 Ibid, pgs. 19-20. Justice Grier here uses similar language as Locke does in Locke’s chapter XIV Of Prerogative when Locke says, “And those must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require” (II, 159).
These kinds of cases and considerations are exactly what Locke has in mind when he says the people can resist if the government has lost their trust. That is, under Locke’s theory, no one can resist unless the government first does something wrong. And then the people still have to see if there is a remedy for appeal. But the first step cannot be overlooked. An example from Locke’s time shows how Locke saw things and also shows that Thomas’ assertion that “the people have grounds to resist no matter what” is false. Although Locke and his friends did not want the brother of King Charles II to succeed as King, because James was Catholic, (and they worked very hard politically to make this the case\textsuperscript{161}) Locke recognized that once James became King they could not act against him unless he broke the law. “As Locke put it, if there were no miscarriages, ‘our complaints were mutiny and our redemption rebellion and we ought to returne as fast as we can to our old obedience’.”\textsuperscript{162}

This was the kind of thing that occurred when Lincoln was elected President. Although the Southern states did not want him to be elected, in Lincoln’s first Inaugural Address given on March 4\textsuperscript{th} 1861, he explained several times he would not break the law, for slavery or for any reason, and that the Southern states should not fear him. He said, “I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so.” Lincoln felt that under the laws of the Constitution of the United States of America, he did not have the legal or moral authority to interfere with or outlaw slavery. So, as for Thomas’s second criticism goes, if the people withdraw their consent when the

\textsuperscript{161} Locke and his friends supported the \textit{Exclusion Act}, which said, King James II, a Catholic could not be King.

government is doing its job, as in protecting a minority’s natural rights, they do so unjustly and are not justified to resist. That is, if the government keeps its fiduciary responsibilities, acts for the common good, and within positive law, the people cannot justly revolt. So in the end, the grounds that Thomas cites for justified resistance do not contradict or work against each other. Therefore, the people of the south had no moral or legal right to withdraw their trust and consent of the government since the government was keeping its fiduciary responsibilities.  

CONDITIONS THAT MAY LIMIT OUR RIGHT TO RESIST

The next case I will first discuss in the abstract. It involves a situation with many variables that come into play. The case involves the government acting against people’s natural and civil rights, namely their liberty and property rights, while at war. In this case the government is not a completely immoral regime, but in fact, it is a reasonably just one. You have a remedy for appeal by appealing to the law, but due to the fact that your nation is at war, you know you will lose your appeal. It has been precedent in the past that during times of war the courts are highly reluctant to side against the government. In fact, at times the court has explicitly stated that the government’s powers during war and emergencies actually expand.  

163 In the mid 1850’s the great abolitionist William Llloyd Garrison made arguments and wrote in his weekly newspaper, The liberator, that the northern states have a moral duty to secede because the United States government was unjust and tyrannical. In this case one could argue that the government was first doing something wrong by violating the natural rights of the slaves, and that the slaves had no remedy to appeal, and therefore you could withdraw your trust from this government and if resisted by the government, resist with force. For a brief and well written article about this, see The Agitator, published on the National Endowment for the Arts web site www.neh.gov January/February 2013.

as your appeal will most certainly be denied. So in effect, you have no remedy for appeal.

In addition to these facts, other facts also come into play. If you decide to resist and others decide to join you in resisting the government, it will be the case that your government will devote substantial resources to fight the resistance and as a result this could actually lead to your government losing the war because their resources will be spread too thinly. This would jeopardize your nation’s security and its very existence. Finally, if your nation loses this war, the resulting harm inflicted by your enemy’s military to innocent human beings will not be unsubstantial but to the contrary; the consequences will be catastrophic and massive.

The question is, do these facts have any bearing on whether or not you have the right to resist? The reason why we even have to explore this question is that according to Locke our right to resistance still has to comply with the law of nature. That is, there may be conditions that exist that could limit our right to resistance at times. Our right to resistance has to always conform to God’s law - no exceptions. Recall that the fundamental law of nature says, “By the fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred” (II, 16). The question becomes, if you resist and the result is harm to mankind or the innocent, can this limit your right to resistance for a time?

relatively limited. Yet during the past century and one-third, the United States has faced five major war emergencies – the Civil War, the two World Wars, Korea, and Vietnam – and from this experience has emerged a number of principles of wartime government involving both the form and substance of the constitutional system. These principles are: …

4. Judicial review of governmental action is largely nullified in time of war, as the law of necessity supersedes the law of the Constitution. With the Nation’s survival at stake, the Supreme Court cannot substitute its judgment of what is permissible for the political branches’ determination of what is necessary. As a result the court must acquiesce in assertions of power which under normal conditions it could not consider constitutional”.
John Simmons says, “If individuals have a right to resist injustice in civil society, this means for Locke that they have a virtually absolute moral justification for resistance. But the justification is only virtually absolute. The right to resist may be overridden or outweighed by conflicting rights or by dramatic social utilities. By “dramatic social utilities” I mean to refer only to those cases in which the cost of resistance (in terms of the effective preservation of mankind) is extremely high.”\textsuperscript{165} Therefore at times, if by resisting, it results in a cost that is too high, your right to resist in certain cases could be overridden and outweighed by other important moral considerations (II, 176). The kind of thing that would override someone’s right to resistance, or make the cost of resisting too high according to Locke, would be for example if by resisting you violated the fundamental law of nature. If millions of innocent lives are at stake or when the very existence of your society is at stake (during a time of war for example) even if your natural rights are grossly violated and you have no true remedy for appeal, you have to judge whether or not you have the moral right to resist, because other moral considerations must always be considered.

Earlier, when discussing the steel seizure case, I mentioned it would seem that if President Truman refused to comply with the Supreme Court’s decision and ordered his Secretary of Commerce to retain control over the steel mills, that the stockholders and all others sympathetic to their cause could justifiably resist the Truman government. But I am not so sure that would be correct. That is, under certain conditions, even if your rights are being violated, in this case your property rights, it is not necessarily the case that individuals can resist. Resistance may in the end violate the fundamental law of nature.

An individual must weigh the costs, and just make sure they are not too high. If this cost turns out to be too high, this then would limit our right to resistance for a time. John Dunn explains it this way, “Equally it does not mean that the wronged subject would be morally entitled, however well or ill advised from a prudential viewpoint this may be, to claim his revenge in action. The title he has to punish the ruler is one which he may only exercise if to do so is unlikely to damage the interest of others.”\(^{166}\) And he adds another important point about the right to resist: “The right is not cancelled but its use is restricted on grounds or moral responsibility and the consequent (unjust) individual suffering is sanctioned by social expediency.”\(^{167}\) When he says “Sanctioned by social expediency” I agree with Dunn, but I would add that the suffering is only allowed or appropriate to let happen and looked past for a time, because of the threat and seriousness of the matter at hand – making sure you win the war for example. So in the steel seizure case, if the court went against the steel owners, could they resist and be joined by stockholders and others sympathetic to their cause? After all this was seizure of their property without their consent and Locke says explicitly many times that this cannot be allowed (For example see II, 138, 139). However, our natural right to property, even as fundamental to the preservation of our lives as Locke sees it, this too can be overridden by other moral considerations. In fact, it is property, a person’s home that is destroyed without their consent that Locke uses as an example of an executive having the right to prerogative to preserve humankind. Locke says,

\(^{166}\) Dunn, John, *The Political Thought of John Locke*, Cambridge University Press, 1969, reprinted 1995, pgs, 178-179. The only thing I would change about Dunn’s statement is when he says, damaging the interests of others, this seems to be too broad and vague; your actions have to result in serious harm to the innocent.

\(^{167}\) Ibid, see footnote on pg. 179.
The laws themselves should in some cases give way to the executive power, or rather to this fundamental law of nature and government, *viz.* That as much as may be, *all* the members of the society are to be preserved: for since many accidents may happen, wherein a strict and rigid observation of the laws may do harm; (as not to pull down an innocent man’s house to stop the fire, when the next to it is burning)...for the end of government being *the preservation of all.* (II, 159)...This power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it, *is* that which is called *prerogative* (II, 160).

So if by resisting the result was the loss of the war and the harm to the innocent, this would limit the steel mill owner’s right to resistance. The loss of their property in this case, would be overridden by the fundamental law of nature.

Also another fact should not be overlooked when examining this kind of case. Locke’s theory of justified resistance is not addressing for the most part (and this is a good time to remind us of this fact) governments that think the people exist for them, that is, illegitimate governments from their very inception, such as absolute monarchies, or governments by conquest.168 His theory of justified resistance is focusing on when it is morally legitimate to resist governments that have been formed legitimately by consent and that the people and the government itself think that the government exists for the good of the people. In his chapter, *Of the Dissolution of Government,* he tells us that knowing the kind of government you have is important, so he supposes a government for the sake of his argument is one that was formed legitimately by consent and exists for the good of the people. In fact he is describing the government of England under which he lived at the time. He says,

> It is hard to consider it aright, and know at whose door to lay it, without knowing the form of government in which it happens. Let us suppose then the legislative placed in the concurrence of three distinct persons.

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168 Also we must recall that Locke had already addressed in the *First Treatise,* the false principles and foundations of government proposed by Filmer, which leads to perpetual disorder and rebellion (II, 4).
1. A single hereditary person, having the constant, supreme, executive power, and with it the power of convoking and dissolving the other two within certain periods of time.

2. An assembly of hereditary nobility.

3. An assembly of representatives chosen, pro tempore, by the people. Such a form of government supposed, it is evident (II, 213).

In this case the United States and the Truman administration were reasonably just and the actions involved in this case by the President were certainly with the goal of winning the war and doing what was best for the common good. It is therefore the case that under Locke’s theory of justified resistance, that even when a person’s rights are violated and they have no remedy for appeal, a person still has to consider the consequences of what the result of resisting might bring about. With this background in mind I now want to focus on another actual case.

THE INTERNMENT OF INNOCENT JAPANESE AMERICANS

I will next examine the facts and circumstances of the internment of innocent Japanese Americans during World War II. I must emphasize that what the United States Government did in this case was to intern American citizens who were overwhelmingly born in the United States, who were of Japanese ancestry, but who had never been to Japan and could neither read nor speak Japanese. This incredible and horrifying example illustrates that rights taken for granted and considered sacred by most Americans can and have been suspended at times given the right mix of paranoia, fear, political and public pressures, and worst of all, hatred.
I will begin by giving a list of some of the principles and beliefs that Locke holds that will come into play as I review the case. Some of these will seem to be contradictory and conflicting on their face and will have to be explained and examined. Locke holds:

All human beings have the natural rights to freedom, self-preservation, self-defense, and property. Government is formed to help protect these rights. There is such a thing as humanity and the common good and government exists to protect them. No one can take your property without your consent. No one has the power to rule another arbitrarily and no one has the power to allow someone else to rule them arbitrarily. The government is always subject to the law of nature and is subject to positive law. The executive branch has the right to prerogative for the common good. Being rational, the people can allow the executive to break the law for the common good. If someone or your government violates your rights, puts you in a state of war, and you have no remedy for appeal, you may resist them. If by resisting the cost is too high (violates the fundamental law of nature for example) you may not have the right to resist. Even if you have the right to resist, you have the right not to resist if you would be harmed or killed. You can choose not to exercise the right or wait to use it. You do not have to wait to resist. You can resist before it is too late.

When the Japanese bombed the United States Naval base at Pearl Harbor on the morning of December the 7, 1941, it was already the case that anti-Asian sentiments in the United States existed. President Theodore Roosevelt in 1907-1908 for example, under pressure from anti-Japanese groups, negotiated what was called the “Gentlemen’s Agreement” in which Japan stopped issuing passports to laborers. In exchange Congress
would not pass any formal exclusion law aimed at the Japanese.\textsuperscript{169} There were Alien land laws that were past in several states in the early 20\textsuperscript{th} Century and attempts to segregate housing and education.\textsuperscript{170} It was also the case that Japanese immigrants were frequent targets of physical attacks and their properties vandalized just for being owned by someone of Japanese descent.\textsuperscript{171} But probably the most flagrant example of anti-Asian sentiment before Pearl Harbor was when the Immigration Act of 1924 was made law. In general, the act established limits and quotas on who could come into the United States, but it also said no alien that was ineligible to become a citizen could be admitted into the U.S., thereby eliminating immigration from Japan and other Asian countries.\textsuperscript{172} After the bombing of Pearl Harbor the negative feelings towards the Japanese grew far worse. Immediately after December 7, 1941, many Japanese community leaders were arrested,\textsuperscript{173} curfew orders implemented, financial assets were frozen for many Japanese, and government plans to remove Japanese aliens and Japanese Americans from their homes in the West Coast began.\textsuperscript{174} The government of the United States cited “military necessity” to be the main reason behind evacuation and internment.\textsuperscript{175}

\textsuperscript{169} Ng, Wendy, \textit{Japanese American Internment during World War II}, Greenwood Press, Westport, Ct, 2002, pg. 3.
\textsuperscript{170} Ibid. pages 8 – 11. For example, states such as California in 1913, Arizona in 1917, Washington and Louisiana in 1921, New Mexico in 1922, Idaho, Montana, Oregon in 1923, and Kansas in 1925, passed laws prohibiting the purchase of agricultural land or leasing it for more than three years to any “alien ineligible for citizenship.” In 1906, the San Francisco school board proposed to send Japanese school children to the segregated “Oriental School” where Chinese students attended. pgs. 9 - 10.
\textsuperscript{171} Ibid. 10.
\textsuperscript{172} Ibid. pg. 9. Ng explains that the Naturalization Act of 1790 guaranteed the right of citizenship to “free, white persons,” and later extended this to people of African descent in 1870 and American Indians in 1924, but only Asians were not eligible for citizenship because they were not considered in the category of “free, white” or “African Descent.”
\textsuperscript{173} Ibid. pg 14. Ng explains that the FBI arrested people who were in their “at-risk for security” categories and category “C” were people from a particular “enemy” ethnic group. Group “C” consisted of Japanese language teachers, 1291 of them, and Buddhist priests.
\textsuperscript{174} Ibid. pg. 13.
\textsuperscript{175} Ibid.
What made this main reason so irrational and immoral was that the government’s own intelligence had already determined that the Japanese Americans were not likely to be a security threat. Curtis Munson in the fall of 1941 was appointed to work as a special representative of the U.S. State Department to gather intelligence on Japanese living in the U.S. and he concluded that there would be no threat to national security from the Japanese living in the U.S. Munson said, “There will be no armed uprising of Japanese…For the most part the local Japanese are loyal to the United States or, at worst, hope that by remaining quiet they can avoid concentration camps or irresponsible mobs.”\textsuperscript{176} Even FBI Director J. Edgar Hoover thought interment was unnecessary. Hoover said, “The necessity for mass evacuation is based primarily upon public and political pressure rather than on factual data. Public hysteria and in some instances, the comments of the press and radio announcers have resulted in a tremendous amount of pressure being brought to bear … on the military authorities.”\textsuperscript{177} In response to all of the anti-Japanese sentiment, President Franklin D. Roosevelt issued Executive Order 9066 on February 19, 1942, which authorized the secretary of war to establish military areas that could exclude “any and all persons” the secretary and other military commanders felt needed to be excluded for the purpose of national security.\textsuperscript{178}

On March 22, 1942, the first group of Japanese Americans arrived at Manzanar Reception Center in eastern California. Over two years later, on December 18, 1944, the United States announced that all internment camps will be closed by the end of 1945. Between October 15 and December 15, 1945, all the internment camps were closed.\textsuperscript{179}

\textsuperscript{176} Ibid. pg. 14
\textsuperscript{177} Ibid. pg.20.
\textsuperscript{178} Ibid, see Chronology of events, xix.
\textsuperscript{179} Ibid. see Chronology of Events pgs xxii and xxiii.
The constitutionality of the internment of Japanese Americans was challenged several times during the internment and several cases were heard by the U.S. Supreme Court. On December 18, 1944, the U.S. Supreme Court issued decisions for two of these cases. In Korematsu v. United States, the court ruled the government’s detention orders were constitutional under the “war powers”. But in, Ex parte Endo, the court ruled that Mitsuye Endo, who had filed a petition for a writ of Habeas Corpus in July of 1942 and that a court denied in July of 1943 had her rights violated. In fact other than for violations of Habeas Corpus, the United States won all of the internment cases heard by the court, amounting to what I believe to be an appeal “in name only” in times of war. I say this for two reasons; that not only have most of these cases never been overturned by the United States Supreme Court, and that they have been used as precedent in cases brought since then, but the main reason I say this is that to a large degree, evidence does not matter. That is, in this case the evidence was overwhelmingly on the side of the Japanese Americans, that they were not a threat to national security, and yet the court held that not only the President had the right under “the war powers” to intern them, but that his prerogative was enough to suspend people’s rights for a time regardless of the facts and the evidence. After all, if we decide to intern people because they are a threat to our national security, the evidence should show that they are indeed a threat to our national security. When we restrict people and limit their freedom of movement, when they have a communicable disease and we quarantine them for example, there is evidence, medical science that tells us that great harm could occur to the masses if some people are not quarantined. This was not that kind of case, and in fact the evidence was

180 Ibid, see Chronology of Events. Pg. xxii.
overwhelmingly going in the other direction. In cases of national emergencies as Sheffer says, “The Law of Necessity” trumps our nature and civil rights, at least for a time.

In this case we have to a large degree a situation in which all the branches of the United States Federal government worked to suspend the rights of Japanese aliens and Japanese Americans, especially their liberty and property rights. In addition to the government, the majority of the American people also felt that internment and removal was a legitimate response to the Pearl Harbor attack and war with Japan. “A March 1942 national public opinion poll showed ninety-three percent in favor of evacuating alien Japanese. While fifty-nine percent wanted to evacuate U.S. citizens of Japanese origin, only twenty-five percent disapproved.”¹⁸¹ As mentioned, the Japanese Americans who found themselves in the middle of this situation were second generation (called, the Nisei) and third generation (called, Sansei)¹⁸² Americans, and that they could not read or speak Japanese, and had never even been to Japan. These were American citizens since birth who knew themselves only as Americans. Perhaps this explains the overwhelming loyalty of these Americans to the United States before, during, and after internment.

Many interned were professionals, including attorneys, and even World War I veterans.¹⁸³

¹⁸² Ng, Wendy, Japanese American Internment During World War II, pgs 4 and 5.
¹⁸³ When trying to determine the rights of resistance under Locke’s theory when I studied the facts of the Japanese Americans during World War II, the story of the Hawai, 100th Battalion and the 442nd Regimental Combat Team became known to me. Their actions and incredible amount of fighting they did during the war I must mention. The 442nd were soldiers taken from volunteers from the 10 relocation camps. The two groups met each other when called to train in camp Shelby, Mississippi. The 100th earned more than 900 purple hearts and became to be known as, the Purple Heart Battalion. Together the 100th and the 442nd fought in eight major campaigns. The many amazing tales of re-capturing towns from German occupation can only be surpassed by what they did save the “Lost Texas Battalion.” The Battalion was trapped behind enemy lines for weeks and all attempts to rescue them had failed prior. To rescue 211 of the original 275 Texans trapped, the 442nd suffered almost 800 casualties.
The seriousness of what the United States of America was entering into during World War II cannot be overstated. Victory was not at all guaranteed, and the enemy powers of Italy, Japan, and especially Nazi Germany could be described as evil incarnate. What an enemy victory would mean for the citizens of the United States and the other allied nations is almost unthinkable. It is for this reason, that despite the immense gross violations of their property and liberty rights whether or not the interned Japanese Americans had the right to resist the government under Locke’s theory I think is difficult to decide. I say this not because I think they had a true remedy for appeal. I do not. I say this because I think a victory by the enemy forces could be viewed as being too high a cost for resisting the unjust actions of the government. The idea is, if by resisting the Japanese Americans contributed to an enemy victory, a case could be made, that this violated the fundamental law of nature, which says that mankind must be preserved and when all cannot be preserved, the innocent are to be preferred (II, 16).

Knowing what Locke says about no one having the right to allow another to have absolute or arbitrary power over your own life (II, 23), we should ask, did the Japanese Americans even have the right under Locke’s theory to voluntarily allow the government to intern them and take away their liberty and property rights? Locke says,

For a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases. No body can give more power than he has himself; and he that cannot take away his own life, cannot give another power over it (II, 23).

After all, here was a case where they were told they must report to camp, which was in essence, a prison. They had to relinquish their right to bear arms, leave their jobs and farms, having now to rely on the government that betrayed them for their safety and
sustenance. They were also not told how long this internment would be and whether or not their sacrifices would be ever compensated.

In addition, Locke explains that everyone is born with a natural right to freedom. In the state of nature this right says we are free from any superior power on earth (II, 22), and in society our freedom is only under the power that was established by consent and only under the power that the people have a right to give a government (II, 22, 23). These innocent Americans were being asked and told to relinquish their freedom rights. Locke is explicit and he joins together our right to freedom with our right and duty to preservation. Locke says,

\begin{quote}
This *freedom* from absolute, arbitrary power, is so necessary to, and closely joined with a man’s preservation, that he cannot part with it, but by what forfeits his preservation and life together (23).
\end{quote}

Freedom for Locke is something we cannot ever part with, it is something we cannot relinquish voluntarily. It is something God gave us and it is something that only He could ever take away. The reason why we cannot voluntarily ever give it away completely is that Locke sees it acting like a fence that protects us. Locke says,

\begin{quote}
No body can desire to *have me in his absolute power*, unless it be to compel me by force to that which is against the right of my freedom, *i. e.* make me a slave. To be free from such force is the only security of my preservation; and reason bids me look on him, as an enemy to my preservation, who would take away that *freedom* which is the fence to it (II, 17).
\end{quote}

Besides having the right to freedom and not being allowed to be under the arbitrary power of another, Locke also holds we were made for God’s pleasure and we are morally bound to preserve ourselves and cannot quit our station (II, 6). So again we can begin this inquiry by asking whether or not the Japanese Americans even had the
right to allow themselves to be interned? It is a close call, but it is my view that they did have the right to allow themselves to be interned.

In the Japanese American’s internment case, justice was turned on its head as they were guilty until proven innocent. Their natural right to freedom, along with their civil rights to freedom, was drastically encroached upon to the extent that it could be considered they no longer had any freedom. This, I will argue is not the case, and that they did still have their freedom, but rather they chose to put their trust and faith in the United States of America. This was not a blind faith, but one that was debated and argued over. The Japanese Americans knew they were discriminated against without justification and yet they saw that Americans and the United States of America as something good. That is, a place not just for them to subsist, but a place for them to thrive and a place that they wanted to help improve. The Japanese American Citizen League (JACL), for example, and their leaders throughout the country encouraged Japanese Americans to cooperate and pledge their support for the U.S. during the internment situation. The JACL creed is an amazing example of their faith in the U.S. Written by Mike Masaoka in 1940, it says,

I am proud that I am an American citizen of Japanese ancestry, for my very background makes me appreciate more fully the wonderful advantage of this nation. I believe in her institutions, ideals, and traditions; I glory in her heritage; I boast of her history; I trust in her future. She has granted me liberties and opportunities such as no individual enjoys in this world today. She has given me an education befitting kings. She has entrusted me with the responsibilities of the franchise. She has permitted me to build a home, to earn a livelihood, to worship, think, speak, and act as I please – as a free man equal to every other man. Although some individuals may discriminate against me, I shall never become bitter or lose faith, for I know that such persons are not representative of the majority of the American people. True; I shall do all in my power to discourage such practices; but I shall do it in the American way, above board, in the open, through courts of law, by education, by proving myself to be worthy of equal treatment and consideration. I am firm in my belief that American sportsmanship and attitude of fair

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play will judge citizenship on the basis of action and achievement and not on the basis of physical characteristics. Because I believe in America, and I trust she believes in me, and because I have received innumerable benefits from her, I pledge myself to do honor to her at all times and in all places, to support her Constitution, to obey her laws, to respect her Flag, to defend her against all enemies foreign or domestic and to actively assume my duties and obligations as a citizen, cheerfully and without any reservation whatsoever, in the hope that I may become a better American in a greater America.

I argue that this attitude taken in this case was an exercise in their freedom, and not simply coercion. And that they still could go the other way, that is, they could by exercising their freedom choose to behave very differently. This idea I will explore later in this chapter. Recall that Locke says for the common good and not for their own good the executive has the right of prerogative. However wrong President Roosevelt was in this case, he did not issue this executive order for personal gain. When teaching us about prerogative Locke explains that human beings are rational creatures, who on occasion, can allow the executive to break the law. This is what I think the Japanese Americans did in this case. They knew they were innocent and loyal and the President was dreadfully wrong, but they acquiesced out of loyalty and faith in the President and the United States of America. Locke says,

A rational creature cannot be supposed, when free, to put himself into subjection to another, for his own harm; (though, where he finds a good and wise ruler, he may not perhaps think it either necessary or useful to set precise bounds to his power in all things) **prerogative** can be nothing but the people’s permitting their rulers to do several things, **of their own free choice**, where the law was silent, and sometimes too against the direct letter of the law, for the public good; and their acquiescing in it when so done (II, 164, my emphasis).

I say the Japanese Americans had the right to allow the government to intern them also because of the kind of government that existed in America and because of the kind of person who was the President. That is, I think the Japanese Americans would still be rational if they thought both the United States and the President were worthy of their trust.
Another aspect of this situation that I had to consider was the fact that Locke tells us that we do not have to wait until it’s too late (II, 220). The Japanese Americans were in a sense rounded up like cattle, eerily similar to the Nazi concentration camps and Hitler’s treatment of the Jews. It was certainly the case that not all Japanese Americans agreed with the JACL. Testifying before a committee of congress, journalist James Omura, said, “Has the Gestapo come to America? Have we not risen in righteous anger at Hitler’s mistreatment of the Jews?” The fact that the United States government and the majority of its people were so quickly and comfortably willing to take away the Japanese American’s freedom and property rights makes it reasonable to ask, what else are they willing to do? Imprison me and my family for decades, starve us, and allow others to hurt and abuse us, enslave us? These thoughts are not unreasonable. The negative sentiments that existed for decades, the false and vile claims made about them by many America leaders, and the speed in which the government and American people decided to intern them, had to be considered. Locke says,

He that, in the state of society, would take away the freedom belonging to those of that society or common-wealth, must be supposed to design to take away from them every thing else, and so be looked on as in a state of war (II, 17).

If the society completely turns against you, and violates your rights so grossly, it is reasonable to think that since they have gone this far they could go even further. If you

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185 Ibid, pg. 19.
186 Ibid. pg, 16. The person in charge of the camps and the Western Defense Command, (WDC) was General John L. DeWitt. Testifying before congress he said, “We are at war and this area – eight states – has been designated as a theater of operations … There are approximately 288,000 enemy aliens which we have to watch and I have little confidence that the enemy aliens are law-abiding loyal in any sense of the word … Particularly the Japanese. I have no confidence in the loyalty whatsoever.” Then California Attorney General Earl Warren and many other American leaders made similar comments about the Japanese Americas.
have the right of resistance Locke tells us you don’t have to wait until it is too late to use it. Locke says,

The state of mankind is not so miserable that they are not capable of using this remedy, till it be too late to look for any. To tell people they may provide for themselves, by erecting a new legislative, when by oppression, artifice, or being delivered over to a foreign power, their old one is gone, is only to tell them, they may expect relief when it is too late, and the evil is past cure. This is in effect no more than to bid them first be slaves, and then to take care of their liberty; and when their chains are on, tell them, they may act like freemen. This, if barely so, 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: and therefore it is, that they have not only a right to get out of it, but to prevent it (II, 220).

These are things that not only Locke considered, but that the Japanese Americans must have had to consider too. And Locke would not have it any other way: the right to exercise your right to resist is with individuals (II, 241).

Having examined the facts of the Japanese Americans Interment case and what I think Locke’s theory of justified resistance would allow, I now ask: What if things were different? That is, what if the facts of what happened to the Japanese Americans while they were interned were in fact different than they were? For the most part, and there were exceptions to be sure, the irony of being interned kept most Japanese Americans safe and not harmed by other angry Americans, if you can consider being in prison not being harmed. In fact, one of the arguments the JACL made to their members and other Japanese Americans was that internment would help keep them safe from dangerous mobs. I want to present a scenario that is not at all far-fetched. What if, during the course of internment, the supply of dairy, meats, fruits, vegetables, and other food items were either so scarce or that the government simply began to direct their resources elsewhere, and as a result wide-spread hunger and worse, starvation began to occur at the camp
facilities? Did the Japanese Americans have to sit there and starve? And if they revolted and tried to leave the camps to find food or work or even to return to their own farms and they were met with force, did they simply have to turn around and go back? In this case I think Locke’s theory of justified resistance would allow them to fight whoever met them with force so that they could try to save themselves and their families.

This kind of resistance of course would not be to overthrow the government but simply to do what was necessary to preserve and protect their right to life. We are supposed to preserve ourselves and not quit our station willfully according to Locke (II, 19). Locke tells us the loss of life is capable of no reparation and therefore permits our own defense (II, 19). We certainly have to try and preserve others and especially the innocent according to Locke, but not at our own expense. Locke says we must do these things, but only “when his own preservation comes not in competition.” (II, 6) There is room for this kind of resistance in Locke’s theory because no one ever has to sacrifice themselves even for a just government. A just government does not have the power (the moral authority) to destroy innocent people. The law of nature and the fundamental law of nature are antecedent to government. They are perpetual and cease not in society, and therefore can be enforced (II, 135). At the rock bottom level, Locke’s theory is a theory of self-defense. To detain, to limit a person’s freedom, to confiscate someone’s or some corporation’s property, a reasonably just government can do without an individual having the moral right to resist that government under certain conditions. In Chapter 1 of this work, I said that at times Locke sees the rights of the common good trumping the rights of an individual, but at other times Locke sees the rights of an individual as inviolable:
this is one of those times - no one has to sacrifice their life or the life of their family for the good of society under this scenario.

WEIGHING IT ALL

Going back to the facts as they actually were and given Locke’s theory of justified resistance it is my view that the Japanese Americans were rational in cooperating with the United States authorities on two levels. On the practical side, if the 110,000 or so interned Japanese Americans, many of whom were women, children, and the elderly, would have resisted many would have suffered great harm. The strength of the military, National Guard units, and probably much more worrisome and dangerous, the hatred of the United States people toward the Japanese Americans after the bombing of Pearl Harbor, would have put them all in grave danger had they resisted. Frankly, many Americans were looking for a fight at that time and would have been glad to find one had the Japanese Americans resisted. Under Locke’s theory not resisting because the harm that would result is allowed and expected. Locke allows those being harmed and abused to wait until the odds are much more likely to go the victim’s way (II, 176).

I also think the Japanese were rational for cooperating with the United States government for another reason - a reason that may seem irrational at first given what was happening to them. They cooperated out of a trust and faith in the United States of America. They were informed citizens aware of America’s past history of injustices. This was a country that abused the Native Americans, enslaved Africans, and continued to discriminate against them, and had a long history of abusing the Japanese as well. Yet the
Japanese Americans remained loyal to the United States because they believed it to be a special place in the world among other countries. The JACL creed says they believe in America’s ideals and “shall never lose faith” and want to help make it “a greater America.” I do not think this is an unreasonable position given America’s ideals and what was going on in other countries throughout the world at this time.

Finally, and I do think this is a very close call, I think the Japanese Americans, given the facts of internment and Locke’s theory of justified resistance, had a right to resist the government for what was being done to them. The reason why I have reached this conclusion is that under Locke’s theory, internment simply left the innocent Japanese Americans in a position that was far too risky. They were too exposed to all that could go wrong and could not have defended themselves properly had things gone wrong putting their lives in jeopardy without any real means of self-defense. It is the risk of the loss of their lives and not just the loss of their liberty and property that have led me to reach this conclusion. These people were rounded up like cattle and put into known locations. They were no longer allowed to bear arms, had no idea how long they would be interned, were not allowed to attend to their careers, education, farms and property, and had to rely on those who betrayed them for their food and shelter. If the enemy forces won the war would the armies of imperial Japan see them as traitors? How could they defend themselves against any enemy, including domestic hate-filled enemies? With all the limitations they were being burdened with, and with so many things that could have gone wrong, I think they had a self-preservation right to resist. Ultimately, it is a passage I found early on in the ST that explains my position. Locke says, “Every one, as he is

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187 Although I do not think it would have been practical to resist, given the dangers and harm they would have faced.
bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind” (II, 6). It is true that we all have a duty to preserve mankind and when all of mankind cannot be preserved the innocent are to be preserved according to Locke (II, 16), but not at our own expense. We are not sacrificial lambs. If the United States government acts unjustly against me and I resist and then that same government foolishly attempts to snuff out my resistance, causing them to lose a war that they are in, is that my fault?188 All of their immorality, irrationality, stupidity, and paranoia I have to bear, sacrificing myself and my family for the innocent? No. This is a case where the lives of the Japanese Americans did come into competition with other lives. Too much was being asked of these innocent Americans. Their freedom rights could have easily been violated, and in some cases even their property rights could have been violated without exposing them to this much risk to their lives. The government could have ordered all Japanese Americans working in or near a military installation to leave their jobs immediately. They could have ordered all Japanese Americans not to travel within a certain distance of a military installation and several other things without ordering them into camps. These acts would have violated their rights unjustly but not at the expense of a risk to the loss of their lives.

188 I owe this point to my dissertation advisor Dr. Jon Mandle.
THE ORDERING OF OUR NATURAL RIGHTS

We must ask, if we truly have natural rights and at times some of our natural rights can be trumped by other natural rights or by the laws of God, how does it all work? How do all these things fit together? They fit together based on an order, an order of importance. For example, Locke often speaks of our natural rights to life, liberty and property. The reason why he orders his list this way is by order of importance.\(^{189}\) The reason why life is the most important natural right is that its loss is to each of us, an irreparable loss (II, 19, 207). Other losses are ones we may recover from or at least deal with, but no one can restore life to our dead carcass (II, 207). Death is the greatest natural evil that can befall us according to Locke.\(^{190}\) So if someone attempts to steal one penny from me by putting a knife under my throat, I may kill this person. But if a Chief Executive Officer of a company robs me out of a $100,000 stock investment by using fraud and deception, I may not kill him. Even though the loss of a penny will not harm me and the $100,000 loss will greatly harm me, in the one case my life is in danger and in the other case it is not. Locke says,

A man with a sword in his hand demands my purse on the highway, when perhaps I have not 12d. in my pocket. This man I may lawfully kill. To another I deliver £100 to hold only whilst I alight, which he refuses to restore me when I am got up again, but draws his sword to defend the possession of it by force. I endeavour to retake it. The mischief this man does me is a hundred, or possibly thousand times more than the other perhaps intended me (whom I killed before he really did me any); and yet I might lawfully kill the one and cannot so much as hurt the other lawfully. The reason whereof is plain; because the one using force which threatened my life, I could not have time to appeal to the law to secure it, and when it was gone it was too late to appeal. The law could not restore life to my dead carcass. The loss was irreparable; which to prevent the law of Nature gave me a


\(^{190}\) Ibid. pg. 114.
right to destroy him who had put himself into a state of war with me and threatened my
destruction. But in the other case, my life not being in danger, I might have the benefit of
appealing to the law, and have reparation for my £100 that way” (II, 207).

The loss of my life is “capable of no reparation” (II, 19), but with the loss of $100,000 I
can at least attempt or have an opportunity to receive some reparation.

Freedom or liberty comes after life and before property, because similar to life;
liberty is a natural right we can never bargain away under any circumstance.\textsuperscript{191} We are
free because we are rational and we need our freedom to perform our duties toward God,
ourselves, and each other, which includes preserving ourselves and the rest of
humankind. Recall, it is the “fence” that protects us from the threats of others. Locke
understands liberty to be a faculty, a power, a capacity that we have to implement the
commands of our will (E. II, XXI. 15).\textsuperscript{192} For example, although the Japanese Americans
were being compelled to go to the internment camps by the United States Government, it
was also the case that most Japanese Americans wanted to show their loyalty to America
and complied voluntarily. It seems then at this point that they were exercising their
liberty. However, it is also the case for Locke that you cannot ever voluntarily part with
your freedom because it makes things too dangerous. You are simply allowing yourself to
be exposed to the arbitrary will of another at the risk of your preservation (II, 22). But
freedom for Locke is not doing whatever pleases you, that is, we all give up all sorts of
freedoms when we join society, Locke says,

\textit{The liberty of man, in society, is to be under no other legislative power, but that
established, by consent, in the common-wealth; nor under the dominion of any will, or
restraint of any law, but what that legislative shall enact, according to the trust put in it.
Freedom then is not what Sir Robert Filmer tells us, Observation, A. 55. a liberty for
every one to do what he lists, to live as he pleases, and not to be tied by any laws: but
freedom of men under government is, to have a standing rule to live by, common to every
one of that society, and made by the legislative power erected in it(II, 22).}

\textsuperscript{191} Ibid, pp. 119.
\textsuperscript{192} Ibid. p.122.
This is why Locke is specific in the kind of thing to which you cannot relinquish your freedom, namely to the arbitrary power of another. He says,

This freedom from absolute, arbitrary power, is so necessary to, and closely joined with a man’s preservation, that he cannot part with it … For a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another (II, 23).

When the Japanese Americans allowed themselves to be interned they certainly did not think they were enslaving themselves, but I do not think they thought they were allowing themselves to be put under the absolute and arbitrary power of anyone either. That is, they still believed that this was a nation of laws and they did not believe the President, Congress, or the Courts had absolute or arbitrary power over them. There were still checks and balances even in war. In American history our Presidents have expanded powers for sure, especially during times of war, but not absolute power. In this sense, they were not allowing themselves to be enslaved or put under anyone’s absolute or arbitrary power, and therefore did not forfeit their freedom in a way that is not allowed by Locke.

The natural right to property is listed last because man has the right to exchange his property and the right to part with it. 193 Here, Locke uses the word property in the narrow sense, meaning goods and possessions. Property is necessary to maintain us, as we all need food, clothing, and shelter, and this is why no one can take our property without our consent or by the consent of our representatives. Locke says,

The supreme power cannot take from any man any part of his property without his own consent: for the preservation of property being the end of government” (II, 138, see also II, 140).

193 Ibid. pg. 119.
Despite being a natural right, and essential for our maintenance, it is still, on Locke’s natural rights scale, given a place of lesser importance than the other two because not only is property something that is capable of reparation, but its loss can be dealt with much more easily than the other two natural rights.

**FREQUENT REVOLUTIONS**

To defend his theory against anticipated critics who thought Locke’s ideas on resistance would bring about frequent revolutions, Locke offered several arguments to prove that this would not be the case. Locke thought for the most part that people would put up with a lot, and would only resist after a long train of abuses (II, 225). But he also said that it is this right to resist that always lies with the people and just knowing that the people have a moral right to resist them, shows governments the danger of abusing their power (II, 226). In the end this idea Locke thinks pays dividends, that is, it will actually produce a state of affairs that will prevent governments from acting in evil ways and thereby reduce incidents of resistance (II, 226). He also makes it clear when he defends his theory that although individual people have a right to resist their government when the government puts themselves in a state of war with them, this on a practical level will not often result in a revolution or resistance, not only because the masses will not be moved to help, but the individual person being harmed is rational, and therefore will probably not resist because the cost of resistance may be their life (II, 230). But in this same long argument that he gives to defend his theory, Locke makes it a point to say, (and I think this part of Locke’s argument is often overlooked and not emphasized) that
when private people, either by their ambition, pride, or just disturbed and turbulent disposition try to cast off lawful authority by their rulers, they are committing great evil and are not part of Locke’s theory of justified resistance whatsoever. Locke says,

I grant, that the pride, ambition, and turbulency of private men have sometimes caused great disorders in common-wealths, and factions have been fatal to states and kingdoms. … This I am sure, whoever, either ruler or subject, by force goes about to invade the rights of either prince or people, and lays the foundation for overturning the constitution and frame of any just government, is highly guilty of the greatest crime, I think, a man is capable of, being to answer for all those mischiefs of blood, rapine, and desolation, which the breaking to pieces of governments bring on a country. And he who does it, is justly to be esteemed the common enemy and pest of mankind, and is to be treated accordingly (II, 230).

CONCLUSION

Many Locke scholars think that the main goal of The Two Treatises of Government by Locke is to show, “That it is lawful for the people, in some cases, to resist their king” (II, 232). I call this John Locke’s theory of justified rebellion. The central aim of this work has been to explain and defend this theory. In this section I will briefly review how Locke derived this theory and I will review how I have defended it. At the end of this chapter I will offer my own insights and conclusions about the theory as well.

Locke thinks that God exists, that God created us, that we have natural rights that God gave us, and that there are natural laws to which we and our governments must conform. These natural laws limit our individual actions and make sure government itself should always be an entity of limited powers. No government can rightfully have more power than what the people can give it, and what the people can give it is only the power they had in the state of nature. Locke also thinks that human beings are special creatures.
We are rational, free, equal, independent, and non-subordinate to each other. As such, the only rightful way for us to be ruled, is by our own consent. When we agree to form a government with other free people it has to be a two-stage process according to Locke. The first stage is when people agree to form a political community. At this stage the consent has to be unanimous and expressed. The reason why this is the case is that this first stage is contractual, as each member gives up something - their natural freedom - in return for a benefit, the security they will gain when they form a government. Just like a contract each person has to benefit from the agreement. Also, the consent has to be expressed because no one is allowed to bind you to this contract except yourself. The second stage involves forming a government by majority vote. The reason Locke insists only for a majority vote and not a unanimous one, is that for practical reasons, Locke does not think you could get all to agree on a form of government and how it would be arranged.

As long as this newly formed government was formed by consent, performs its fiduciary responsibilities, and rules within the laws of nature, each member of the political society is obligated to obey this newly formed government. One thing to note about this two-stage process is that even after the government is formed the political community retains a power, what Locke calls, the supreme power. This is the power to remove a government if that government acts contrary to the trust it was given (II, 149). This is the reason why the first stage of the process of forming a government is necessary, because ultimately Locke trusts the people and not the government to be responsible for its own self-preservation. As rational creatures the only reason why we would consent to be ruled by another is to be better off. Living without a government
despite having our natural freedoms is very unsafe and inconvenient according to Locke. This is why free people agree with other free people to form governments. Governments should therefore be formed for the good of the people and exist to preserve each person’s life, liberty, and property. For a government to be legitimate it must therefore function as a trusteeship according to Locke. In this way there is no contract that exists between the people and the government, the government holds power only on trust. Locke sees that government responsibilities are fiduciary. That is, the government’s duty is to take care of the people’s interests and not its own interest (II, 149).

In order for a government to do its job it must have the power and authority to do so, it must have what Locke calls, political power.

Political power, then, I take to be a right of making laws with penalties of death, and consequently all less penalties, for the regulating and preserving of property, and of employing the force of the community, in the execution of such laws, and in the defence of the common-wealth from foreign injury; and all this only for the public good (II, 3).

Despite needing powers necessary to do its job Locke also recognizes that the government’s powers must be divided. Too much power in one person’s hands has proven throughout human history to be too much temptation for many and has caused great harm. Having power in only one person’s hand also leaves people in a state of nature, and this is one of the main reasons people form governments in the first place, to remedy the inconveniences of living in the state of nature. The state of nature is not simply defined by Locke as a state in which no government exists. Locke defines the state of nature as an analytical concept that represents a state of affairs. He says,

For where-ever any two men are, who have no standing rule, and common judge to appeal to on earth, for the determination of controversies of right betwixt them, there they are still in the state of nature, and under all the inconveniencies of it (II, 91).
This is why under Locke’s theory of government an absolute monarchy is always an illegitimate government (II, 90). That is, whenever there is a dispute between a subject and the monarch there is no common judge with authority to adjudicate cases between them and the absolute monarch is the judge in his or her own case. People can never allow themselves to be put under the arbitrary power of another according to Locke because no one has the moral authority to give a power to someone else that they do not have, and no one has the power to destroy their own life or harm another (II, 135). Not only does rule by absolute monarchy leave people in the state of nature, according to Locke it leaves people even worse off than living in a state of nature that has no government. At least in the latter case, power is dispersed. In the case of absolute monarchy, power is concentrated and often backed by great military force (II, 137).

Locke holds that people have an innate desire to live and that they have a natural right to self-defense. We are born with this desire to live and we are also born with many physical needs that must be met in order for us to live. It is also the case that we are born into a world furnished with goods that can sustain us. We therefore have a natural right to appropriate property according to Locke because we need to appropriate goods necessary for our sustenance without anyone else taking these goods from us without our consent. Property rights and the right to life are closely linked according to Locke. If someone attempts to murder you by putting a knife under your throat, you may kill this person rightfully according to Locke. In a similar way, if someone attempts to steal your coat when it is five below zero and your coat is the only means for you to keep warm and keep from freezing to death, you may kill this thief as they are in essence making an attempt
on your life. When someone tries to put you under their power and use force without the moral authority to do so, Locke says such a person is putting themselves in a state of war with you, and you have the right to resist and destroy this person. Even when a government exists this sort of thing happens, and if you do not have time to appeal to the government for help you can resist the aggressor.

Locke realizes it is also the case that governments or branches of governments will attempt to harm individuals or groups of people on occasion. When this happens and your rights are invaded and you have time to appeal to the government for help you have no right to resist your government with force (II, 207). Sometimes however, a government will attempt to harm a person or a group of people and there is no remedy for appeal. In such a case people have a right to resist their government. This I call this John Locke’s theory of justified resistance. I state the theory this way:

When a government does not hold up its fiduciary responsibilities and when that same government uses force without authority and there is no common judge with authority to whom to appeal because either there is no judge that exists, (such as in the state of nature) or because there is no time to appeal to one, the people may justifiably resist.

The main focus of this theory is not when people can resist forms of government that are illegitimate from their formation, such as governments by conquest or absolute monarchies. These forms of government are always illegitimate and can be resisted, although it may not be practical to do so, as you may be killed. Locke’s theory is mainly focusing on when a person has a right to resist their government when that government was once a legitimate form of government. Governments cannot be resisted for just any reason, and people cannot withdraw their trust from a government for just any reason. A government first has to do something wrong, and then there has to be no remedy for
appeal available. If these two conditions are met, then a person then must make sure that if they resist it would be worth the cost. If it would not be worth the cost, you don’t yet have the right to resist (II, 176). Here is an example of this kind of situation. Let’s say in general your government is a legitimate government. It was formed by consent, it performs its fiduciary responsibilities, and it rules within the law of nature most of the time. Then let’s say this government finds itself in a war against an invading country and it finds that it needs to use and take your property for the war effort without compensating you because it does not have the means to compensate you. So it goes ahead and confiscates your property without your consent. If you have no remedy for appeal as the courts will decide in the government’s favor, as the courts generally expand the government’s power in times of war, you may think you have a right to resist rightfully under Locke’s scheme. However, if you resist and do not allow the government to use your property, say a factory in this case, your resisting could cause a great more harm than the loss of your property. It may cause the government to lose the war causing harm to thousands or millions of innocent people. If this is the case, your right of resisting rightfully does not exist. That is, if you resisted you would be violating the fundamental law of nature, which says that mankind must be preserved and when it cannot be preserved the safety of the innocent is to be preferred (II, 16).

A great lesson that we learn, especially from the FS, is that Locke rejects absolutist forms of government. They are illegitimate forms of government according to Locke from the very inception. Locke understands these to be governments in which the source of all law and authority come from the arbitrary dictates of an indivisible sovereign. That this authority is necessarily perpetual, that governmental power should
not be divided, and that all citizens and subjects of this government are under the absolute submission to the arbitrary dictates of it. Such a government has another aspect to it that Locke also rejects; the irrevocable aspect of this kind of government. No matter what the arbitrary dictate of this kind of government individuals and the people at large have no right to alter or replace it. It is often held that the king’s power is dependent on the law of God and that kings are above the law (I, 81), and has absolute power over life and death.

Given how Locke understands the nature of human beings, their relationship with each other, and their relationship with God an absolutist form of government simply does not come close to the kind of government that could have the moral authority to rule over creatures like us. This brings us to another lesson we learn from Locke; Locke necessarily is in favor of only governments that derive their political power and authority from the wills and consent of the people, and who rule within the law of nature and only for the public good. This kind of government is necessarily self-ruling and is both for the people and by the people. It is by majority vote that the people who make up the political community decide what form of government they are to live under, “as they think good” (II, 132). It is this self-ruling body, what Locke refers to as “the people” that make sure this government remains legitimate and acts according to the trust that has been reposed in it (II, 240). It is the people who always maintain the right to remove the government and erect a new one if the government becomes illegitimate (II, 149, 220). When a government has become tyrannical, it is for all practical purposes no longer the people’s

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194 This summary of how Locke understood an absolutist form of government come from Peter Laslett. See Lasett, Ibid, pg. 183.
and when this happens the people always have the right to take it back and restore it and make it theirs again (II, 243).

Locke’s theory of justified resistance is a moral theory that I think is internally coherent. With regard to the theory I think Locke successfully balances the interests of the common good and the preservation of human kind, along with people’s individual rights. We form government because we are social creatures and we all do better when we cooperate and work to preserve each other. This is very practical and not dependent on a divine order of the universe. The preservation of our species and our society takes center stage in Locke’s thought, but not at the expense of forfeiting our individual right to life and self-defense. The balance of these things is not always easy, and how they fit together in practice is not always easy to see, but I think Locke gets very close to showing us a way.

In order to explain and understand Locke’s theory I have reviewed and examined several criticisms levied at Locke’s theory over the years. I think these criticisms are mistaken, but they push us to understand and grasp Locke’s thought at a deeper level. I have also used several examples of historical cases and several cases in which I examine the actions of government and individuals during war time. I think the study of these historical cases especially during war time presses Locke’s theory at the highest level. They bring out all the Lockean principles that must be weighed and considered and they force us to come to a greater understanding of each principle itself and even more importantly, how they all might fit together. Locke wants us to understand that we have a right to resist on the one hand, and on the other hand, he wants us to use our reason and
our knowledge of natural law to always choose the morally correct action. It is within this second aspect of Locke’s theory that I have finally found fault with Locke.

I think Locke is over-confident. He thinks if we know the law of nature, and use our reason correctly we would know if resisting was morally correct or not in every given situation. It is a theme found in Locke’s moral theory and his epistemology that human beings create ideas by using the input derived from our senses, along with our innate natural abilities, such as our ability to abstract, recall, and combine, to create new ideas. Many of our moral ideas are ideas that we create according to Locke. On the one hand this is descriptive, as Locke is simply explaining how we come to have ideas in general, but on the other hand, Locke’s epistemology is prescriptive in that he puts the burden on us to come up with correct moral ideas. Nowhere does he think this is as important as when we come up with ideas about morality, divinity, and law. It is up to us to get our moral ideas right and Locke thinks we can. He holds that if we think hard enough about it, we can get our moral ideas as correct as our ideas on mathematics have been. Locke also believes that we can understand the law of nature, which is God’s unchanging and eternal moral law for us, by the use of our reason. We can therefore compare the moral ideas that we created ourselves with God’s law to make sure they are correct. Locke thinks we therefore can discover in any situation the morally correct course of action. This is why I have described Locke’s theory of justified resistance as a burden for us. That is, the right to resist is an individual decision, and as such this decision must be morally correct or else Locke thinks you will be held morally responsible. If you do the wrong thing and resist when you should not, you are acting immorally according to Locke and guilty of the greatest crime (II, 231). Locke is confident that we can always
figure out the morally correct answer and says he is sure that if we resist when we should not, we will be held accountable. He says,

This I am sure, whoever, either ruler or subject, by force goes about to invade the rights of either prince or people, and lays the foundation for overturning the constitution and frame of any just government, is highly guilty of the greatest crime, I think, a man is capable of, being to answer for all those mischiefs of blood, rapine, and desolation, which the breaking to pieces of governments bring on a country. And he who does it, is justly to be esteemed the common enemy and pest of mankind, and is to be treated accordingly (II, 230).

Locke’s theory is so very comprehensive and useful to us, that I think it is wise that all students interested in political philosophy and the right to revolution should spend some time becoming acquainted with it. However, it is just a fact we all can be presented with competing moral claims that seem morally equal and it is difficult to decide how to proceed. Was the great abolitionist William Lloyd Garrison right or wrong when he advocated that the northern states should secede from the United States in 1840 because of the practice of slavery? Or was the United States with all its faults still a special place in the world and in the history of humanity that needed not to be abandoned at that time especially from moral people like Harrison? Would that have caused more harm than good? Would other citizens have felt they had the right to secede when other rights were being violated? Over time would this have collapsed this union of states? These answers are not easy to find, but Locke is sure there is always a right answer. I am not so sure,

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195 One of Locke’s great achievements is to teach us that we must work long and hard when defining ideas about morality, divinity, and law because wrong ideas about them are not just
and even if there is right answer, how do you know you have found it? Can I truly say Harrison’s view is morally wrong? Despite this fault that I believe to be in Locke’s theory, I do not think that my disagreement with Locke undermines his great achievement in giving us a theory of justified resistance.

failed academic exercises but they cause great harm to real people. This is a repeated theme in Locke’s Essay. In the Essay he is also very confident about our ability to be certain about morality. He says, “The idea of a supreme being, infinite in power, goodness, and wisdom, who made us and on whom we depend, and the idea of ourselves, as understanding rational creatures. If we thought hard about these and explored them, I think they would provide foundations for our duty and rules of action, in such a way as to make morality one of the sciences capable of demonstration [= ‘rigorous proof’]. Within such amorality the measure so fright and wrong could, I am sure, be derived from self-evident propositions by valid inferences as incontestable as those in mathematics, in a way that would satisfy anyone who was willing to bring to moral studies the same attentiveness and lack of bias that he brings to mathematics” (E. IV. iii. 18).


Filmer, Sir Robert, Patriarcha or the Natural Powers of Kings. (1680)


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